

## **Appeal Record Index**

### **Appeal to the Board of Adjustment Re: Appeal of the Planning Commission Decision of Zoning Permit 1020-782 issued for the property located at 541 Bonanza Avenue, Homer, Alaska**

Notice of Appeal to the Board of Adjustment from Frank Griswold May 10, 2021	Page 3
Homer Planning Commission Decision on Appeal dated May 7, 2021	Page 6
Memorandum from City Clerk Re: Notice of Appeal filed dated May 14, 2021	Page 12
Appeal Record: Appeal to the Planning Commission of City Planning Staff Issuance of Zoning Permit 1020-782 by Frank Griswold	Page 20
Supplement to the Record	Page 32
Notice of Hearing and Supplemented Record	Page 108
Motion to Continue Appeal Hearing submitted by the City of Homer through Jermain Dunnagan & Owens P.C. dated December 31, 2020	Page 109
Frank Griswold's opposition to Motion to Continue Appeal Hearing dated January 4, 2021	Page 111
Reply to Opposition to Motion to Continue Appeal Hearing by the City of Homer through Jermain Dunnagan & Owens P.C. dated January 4, 2021 and Draft Proposed Order Granting Motion to Continue Appeal Hearing	Page 114
Memorandum from City Clerk Re: Motion to Continue Appeal Hearing and Proposed Order Granting Motion to Continue dated January 5, 2021	Page 117
Written public comment from Michelle Borland dated January 6, 2021	Page 118
Supplemental information submitted by Frank Griswold received for the January 6, 2021 hearing	Page 119
Planning Commission approved minutes of January 6, 2021	Page 159
Memorandum from City Clerk Re: Process for Appeal of Zoning Permit 1020-782 dated January 14, 2021	Page 166
Hearing Procedure drafted for January 27, 2021 hearing	Page 168
Frank Griswold's Witness List submitted January 15, 2021	Page 169

Frank Griswold's Brief submitted January 25, 2021	Page 170
City of Homer's Brief submitted by Jermain Dunnagan & Owens P.C. dated January 25, 2021	Page 189
Jermain Dunnagan & Owens P.C. Entry of Appearance filed January 25, 2021	Page 198
City of Homer's Witness List Submitted by Jermain Dunnagan & Owens P.C. January 25, 2021	Page 199
Memorandum from City Clerk Re: Preliminary Matters dated January 27, 2021 (reads 2020)	Page 201
Planning Commission approved minutes of January 27, 2021	Page 203
Frank Griswold Motion for Legal Counsel for the Planning Commission filed January 28, 2021	Page 215
Notice of Continued Hearing	Page 217
Frank Griswold Evidence Filing filed March 9, 2021	Page 218
Emails from Frank Griswold re: Issues of Notice, Comment Periods, and Identification of Parties filed March 10, 2021	Page 231
Motion to Strike Appellant's Reply Brief and Proposed Order Granting Motion to Strike by the City of Homer through Jermain Dunnagan & Owens P.C. filed March 11, 2021	Page 233
Frank Griswold Reply to Motion to Strike dated March 11, 2021	Page 237
Notice of Appeal Hearing with Affidavit dated March 11, 2021	Page 241
Planning Commission approved minutes of March 11, 2021	Page 244
Frank Griswold Motion for Disqualification and Termination of Chair Smith from further participation in the appeal of zoning permit 1020-781 and of his seat on the Planning Commission.	Page 267
Memorandum from City Clerk Re: Appellant Motion for Disqualification and Termination of Chair Smith from further participation in the appeal of zoning permit 1020-781 and of his seat on the Planning Commission.	Page 269
Written Public Comments	Page 271
Planning Commission minutes of April 15, 2021	Page 280



**ON APPEAL TO THE HOMER BOARD OF ADJUSTMENT**

FRANK GRISWOLD,

Appellant,

v.

RICK ABBOUD, TRAVIS BROWN,  
SCOTT AND STACY LOWRY,

Appellees.

\_\_\_\_\_/ Appeal of Zoning Permit 1020-782

**NOTICE OF APPEAL RE: HOMER PLANNING COMMISSION'S DECISION  
UPHOLDING ZONING PERMIT 1020-782**

Pursuant to HCC 21.93.060, the Homer Planning Commission's May 7, 2021 Decision affirming Zoning Permit 1020-782 is hereby appealed by Frank Griswold whose address is 519 Klondike Avenue, Homer, Alaska. The subject property is located at 541 Bonanza Avenue, Homer, Alaska and its legal description is T 6S R 13W SEC 20 Seward Meridian HM 0930033 Glacier View SUB NO 23 Blocks 8 9 & 10 Lot 24A. The owners of the subject property are Scott and Stacy Lowry, 907 Daly Road, Ojai, CA. Mr. Griswold owns several lots in close proximity to the subject lot, including his residence at 519 Klondike Avenue. The subject structure is/ was a Connex shipping container which constitutes a nuisance under HCC 21.18.080 and potentially diminishes the value of Mr. Griswold's real property and his enjoyment of that property. Mr. Griswold has objected to the subject structure since the day it was illegally deposited onto the subject lot.

**Allegations of Error**

1. Pursuant to HCC 21.70.030(a), Planning Technician Travis Brown had no authority to issue Zoning Permit 1020-782; the Commission erroneously failed to acknowledge that HCC 21.70.030(a) takes precedent over HCC 21.90.020(b) and/or make a finding regarding the conflict between these two code provisions.

2. The Commissioners correctly found that Zoning Permit 1020-782 violates HCC 21.70.010(b) because it was not obtained prior to commencement of the activity for which it was required but then

erroneously waived HCC 21.70.010(b) without having the authority to do so thereby violating their Oaths of Office to support and defend the Ordinances of the City of Homer including HCC 21.70.010(b) and HCC 21.70.030(c).

3. The subject structure is a single family residence which is not allowed on the subject lot because the lot already contains a single family dwelling; HCC 21.18.030(j) requires a conditional use permit for more than one building containing a permitted principal use on a lot.

4. The Commission erred in finding that the subject structure constitutes a detached dwelling unit as an accessory building to a principal single family dwelling. Furthermore, the Lowrys did not apply for or receive a zoning permit for an accessory building to a principal single family dwelling, and the Commission did not have the authority to transform a zoning permit for a single family residence into a zoning permit for an accessory building to a principal single family dwelling. The Commission had no authority previously to "instruct" the Lowrys to file for a zoning permit using HCC 21.18.020(ii) because no public notice had been given that a detached dwelling unit option would be discussed regarding the Lowry's application for a mobile home park via CUP 20-14 and the Commission's Decision regarding CUP 20-14 contained no finding that the subject structure constituted a detached dwelling unit.

5. The subject structure violates nuisance standards set forth in HCC 21.18.080.

6. The Commission erred in finding that a new (second) driveway permit is not required. The former driveway was vacated when two lots were combined into one and a new (second) driveway permit was not obtained in violation of HCC 11.08.040(a). The Commission's finding that the subject property does not constitute abutting lots is contrived and irrelevant as to whether a new driveway permit is required.

7. Chair Smith had a flagrant disqualifying bias and violated his oath of office to solemnly support the Constitutions, the Ordinances of the City of Homer, and honestly, faithfully, and impartially perform the duties of his office. Furthermore, during the March 17, 2021 Commission meeting, Chair Smith initiated illegal ex parte communications regarding the appeal



of Zoning Permit 1020-782 in the presence of City Planner Rick Abboud.

8. Mr. Griswold was denied his due process right to conduct direct examination of witnesses and otherwise develop a full record in accordance with HCC 21.93.300(d). The Commission arbitrarily adopted hearing procedures designed to thwart Mr. Griswold's presentation of evidence and the development of a full record.

9. The Commission's "Procedure for Planning Commission Hearing" failed to provide for the filing of written briefs by non-parties per HCC 21.93.300(d).

10. The Commission erroneously and deliberately failed to identify the parties involved or indicate which were the appellees/respondents.

11. The notification of neighboring property owners and general public regarding the subject appeal proceedings failed to include a statement that the complete proposal is available for review, specifying the particular city office where the proposal may be examined as required under HCC 21.94.020(b) and HCC 21.94.020(4).

12. The Homer City Attorneys failed to adequately identify which party/parties they were representing and their participation in this matter conflicted with their duties prescribed under HCC 2.16.010(e).

#### **RELIEF SOUGHT**

The Homer Board of Adjustment should vitiate Zoning Permit 1020-782 and instruct the Planning Department to order the prompt removal of the subject structure.

DATED: May 10, 2021

By:

  
Frank Griswold



**City of Homer**

[www.cityofhomer-ak.gov](http://www.cityofhomer-ak.gov)

**Planning**

491 East Pioneer Avenue  
Homer, Alaska 99603

[Planning@ci.homer.ak.us](mailto:Planning@ci.homer.ak.us)

(p) 907-235-3106

(f) 907-235-3118

**HOMER PLANNING COMMISSION  
DECISION ON APPEAL**

Re: Zoning Permit 1020-782  
Address: 541 Bonanza Ave, Homer AK  
Legal Description: T 6S R 13W SEC 20 Seward Meridian HM 0930033 Glacier View  
SUB NO 23 Blocks 8 9 & 10 Lot 24A

**INTRODUCTION**

Scott and Stacy Lowry applied for Zoning Permit (ZP) 1020-782 on October 5, 2020, for a Detached Dwelling Unit (DDU) under Homer City Code (21.70). The subject structure is a connex repurposed into a living structure with modifications and amenities common to living structures. City Resident Frank Griswold submitted an Appeal to Zoning Permit 1020-782 per Homer City Code (HCC) 21.93.020(a) and HCC 21.93.050(c) citing the subject structure is/was a connex shipping container which constitutes a nuisance under HCC 21.18.080 and could diminish both the value of Mr. Griswold's real property in the Central Business District (CBD) and his enjoyment of that property. Mr. Griswold states Zoning Permit 1020-782 should be vitiated, and the subject structure removed.

**BACKGROUND**

The Lowry's installed the subject structure onto their property prior to obtaining a Zoning Permit. Sometime after, they discovered a permit was needed and filed for a Conditional Use Permit 20-14 which came before the Homer Planning Commission (HPC) on September 2, 2020. As is common to CUP's, a Public Hearing was opened and Mr. Griswold brought his initial objections to the subject structure. HPC denied this CUP citing the structure was not a Mobile Home under HCC definitions. In discussion, the option was identified for Lowry's to go back to the Planning Office and file for a Zoning Permit using HCC 21.18.020 (ii).

Homer Planning Office (HPO) Employee Travis Brown processed and signed Zoning Permit 1020-782 on October 5, 2020 using standard, accepted Planning Office procedures. On October 8, 2020 Mr. Griswold submitted his Notice of Appeal to ZP 1020-782 with nine (9) Allegations of Error.

A Planning Commission Special Meeting and Public Hearing was scheduled for January 27, 2021 to process the Appeal of ZP 1020-782. Due to a disagreement of the proposed process for the hearing, a Continuance was ordered, and the Public Hearing was rescheduled for March 11, 2021.

During the March 11, 2021 Public Hearing, the full Planning Commission was present as well as Scott and Stacy Lowry, Mr. Griswold, Homer City Attorney Max Holmquist, City Planner Rick Abboud, Planning Office employee Travis Brown, Deputy City Clerk Renee Krause and Members of the Public. Chairman Scott Smith presided over the Hearing. Hearing Procedures were drafted and agreed upon by all members prior to the March 11 meeting.

During the PH, Mr. Griswold raised preliminary matters. Thirty (30) minutes were allotted to the Appellant, Mr. Frank Griswold, and the Appellee, Homer City Attorney Max Holmquist for testimony and remarks. Members of the Public were allotted 3 minutes each. Appellant and Appellee were then given 10 minutes for Cross Examination and final comments. HPC left Deputy City Clerk Krause to schedule the Deliberations meeting with the Commissioners at her convenience.

Deliberations were initially scheduled for April 7, 2021, however, this meeting was postponed after the clerk's office received a motion on April 7th, 2021 from Mr. Griswold which called for the Disqualification of Chairman Smith from the Deliberations and also for the immediate termination of Chairman Smith from the Planning Commission.

A Public Hearing was scheduled for April 15, 2021. Attending were Commissioners Highland, Conley, Barnwell, Venuti and Smith. Appellant Mr. Frank Griswold, City Attorney Max Holmquist, City Clerk Melissa Jacobsen attended, and Mayor Castner attended as a Member of the Public. A Lay-down packet was sent to HPC prior to the meeting. Chairman Smith presided over the meeting. At the appropriate time, Chairman Smith passed the gavel to Commissioner Highland. Three (3) minutes were given to Mr. Griswold and Attorney Holmquist for testimony. Acting Chairperson Highland requested motions from Commissioners, and none were presented. The gavel was passed back to Chairman Smith who opened Public Testimony during which no testimonies were given. The Hearing was closed and HPC motioned to continue the meeting in private for Deliberations, which passed. Those present for deliberations on April 15, 2021 included Chairman Smith and Commissioners Highland, Venuti, Barnwell, and Conley.

Deliberations continued on April 21, 2021. Those present for deliberations on April 21, 2021 included Chairman Smith and Commissioners Highland, Venuti, Bentz, Barnwell, and Conley.

The HPC submits and unanimously approves the following findings in support of the decision on appeal.

## DECISIONS

The following numbered points are taken directly from Mr. Griswold's Appeal to Zoning Permit 1020-782. Responses from HPC are in each finding.

1. Planning Technician Travis Brown did not have the authority to issue Zoning Permit 1020-782. HCC 21.70.030(a).

### FINDING:

According to HCC 21.90.020(b), HPC finds that Travis Brown has authority to sign Zoning Permits.

**21.90.020 City Planner – Functions and powers.** 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.

2. Contrary to the caption on Zoning Permit 1020-782, the subject structure does not constitute "New Construction."

### FINDING:

Mr. Griswold does not support his claim with Code or other evidence. Therefore, it is up to HPC to define "New Construction" and offer Findings. Under oath, City Planner Rick Abboud testified that any construction not previously on a property is considered New Construction. "New construction" is new on the lot, whether it is prefabbed or not." HCC does not specifically define New Construction, therefore, HPC finds that according to HCC 21.18.020 (ii),

**21.18.020 Permitted uses and structures:** ii. One detached dwelling unit, excluding mobile homes, as an accessory building to a principal single-family dwelling on a lot; the structure in ZP 1020-782 is permitted.

3. The subject structure, allegedly a single-family residence, is not allowed on the subject lot because the lot already contains a single-family dwelling. HCC 21.18.030(j) requires a conditional use permit for more than one building containing a permitted principal use on a lot.

### FINDING:

HPC finds, as stated above, the subject structure of ZP 1020-782 is identified as a DDU per HCC 21.18.020(ii), and is therefore permissible.

4. The subject structure violates HCC 21.18.080.

**FINDING:**

During the Public Hearing of March 11, 2021, Travis Brown testified that he went to the subject structure to see if it truly was modified to be a dwelling unit. He found the subject structure to have finished walls, a kitchen and living area and could see other improvements. As was ruled during the September 2, 2020 CUP process, HPC concluded the subject structure was no longer a shipping container. Therefore, HPC finds that the subject structure does not violate the Nuisance Standards of HCC 21.18.080 and should be considered a suitable structure for living within.

5. Application procedures set forth under HCC 21.70.020 were not fully complied with.

**FINDING:**

There are no specific violations listed, therefore, HPC will make no ruling and does not find need for further action.

6. The proper fee was not paid in violation of HCC 21.70.060.

**FINDING:**

During the March 11, 2021 Public Hearing, City Planner Rick Abboud testified the Lowry's were issued and paid all ZP fees and fines. The Lowry's paid the \$200 Zoning Permit fee and a \$100 Fine. HPC finds this sufficient according to the fee schedule.

**HCC 21.70.060 Permit – Fee** “The applicant for a zoning permit shall pay a fee according to the fee schedule established by resolution of the City Council. No application shall be processed until the fee is paid.”

7. Requirements of the zoning code and other applicable laws and regulations were waived in violation of HCC 21.70.030.3.

**FINDING:** There are no specific violations listed, therefore, HPC will make no ruling and does not find need for further action.

8. Zoning Permit 1020-782 was not obtained prior to commencement of the activity for which it was required in violation of HCC 21.70.010(b).

**FINDING:**

HPC finds the subject structure of ZP 1020-782 was placed on the lot prior to obtaining a permit in violation of HCC 21.90.090(a.3): During the March 11, 2021 Public Hearing HPO staff testified that the Applicants have fully cooperated with HPO once they learned a permit was needed, and staff provided a breakdown of the fees and testified that the Permit Fee and all appropriate fines set forth by HPO and HCC had been paid. The Lowry's testified to this point during the September 2, 2020 processing of CUP application 20-14. HPO testified the Lowry's paid all

applicable ZP fees and fines for this activity during the application process and is in good standing. Therefore, HPC finds this is not sufficient grounds to reverse ZP 1020-782.

**21.90.090 Violations** a. The following are violations of title 3 “To erect, construct, reconstruct, enlarge, move, repair or alter a structure or part thereof other than as allowed by the Homer Zoning Code, a regulation or a permit issued under the Homer Zoning Code.”

9. The former driveway was vacated when two lots were combined into one and a new (second) driveway permit was not obtained in violation of HCC 11.08.040(a).

**FINDING:**

HPC finds the lot specified in ZP 1020-782 is not an abutting lot and therefore the driveway is not in violation of code.

**HCC 21.03.040 Definitions used in zoning code** ““Abut” means to touch by sharing a common boundary at one or more points. Two adjacent lots separated by a road right-of-way do not abut.”

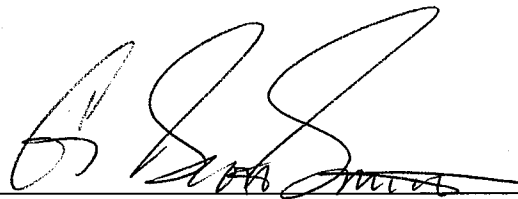
**HCC 11.08.040 Driveway Construction Permit - Required**

a. Any owner of abutting property desiring to gain access, or to enlarge or change the location of an existing access, to a road or street right-of-way shall do so only in strict accordance with the provisions of a permit issued by the City. Written application must be made to secure such a permit from the City through the City Planner. Each application for a permit shall be accompanied by a fee in the amount determined by Council resolution and set forth in the City of Homer fee schedule.

**CONCLUSION:** After thoroughly reviewing the nine Allegations of Error submitted by Frank Griswold, listening to the testimonies of the Appellants, Appellee and all other applicable witnesses and testimonies given during the Public Hearings and Appeal Hearings, HPC finds to uphold the decision by HPO of Zoning Permit 1020-782.

May 7, 2021

Date



Chair, Scott Smith



#### NOTICE OF APPEAL RIGHTS

Pursuant to Homer City Code, Chapter 21.93.060, any person with standing that is affected by this decision may appeal this decision to the Homer Board of Adjustment or hearing officer within thirty (30) days of the date of distribution indicated below. Any decision not appealed within that time shall be final. A notice of appeal shall be in writing, shall contain all the information required by Homer City Code, Section 21.93.080, and shall be filed with the Homer City Clerk, 491 East Pioneer Avenue, Homer, Alaska 99603-7645.

#### CERTIFICATION OF DISTRIBUTION

I certify that a copy of this Decision was mailed to the below listed recipients on May 7, 2021. A copy was also delivered to the City of Homer Planning Department and the Homer City Clerk on the same date.

May 7, 2021

Date

Renee Krause

Renee Krause, MMC, Deputy City Clerk

Frank Griswold  
Appellant  
519 Klondike Ave.  
Homer, AK 99603

Robert Dumouchel  
City Manager  
491 E Pioneer Avenue  
Homer, AK 99603

Michael Gatti and Max Holmquist  
Jermain, Dunnagan & Owens  
3000 A Street, Suite 300  
Anchorage, AK 99503

Scott and Stacy Lowry  
Property owners  
907 Daly Road  
Ojai, CA 93023



## City of Homer

[www.cityofhomer-ak.gov](http://www.cityofhomer-ak.gov)

## Office of the City Clerk

491 East Pioneer Avenue  
Homer, Alaska 99603

[clerk@cityofhomer-ak.gov](mailto:clerk@cityofhomer-ak.gov)

(p) 907-235-3130

(f) 907-235-3143

### Memorandum

TO: Scott and Stacy Lowry, Property Owners  
Rick Abboud, City Planner

FROM: Melissa Jacobsen, MMC, City Clerk

DATE: May 14, 2021

SUBJECT: Notice of Appeal of the Planning Commission Decision of Zoning Permit 1020-782  
issued for the property located at 541 Bonanza Avenue, Homer, Alaska

---

An appeal to the Board of Adjustment has been filed by Frank Griswold regarding the Planning Commission Decision on Appeal of Zoning Permit 1020-782 issued for the property located at 541 Bonanza Avenue, Homer, Alaska.

The appeal appears to be compliant with Homer City Code Sections § 21.93.070 and 21.93.080 and a copy is included with this notice.

In accordance with HCC §21.93.520 the appeal record will be prepared within 30 days of this notice. Notification will be provided when the record is complete. The appeal will be heard by the Board of Adjustment within 60 days after the appeal record has been prepared.

If you have any questions about this process please contact the City Clerk's Office.

Cc: Frank Griswold, Appellant  
City Manager Dumouchel  
City Attorney Gatti

APPEAL RECORD  
Index  
Appeal of City Planning Staff Issuance of  
Zoning Permit 1020-782

Notice of Appeal from Melissa Jacobsen, City Clerk	Page 2
Griswold Notice of Appeal	Page 3
Zoning Permit 1020-782 issued October 5, 2020	Page 5
Zoning Permit Application with attachments	Page 6
<ul style="list-style-type: none"><li>• External Lighting</li><li>• Site Plan</li><li>• Neighboring Properties Map</li><li>• Drawing and Photos</li><li>• Zoning Permit Payment Receipt</li><li>• Water Sewer Permit</li><li>• Utility Installation Instructions</li><li>• Drive-way Permit No. 1199 and 1432</li></ul>	



## City of Homer

[www.cityofhomer-ak.gov](http://www.cityofhomer-ak.gov)

## Office of the City Clerk

491 East Pioneer Avenue  
Homer, Alaska 99603

[clerk@cityofhomer-ak.gov](mailto:clerk@cityofhomer-ak.gov)

(p) 907-235-3130

(f) 907-235-3143

October 22, 2020

Dear Mr. and Mrs. Lowry,

A **Notice of Appeal** has been filed by Frank Griswold regarding the approval of Zoning Permit 1020-782 issued for the property located at 541 Bonanza Avenue, Homer, Alaska. Pursuant to HCC 21.93.020 decision on the appeal of a zoning permit is appealed to the Planning Commission.

I find the Notice of Appeal to be compliant with Homer City Code Sections § 21.93.070 and 21.93.080. Attached is a copy of the appeal.

The appeal record will now be prepared in accordance with HCC §21.93.520 and you will be notified when the record is complete. The appeal will be heard by the Planning Commission within 60 days after the appeal record has been prepared.

If you have any questions about this process please contact the City Clerk's Office.

Regards,

Melissa Jacobsen, MMC  
City Clerk

Encl. Appeal submitted by Frank Griswold  
HCC 21.93

Cc: Frank Griswold  
Scott and Stacy Lowry  
City Manager Dumouchel  
City Planner Abboud

061 - 8 2611

City of Homer

NOTICE OF APPEAL TO PLANNING COMMISSION RE: ZONING PERMIT  
1020-782

Pursuant to HCC 21.93.20(a) and HCC 21.93.050(c), the October 5, 2020 issuance of Zoning Permit 1020-782 is hereby appealed by Frank Griswold whose address is 519 Klondike Avenue. The subject property is located at 541 Bonanza Avenue, Homer Alaska and its legal description is T 6S R 13W SEC 20 Seward Meridian HM 0930033 Glacier View SUB NO 23 Blocks 8 9 & 10 Lot 24A. The owners of the subject property are Scott and Stacy Lowry, 907 Daly Road, Ojai, CA. Mr. Griswold owns several lots in close proximity to the subject lot, including his residence at 519 Klondike Avenue. The subject structure is/was a Connex shipping container which constitutes a nuisance under HCC 21.18.080 and could diminish both the value of Mr. Griswold's real property in the CBD and his enjoyment of that property. Mr. Griswold has objected to the subject structure from the day it was illegally deposited onto the subject lot. Zoning Permit 1020-782 should be vitiated and the subject structure removed.


## Allegations of Error

1. Planning Technician Travis Brown did not have the authority to issue Zoning Permit 1020-782. HCC 21.70.030(a).
2. Contrary to the caption on Zoning Permit 1020-782, the subject structure does not constitute "New Construction."
3. The subject structure, allegedly a single family residence, is not allowed on the subject lot because the lot already contains a single family dwelling. HCC 21.18.030(j) requires a conditional use permit for more than one building containing a permitted principal use on a lot.
4. The subject structure violates HCC 21.18.080.
5. Application procedures set forth under HCC 21.70.020 were not fully complied with.
6. The proper fee was not paid in violation of HCC 21.70.060.
7. Requirements of the zoning code and other applicable laws and regulations were waived in violation of HCC 21.70.030.

8. Zoning Permit 1020-782 was not obtained prior to commencement of the activity for which it was required in violation of HCC 21.70.010(b).

9. The former driveway was vacated when two lots were combined into one and a new (second) driveway permit was not obtained in violation of HCC 11.08.040(a).

DATED: October 8, 2020

  
\_\_\_\_\_  
Frank Griswold





**City of Homer**  
Planning & Zoning  
491 East Pioneer Avenue  
Homer, AK 99603-7624

**Residential Zoning Permit New Construction**

**Department Use Only**

**Permit: 1020-782**

Approved Date: **10/5/2020**

Start Date: **10/05/2020**

End Date: **04/05/2022**

Rcvd by

Paid by

Date Paid:

Check No.

**Job Site Information**

Address: **541 BONANZA AVE**  
City: **HOMER** State: **AK**  
Zone: **CBD**  
Parcel/Block/Lot: **17710421/BLK 9/LOT 24A**

**Owner Information**

Name: **LOWRY SCOTT**  
Address: **907 DALY RD**  
City/State/Zip: **OJAI, CA 93023**  
Telephone: **805-509-1757**

**Applicant Information**

Name: **LOWRY SCOTT**  
Address: **907 DALY RD**  
City/State/Zip: **OJAI, CA 93023**  
Telephone: **805-509-1757**  
Land Use:

**Contractor Information**

Name: **LOWRY SCOTT**  
Address: **907 DALY RD**  
City/State/Zip: **OJAI, CA 93023**  
Telephone: **805-509-1757**  
Building Use: **Res - Single Family**

Legal Description: **T 6S R 13W SEC 20 SEWARD MERIDIAN HM 0930033 GLACIER VIEW SUB NO 23 BLOCKS 8 9 & 10 LOT 24A**

This permit shall be displayed in a prominent, readily visible place at the site. If the work is not completed within the above-specified time, application for extension MUST be made to the City of Homer, prior to the end date above. The City assumes no responsibility for the accuracy of any City-held as-built drawings or for the Permittee's interpretation thereof.

This permit is issued with the expressed understanding that the City of Homer assumes no responsibility hereunder with regard to maintenance of private drainage systems that terminate in City ditch lines or drainages, including but not limited to foundation drains; proper location of lot lines or site dimensions. It is the responsibility of the permittee to meet whatever requirements any agency may have which may apply to the project specified in this permit. It is the permittee's responsibility to comply with all continuing obligations imposed by the Code not to damage other property. It is the permittee's responsibility to comply with all other permit terms at his/her expense.

**Description of Work:**

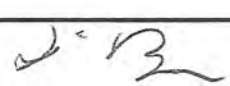
360 square foot single family dwelling.

**Estimated Value: 40,000.00**

AN ASBUILT SURVEY IS REQUIRED UPON PROJECT COMPLETION ACCORDING TO HOMER CITY CODE 21.70.040

**Permit Fees**

Description	Work Being Done By	Units	Cost @	Sum
Planning Single Family /Duplex			\$200.00	\$300.00

Signature: 

Date: 10/5/20

**Grand Total:** **\$300.00**

**Construction Type:**





# City of Homer

www.cityofhomer-ak.gov

Planning  
491 East Pioneer Avenue  
Homer, Alaska 99603

Planning@ci.homer.ak.us  
(p) 907-235-3106  
(f) 907-235-3118

## Zoning Permit Application

### Property Owner

Name: Scott & Stacy Lowmy Phone #(s): 805-509-1757 / 299-4070  
Mailing Address: 907 Daly Rd City: Ojai State: CA Zip: 93023  
Email: SPL8@me.com

### Applicant (if different than the property owner)

Name: \_\_\_\_\_ Phone #(s): \_\_\_\_\_  
Mailing Address: \_\_\_\_\_ City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_  
Email: \_\_\_\_\_

### Project Property Information

Address: 541 Bonanza Ave KPB Tax ID #: 17710421  
Legal Description: lot 24 A Glacier View Sub No. 23  
Lot Size: .28 Zoning District: CBD  
Describe the use of all existing structures: Existing residential 2BR / 1BA  
mobile home/house.

For each proposed structure, describe the use & list the square footage of each floor: \_\_\_\_\_

Residential 1BR 1BA 360 sq ft

Estimated market value of finished improvements: \$40,000

Water Permit # (City) 3002 Sewer Permit # (City) 3002 Driveway Permit # Existing Approach #1432

Will site be served by a: well or cistern? Y or (N) (circle one) DEC approved septic system? Y or (N) (circle one) NA

### For staff use:

Date: 9/11/20 Fee \$ 300 Residential \$200/Commercial \$300. SWP \$200 additional. Late fee 1.5 times.  
Received by: TPB Date application accepted as complete 9/11/20

Finance Code 21-2106. Zoning Permit required by HCC 21.70

### ite development standards for all projects (applies to all development in the City)

- Drainage design must deposit all runoff into either an engineered drainage system or into a natural drainage. Building setbacks are 15ft. from open ditches and 10 ft. from closed drainage systems.
- All exposed, cleared, filled and disturbed soils must be revegetated within 9 months of initial earthwork or reseeded by the next August 31<sup>st</sup>.
- Development activities shall not adversely impact other properties by causing damaging alteration of surface water drainage, surface water ponding, slope failure, erosion, siltation, intentional or inadvertent fill or root damage to neighboring trees, or other damaging physical impacts.

### All Projects in Any Zoning District (Check all that apply)

- ☒ A **Site Plan** is required for all projects. This "bird's eye view" must show the entire lot and include all of the details found on the site plan checklist. See the attached example site plan.
- ☒ An **As-built survey** is required for all structures upon completion of work  
The survey must show the location and dimensions of permitted structures (see HCC 21.70.040)
- ☒ A **Building Elevation** drawing is required for all proposed buildings. Building height from grade to the peak of the roof must be included. See the attached example building elevation drawing.
- ☒ **Lighting standards** apply to all projects (HCC 21.59.030)
  - Outdoor lighting must be installed so that it does not produce light trespass or glare
  - The maximum height for pole lighting is 28 ft. and for building-mounted lighting, it is 15 ft.
  - Outdoor lights installed 15 ft. or higher must be cut-off luminaires
- ☐ A **Wetlands Permit** may be required if your project is within a wetland. If the following map indicates wetlands on your property, then written authorization from the Army Corps of Engineers (ACOE) is required
  - Homer area wetland map source: <https://www.kpb.us/gis-dept/interactive-mapping>  
ACOE submission status: \_\_\_\_\_ ACOE POA #: \_\_\_\_\_
- ☐ A **Grading/Fill Plan** is required when 3 ft. of fill is placed over 25% of the lot area (HCC 21.50.150)
- ☐ **Slope Development Standards** apply when the project includes any of the following: (HCC 21.44)
  - The average slope of the lot is greater than 15% (A rise of 15 ft. to 100 ft. run)
  - Disturbance takes place within 40 ft. of the top, or 15 ft. of the toe of a steep slope (45%), bluff, coastal bluff or ravine
- ☐ A **Storm Water Plan (SWP)** is required when the project includes any of the following: (HCC 21.50.020)  
*For projects located in commercial zoning districts, skip this subsection & see SWP section below*
  - Creates 25,000 square feet of new impervious surface
  - Increases the total impervious surface coverage to one acre or greater
  - Grading that moves 1,000 cubic yards of material
  - Creates a permanent slope of 3:1 or more that exceeds 10 ft. from toe of slope to top of slope
- ☐ A **Sign Permit** is required for most projects that include advertising signage. Check with Planning Staff to find out if a permit is required for your project.
- ☐ A **Conditional Use Permit (CUP)** may be required under certain circumstances, including but not limited to the following:
  - The project includes a conditionally permitted use, as listed in the specific zoning district section of HCC Title 21
  - Building area exceeds 8,000 (all buildings combined) or 30% of the lot area
  - The project includes more than one building with a primary use
  - The project will generate traffic in excess of 100 vehicle trips per hour or 500 vehicle trips per day
- ☐ A **Coastal Flood Hazard Area Development Permit** is required when the project lies within mapped coastal flood hazard areas. For all projects on coastal properties, check with the Planning Office for current flood area designations.
- ☐ The **Bridge Creek Watershed Protection District** has additional restrictions for property development (see HCC 21.40)



**All Projects in Commercial Districts** including the Residential Office District when the project is commercial or multifamily residential (3-plex or larger) in nature (check all that apply)

- ☐ **State Fire Marshal** approval is required for all commercial buildings and apartment projects (4-units or more)  
Fire Marshal application Status: \_\_\_\_\_ Permit # \_\_\_\_\_
- ☒ **Landscaping requirements** apply to all projects (HCC 21.50.030(f))
- Landscaping shall include the retention of native vegetation to the maximum extent possible
  - A minimum buffer of 3 ft. along lot lines and 15 ft. along the top bank of a defined drainage
  - Topsoil addition, seeding, and plantings must be completed within 9 months of completion of project
  - Parking lots with 24 spaces or more have additional standards (see HCC 21.50.030(f)(1)(b))
- ☐ A **Development Activity Plan (DAP)** is required when your project includes any of the following (HCC 21.74):
- Clearing or grading of 10,000 square feet or more
  - 5,000 square feet or more of new impervious coverage. "Impervious" coverage includes all parking areas, driveways, roads, walkways, whether paved or not, and any areas covered by buildings or structures, concrete, or asphalt
  - Grading that moves 1,000 cubic yards of material
  - A temporary or permanent slope of 3:1 or more that exceeds 5 ft. from toe of slope to top of slope
  - Grading activities that will result in the diversion of existing drainage courses, both natural or human-made, from their existing point of entry or exit from the grading site
  - Any land clearing or grading on slopes steeper than 20%, or within 20 feet of wetlands.
- ☐ A **Storm Water Plan (SWP)** is required when your project includes any of the following (HCC 21.50.030):
- Creates 25,000 square feet of new impervious surface
  - Increases the impervious surface coverage to greater than 60% of the lot area
  - Grading of 1 acre or more
  - Grading that moves 10,000 cubic yards of material
  - A temporary or permanent slope of 3:1 or more that exceeds 10 ft. from toe of slope to top of slope
  - Land clearing or grading on slopes steeper than 25%, or within 10 feet of wetlands, streams, or ponds

*I/we certify that all the information contained in this application is true and accurate and that I am/we are authorized to act on behalf of the property owner(s). I/we hereby hold harmless the City of Homer, its employees and agents from all suits, actions, or claims arising from any work undertaken.*

*The permit will be issued with the understanding that the City of Homer assumes no responsibility with regard to maintenance of private drainage systems that terminate in City ditch lines or drainages, including but not limited to foundation drains, proper location of lot lines, or site dimensions. Further, the City assumes no responsibility for the accuracy of any City-held drawings, or for the permittee's interpretation thereof.*

*I/we understand that the application fee covers the costs associated with processing this application, and that payment of same is nonrefundable and does not assure approval of the site plan. I/we acknowledge that by signing this application I am/we are authorizing employees or agents of the City access for exterior site inspections. This permit must be displayed so that it is readily visible from the nearest street, at the site for which the permit was obtained. If the exterior work is not completed by the permit's expiration date, one reasonable extension may be granted for good cause shown.*

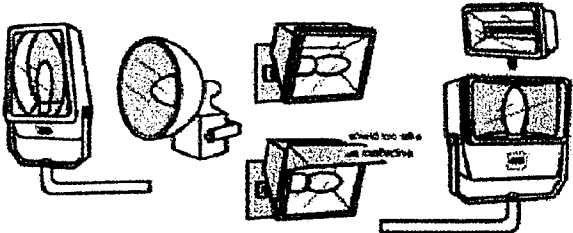
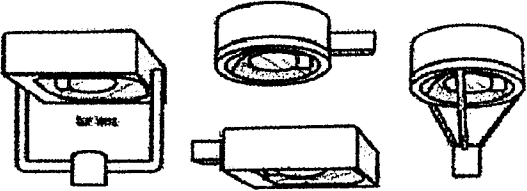
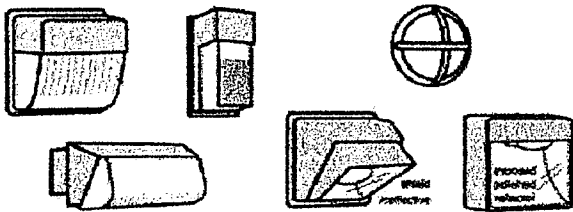
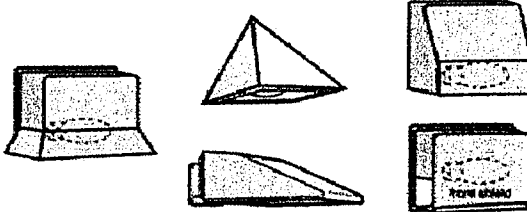
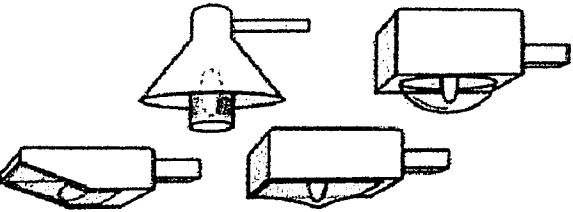
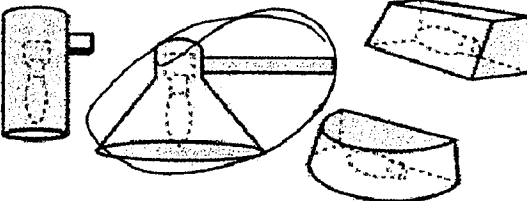
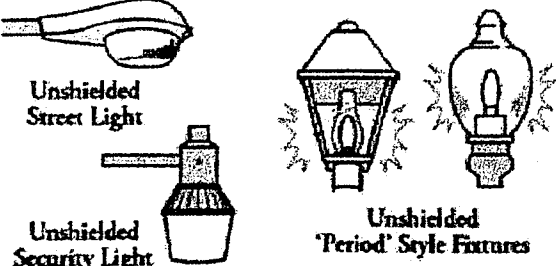
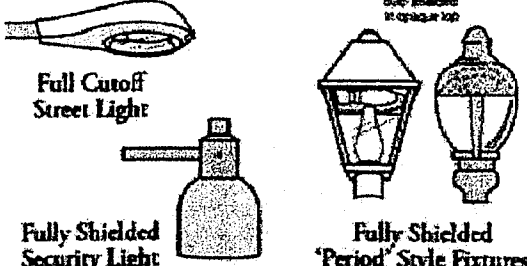

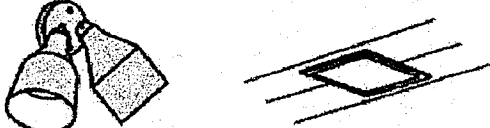
Owner Signature (required):  Date: 9/10/20

Applicant Signature:  Date: 9/10/20

## Circle the type(s) of exterior fixtures to be used in your project below

All exterior lighting is subject to level one lighting standards, according to HCC 21.59.030. Lighting standards aim to reduce glare and light trespass and to improve the nighttime visual environment.

☐ Check this box if exterior lighting will not be installed or replaced with your project

<p><b>UNACCEPTABLE</b> Fixtures that Produce Glare and Light Trespass</p>	<p><b>ACCEPTABLE</b> Fixtures that Shield the Light Source to Minimize Glare and Light Trespass - Facilitating Better Night Vision</p>
 <p>Unshielded or Poorly-shielded Floodlights</p>	 <p>Full Cutoff Fixtures</p>
 <p>Unshielded Wallpacks &amp; Poorly-shielded Wall Mount Fixtures</p>	 <p>Fully-shielded Wallpack &amp; Wall Mount Fixtures</p>
 <p>Drop-lens &amp; Sag-lens Fixtures with Exposed Bulb/Refractor Lens</p>	 <p>Fully-shielded Fixtures</p>
 <p>Unshielded Street Light</p> <p>Unshielded Security Light</p> <p>Unshielded 'Period' Style Fixtures</p>	 <p>Full Cutoff Street Light</p> <p>Fully Shielded Security Light</p> <p>Fully Shielded 'Period' Style Fixtures</p>
 <p>Unshielded PAR Floodlights</p> <p>Drop-lens Canopy Fixtures</p>	 <p>Shielded/Property Aimed PAR Floodlights</p> <p>Flush Mounted Canopy Fixtures</p>



# City of Homer

[www.cityofhomer-ak.gov](http://www.cityofhomer-ak.gov)

## Planning

491 East Pioneer Avenue  
Homer, Alaska 99603

[Planning@ci.homer.ak.us](mailto:Planning@ci.homer.ak.us)

(p) 907-235-3106

(f) 907-235-3118

### SITE PLAN

Address: 541 Bonanza Ave

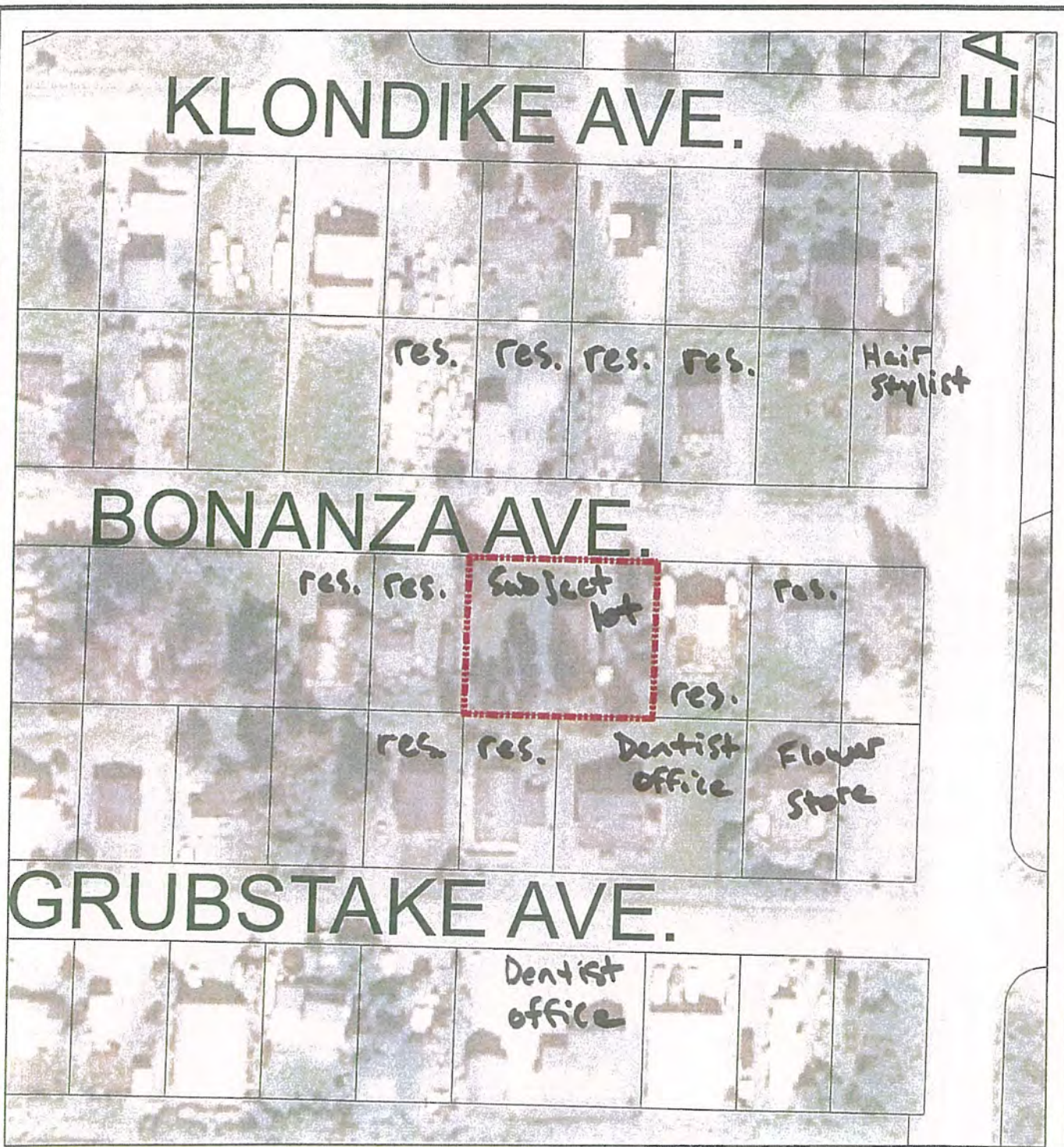
A site plan is a detailed scaled drawing which depicts the current and proposed improvement and uses of a parcel of land.

Drawing your site plan is easier than you might expect. With accurate measurements, pencil, paper and a ruler you can draw a site plan right at home. For more complex projects you may need professional expertise.

**Below is a checklist of items that should be on your site plan.** For items that do not apply to your project simply indicate N/A over the checkbox.

- ☐ Scale factor. For example, 1" = 20 ft. for smaller lots or 1" = 50 ft. for larger lots.
- ☐ North arrow
- ☐ All property lines and their dimensions
- ☐ All known easements – utility, drainage, driveway, etc.
- ☐ Exterior dimensions of proposed and existing structures, including additions, decks, and stairways.
- ☐ Building setbacks - distance from all structures to nearest property lines. Front property line(s) (property lines abutting a right-of-way) require a 20 ft. setback. Setbacks for other property lines are 5 – 8 ft., depending on the number of stories. Setbacks are measured from the property lines, NOT the road.
- ☐ Site work - Areas affected by excavating, filling, grading, or vegetation removal (with soil disturbance)
  - o label the building location(s) disturbed area
  - o label areas used for driveway/parking/maneuvering
  - o approximate volume of excavated material: \_\_\_\_\_ cubic yards
  - o approximate volume of filled material: \_\_\_\_\_ cubic yards
  - o label areas of disturbed soil that will be revegetated naturally or landscaped (indicate areas of seeded grass or plantings such as trees and shrubs)
  - o label limits of undisturbed vegetation
- ☐ Draw and label adjacent roads
- ☐ Label length and width of driveways & parking spaces (standard space is 9' x 19')
- ☐ Drainage – Indicate direction of surface flow, label structures such as ditches, french drains & swales
- ☐ Show wetland boundary if applicable





City of Homer  
Planning and Zoning Department

8/18/2020

### Neighboring Properties Map

2017 Photo. Property lines  
are not exact; use with care.

0 75 150 Feet



**Disclaimer:**  
It is expressly understood the City of  
Homer, its council, board,  
departments, employees and agents are  
not responsible for any errors or omissions  
contained herein, or deductions, interpretations  
or conclusions drawn therefrom.



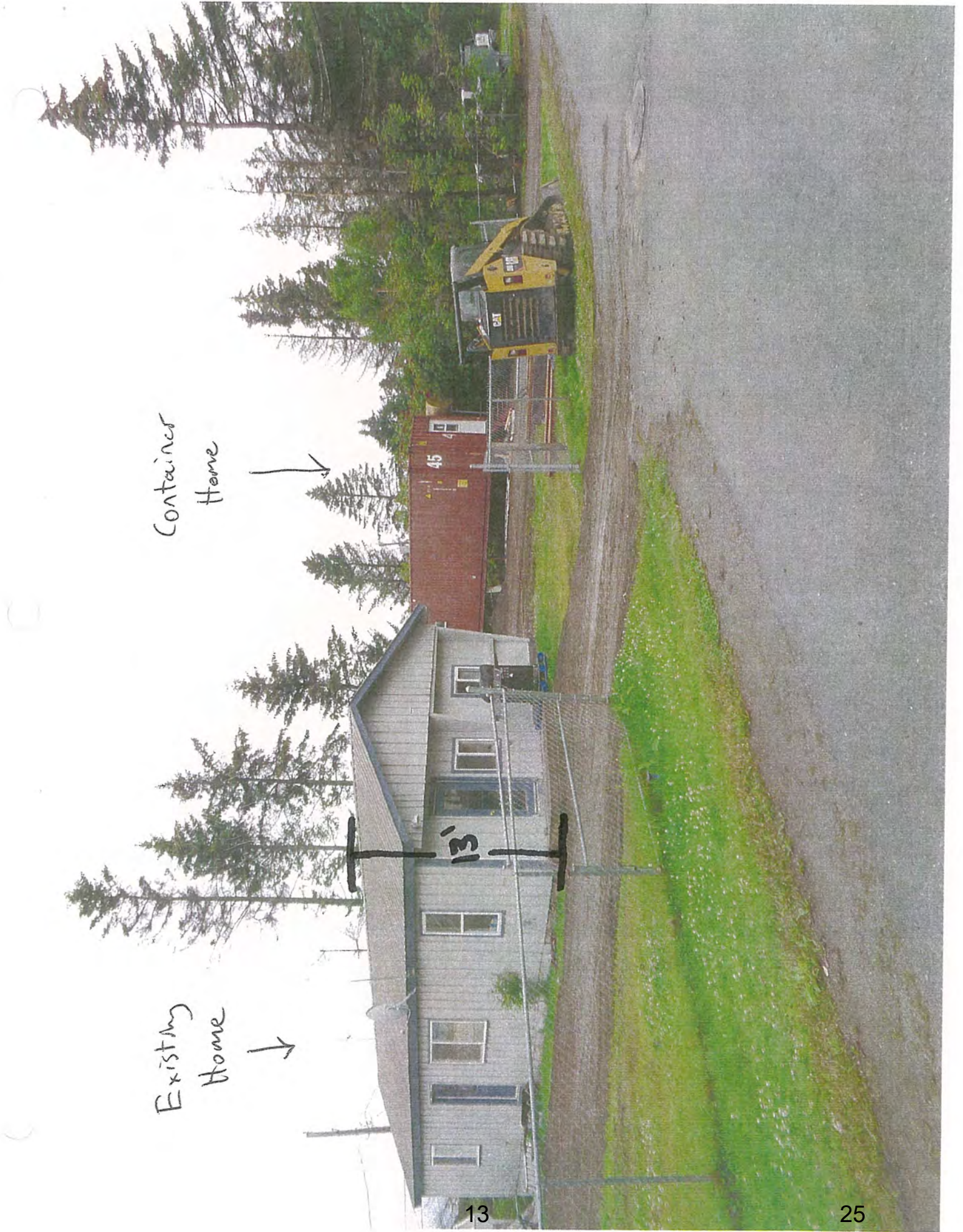




Existing  
Home

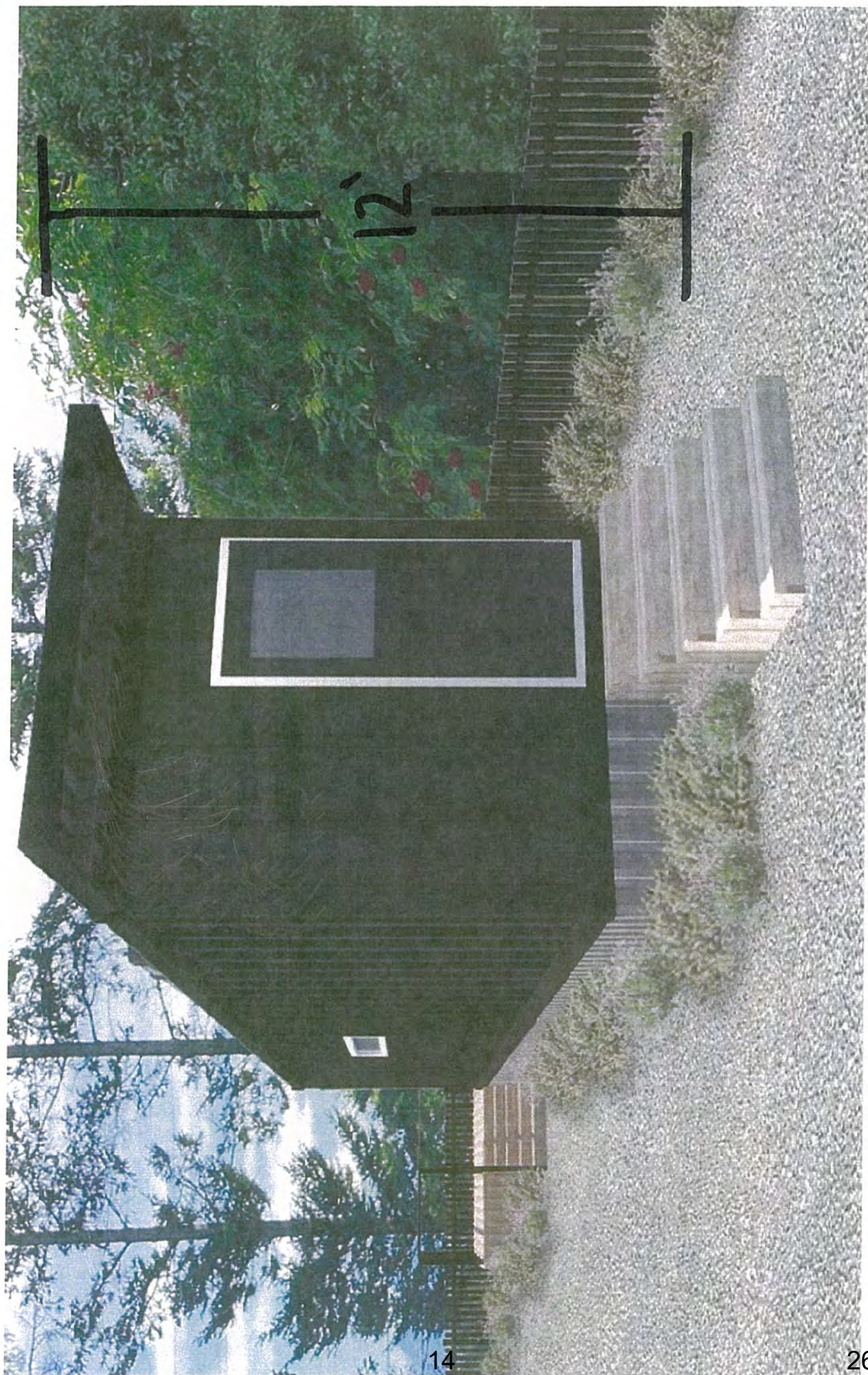


Container  
Here





Looking South from Bonanza Ave.



City of Homer  
491 East Pioneer Avenue  
Homer AK 99603-7645

907-235-8121

Receipt No: 2.001142

Sep 11, 2020

Scott Lowry

Previous Balance:	.00
PERMIT/CONNECTS/DEPOSITS - Building/zoning permit	300.00
100-0015-4303 Building Permit	
<hr/>	
Total:	300.00
<hr/>	
Credit Card      Check No: 06297D	300.00
Payor: Scott Lowry	
Total Applied:	300.00
<hr/>	
Change Tendered:	.00
<hr/>	

09/11/2020 9:46 AM  
Customer Copy





CITY OF HOMER

PERMIT NO. 3002

## WATER / SEWER PERMIT

SERVICE CODE

SERVICE ADDRESS 541 Bonanza Avenue

APPLICATION DATE 6-23-2020

ACCOUNT #

APPLICANT Scott Lowry

OWNER Same

MAILING ADDRESS 201 E. Oak Street, Ojai CA 93023

PHONE NUMBER (HOME) 805-509-1757

(WORK)

LOT 24A

BLOCK

SUBDIVISION Glacier View Sub No. 23

KPB PARCEL # 177-104-21

CONTRACTOR J.C. Johnson and Son

SIZE OF SERVICE

SIZE OF METER

DATE CONNECTED

ORION #

METER READING

RT/SEQ #

REQUESTED SERVICE: WATER

SEWER

WATER RATE: Commercial/Residential

SEWER RATE: Commercial/Residential

Living Units in Apartments

Served by mainline lift station Y/N

## FEES

WATER PERMIT/INSPECTION PERMIT

WATER LEASE FEE

DEPOSIT

CONNECTION FEE

SEWER PERMIT/INSPECTION PERMIT

DEFERRED SERVICE - WATER

DEFERRED SERVICE - SEWER

CITY ROW PERMIT - MINOR

CITY ROW PERMIT - MAJOR

DEVELOPMENT PERMIT

OTHER

SUBTOTAL

TAX

TOTAL CHARGES

DATE PAID

AMOUNT PAID

\$

\$

\$

\$

\$ 100.00

\$

\$

\$

\$

\$

\$

\$ 100.00

\$ 7.85

\$ 107.85

\$

\$ 107.85

## CODES

2107 T

2102 T (prv also)

2103

2101 T

2108 T

WADEF

SEDEF

2111

2112

122

Received By:JEH

Paid By:Scott Lowry

Date:6-23-2020

PAID VISA \$107.85

Re: 1174537 Con: 04644D

\*\*\* READ INSTALLATION INSTRUCTIONS ON SECOND PAGE \*\*\*

SIGNATURE

\*CUSTOMER RESPONSIBLE FOR MONTHLY BILLINGS

COMMENTS Inspection Permit Only

\*Customer must be owner or an authorized agent or renter/lessee.

Original - Applicant, Copy : Planning, PW, Finance)



## UTILITY INSTALLATION INSTRUCTIONS

1. The Applicant/Owner obtains a water & sewer permit at the Public Works Department.
2. The Applicant/Owner pays for all materials, labor and equipment required for the utility installation
3. Construction materials and practices must conform to Section 13 of the Homer City Code.
4. Work must be performed by a Licensed and Bonded Contractor.
5. Inspections must be performed for all utility installations by Public Works employees.  
24 HOUR NOTICE IS REQUIRED BEFORE ALL INSPECTIONS. Call Public Works at 235-3170.
6. The City assumes no responsibility for the accuracy of any City held Asbuilt Drawing or the Permittee's interpretation thereof.

### SAMPLE WATER METER INSTALLATION



Meter shall be installed in a horizontal, upright position.

Meter shall be inside a warm, dry, easily accessible place.

Meter shall be installed prior to providing any water service to customer.

The applicant is responsible for purchasing a pressure reducing valve and one way check valve, to be placed in line with all meter installations.

### WARNING

**IT IS ILLEGAL TO CONNECT RAIN GUTTERS, ROOF DRAINS, DRAIN TILE SYSTEMS, SUMP PUMPS OR OTHER FRESH WATER SOURCES TO THE CITY SEWER SYSTEM.**



CITY OF HOMER  
APPLICATION & PERMIT TO CONSTRUCT AND MAINTAIN DRIVEWAY  
ON PUBLIC RIGHT-OF-WAY

PART 1: To Be Completed by Permittee

Permit No: 1199

Permittee: Kenneth P. & Anna Knudsen

Date: April 2, 1993

Address: Box 271

Phone: 262-5153

Driveway Location: 551 ROMANZA AVE  
Street Address

Lot: 24 Block: 9

Sub: Glacier View Sub

KPB Parcel No.: 177-104-07



Residential



Commercial

Field inspection and notice required 24 hours in advance of construction. Call Public Works Department Inspector 235-3170.

The permittee certifies that: (1) he/she is the owner and/or authorized agent of the property, (2) that the conditions, restrictions and regulations of the City will be complied with, (3) that he/she will maintain the driveway in accordance with City standards, and (4) that the minimum clearance between the proposed finished driveway grade and the lowest aerial utility conductor shall not be less than 18 feet.

I have read the above application and know the contents thereof, the same is true and correct. I agree the above work will be done in accordance with all State and City laws and ordinances, and further agree to hold the City harmless from any and all claims of whatever kind or nature which may arise from activities under this permit.

Signed by Permittee Kenneth P. Knudsen \$15.00 fee rec'd by: B  
Initials

PART 2: For Public Works Department Use

( ) No ( ) Yes Culvert Required Minimum CMP Culvert \_\_\_\_\_  
( ) No ( ) Yes Paving Required Maximum driveway width at culvert \_\_\_\_\_  
( ) Applicant required to install a culvert if later conditions warrant.

SPECIAL INSTRUCTIONS

Initial inspection by: \_\_\_\_\_ Date: \_\_\_\_\_

Permit granted by: \_\_\_\_\_ Date: \_\_\_\_\_

Final inspection by: \_\_\_\_\_ Date: \_\_\_\_\_

Driveway ( ) Does ( ) Does not meet requirements

Improvements or corrections required: \_\_\_\_\_

CONSTRUCTION APPROVED BY: \_\_\_\_\_ Date: \_\_\_\_\_

Public Works Inspector

PERMIT APPROVED BY: \_\_\_\_\_ Date: \_\_\_\_\_

Director of Public Works

DISTRIBUTION: 1. WHITE - Permittee (completed part 1)  
2. YELLOW - Inspector (permit granted)  
3. PINK - Planning Dept. (address file)  
4. GOLDENROD - Inspector (final inspection/and approval)



CITY OF HOMER  
APPLICATION & PERMIT TO CONSTRUCT AND MAINTAIN DRIVEWAY  
ON PUBLIC RIGHT-OF-WAY

PART 1: To Be Completed by Permittee

Permit No: 1432

Permittee: Kenneth P & Anna Knudsen

Date: April 2, 1993

Address: 541 Bonanza Box 271

Phone: 262-5153

Driveway Location: 541 Bonanza  
Street Address

Lot: 25 Block: 9  
Sub: Glacier View Sub.

KPB Parcel No.: 177-104-06



Residential



Commercial

Field inspection and notice required 24 hours in advance of construction. Call Public Works Department Inspector 235-3170.

The permittee certifies that: (1) he/she is the owner and/or authorized agent of the property, (2) that the conditions, restrictions and regulations of the City will be complied with, (3) that he/she will maintain the driveway in accordance with City standards, and (4) that the minimum clearance between the proposed finished driveway grade and the lowest aerial utility conductor shall not be less than 18 feet.

I have read the above application and know the contents thereof, the same is true and correct. I agree the above work will be done in accordance with all State and City laws and ordinances, and further agree to hold the City harmless from any and all claims of whatever kind or nature which may arise from activities under this permit.

Signed by Permittee Kenneth P Knudsen \$15.00 fee rec'd by: (initials)  
Initials

PART 2: For Public Works Department Use

( ) No ( ) Yes Culvert Required Minimum CMP Culvert  
( ) No ( ) Yes Paving Required Maximum driveway width at culvert  
( ) Applicant required to install a culvert if later conditions warrant.

SPECIAL INSTRUCTIONS

Initial inspection by: Date:

Permit granted by: Date:

Final inspection by: Date:

Driveway ( ) Does ( ) Does not meet requirements

Improvements or corrections required:

CONSTRUCTION APPROVED BY: Date:

Public Works Inspector

PERMIT APPROVED BY: Date:

Director of Public Works

DISTRIBUTION: 1. WHITE - Permittee (completed part 1)  
2. YELLOW - Inspector (permit granted)  
3. PINK - Planning Dept. (address file)  
4. GOLDENROD - Inspector (final inspection/and approval)

SUPPLEMENTS TO THE APPEAL RECORD  
Index  
Appeal of City Planning Staff Issuance of  
Zoning Permit 1020-782

Planning Commission Meeting Minutes of October 2, 2020 - Requested by Griswold	Page 2
Conditional Use Permit 20-14 Documentation from September 2 and October 7 Planning Commission Regular Meetings – Requested by Griswold	Page 12
Audio Recording of the September 2, 2020 Planning Commission Regular Meeting – Requested by Griswold	
Photographs of subject property – Submitted by Griswold	Page 60

Session 20-12, a Regular Meeting of the Planning Commission was called to order by Chair Smith at 6:34 p.m. on September 2, 2020 at Cowles Council Chambers in City Hall located at 491 E. Pioneer Avenue, Homer, Alaska via Zoom Webinar.

PRESENT: COMMISSIONERS HIGHLAND, SMITH, DAVIS, VENUTI AND BENTZ

ABSENT: COMMISSIONERS PETSKA-RUBALCAVA AND BARNWELL (EXCUSED)

STAFF: CITY PLANNER ABBOUD  
DEPUTY CITY CLERK KRAUSE

### **APPROVAL OF THE AGENDA**

Chair Smith requested a motion to approve the agenda.

HIGHLAND/VENUTI – SO MOVED.

There was no discussion.

VOTE. NON-OBJECTION. UNANIMOUS CONSENT.

Motion carried.

### **PUBLIC COMMENT ON ITEMS ALREADY ON THE AGENDA**

### **RECONSIDERATION**

### **ADOPTION OF CONSENT AGENDA**

- A. Minutes of the August 19, 2020 Planning Commission Regular Meeting
- B. Decisions and Findings for Conditional Use Permit 20-12 for four dwellings on a lot at 3972 Bartlett Street

Chair Smith requested a motion to approve the Consent Agenda.

HIGHLAND/BENTZ – SO MOVED.

There was no discussion.

VOTE. NON-OBJECTION. UNANIMOUS CONSENT.

Motion carried.

### **VISITORS/PRESENTATIONS**

## **REPORTS**

### **A. Staff Report 20-57, City Planner's Report**

City Planner Abboud commented he was in transition from the acting city manager position so there is not much in this report. He noted the Council passed action items mentioned in Staff Report 20-57.

## **PUBLIC HEARING(S)**

### **A. Staff Report 20-58, Conditional Use Permit 20-14 to allow a second mobile home at 541 Bonanza Avenue**

Chair Smith introduced the item by reading of the title into the record.

City Planner Abboud noted the late laydown from Mr. Griswold and confirmed that all commissioners were able to review this information before the meeting.

Commissioners verbally and visually confirmed that they had reviewed the information.

City Planner Abboud briefly reviewed the laydown for the Commission noting the concerns on access and mobile home park. He stated that there were some valid points brought forward by Mr. Griswold, but the majority did not apply. He further stated that Mr. Griswold brought forward his typical arguments but he has not prevailed on previous attempts.

City Planner Abboud then reviewed Staff Report 20-58 for the commission. He commented on the following:

- Comprehensive Plan Goals and Objectives
- One large lot that was previously two lots, this can be subdivided and no CUP would be required
- Single family connex home was placed on the property without a zoning permit and the options available to address the matter
- Mobile Home Park requirement review and considering the connex as a mobile home
  - o Access for Fire Department
- Compliance with the existing definition of mobile home
- Use of similar structure in other areas of the city
- Discussion needed on when a shipping container is no longer a shipping container
- Requested a correction by the commission to fix the double negative shown in Finding 9, line 4, Requested the Commission to amend the sentence to remove the word "not" before contrary

Scott and Stacy Lowry, applicant and owner, provided a verbal presentation on the proposed project explaining the planning and goals that they wanted to reach by placing the converted connex on the property. They noted that the lot was purchased and prior to them purchasing the lot, the lot line had been vacated to create one larger lot. There is an older mobile home on the property that is currently rented and that tenant has resided on the property prior to them purchasing the property. They intend to use the new structure as a vacation home as they come to Homer every summer since they have family here. They stated that they have photos of the interior and would be happy to share. The Applicant explained that they had future plans to replace the existing mobile home with a new structure. The applicant further explained that they have been working with the planning staff to meet all the requirements of the city.

Chair Smith opened the Public Hearing.

Bob Shavelson, representing his sister who owns the neighboring parcel, commented on being caught off guard with no notice, stated that a connex does not meet the definition of mobile home, commented on the nomenclature issue with the streets and defining this as a mobile home park since it is not one; he believed there would be difficulties in reestablishing the lot line. Mr. Shavelson then commented that the comp plan has some conflicting items as goal number three is to encourage high quality buildings and site development and he opined that a connex was not that. Mr. Shavelson stated he was not going to raise serious objections if the intent of the applicant is to improve the appearance of the lot.

Chair Smith confirmed with the Clerk there were no further members of the public to provide testimony and closed the Public Hearing and requested questions for the City Planner.

Commissioners and City Planner Abboud discussed the following points:

- Review of the section of city code regarding the Central Business District (CBD) 20.18.020, Permitted uses and structures (ii.) One detached dwelling unit, excluding mobile homes, as an accessory building to a principal single-family dwelling on a lot; arguing that this could be used to define this project, to avoid the discussion of mobile homes
- Consideration of a connex as a nuisance
- City does not have a building code
- Confusion of the two mobile homes on one lot
- Bringing a connex into the CBD without permits, setting precedent that it is allowed, and the Commission's intent to limit or decrease the use of mobile homes in the city
- Conditional Use Permit would be after the fact but would bring the action into compliance
- Applicant has not been fined since they are actively working with the Planning Department to bringing the project into compliance.
- Defining this structure as a mobile home is incorrect since it is a connex.
- Staff would recommend or the applicants can consider the pulling the application and bringing it back under the additional dwelling, a CUP would not be required.
- Commissioner perspectives on the connex since that is what it is

- The trend to sustainable, affordable housing by using modular, pre-fab, manufactured homes and tiny homes

There were no further questions for the City Planner and Chair Smith requested questions from the Commission for the Applicant.

Commissioners and the Applicant discussed the following points:

- Basis and reasons for moving a connex into a developed neighborhood
- Sustainable housing, trend for tiny homes, a connex does present a modern appearance, placement on the far eastern edge, the foundation is permanent.
- Consideration that it is a modular home, not a connex, as it is tied into existing water and sewer and will have exterior improvements
- Can subdivide the property back again and keep the structure as a permanent dwelling
- Timeline for the improvements to be completed on the appearance of the connex
- Retrofitting a connex into a dwelling and electrical, plumbing standards since there are standards for mobile homes
- Additional questions could be presented in writing and the applicant would respond with photos and certifications to address those concerns of the Commission

Chair Smith called for additional questions for the applicant, there were none so he redirected the discussion back to the question on evaluating this as an Accessory Dwelling Unit (ADU) rather than for a CUP.

City Planner Abboud noted that it appeared there was agreement among the Commissioners that this structure is not a mobile home and as such it does not appear to be appropriate that the term mobile home park applies. He then reviewed the nuisance standard and noted that it is no longer a shipping container, there are no other standards to apply.

Further discussion ensued on the application of code, renovation of the connex so that it is no longer a shipping container, if they amend to reflect a permitted use then a CUP is not required, clarification on the number of structures on the property, the connex does not meet the definition of mobile home and where a challenge will come from the neighbor by appeal.

City Planner Abboud stated that it should be failed since they are not dealing with a mobile home or mobile home park as it did not meet the definition.

Commissioner Bentz then recognized the city code that addressed nuisance standards HCC 21.18.080 (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. She noted that in the packet there is a photo showing the interior of the connex and did not believe that it was capable of transporting merchandise and provided a description of the interior represented by the photo.



Commissioner Highland also noted that a shipping container is allowed if screened from public view as described in the same section of city code Commissioner Bentz referenced.

Commissioner Bentz additionally stated that a connex could fall under the designated permitted use of mini storage. She observed that the Commission could not show bias against a structure based on the materials used, noting the blue tarps being used on Bonanza Street as roofing materials and the applicants have undergone a level of scrutiny that the Commission does not talk about with people such as the renovated construction with fire alarms and electrical systems.

City Planner Abboud responding to the question of changing it from a mobile home, that since Homer does not have a building code, and until the city adopts building codes, a dwelling can be built out of any material. This is a dwelling and has all the features that is expected in a structure defined as such.

Chair Smith requested a motion.

*VENUTI/ HIGHLAND MOVE TO ADOPT STAFF REPORT 20-58 AND APPROVE CUP 20-14 WITH FINDINGS 1-10 AND CONDITIONS 1-7*

- 1. ALL DEVELOPMENT MUST BE COMPLETED BY AUGUST 1, 2021. THIS INCLUDES PAINTING, SKIRTING, PORCH CONSTRUCTION AND COMPLETE SITE DEVELOPMENT AS SHOWN ON THE SITE PLAN AND PROJECT ELEVATIONS.*
- 2. THE ZONING PERMIT AND CUP MAY ONLY BE EXTENDED BY THE PLANNING COMMISSION.*
- 3. FAILURE TO COMPLETE DEVELOPMENT BY AUGUST 1, 2021 MAY RESULT IN A ZONING VIOLATION AND FINES UNTIL THE STRUCTURE IS REMOVED OR BROUGHT INTO COMPLIANCE.*
- 4. BOTH MOBILE HOMES SHALL MEET THE REQUIREMENTS OF HCC 21.54.100*
- 5. COVERED STORAGE MEETING REQUIREMENTS OF HCC 21.54.070, NOT LESS THAN 200 CUBIC FEET OF COVERED STORAGE PER UNTI SHALL BE PROVIDED.*
- 6. PLANT OR SCREEN THE EASTERN AND SOUTHERN PROPERTY LINES WITH A FENCE OR COMBINATION EVERGREEN DECIDUOUS PLANTINGS TO PROVIDE EFFECTIVE SCREENING.*
- 7. OUTDOOR LIGHTING MUST BE DOWN LIT PER HCC 21.59.030*

It was noted that there was a typographical error in the staff report numbers, it was stated that it can be corrected by the Clerk.

City Planner Abboud provided clarification that the Commission could fail the motion and the Applicant would apply for a permit under the ADU and it would be handled administratively. He stated that there are three choices for the Commission: Approve the Conditional Use Permit, Approve with more conditions or deny the permit.

The Commission and City Planner Abboud entertained a brief discussion on amending the findings to substantiate the denial of the CUP by amending the cited city code citation from Finding 1, HCC 20.18.020 (m) and replace with Finding 1 HCC 20.18.020(ii) one

detached dwelling unit, excluding mobile homes, as an accessory building to a principal single-family dwelling on a lot and that two the Commission finds that the structure in question, the shipping container was not used for transportation of merchandise and therefore HCC 21.18.080 Nuisance standards, item c, does not apply.

Chair Smith called for a roll call vote.

VOTE. NO, BENTZ, DAVIS, HIGHLAND, VENUTI, SMITH

Motion failed.

Chair Smith thanked the applicants for a very interesting topic and he wanted to make them aware that the Commission was trying to advocate for the them while addressing the concerns presented by Mr. Griswold and being applicable to city code.

Mr. Lowry responded that he was appreciative of the Commission processes and just wanted to do what was easiest for the Commission and city in regards to paperwork and permits. He had noted through the chat option that they could withdraw the permit application if that was easier but it sounds as if it is past that point. He thanked everyone for their time and discussion tonight.

City Planner Abboud clarified that the applicant can contact the planning department to proceed to the next step for their project.

#### B. Staff Report 20-60, Medical Zoning District

Chair Smith introduced the item by reading of the title.

City Planner Abboud provided a brief summary of the previous actions on the draft ordinance.

There is no applicant as the city is the applicant.

Chair Smith opened the public hearing and seeing no members of the audience coming forward to provide testimony he closed the public hearing and opened the floor to questions from the Commission.

There were no questions from the Commissioners for the City Planner.

Chair Smith Requested a motion.

VENUTI/ BENTZ MOVE TO ADOPT STAFF REPORT 20-60 AND FORWARD THE DRAFT ORDINANCE CREATING A MEDICAL ZONING DISTRICT TO CITY COUNCIL.

There was a brief commentary from Commissioner Highland explaining her reason that she would not be supporting this ordinance was that she did not support the sixty five foot building height.

VOTE. YES. BENTZ, DAVIS, VENUTI, SMITH

VOTE. NO. HIGHLAND

Motion carried.

### **PLAT CONSIDERATION**

- A. Staff Report 20-61, Guy Waddell Subd. No. 3 June's Addn. Lot 1-E 2020 Replat Preliminary Plat

Chair Smith introduced the item by reading of the title.

City Planner Abboud provided a summary of Staff Report 20-61.

There was no applicant or representative present.

Chair Smith opened the floor to public comment on the project. Having no one in the audience come forward to comment on this project he closed the public comment period and opened the floor to questions from the Commission.

The Commission had no questions for the City Planner.

BENTZ/HIGHLAND MOVED TO ADOPT STAFF REPORT 20-61 AND RECOMMEND APPROVAL OF GUY WADDELL SUBDIVISION NUMBER 3 JUNE'S ADDITION LOT 1-E 2020 REPLAT PRELIMINARY PLAT WITH COMMENTS ONE AND TWO:

1. INCLUDE PLAT NOTE STATING "PROPERTY OWNER SHOULD CONTACT THE ARMY CORPS OF ENGINEERS PRIOR TO ANY ONSITE 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. A CITY OF HOMER DEVELOPMENT AGREEMENT OR CONSTRUCTION AGREEMENT IS REQUIRED FOR THE INSTALLATION OF WATER AND SEWER SERVICES.

There was no discussion.

VOTE. NON-OBJECTION. UNANIMOUS CONSENT.

Motion carried.

### **PENDING BUSINESS**

## **NEW BUSINESS**

### **INFORMATIONAL MATERIALS**

#### **A. City Manager's Report for the August 24th City Council Meetings**

### **COMMENTS OF THE AUDIENCE**

Bob Shavelson, city resident, commented on the amount of development being done during this time of COVID 19 and did not appreciate Mr. Griswold being called out tonight as some of the tone and content was negative. He did not see any place for that. Mr. Griswold may be a thorn in the side of the city but he is a resident of the city and cares about the community.

### **COMMENTS OF THE STAFF**

Deputy City Clerk Krause thanked the Commission for an interesting meeting, noting that she will be brushing up on city code.

City Planner Abboud commented that it was nice to be back, he found that he can do a lot of work in COVID time and he thought they may look at their worklist and maybe have a worksession in the future. He noted that Julie will be out of the office for approximately two month so it may present challenges.

### **COMMENTS OF THE COMMISSION**

Commissioner Highland commented it was a good meeting and welcomed Rick back.

Commissioner Bentz commented on appreciated the input from the public and is a very important part of the process and that they initially had a few points of confusion with one of the applications but the public comment helps the commission. It made them go back to reread city code and really understand what the decision they were being asked to make is; interesting to read in the City Manager's Report that there is an opportunity for a NEA grant partnership. She mentioned moving forward on the transportation as a priority and to wait until they get the new census information.

Commissioner Davis commented on sharing Commissioner Highland's concern with the 65 foot building height especially as applied in the district without concern for viewshed, he voted in favor as they have worked on this for a long time but he will always side on the effect a tall building will have on someone's viewshed. He agreed that public comment is important and they can just focus on the pertinent comments that apply and ignore the non-relevant comments.

Commissioner Venuti welcomed Rick back and commented on seeing him in action as the Acting City Manager and complemented him on doing a great job. He responded to Mr. Shavelson

remarks regarding talking negatively about anybody although he understands why an individual who has been a pain in the neck for a long time could be considered in a negative manner. His concern is the possibility of litigation from Mr. Griswold if more connex homes catches on, so we have to watch what they do because he seems to be setting policy. Mr. Venuti stated it was a good meeting and complimented Chair Smith on a great job.

Chair Smith echoed the sentiments previously expressed about public comment and hoped that his comments were not perceived as negative, that was not his desire. He appreciated Commissioner Bentz' attention to detail and providing the alternative solution for the commission and applicant tonight. He thanked Rick for his knowledge regarding these matters and providing direction for the Commission. It was a good meeting and believed that they need to ask themselves a couple of questions such as Do we want trailer parks as part of our language and do they want connex as a part of the building possibilities they will need to have some future conversations.

#### **ADJOURN**

There being no further business to come before the Commission, the meeting adjourned at 7:45 p.m. The next Regular Meeting is scheduled for Wednesday, September 16, 2020 at 6:30 p.m. All meetings are 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

Approved: October 7, 2020





# City of Homer

[www.cityofhomer-ak.gov](http://www.cityofhomer-ak.gov)

## Planning

491 East Pioneer Avenue  
Homer, Alaska 99603

[Planning@ci.homer.ak.us](mailto:Planning@ci.homer.ak.us)

(p) 907-235-3106

(f) 907-235-3118

### Staff Report 20-58

TO: Homer Planning Commission  
THROUGH: Rick Abboud, City Planner  
FROM: Julie Engebretsen, Deputy City Planner  
DATE: September 2, 2020  
SUBJECT: Conditional Use Permit (CUP) 20-14

---

**Synopsis** The applicant proposes to add a second mobile home to a lot with an existing mobile home. A Conditional Use Permit (CUP) is required per HCC 21.18.030(c).

Applicant: Scott and Stacy Lowry  
907 Daly Road  
Ojai, CA 93023

Legal Description: LEGAL T 6S R 13W SEC 20 SEWARD MERIDIAN HM 0930033  
GLACIER VIEW SUB NO 23 BLOCKS 8 9 & 10 LOT 24A

Parcel ID: 17710421

Size of Existing Lot: 12,017 square feet.  
Minimum lot size in the CBD is 6,000 square feet.  
Minimum lot size for a mobile home park is 3,000 square feet per unit.

Zoning Designation: Central Business District

Existing Land Use: Residential mobile home

Surrounding Land Use: North: Residential, mobile homes  
South: Residential  
East: Residential  
West: Residential

Comprehensive Plan: Goal 1 Objective C: Maintain high quality residential neighborhoods; promote housing choice by supporting a variety of dwelling options. Promote infill development in all housing districts.

Wetland Status: No wetlands mapped

Flood Plain Status: Zone D, Flood Hazards not determined

BCWPD: Not within the Bridge Creek Watershed Protection District

Utilities: Public utilities service the site.

Public Notice: Notice was sent to 50 property owners of 40 parcels as shown on the KPB tax assessor rolls.

**ANALYSIS:** The current property is one large lot. At one point it was two lots, but the interior lot line was vacated in 1993 so the current configuration is one large lot. Staff brings this to the Commission's attention because it is possible for the applicant to re-subdivide the lot, and have one mobile home on each lot without a conditional use permit.

The applicant placed a 'connex' single family dwelling on the property on July 20<sup>th</sup>, 2020. No zoning permit was applied for, so the structure is in violation of city code. Staff contacted the land owner to inform them of the need for a zoning permit and a conditional use permit. The land owner then submitted a conditional use permit. If this CUP is approved, in addition to any CUP conditions, the land owner will need to apply for and receive a zoning permit to bring the structure into compliance.



Photo 1. Existing Mobile Home, and planned shared driveway.





Photo 2. Existing Mobile home and new mobile home. Under the CUP, this driveway access would be eliminated, and a fence erected. Both homes would use the eastern driveway.



Photo 3. East view of structure



Photo 4. South or back side of the dwelling.

### **Mobile Home Park Review**

City code is provided below, with responses italicized. See Right of way Plan Drawing for depiction.

#### **21.54.010 Standards for mobile home parks – General.**

This article establishes minimum standards governing mobile home parks. [Ord. 08-29, 2008].

#### **21.54.020 Where allowed.**

Mobile home parks will be allowed only in those zoning districts that list mobile home parks as permitted or conditionally permitted. [Ord. 08-29, 2008].

**Response:** *HCC 21.18.030(c) allows for mobile home parks with an approved conditional use permit.*

#### **21.54.030 Spaces and occupancy.**

a. Only one mobile home or duplex mobile home shall occupy a space.

**Response:** *Only one home occupies each space.*

b. More than one space may be located on a lot, subject to the following: Each space for a mobile home shall contain not less than 3,000 square feet, exclusive of space provided for the common use of tenants, such as roadways, general use structures, guest parking, walkways,

and areas for recreation and landscaping. Spaces designed and rented for duplex mobile homes shall have a minimum of 4,500 square feet. [Ord. 08-29, 2008].

**Response:** *The property is 12,017 square feet. The western mobile home space is just over 3,000 square feet. The eastern space is just under 4,300 square feet.*

#### **21.54.040 Lot size and setbacks.**

a. Minimum Lot Size. Lots used for mobile home parks shall be no smaller than the minimum lot size for the zoning district in which the mobile home park is located.

**Response:** *The property meets the minimum lot size requirements per HCC 21.18.040 (a)(1), of 6,000 square feet. The property is 12,017 square feet.*

b. Setbacks. In addition to the required setbacks from lot lines and rights-of-way applicable to the zoning district:

1. No mobile home in the park shall be located closer than 15 feet from another mobile home or from a general use building in the park.

**Response:** *The existing shed is more than 15 feet from the existing mobile home. The mobile homes are more than 15 feet apart.*

2. No building or structure accessory to a mobile home on a mobile home space shall be closer than 10 feet from another mobile home, another accessory building or another mobile home space.

**Response:** *The existing shed is more than 10 feet from the existing mobile home. The mobile homes are more than 10 feet apart.*

3. Along any vehicular right-of-way within the mobile home park, mobile homes and other buildings shall be set back a minimum of 10 feet from the edge of the right-of-way. [Ord. 08-29, 2008].

**Response:** *The driveway entrance is the vehicular right of way within the mobile home park.*

#### **21.54.050 Open space and recreation areas.**

A minimum of 10 percent of the total area of all lots used for a mobile home park shall be devoted to a common open space for use by residents of the mobile home park. This open space shall not include areas used for vehicle parking or maneuvering, vehicle access, or any area within a mobile home space. The open space may include lawns and other landscaped areas, walkways, paved terraces, and sitting areas. The common open space shall be reasonably secluded from view from streets and shall be maintained in a neat appearance. [Ord. 08-29, 2008].

**Response:** *The eastern quarter of the lot has a lawn area. Exclusive of the storage shed, there is approximately 3,200 square feet of open space. Ten percent of the total lot area is approximately 1,200 square feet of open area.*

**21.54.070 Required improvements.**

a. Storage. Not less than 200 cubic feet of covered storage shall be provided for each mobile home space (but not necessarily on each space).

**Response:** *The existing storage shed may or may not be adequate, depending on the interior headroom of the space, which is currently unknown. The shed is 8 feet by 10 feet, or 80 square feet in area. If there is 5 feet of head room in the shed, then it contains at least 400 cubic feet of covered storage and would meet this requirement the way it is (8 ft. x 10 ft. x 5 ft. = 400 cu. ft.). **See Condition 5:** Covered storage meeting the requirements of HCC 21.54.070, not less than 200 cubic feet of covered storage per unit, shall be provided.*

b. Perimeter. The land used for mobile home park purposes shall be effectively screened, except at entry and exit places, by a wall, fence or other sight-obscuring screening. Such screening shall be of a height adequate to screen the mobile home park from view and shall be maintained in a neat appearance.

**Response:** *The western lot line is screened by alders. The northern property line along Bonanza Ave will have a six foot wooden fence.*

**Condition 7:** *Plant or screen the eastern and southern property lines with a fence or combination evergreen and deciduous plantings to provide effective screening.*

c. Water and Sewer. All mobile homes in the park shall be connected to water and sewage systems before they are occupied. Evidence shall be provided with the application for a mobile home park that the park will meet the standards of the Alaska Department of Environmental Conservation. [Ord. 08-29, 2008].

**Response:** *City water and sewer connections have been made and approved by the Public Works Department.*

**21.54.080 Access and parking.**

a. Access. Each mobile home space shall be directly accessible by a vehicle from an internal street without the necessity of crossing any other space. Direct vehicular access from public streets to a mobile home space is prohibited.

**Response:** *The mobile home park has a single point of access onto Bonanza Ave. The portion of the driveway immediately on the property is the internal street.*

b. Parking. A minimum of two parking spaces shall be provided for each mobile home space. An additional common parking area for guests shall be provided with one space for every four mobile homes. [Ord. 08-29, 2008].

**Response:** *Two spaces per home and one additional guest space are provided for a total of five parking spaces.*

#### **21.54.090 Street standards.**

a. Circulation. The internal street system of a mobile home park shall provide convenient circulation by means of minor streets and collector streets. Dead-end streets shall be provided with an adequate turning circle at least 80 feet in diameter.

**Response:** *The internal street system for the two mobile home terminates in parking for one mobile home space, and driveway access for a second space. There is adequate maneuvering area within the property.*

b. Street Widths. The width of internal streets shall be adequate to accommodate the contemplated traffic load, and no less than the following minimums:

	<b>Minimum Width (in feet)</b>
Collector streets with no parking	28
Minor streets with no parking	22

**Response:** *The shared driveway access to Bonanza Ave is 22 feet wide.*

c. If utilities are planned to be in or next to streets, additional width may be required by the Commission to accommodate the utilities. [Ord. 08-29, 2008].

**Response:** *Utilities are already installed within existing public rights of ways and utility easements.*

#### **21.54.100 Standards for mobile homes.**

Each mobile home structure, whether located in a mobile home park or on an individual lot, shall meet the following standards:

a. The mobile home shall contain sleeping accommodations, a flush toilet, a tub or shower and kitchen facilities, with plumbing and electrical connections provided for attachment to public utilities or approved private systems.

**Response:** *Condition: The applicant shall provide evidence that both homes meet the requirements of this section.*

b. The mobile home shall be fully skirted and, if a single-wide unit, shall be tied down with devices that meet State standards. [Ord. 10-01(S) § 4, 2010].



**Response: Condition 4:** *Both mobile homes shall meet the requirements of HCC 21.54.100.*

**The criteria for granting a Conditional Use Permit is set forth in HCC 21.71.030, Review criteria, and establishes the following conditions:**

a. The applicable code authorizes each proposed use and structure by conditional use permit in that zoning district;

**Analysis:** The structure meets the definition of a mobile home under HCC 21.030 Definitions.

“Mobile home” or “manufactured home” means a structure, transportable in one or more sections: (1) that in the traveling mode is eight feet or more in width or 40 feet or more in length, or when erected on site is 320 square feet or more; and (2) that is built on a permanent chassis and is designed for use as a dwelling with or without a permanent foundation when the plumbing, heating, and electrical systems contained therein are connected to the required utilities. A mobile home shall be construed to remain a mobile home whether or not wheels, axles, hitch or other appurtenances of mobility are removed, and regardless of the nature of the foundation provided. A mobile home shall not be construed to be a recreational vehicle or a factory built dwelling.

“Mobile home park” means one or more lots developed and operated as a unit with individual sites and facilities to accommodate two or more mobile homes.

The structure is considered a mobile home because it is 8 feet wide, 45 feet long, and 360 square feet. It is connected to city water and sewer and is fully equipped as a dwelling unit. It could be picked up via crane and moved again by truck in the future and is therefore transportable in one or more sections.

HCC 21.18.080(c) further discusses shipping containers in the CBD.

HCC 21.18.080(c) Nuisance standards states 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 subject structure is no longer functional as a shipping container as it has been modified with doors and windows. It has further been retrofitted to serve as a residential dwelling.

**Finding 1:** HCC 21.18.020(m) authorizes mobile homes, and HCC 21.18.030(c) authorizes mobile home parks if approved by a Conditional Use Permit.

b. The proposed use(s) and structure(s) are compatible with the purpose of the zoning district in which the lot is located.

The purpose of the Central Business District is primarily to provide a centrally located area within the City for general retail shopping, personal and professional services, educational institutions, entertainment establishments, restaurants and other business uses listed in this chapter. The district is meant to accommodate a mixture of residential and nonresidential uses with conflicts being resolved in favor of nonresidential uses. Pedestrian-friendly designs and amenities are encouraged.

**Applicant:** There are other homes adjacent to this property.

**Analysis:** The purpose of the Central Business District includes accommodating a mixture of residential and non-residential uses. A mobile home park is a form of residential use.

**Finding 2:** The proposed use and structures of the mobile home park are compatible with the purpose of the district.

c. The value of the adjoining property will not be negatively affected greater than that anticipated from other permitted or conditionally permitted uses in this district.

**Applicant:** We are improving the property and cleaning up the overall appearance. This is a first step to our plans to improve the property.

**Analysis:** Several uses in the CBD have the potential to have a greater negative impact on property values. A club or drinking establishment could generate noise during hours objectionable to residential uses, and affect the value of the adjoining land as a residential use.

**Finding 3:** A two unit mobile home park is not expected to negatively impact the adjoining properties greater than other permitted or conditional uses.

d. The proposal is compatible with existing uses of surrounding land.

**Applicant:** Similar to the surrounding homes and land.

**Analysis:** The residential use is compatible with the existing surrounding homes. However, the new structure is currently unpainted and generally in an unattractive, incomplete state. Staff recommends the following conditions:

1. All development must be completed by August 1, 2021. This includes painting, skirting, porch construction and complete site development as shown on the site plan and project elevations.
2. The zoning permit and CUP may only be extended by the Planning Commission.
3. Failure to complete development by August 1<sup>st</sup> may result in a zoning violation and fines until the structure is removed or brought into compliance.

**Finding 4:** The proposal when completed is compatible with existing uses of surrounding land which include single family homes and mobile homes on individual lots.

e. Public services and facilities are or will be, prior to occupancy, adequate to serve the proposed use and structure.

**Finding 5:** Existing public, water, sewer, and fire services are adequate to serve the mobile home park.

f. Considering harmony in scale, bulk, coverage and density, generation of traffic, the nature and intensity of the proposed use, and other relevant effects, the proposal will not cause undue harmful effect upon desirable neighborhood character.

**Applicant:** Impact will be very minimal. Also, the guest house is very small and tucked away in the property.

**Analysis:** Desirable neighborhood character could be described by a portion of the Purpose statement for the district, which includes the accommodation of residential uses. Individual mobile homes as well as mobile home parks are listed permitted and conditionally permitted uses within the district.

**Finding 6:** The Commission finds the proposal will not cause undue harmful effect upon desirable neighborhood character as described in the purpose statement of the district, when conditions 1-7 are met.

g. The proposal will not be unduly detrimental to the health, safety or welfare of the surrounding area or the city as a whole.

**Analysis:** City utilities, police, fire and road maintenance services are available and adequately serve the lot.

**Finding 7:** The proposal will not be unduly detrimental to the health, safety or welfare of the surrounding area and the city as a whole when all applicable standards are met as required by city code.

h. The proposal does or will comply with the applicable regulations and conditions specified in this title for such use.

**Analysis:** Utility connection permits have been acquired. If a CUP is granted, a zoning permit must be applied for and approved to bring the property into compliance.

**Finding 8:** The proposal shall comply with applicable regulations and conditions specified in Title 21.

i. The proposal is not contrary to the applicable land use goals and objectives of the Comprehensive Plan.

**Analysis:** Goals of the Land Use Chapter of the Homer Comprehensive Plan include Goal 1 Objective C: Maintain high quality residential neighborhoods; promote housing choice by supporting a variety of dwelling options. Promote infill development in all housing districts. Conditions 1-7 address the current state of the property and require project completion within a specific timeframe. The current incomplete structure does not meet the comprehensive plan goal of a high quality residential neighborhood. With completion of the structure and planned improvements including skirting, painting and a fence, the new structure will be closer to meeting the intent of the Comprehensive Plan.

**Finding 9:** The proposal when completed in adherence to the conditions set forth by this permit is not contrary to the applicable land use goals and objects of the Comprehensive Plan. The proposal aligns with Goal 1 Objective C and no evidence has been found that it is not contrary to the applicable land use goals and objects of the Comprehensive Plan.

j. The proposal will comply with the applicable provisions of the Community Design Manual (CDM).

**Analysis:** The outdoor lighting section of the CDM applies.

**Condition 7:** Outdoor lighting must be down lit per HCC 21.59.030 and the CDM.

**Finding 10:** Project complies with the applicable provisions of the CDM.

**HCC 21.71.040(b).** b. In approving a conditional use, the Commission may impose such conditions on the use as may be deemed necessary to ensure the proposal does and will



continue to satisfy the applicable review criteria. Such conditions may include, but are not limited to, one or more of the following:

- 1. Special yards and spaces:** No specific conditions deemed necessary
- 2. Fences and walls:** No specific conditions deemed necessary
- 3. Surfacing of parking areas:** No specific conditions deemed necessary.
- 4. Street and road dedications and improvements:** No specific conditions deemed necessary.
- 5. Control of points of vehicular ingress and egress:** No specific conditions deemed necessary.
- 6. Special provisions on signs:** No specific conditions deemed necessary.
- 7. Landscaping:** No specific conditions deemed necessary.
- 8. Maintenance of the grounds, building, or structures:** No specific conditions deemed necessary.
- 9. Control of noise, vibration, odors or other similar nuisances:** No specific conditions deemed necessary.
- 10. Limitation of time for certain activities:** No specific conditions deemed necessary.
- 11. A time period within which the proposed use shall be developed:** No specific conditions deemed necessary.
- 12. A limit on total duration of use:** No specific conditions deemed necessary.
- 13. More stringent dimensional requirements,** such as lot area or dimensions, setbacks, and building height limitations. Dimensional requirements may be made more lenient by conditional use permit only when such relaxation is authorized by other provisions of the zoning code. Dimensional requirements may not be altered by conditional use permit when and to the extent other provisions of the zoning code expressly prohibit such alterations by conditional use permit.
- 14. Other conditions necessary** to protect the interests of the community and surrounding area, or to protect the health, safety, or welfare of persons residing or working in the vicinity of the subject lot.

**PUBLIC WORKS COMMENTS:** No comments

**PUBLIC COMMENTS:** None as of the writing of the staff report. Staff expects comments to be provided prior to and at the Commission public hearing.

**STAFF COMMENTS/RECOMMENDATIONS:**

Conduct a public hearing and consider public testimony. Approve CUP 20-14 with findings 1-10 and the following conditions:

1. All development must be completed by August 1, 2021. This includes painting, skirting, porch construction and complete site development as shown on the site plan and project elevations.
2. The zoning permit and CUP may only be extended by the Planning Commission.
3. Failure to complete development by August 1<sup>st</sup> may result in a zoning violation and fines until the structure is removed or brought into compliance.
4. Both mobile homes shall meet the requirements of HCC 21.54.100.
5. Covered storage meeting the requirements of HCC 21.54.070, not less than 200 cubic feet of covered storage per unit, shall be provided.
6. Plant or screen the eastern and southern property lines with a fence or combination evergreen and deciduous plantings to provide effective screening.
7. Outdoor lighting must be down lit per HCC 21.59.030 and the CDM.

### **Attachments**

Application

Site Plan 8.14.20 Right of Way

Additional Site Photos

Public Notice

Aerial Photograph





# City of Homer

www.cityofhomer-ak.gov

**Planning**  
491 East Pioneer Avenue  
Homer, Alaska 99603

Planning@ci.homer.ak.us  
(p) 907-235-3106  
(f) 907-235-3118

## Applicant

Name: Scott & Stacy Lowry Telephone No.: 805-509-1757, 907-299-4070

Address: 907 Daly Rd. Ojai, CA 93023 Email: SRL8@me.com

## Property Owner (if different than the applicant):

Name: \_\_\_\_\_ Telephone No.: \_\_\_\_\_

Address: \_\_\_\_\_ Email: \_\_\_\_\_

## PROPERTY INFORMATION:

Address: 541 Bonanza Lot Size: .28 acres KPB Tax ID # 17710421

Legal Description of Property: Residential City/Residential B

### For staff use:

Date: \_\_\_\_\_ Fee submittal: Amount \_\_\_\_\_

Received by: \_\_\_\_\_ Date application accepted as complete \_\_\_\_\_

Planning Commission Public Hearing Date: \_\_\_\_\_

## Conditional Use Permit Application Requirements:

1. A Site Plan
2. Right of Way Access Plan
3. Parking Plan
4. A map showing neighboring lots and a narrative description of the existing uses of all neighboring lots. (Planning can provide a blank map for you to fill in).
5. Completed Application Form
6. Payment of application fee (nonrefundable)
7. Any other information required by code or staff, to review your project

## Circle Your Zoning District

	RR	UR	RO	CBD	TCD	GBD	GC1	GC2	MC	MI	EEMU	BCWPD
Level 1 Site Plan	x	x	x			x			x			x
Level 1 ROW Access Plan	x	x							x			
Level 1 Site Development Standards	x	x										
Level 1 Lighting			x	x	x	x	x	x	x	x	x	
Level 2 Site Plan			x	x	x		x	x		x	x	
Level 2 ROW Access Plan			x	x	x		x	x		x	x	
Level 2 Site Development Standards			x*	x	x	x	x	x			x	
Level 3 Site Development Standards									x	x		
Level 3 ROW Access Plan						x						
DAP/SWP questionnaire				x	x	x	x	x			x	



**Circle applicable permits. Planning staff will be glad to assist with these questions.**

- Y/N ☒ Are you building or remodeling a commercial structure, or multifamily building with more than 3 apartments? If yes, Fire Marshal Certification is required. Status: \_\_\_\_\_
- Y/N ☒ Will your development trigger a Development Activity Plan?  
Application Status: \_\_\_\_\_
- Y/N ☒ Will your development trigger a Storm water Plan?  
Application Status: \_\_\_\_\_
- Y/N ☒ Does your site contain wetlands? If yes, Army Corps of Engineers Wetlands Permit is required. Application Status: \_\_\_\_\_
- Y/N ☒ Is your development in a floodplain? If yes, a Flood Development Permit is required.
- Y/N ☒ Does your project trigger a Community Design Manual review?  
If yes, complete the design review application form. The Community Design Manual is online at: <http://www.ci.homer.ak.us/documentsandforms>
- Y/N ☒ Do you need a traffic impact analysis?
- Y/N ☒ Are there any nonconforming uses or structures on the property?
- Y/N ☒ Have they been formally accepted by the Homer Advisory Planning Commission?
- Y/N ☒ Do you have a state or city driveway permit? Status: Existing driveway approach
- Y/N ☒ Do you have active City water and sewer permits? Status: Existing

1. Currently, how is the property used? Are there buildings on the property? How many square feet? Uses within the building(s)?

- Manufactured home with improvement structure. 470 sq ft
- Used for a home. 840 total

2. What is the proposed use of the property? How do you intend to develop the property? (Attach additional sheet if needed. Provide as much information as possible).

- We intend to add the new structure as a guest house to stay in when we visit and have family members stay while in town.



- a. What code citation authorizes each proposed use and structure by conditional use permit? **21.18.030(c)**
- b. Describe how the proposed uses(s) and structures(s) are compatible with the purpose of the zoning district.  
**There are other homes adjacent to this property.**
- c. How will your proposed project affect adjoining property values?  
**We are improving the property and cleaning up the overall appearance. This is a first step to our plans to improve the property.**
- d. How is your proposal compatible with existing uses of the surrounding land?  
**Similar to the surrounding homes and land.**
- e. Are/will public services adequate to serve the proposed uses and structures?  
**yes**
- f. How will the development affect the harmony in scale, bulk, coverage and density upon the desirable neighborhood character, and will the generation of traffic and the capacity of surrounding streets and roads be negatively affected?  
**Impact will be very minimal. Also, the guest house is very small and tucked away in the property.**
- g. Will your proposal be detrimental to the health, safety or welfare of the surrounding area or the city as a whole?  
**No**
- h. How does your project relate to the goals of the Comprehensive Plan?  
The Comprehensive Plan are online,  
**Chapter 4, Goal #1 - Increasing supply of housing. and encouraging infill development.**
- i. The Planning Commission may require you to make some special improvements. Are you planning on doing any of the following, or do you have suggestions on special improvements you would be willing to make? **(circle each answer)**
1. Y/N Special yards and spaces.
  2. ☒ Y/N Fences, walls and screening.
  3. Y/N Surfacing of parking areas.
  4. Y/N Street and road dedications and improvements (or bonds).
  5. Y/N Control of points of vehicular ingress & egress.
  6. Y/N Special provisions on signs.
  7. ☒ Y/N Landscaping.
  8. Y/N Maintenance of the grounds, buildings, or structures.



9. Y/N Control of noise, vibration, odors, lighting, heat, glare, water and solid waste pollution, dangerous materials, material and equipment storage, or other similar nuisances. (2)050.81.15
10. Y/N Time for certain activities.
11. Y/N A time period within which the proposed use shall be developed.
12. Y/N A limit on total duration of use.
13. Y/N Special dimensional requirements such as lot area, setbacks, building height. There are other zoning rules that apply to this property.
14. Y/N Other conditions deemed necessary to protect the interest of the community. Similar to the surrounding zoning rules.

## PARKING

1. How many parking spaces are required for your development? ~~4~~ 5

If more than 24 spaces are required see HCC 21.50.030(f)(1)(b).

2. How many spaces are shown on your parking plan? ~~4~~ 5

3. Are you requesting any reductions? NO

Include a site plan, drawn to a scale of not less than 1" = 20' which shows existing and proposed structures, clearing, fill, vegetation and drainage.

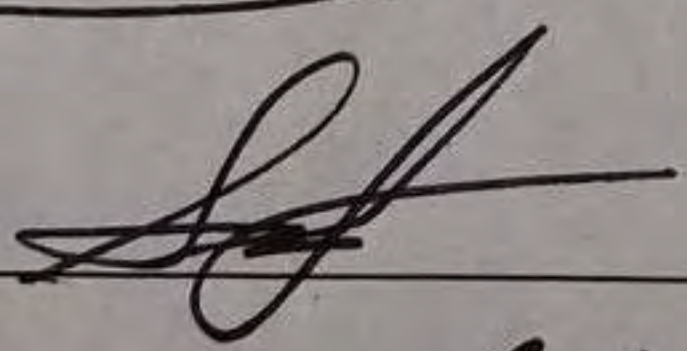
I hereby certify that the above statements and other information submitted are true and accurate to the best of my knowledge, and that I, as applicant, have the following legal interest in the property:

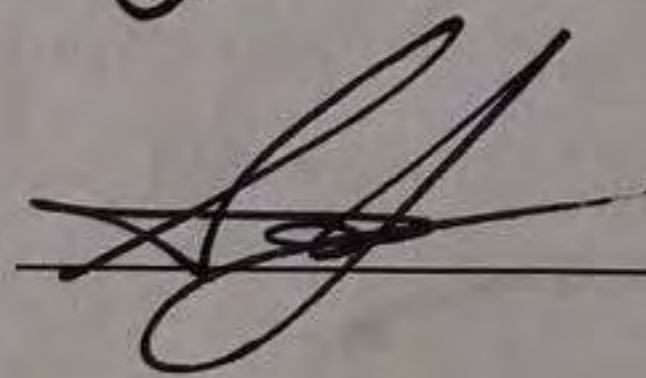
**CIRCLE ONE:**

Owner of record

Lessee

Contract purchaser

Applicant signature:  Date: 8/6/20

Property Owner's signature:  Date: 8/6/20





Looking South from Bonanza Ave.

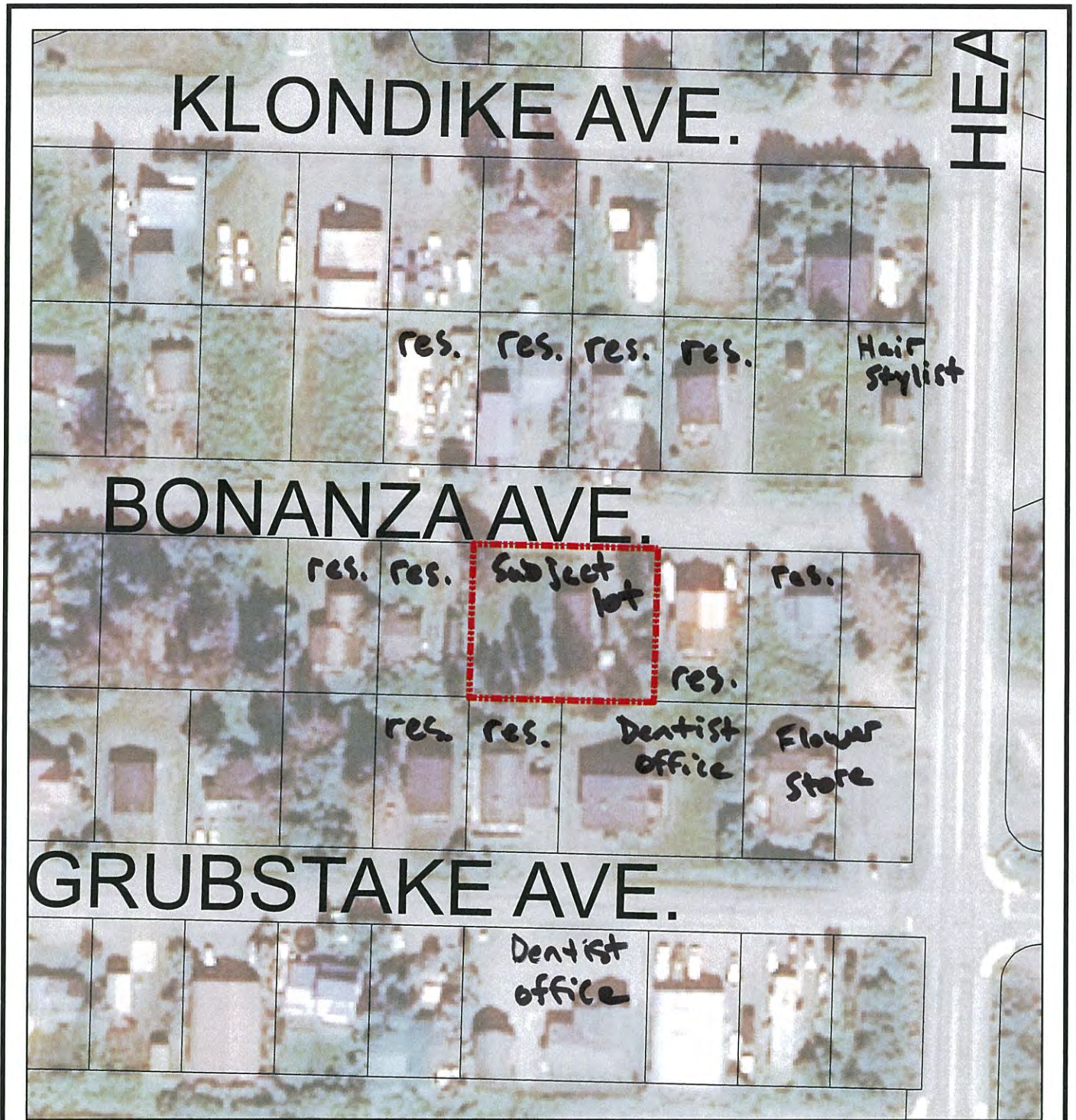




Looking Southwest from Bonanza Ave.







City of Homer  
Planning and Zoning Department

8/18/2020

### Neighboring Properties Map

2017 Photo. Property lines  
are not exact; use with care.

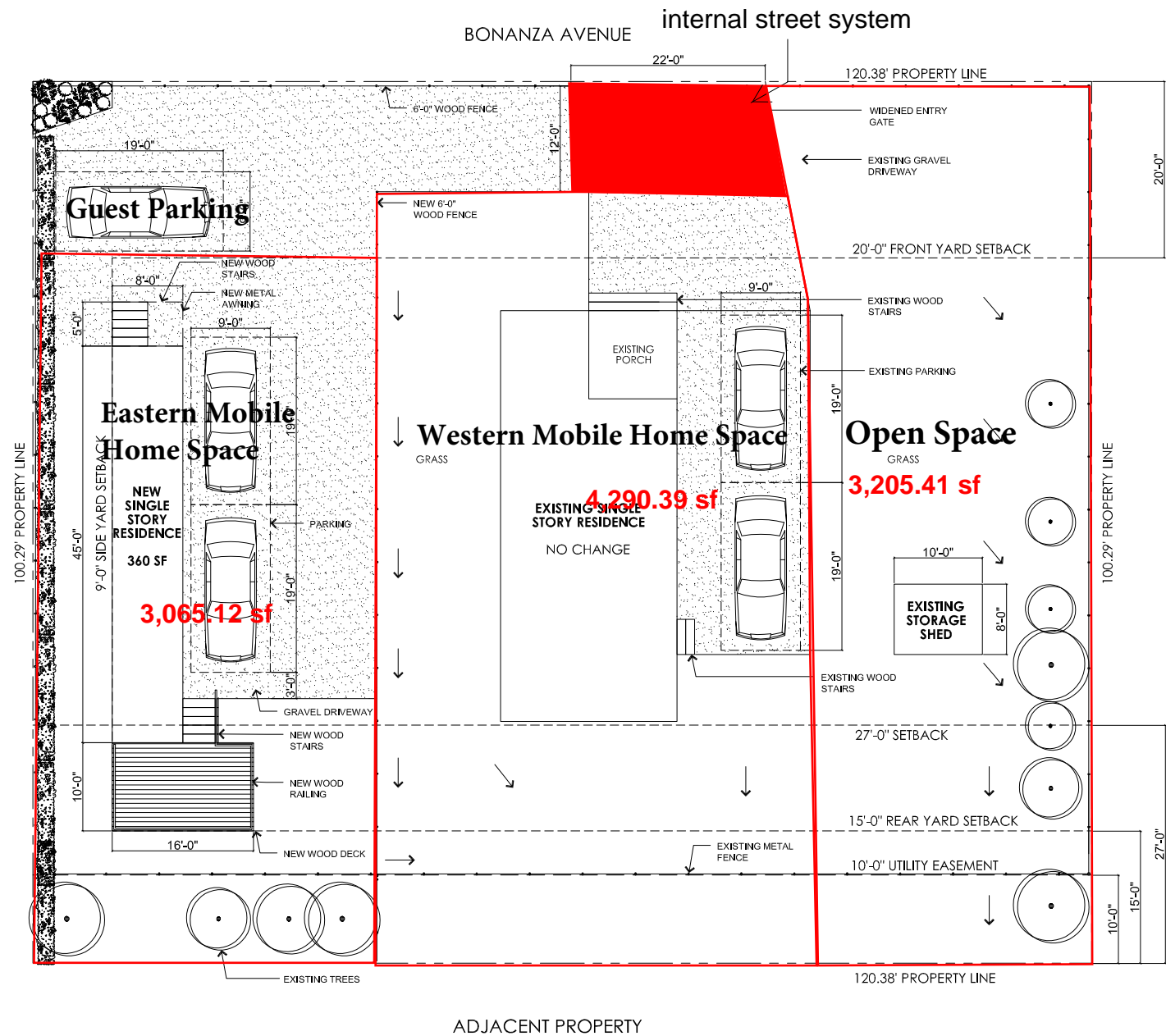
0 75 150 Feet



**Disclaimer:**  
It is expressly understood the City of  
Homer, its council, board,  
departments, employees and agents are  
not responsible for any errors or omissions  
contained herein, or deductions, interpretations  
or conclusions drawn therefrom.



Right of Way Plan



OWNER:  
Scott Lowry  
Lowry Construction

CONTRACTOR:  
Scott Lowry  
Lowry Construction

PROJECT:  
542 Bonanza Avenue,  
Homer, Alaska 99603

SITE PLAN

SCALE  
1" = 15'-0"

2

LOT 24A 12,017 SQ FT 0.28 ACRES	
PROPERTY ADDRESS: 541 BONANZA AVE HOMER, ALASKA, 99603	
TOTAL LOT AREA	12,017 SF
EXISTING SINGLE STORY RESIDENCE	430 SF
NEW CONTAINER HOME	360 SF
TOTAL +	790 SF
EXISTING ON-SITE PARKING	2 UNCOVERED SPACES
NEW ON-SITE PARKING	3 UNCOVERED SPACES

- GRAVEL
- GRASS
- TREE
- LOW PLANTING
- LOW PLANTING

- SETBACK LINE
- UTILITY EASEMENT
- PROPERTY LINE
- BUILDING FOOTPRINT
- FENCE
- SITE DRAINAGE, 2% SLOPE MINIMUM

SITE INFORMATION

SCALE  
N/A

7

LEGEND

SCALE  
N/A

4

LEGEND

SCALE  
N/A

1

SITE PLAN

PERMIT: 08/12/2020

A164

## Additional Photos



Photo 5. Internal picture of mobile home (through window)



Photo 6. South lot line and fence



## Additional Photos



Photo 7. Eastern Lot line



Photo 8. Utility connections

## PUBLIC HEARING NOTICE

Public notice is hereby given that the City of Homer will hold a public hearing by the Homer Planning Commission on Wednesday, September 2<sup>nd</sup>, 2020 at 6:30 p.m. via a virtual meeting, on the following matter:

**A request for Conditional Use Permit (CUP) 20-14 to allow a mobile home park consisting of two mobile homes at 541 Bonanza Ave., Lot 24A Glacier View Subdivision No. 23, SE ¼, NW ¼ Sec. 20, T. 6 S., R. 13W., S.M., HM 0930033. A CUP is required according to HCC 21.18.030(c) mobile home parks.**

Anyone wishing to view the meeting packet, attend the virtual meeting, or participate in the virtual meeting may do so by visiting the Planning Commission Regular Meeting page on the City's online calendar at <https://www.cityofhomer-ak.gov/calendar>. This information will be posted by 5pm on the Friday before the meeting.

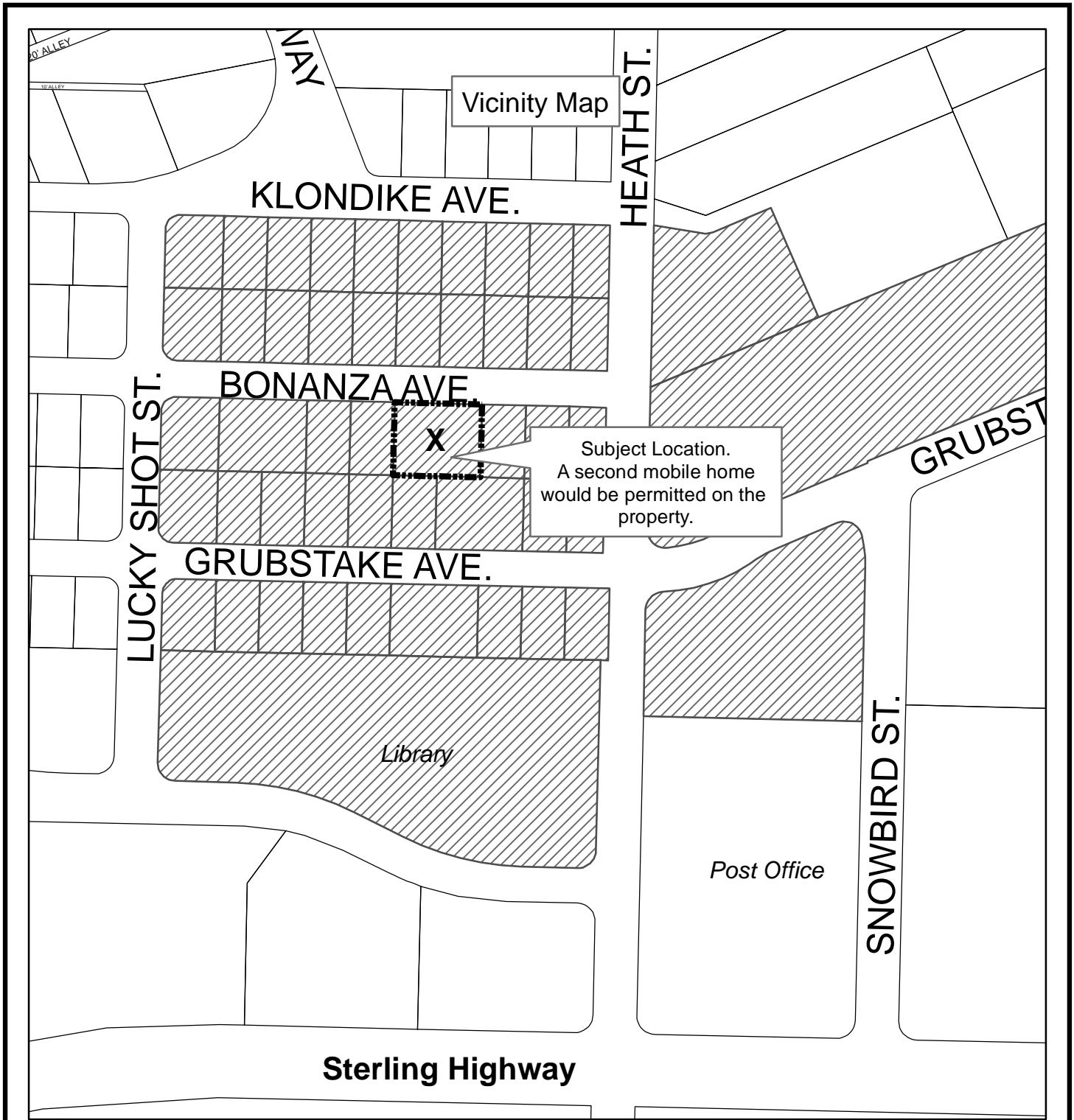
Visit the link above or call the City Clerk's Office to learn how to provide verbal testimony during the meeting via telephone or the Zoom online platform. Written comments can be emailed to [planning@ci.homer.ak.us](mailto:planning@ci.homer.ak.us) or mailed to Homer City Hall, 491 E. Pioneer Ave., Homer, AK, 99603. They may also be placed in the Homer City Hall drop box at any time. Comments must be received by 4pm on the day of the meeting.

If you have questions or would like additional information about the proposal, please contact Travis Brown with the Planning and Zoning Office at 235-3106. If you have questions about how to participate in the virtual meeting, please contact Renee Krause with the City Clerk's Office at 235-3130.

**NOTICE TO BE SENT TO PROPERTY OWNERS WITHIN 300 FEET OF PROPERTY**

.....

**VICINITY MAP ON REVERSE**



City of Homer  
Planning and Zoning Department

8/18/2020

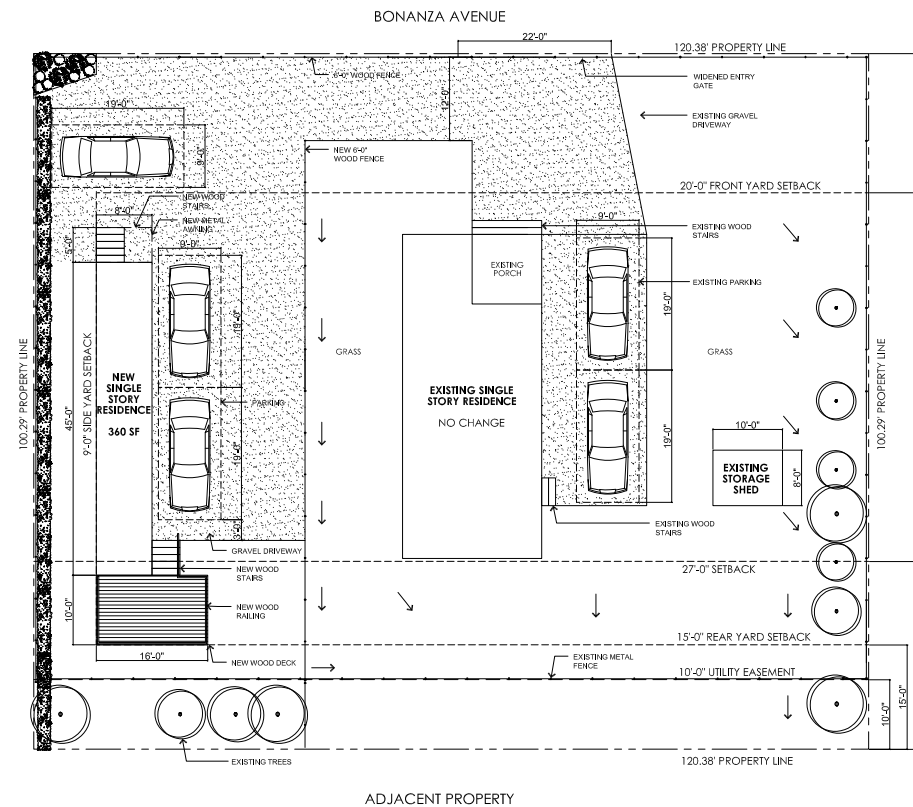
# Request for Conditional Use Permit 20-14 541 Bonanza Ave

Marked lots are within 300 feet and  
property owners notified.

0 150 300 Feet



Disclaimer:  
It is expressly understood the City of  
Homer, its council, board,  
departments, employees and agents are  
not responsible for any errors or omissions  
contained herein, or deductions, interpretations  
or conclusions drawn therefrom.



OWNER:  
Scott Lowry  
Lowry Construction

CONTRACTOR:  
Scott Lowry  
Lowry Construction

PROJECT:  
542 Bonanza Avenue,  
Homer, Alaska 99603

## SITE PLAN

SCALE
1" = 15'-0"

2

**LOT 24A**  
**12,017 SQ FT**  
**0.28 ACRES**

PROPERTY ADDRESS:  
541 BONANZA AVE  
HOMER, ALASKA, 99603

<b>TOTAL LOT AREA</b>	<b>12,017 SF</b>
-----------------------	------------------

**EXISTING SINGLE STORY RESIDENCE** 430 SF

NEW CONTAINER HOME 360 SF

**TOTAL + 790 SF**

**EXISTING ON-SITE PARKING** **2 UNCOVERED SPACES**

**NEW ON-SITE PARKING** **3 UNCOVERED SPACES**

 GRAVEL GRASS
**LOW PLANTING**
**LOW PLANTING**

----- SETBACK LINE

UTILITY EASEMENT

— — — — — PROPERTY LINE

\_\_\_\_\_ BUILDING FOOTPRINT

FENCE

————→ SITE DRAINAGE, 2% SLOPE MINIMUM

## SITE INFORMATION

SCALE
N/A

7

## LEGEND

SCALE
N/A


LEGEND
--------

SCALE
N/A

1

# SITE PLAN

00041E 0010000

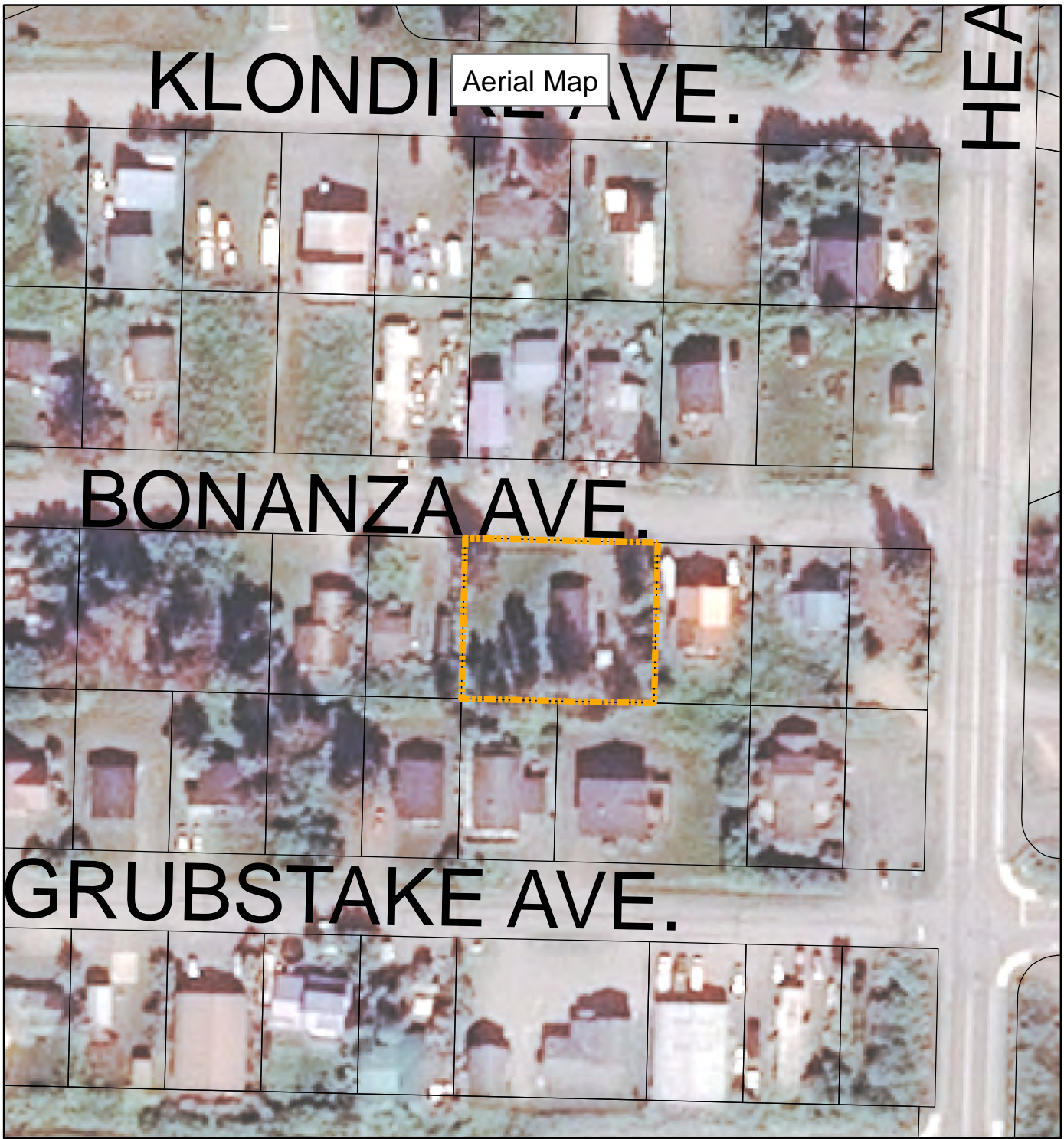
A1.0



View is from Bonanza Avenue looking south  
toward "New Single Story Residence"







City of Homer  
Planning and Zoning Department

8/18/2020

### Request for Conditional Use Permit 20-13 541 Bonanza Ave

2017 Photo. Property lines  
are not exact; use with care.

0 75 150 Feet



*Disclaimer:  
It is expressly understood the City of  
Homer, its council, board,  
departments, employees and agents are  
not responsible for any errors or omissions  
contained herein, or deductions, interpretations  
or conclusions drawn therefrom.*

**From:** Frank Griswold <fsgriz@alaska.net>  
**Sent:** Wednesday, September 2, 2020 3:34 PM  
**To:** Department Planning  
**Cc:** Julie Engebretsen  
**Subject:** CUP 20-14

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

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

Dear Commissioners,

1. The subject structure does not and cannot as a matter of law constitute a mobile home. HCC 21.03.040 (not HCC 21.030 as cited in Staff Report 20-58) defines mobile home in significant part as a structure that is **built on a permanent chassis and is designed for use as a dwelling.** The subject Connex was not built on a permanent chassis and was not designed for use as a dwelling. A "chassis" is the base frame of a motor vehicle or other wheeled conveyance. A Connex shipping container is designed to be transported on a trailer towed by a truck and therefore has no permanent chassis. (The truck has a permanent chassis and the trailer has a permanent chassis but the Connex shipping container does not). HCC 21.03.040 states in part as follows: "A mobile home shall be construed to remain a mobile home whether or not wheels, axles, hitch or other appurtenances are removed, and regardless of the nature of the foundation provided." It would follow that a Connex shipping container shall be construed to remain a shipping container whether or not it is modified into a dwelling unit. According to the Manufactured Housing Institute's National Communities Council (MHINCC), manufactured homes are homes built entirely in the factory under a federal building code administered by the U.S. Department of Housing and Urban Development (HUD). The MHINCC distinguishes among several types of factory-built housing: manufactured homes, modular homes, panelized homes, pre-cut homes, and mobile homes. Shipping containers are not designed or manufactured to comply with a nationally recognized model building code for site-built housing and the MHINCC does not consider modified shipping containers to be factory-built housing of any sort. Neither does HCC. Shipping containers are considered a nuisance and prohibited in the CBD. (HCC 21.18.080(c)). Modifying a shipping container does not magically transform it into something else. No matter how much lipstick one puts on a pig, at the end of the day it is still a pig. The fact that the subject structure may no longer be functional as a shipping container is irrelevant. It belongs in the dump, not in the CBD.

2. At page 3 of Staff Report 20-58 it states "Both homes would use the eastern **driveway.**" But HCC 21.54.080 mandates that "each mobile home space shall be directly accessible by a vehicle from an internal street without the necessity of crossing any other space. **Direct vehicular access from public streets to a mobile home space is prohibited.**" HCC 21.03.040 defines street as follows: "Street" means a public thoroughfare including a public street, road or highway of any description that affords a principal means of access to abutting property. **Street does not include alley or driveway.**" (Emphasis added). Furthermore, HCC 21.54.090 states: "The internal street system of a mobile home park shall provide convenient circulation by means of minor streets and collector streets. Dead-end streets shall be provided with an adequate turning circle at least 80 feet in diameter." The proposed mobile home park contains no minor streets or collector streets and therefore cannot be sustained. Applicants recently removed chain link fencing to install a new driveway providing direct vehicular access from Bonanza Avenue to the Connex. This new driveway did not exist prior to the illegal installation of the Connex. There is no evidence in the record that a

driveway permit was issued for the construction of the new driveway and it seems unlikely that it will now be abandoned. The driveway to the east provides direct vehicular access from Bonanza Avenue to the other structure on the subject lot. This direct access from Bonanza to the existing structure would be prohibited in a mobile home park under the provisions of HCC 21.54.080 cited above. There is no evidence in the record that a prerequisite driveway permit was issued for that driveway either.

3. Most building contractors quickly learn that forgiveness is easier to obtain than permission. California *contractor* Scott Lowry and his wife had the Connex placed on the subject lot before obtaining prerequisite zoning permits thereby violating HCC 21.90.090(a)(3), HCC 21.90.090(a)(6), and HCC 21.90.090(a)(7). The applicants are therefore zoning code violators per HCC 21.90.090(c). Every day upon which the act or condition occurs constitutes a separate violation. (HCC 21.90.090(b)). Violators are subject to a fine of not less than \$75 and not more than \$300 for each violation. (HCC 21.90.100). The Applicants would never get away with such flagrant zoning violations in Ojai California; its Planning Department would likely order the immediate removal of the subject structure and/or initiate other measures to enforce its zoning code.

4. The proposed structure is incompatible with the purpose of the CBD. The primary purpose of the CBD is to provide a centrally located area within the City for general retail shopping, personal and professional services, educational institutions, entertainment establishments, restaurants and other listed business uses. The primary purpose of the CBD is not to provide mobile home parks for modified Connex dwellings. The proposed structure would create conflict with nearby non-residential uses including Glacierview Garage located at 519 Klondike Avenue which I have owned and operated for over 40 years. The design of the modified Connex is not pedestrian-friendly. One has to wonder how horrible and/or illegal a CUP proposal would have to be for Planning Staff to recommend its denial.

5. The value of adjoining property will likely be negatively affected greater than that anticipated from other permitted or conditionally **permitted** (vs. **permissible**) uses in the CBD. HCC 21.71.030 mandates that the applicant "must produce evidence sufficient to enable meaningful review of the application." Thus, the applicants have the burden to prove that their proposal will not negatively affect adjoining property values greater than that anticipated ... etc. Applicants have not and likely cannot meet this burden. The review criteria prescribed under HCC 21.71.030(c) is excessively ambiguous, totally subjective, and requires the applicant to prove a negative fact. As recently argued by counsel for the City of Homer, the law rarely requires a party to prove a negative fact. *Hewing v. Alaska Workmen's Compensation Bd*, 512 P.2d 896, 900 n.14 (Alaska 1973). HCC 21.18.030(f) lists railroads as a **permissible** conditional use in the CBD. Even though no CUP application for railroad has ever been applied for or approved in the CBD, is this extremely low bar one of the standards for judging whether a different proposal will negatively affect the value of adjoining property? Or is the standard a use that has already been conditionally **permitted** and currently exists? Can it exist anywhere in the CBD or must it exist in the surrounding neighborhood of the proposed CUP? If a proposed use or structure must simply be less deleterious to adjoining property values than that anticipated from a freight train then the Commission's consideration of HCC 21.71.030(c) is pointless. HCC 21.18.010 mandates that conflicts between residential uses and nonresidential uses are to be resolved in favor of nonresidential uses so the fact that a drinking establishment could adversely affect the value of adjoining residential land is moot because owners of residential CBD properties apparently forfeit all of their constitutional property rights to the owners of nonresidential properties.



6. The proposal is not compatible with uses of surrounding land. None of the **surrounding land** (undefined) contains modified Connex dwellings or mobile home parks. HCC 21.71.020(a)(6) required Applicants to provide a map showing **neighboring lots** (undefined) and a narrative description of the existing uses those neighboring lots but they failed to do so. "Neighboring lots" is not synonymous with "abutting lots" and would arguably include all properties located within 300 feet of the subject property since the Notice of Public Hearing was sent to all (neighboring) property owners within 300 feet. The Commission should not consider this application until HCC 21.71.020(a)(6) is fully complied with. HCC 21.71.020(a)(3) required Applicants to provide the legal description of the subject lot but they did not. The Homer City Clerk rejected my initial Notice of Appeal re: CUP 14-05 because I neglected to include therein the formal legal description of the subject property in addition to its street address and KPB parcel number which were included.

7. Existing fire services may not be adequate to extinguish a meth lab fire in a modified shipping container dwelling. No input from HVFD was sought or received.

8. The fact that mobile homes and mobile home parks are listed as permitted uses and conditionally permitted uses respectively in the CBD is irrelevant since the proposed use is not a mobile home. Being compatible with the purpose of the CBD is a distinct review criteria and compatibility with the purpose of the CBD does not guarantee that the proposal will not cause undue harmful effect upon desirable neighborhood character. If the modified Connex is rented to drug dealers this would clearly cause undue harmful effect upon desirable neighborhood character. Applicants assert that the proposed dwelling is to be used "as a guest house to stay in when we visit and have family members stay while in town" but this would not be binding on Applicants or future owners unless a condition were imposed that the alleged "guest house" not become a rental or put to some other more objectionable use. Note that the Applicants and visiting family members could stay in the existing mobile home instead of in the cramped and unsightly Connex which seems better suited to drug dealers and miscreants. A mild earthquake could easily topple the existing fuel oil tank (conveniently omitted from the Applicants' fanciful conceptual drawing) spilling hundreds of gallons of fuel oil onto the adjacent property. No Commissioner or Planning Department employee would likely support the approval of CUP 20-14 if they lived next door to the subject Connex.

9. Staff's analysis pertaining to HCC 21.71.030(g) fails to address whether the proposal will be unduly detrimental to the health, safety or welfare of the surrounding area or the city as a whole. The fact that city utilities, police, fire and road maintenance services are available and adequately serve the lot may apply to HCC 21.71.030(f) but is irrelevant to HCC 21.71.030(g). HCC 21.71.030(g) is one of the review criteria that must be met before the CUP 20-14 can be approved. Staff circuitously asserts that if all applicable standards required by code are met, including this one, then this review criteria will be met. Such a finding is evasive and inadequate. If Connex shipping containers were not considered nuisances and unduly detrimental to the health, safety and/or welfare of the surrounding area they would not be prohibited in the CBD under HCC 21.18.080(c).

10. The proposal cannot comply with the applicable regulations and conditions specified in the zoning code unless the subject structure is first removed. HCC 21.70.010(a)(1) mandates that a zoning permit shall be obtained from the City Planner for the erection, construction or moving of any building or structure. HCC 21.70.010(b) states: "The 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." There is no provision in HCC for issuing after-the fact zoning permits. HCC 21.70.070 states as follows: "Nothing in this chapter shall relieve the applicant of the obligation to obtain a conditional use permit, sign permit, variance, or



other permit or approval required by other provisions of the zoning code. The zoning permit required by this chapter shall be in addition to any other applicable permit or approval requirements. If any such additional permits or approvals are required, they must be obtained **prior** to the issuance of the zoning permit under this chapter. Thus, CUP 20-14 would need to be approved before the issuance of a zoning permit and the structure would have to be removed before that zoning permit could be issued. HCC 21.70.030(c) provides that in granting a zoning permit, no City official or employee has authority to grant a waiver, variance, or deviation from the requirements of the zoning code and other applicable laws and regulations, unless such authority is expressly contained therein. There is no evidence in the record that either driveway permit has been acquired or that the CUP application fee has been paid.

11. The proposal is contrary to many applicable land use goals and objectives of the Homer Comprehensive Plan. Applicants failed to meet their burden of proof that their proposal is not contrary to the applicable goals and objectives of the Comprehensive Plan (once again Applicants were unreasonably required by city code to prove a negative) and Planning Staff ignored several applicable provisions of the Comprehensive Plan with which the proposal clearly does not comport while creatively presenting others in a favorable light. As pointed out on page 1 of Staff Report 20-58, Goal 1, Objective C is to maintain high quality residential neighborhoods. Allowing a Connex shipping container to be occupied as a dwelling unit in the CBD is clearly contrary to the goal of maintaining high quality residential neighborhoods and potentially sets a precedent would generate an influx of additional substandard housing in the CBD. The overly-broad goal of promoting infill development in all housing districts is not a legitimate zoning objective because it would support any and all development thus defeating the purpose for adopting a comprehensive development plan in the first place. "Not all of the goals articulated by the City can be considered legitimate per se. For example, any zoning change which eases restrictions on property use could be said to further the goal of "filling in vacant places." *Griswold v. City of Homer*, 925 P.2d 1015, 1023 n. 9 (Alaska 1996). In any event, the subject lot is already infilled with a single-family dwelling. Furthermore, it is not clear that the Central Business District constitutes a "housing district" which is undefined in HCC 21.03.040. Planning Staff's finding that the proposed structure may at some point "be closer to meeting the intent of the Comprehensive Plan" is not only damnation by faint praise but inadequate to support the prerequisite review criteria i.e., not being contrary to the Comprehensive Plan's applicable land use goals and objectives. Planning Staff's finding that "no evidence has been found that it is **not** contrary to the applicable land use goals and objects [sic] of the Comprehensive Plan," while very true and therefore automatic grounds for denial of the application for CUP 20-14, appears to be a Freudian slip. The photos of the subject Connex that are included in the Commission's packet constitute substantial evidence that the proposal is contrary to the applicable goals and objectives of the Comprehensive Plan. The proposed development is flagrantly contrary to many Chapter 4 land use goals and objectives including protecting community character, maintaining high quality residential neighborhoods, maintaining the quality of Homer's natural environment and scenic beauty, and encouragement of high quality buildings and site development that complement Homer's beautiful natural setting. No matter how much lipstick is applied to it, a Connex shipping container does not constitute a high quality building. Even if no evidence had been found by Planning Staff that the proposal is contrary to the applicable goals and objectives of the Comprehensive Plan, that would not constitute evidence that the proposal is not contrary to the applicable goals and objectives of the Comprehensive Plan. Quasi-judicial findings must be based on substantial evidence and a lack of evidence does not constitute evidence of any kind. (Ask your attorney).

12. Finding #10 of Staff Report 20-58 states that the project will comply with the applicable provisions of the Community Design Manual but erroneously suggests that only the outdoor lighting section of the CDM applies to the application for CUP 20-14. Applicants erroneously state that their project does not trigger a Community Design Review CDM review. Accordingly, they did not complete the design review application form. Downward lighting is required by HCC 21.59.030 but no outdoor lighting plan was submitted by the

Applicants. Because this is an application for CUP, all applicable provisions of the CDM apply, even those provisions that would not otherwise apply. If this were not the case, HCC 21.71.030(j) would be superfluous. The Commission should make a finding of law as to whether other provisions of the CDM (besides outdoor downward lighting) are applicable to the application for CUP 20-14 and therefore prerequisite for its approval. To this end, it would be prudent for the Commission to seek legal advice from an unbiased attorney not affiliated with or influenced by the Planning Department or Administration. That attorney could also advise the Commission whether a modified Connex can constitute a mobile home. Neither Planning Staff nor the Administration has the authority to deny independent legal representation to the Commission if it is requested.

13. Black's Law Dictionary defines testimony as follows: "Evidence given by a competent witness under oath or affirmation; as distinguished from evidence derived from writings, and other sources. Testimony is particular kind of evidence that comes to tribunal through live witnesses speaking under oath of affirmation in presence of tribunal, judicial or quasi-judicial." Thus, those testifying before the quasi-judicial Commission, including the Applicants, should first be sworn in.

14. HCC 21.71.010(c) states that nothing in the zoning code shall be construed to require the granting of a conditional use permit. Staff Report 20-58 was prepared before critical evidence was presented. The Commission should reject the biased, unsubstantiated, circuitous off-point, conclusionary, and blatantly erroneous findings of Staff Report 20-58, except for the Freudian slip, and deny the application for CUP 20-14. In accordance with HCC 21.71.050(b), the Commission has 45 days to issue its Decision and Findings and, within that 45-day period, may deliberate in executive session, with or without legal representation, as many times as it deems necessary. The City Planner is not a member of the Homer Advisory Planning Commission and therefore has no authority to attend the executive sessions or sign the *Commission's* Decision.

Frank Griswold



## REPORTS

### A. Staff Report 20-57, City Planner's Report

City Planner Abboud commented he was in transition from the acting city manager position so there is not much in this report. He noted the Council passed action items mentioned in Staff Report 20-57.

## PUBLIC HEARING(S)

### A. Staff Report 20-58, Conditional Use Permit 20-14 to allow a second mobile home at 541 Bonanza Avenue

Chair Smith introduced the item by reading of the title into the record.

City Planner Abboud noted the late laydown from Mr. Griswold and confirmed that all commissioners were able to review this information before the meeting.

Commissioners verbally and visually confirmed that they had reviewed the information.

City Planner Abboud briefly reviewed the laydown for the Commission noting the concerns on access and mobile home park. He stated that there were some valid points brought forward by Mr. Griswold, but the majority did not apply. He further stated that Mr. Griswold brought forward his typical arguments but he has not prevailed on previous attempts.

City Planner Abboud then reviewed Staff Report 20-58 for the commission. He commented on the following:

- Comprehensive Plan Goals and Objectives
- One large lot that was previously two lots, this can be subdivided and no CUP would be required
- Single family connex home was placed on the property without a zoning permit and the options available to address the matter
- Mobile Home Park requirement review and considering the connex as a mobile home
  - o Access for Fire Department
- Compliance with the existing definition of mobile home
- Use of similar structure in other areas of the city
- Discussion needed on when a shipping container is no longer a shipping container
- Requested a correction by the commission to fix the double negative shown in Finding 9, line 4, Requested the Commission to amend the sentence to remove the word “not” before contrary

Scott and Stacy Lowry, applicant and owner, provided a verbal presentation on the proposed project explaining the planning and goals that they wanted to reach by placing the converted connex on the property. They noted that the lot was purchased and prior to them purchasing the lot, the lot line had been vacated to create one larger lot. There is an older mobile home on the property that is currently rented and that tenant has resided on the property prior to them purchasing the property. They intend to use the new structure as a vacation home as they come to Homer every summer since they have family here. They stated that they have photos of the interior and would be happy to share. The Applicant explained that they had future plans to replace the existing mobile home with a new structure. The applicant further explained that they have been working with the planning staff to meet all the requirements of the city.

Chair Smith opened the Public Hearing.

Bob Shavelson, representing his sister who owns the neighboring parcel, commented on being caught off guard with no notice, stated that a connex does not meet the definition of mobile home, commented on the nomenclature issue with the streets and defining this as a mobile home park since it is not one; he believed there would be difficulties in reestablishing the lot line. Mr. Shavelson then commented that the comp plan has some conflicting items as goal number three is to encourage high quality buildings and site development and he opined that a connex was not that. Mr. Shavelson stated he was not going to raise serious objections if the intent of the applicant is to improve the appearance of the lot.

Chair Smith confirmed with the Clerk there were no further members of the public to provide testimony and closed the Public Hearing and requested questions for the City Planner.

Commissioners and City Planner Abboud discussed the following points:

- Review of the section of city code regarding the Central Business District (CBD) 20.18.020, Permitted uses and structures (ii.) One detached dwelling unit, excluding mobile homes, as an accessory building to a principal single-family dwelling on a lot; arguing that this could be used to define this project, to avoid the discussion of mobile homes
- Consideration of a connex as a nuisance
- City does not have a building code
- Confusion of the two mobile homes on one lot
- Bringing a connex into the CBD without permits, setting precedent that it is allowed, and the Commission's intent to limit or decrease the use of mobile homes in the city
- Conditional Use Permit would be after the fact but would bring the action into compliance
- Applicant has not been fined since they are actively working with the Planning Department to bringing the project into compliance.
- Defining this structure as a mobile home is incorrect since it is a connex.
- Staff would recommend or the applicants can consider the pulling the application and bringing it back under the additional dwelling, a CUP would not be required.
- Commissioner perspectives on the connex since that is what it is



- The trend to sustainable, affordable housing by using modular, pre-fab, manufactured homes and tiny homes

There were no further questions for the City Planner and Chair Smith requested questions from the Commission for the Applicant.

Commissioners and the Applicant discussed the following points:

- Basis and reasons for moving a connex into a developed neighborhood
- Sustainable housing, trend for tiny homes, a connex does present a modern appearance, placement on the far eastern edge, the foundation is permanent.
- Consideration that it is a modular home, not a connex, as it is tied into existing water and sewer and will have exterior improvements
- Can subdivide the property back again and keep the structure as a permanent dwelling
- Timeline for the improvements to be completed on the appearance of the connex
- Retrofitting a connex into a dwelling and electrical, plumbing standards since there are standards for mobile homes
- Additional questions could be presented in writing and the applicant would respond with photos and certifications to address those concerns of the Commission

Chair Smith called for additional questions for the applicant, there were none so he redirected the discussion back to the question on evaluating this as an Accessory Dwelling Unit (ADU) rather than for a CUP.

City Planner Abboud noted that it appeared there was agreement among the Commissioners that this structure is not a mobile home and as such it does not appear to be appropriate that the term mobile home park applies. He then reviewed the nuisance standard and noted that it is no longer a shipping container, there are no other standards to apply.

Further discussion ensued on the application of code, renovation of the connex so that it is no longer a shipping container, if they amend to reflect a permitted use then a CUP is not required, clarification on the number of structures on the property, the connex does not meet the definition of mobile home and where a challenge will come from the neighbor by appeal.

City Planner Abboud stated that it should be failed since they are not dealing with a mobile home or mobile home park as it did not meet the definition.

Commissioner Bentz then recognized the city code that addressed nuisance standards HCC 21.18.080 (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. She noted that in the packet there is a photo showing the interior of the connex and did not believe that it was capable of transporting merchandise and provided a description of the interior represented by the photo.

Commissioner Highland also noted that a shipping container is allowed if screened from public view as described in the same section of city code Commissioner Bentz referenced.

Commissioner Bentz additionally stated that a connex could fall under the designated permitted use of mini storage. She observed that the Commission could not show bias against a structure based on the materials used, noting the blue tarps being used on Bonanza Street as roofing materials and the applicants have undergone a level of scrutiny that the Commission does not talk about with people such as the renovated construction with fire alarms and electrical systems.

City Planner Abboud responding to the question of changing it from a mobile home, that since Homer does not have a building code, and until the city adopts building codes, a dwelling can be built out of any material. This is a dwelling and has all the features that is expected in a structure defined as such.

Chair Smith requested a motion.

*VENUTI/ HIGHLAND MOVE TO ADOPT STAFF REPORT 20-58 AND APPROVE CUP 20-14 WITH FINDINGS 1-10 AND CONDITIONS 1-7*

- 1. ALL DEVELOPMENT MUST BE COMPLETED BY AUGUST 1, 2021. THIS INCLUDES PAINTING, SKIRTING, PORCH CONSTRUCTION AND COMPLETE SITE DEVELOPMENT AS SHOWN ON THE SITE PLAN AND PROJECT ELEVATIONS.*
- 2. THE ZONING PERMIT AND CUP MAY ONLY BE EXTENDED BY THE PLANNING COMMISSION.*
- 3. FAILURE TO COMPLETE DEVELOPMENT BY AUGUST 1, 2021 MAY RESULT IN A ZONING VIOLATION AND FINES UNTIL THE STRUCTURE IS REMOVED OR BROUGHT INTO COMPLIANCE.*
- 4. BOTH MOBILE HOMES SHALL MEET THE REQUIREMENTS OF HCC 21.54.100*
- 5. COVERED STORAGE MEETING REQUIREMENTS OF HCC 21.54.070, NOT LESS THAN 200 CUBIC FEET OF COVERED STORAGE PER UNIT SHALL BE PROVIDED.*
- 6. PLANT OR SCREEN THE EASTERN AND SOUTHERN PROPERTY LINES WITH A FENCE OR COMBINATION EVERGREEN DECIDUOUS PLANTINGS TO PROVIDE EFFECTIVE SCREENING.*
- 7. OUTDOOR LIGHTING MUST BE DOWN LIT PER HCC 21.59.030*

It was noted that there was a typographical error in the staff report numbers, it was stated that it can be corrected by the Clerk.

City Planner Abboud provided clarification that the Commission could fail the motion and the Applicant would apply for a permit under the ADU and it would be handled administratively. He stated that there are three choices for the Commission: Approve the Conditional Use Permit, Approve with more conditions or deny the permit.

The Commission and City Planner Abboud entertained a brief discussion on amending the findings to substantiate the denial of the CUP by amending the cited city code citation from Finding 1, HCC 20.18.020 (m) and replace with Finding 1 HCC 20.18.020(ii) one

detached dwelling unit, excluding mobile homes, as an accessory building to a principal single-family dwelling on a lot and that two the Commission finds that the structure in question, the shipping container was not used for transportation of merchandise and therefore HCC 21.18.080 Nuisance standards, item c, does not apply.

Chair Smith called for a roll call vote.

VOTE. NO, BENTZ, DAVIS, HIGHLAND, VENUTI, SMITH

Motion failed.

Chair Smith thanked the applicants for a very interesting topic and he wanted to make them aware that the Commission was trying to advocate for the them while addressing the concerns presented by Mr. Griswold and being applicable to city code.

Mr. Lowry responded that he was appreciative of the Commission processes and just wanted to do what was easiest for the Commission and city in regards to paperwork and permits. He had noted through the chat option that they could withdraw the permit application if that was easier but it sounds as if it is past that point. He thanked everyone for their time and discussion tonight.

City Planner Abboud clarified that the applicant can contact the planning department to proceed to the next step for their project.

#### B. Staff Report 20-60, Medical Zoning District

Chair Smith introduced the item by reading of the title.

City Planner Abboud provided a brief summary of the previous actions on the draft ordinance.

There is no applicant as the city is the applicant.

Chair Smith opened the public hearing and seeing no members of the audience coming forward to provide testimony he closed the public hearing and opened the floor to questions from the Commission.

There were no questions from the Commissioners for the City Planner.

Chair Smith Requested a motion.

VENUTI/ BENTZ MOVE TO ADOPT STAFF REPORT 20-60 AND FORWARD THE DRAFT ORDINANCE CREATING A MEDICAL ZONING DISTRICT TO CITY COUNCIL.





**HOMER ADVISORY PLANNING COMMISSION**

**September 2, 2020**

**RE:** Conditional Use Permit (CUP) 20-14  
**Address:** 541 Bonanza Ave  
**Legal:** LEGAL T 6S R 13W SEC 20 SEWARD MERIDIAN HM 0930033  
GLACIER VIEW SUB NO 23 BLOCKS 8 9 & 10 LOT 24A

**DECISION**

**Introduction:** Scott and Stacy Lowry (the “Applicants”) applied to the Homer Advisory Planning Commission (the “Commission”) for a Conditional Use Permit (CUP) under Homer City Code HCC 21.18.030(c) for “mobile home parks” at 541 Bonanza Avenue.

The application was scheduled for a public hearing as required by Homer City Code 21.94 before the Commission on September 2, 2020. Notice of the public hearing was published in the local newspaper and sent to 40 property owners of 50 parcels.

The Commission hereby denies the request for Conditional Use Permit 20-14. Five Commissioners were present and voted unanimously to deny the proposal.

**Background and Facts:**

**Evidence Presented:** City Planner Abboud confirmed that the Commissioners had time to read the laydown presented by Frank Griswold in opposition to the proposal. The Applicants reviewed their plan to add an additional dwelling to the site to be used as a vacation home.

**Public Testimony:** Bob Shavelson, representing his sister with a nearby property interest, was concerned that the connex shipping container refurbished into a dwelling does not meet the definition of mobile home and that it conflicts with the goal of encouraging high quality buildings and site development found in the comprehensive plan.

**Written Testimony:** Frank Griswold provided a written comment in opposition that was provided to the Commission prior to the meeting.

**Discussion:** A discussion regarding the status of the use of a repurposed Connex container for a dwelling ensued. The Commissioners determined that the proposed second structure was not a mobile home. The Commission also noted that the structure was not used for the transportation of merchandise, so it did not constitute equipment used for the transporting of merchandise as described in HCC 21.18.080 (c).

**Findings of Fact:** After careful review of the record and consideration of the testimony presented at the hearing, the Commission determines that Conditional Use Permit 20-14 does not satisfy all the review criteria under HCC 21.71.030 and thus denies the conditional use.

Pursuant to HCC 21.71.030 and HCC 21.71.040, a conditional use must satisfy the following criteria:

- a. The applicable code authorizes each proposed use and structure by conditional use permit in that zoning district.
- b. The proposed use(s) and structure(s) are compatible with the purpose of the zoning district in which the lot is located.
- c. The value of the adjoining property will not be negatively affected greater than that anticipated from other permitted or conditionally permitted uses in this district.
- d. The proposal is compatible with existing uses of surrounding land.
- e. Public services and facilities are or will be, prior to occupancy, adequate to serve the proposed use and structure.
- f. Considering harmony in scale, bulk, coverage and density, generation of traffic, the nature and intensity of the proposed use, and other relevant effects, the proposal will not cause undue harmful effect upon desirable neighborhood character.
- g. The proposal will not be unduly detrimental to the health, safety or welfare of the surrounding area or the city as a whole.
- h. The proposal does or will comply with the applicable regulations and conditions specified in this title for such use.

- i. The proposal is not contrary to the applicable land use goals and objectives of the Comprehensive Plan.
- j. The proposal will comply with all applicable provisions of the Community Design Manual.

**Based on the finding(s) below the proposed conditional use fails to satisfy all the criteria identified in HCC 21.71.030. The Commission hereby denies Conditional Use Permit 20-14 the following finding(s).**

**Finding 1:** The converted dwelling was not designed to meet the standards for a manufactured home (mobile home) determined by the U. S. Department of Housing and Urban Development and does not constitute a mobile home.

**Finding 2:** The proposal does not satisfy the criteria under HCC 21.71.030 (a) as “Mobile Home Park” is not applicable code in consideration of the proposed structure.



## Conclusion

Based on the foregoing findings of fact and law, Conditional Use Permit 20-14 is hereby denied.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Chair, Scott Smith

\_\_\_\_\_  
Date

\_\_\_\_\_  
City Planner, Rick Abboud, AICP

## NOTICE OF APPEAL RIGHTS

Pursuant to Homer City Code, Chapter 21.93.060, any person with standing that is affected by this decision may appeal this decision to the Homer Board of Adjustment within thirty (30) days of the date of distribution indicated below. Any decision not appealed within that time shall be final. A notice of appeal shall be in writing, shall contain all the information required by Homer City Code, Section 21.93.080, and shall be filed with the Homer City Clerk, 491 East Pioneer Avenue, Homer, Alaska 99603-7645.

## CERTIFICATION OF DISTRIBUTION

I certify that a copy of this Decision was mailed to the below listed recipients on \_\_\_\_\_, 2020. A copy was also delivered to the City of Homer Planning Department and Homer City Clerk on the same date.

\_\_\_\_\_  
Date

\_\_\_\_\_  
Travis Brown, Planning Technician

Scott & Stacy Lowry  
907 Daly Road  
Ojai, CA 9323

Michael Gatti  
JDO Law  
3000 A Street, Suite 300  
Anchorage, AK 99503

Rob Dumouchel, City Manager  
491 E Pioneer Avenue  
Homer, AK 99603



**HOMER ADVISORY PLANNING COMMISSION**

**September 2, 2020**

**RE:** Conditional Use Permit (CUP) 20-14  
**Address:** 541 Bonanza Ave  
**Legal:** LEGAL T 6S R 13W SEC 20 SEWARD MERIDIAN HM 0930033  
GLACIER VIEW SUB NO 23 BLOCKS 8 9 & 10 LOT 24A

**DECISION**

**Introduction:** Scott and Stacy Lowry (the “Applicants”) applied to the Homer Advisory Planning Commission (the “Commission”) for a Conditional Use Permit (CUP) under Homer City Code HCC 21.18.030(c) for “mobile home parks” at 541 Bonanza Avenue.

The application was scheduled for a public hearing as required by Homer City Code 21.94 before the Commission on September 2, 2020. Notice of the public hearing was published in the local newspaper and sent to 40 property owners of 50 parcels.

The Commission hereby denies the request for Conditional Use Permit 20-14. Five Commissioners were present and voted unanimously to deny the proposal.

**Background and Facts:**

**Evidence Presented:** City Planner Abboud confirmed that the Commissioners had time to read the laydown presented by Frank Griswold in opposition to the proposal. The Applicants reviewed their plan to add an additional dwelling to the site to be used as a vacation home.

**Public Testimony:** Bob Shavelson, representing his sister with a nearby property interest, was concerned that the connex shipping container refurbished into a dwelling does not meet the definition of mobile home and that it conflicts with the goal of encouraging high quality buildings and site development found in the comprehensive plan.

**Written Testimony:** Frank Griswold provided a written comment in opposition that was provided to the Commission prior to the meeting.

**Discussion:** A discussion regarding the status of the use of a repurposed Connex container for a dwelling ensued. The Commissioners determined that the proposed second structure was not a mobile home. The Commission also noted that the structure was not used for the transportation of merchandise, so it did not constitute equipment used for the transporting of merchandise as described in HCC 21.18.080 (c).

**Findings of Fact:** After careful review of the record and consideration of the testimony presented at the hearing, the Commission determines that Conditional Use Permit 20-14 does not satisfy all the review criteria under HCC 21.71.030 and thus denies the conditional use.

Pursuant to HCC 21.71.030 and HCC 21.71.040, a conditional use must satisfy the following criteria:

- a. The applicable code authorizes each proposed use and structure by conditional use permit in that zoning district.
- b. The proposed use(s) and structure(s) are compatible with the purpose of the zoning district in which the lot is located.
- c. The value of the adjoining property will not be negatively affected greater than that anticipated from other permitted or conditionally permitted uses in this district.
- d. The proposal is compatible with existing uses of surrounding land.
- e. Public services and facilities are or will be, prior to occupancy, adequate to serve the proposed use and structure.
- f. Considering harmony in scale, bulk, coverage and density, generation of traffic, the nature and intensity of the proposed use, and other relevant effects, the proposal will not cause undue harmful effect upon desirable neighborhood character.
- g. The proposal will not be unduly detrimental to the health, safety or welfare of the surrounding area or the city as a whole.
- h. The proposal does or will comply with the applicable regulations and conditions specified in this title for such use.



i. The proposal is not contrary to the applicable land use goals and objectives of the Comprehensive Plan.

j. The proposal will comply with all applicable provisions of the Community Design Manual.

**Based on the finding(s) below the proposed conditional use fails to satisfy all the criteria identified in HCC 21.71.030. The Commission hereby denies Conditional Use Permit 20-14 the following finding(s).**

**Finding 1:** The converted dwelling was not designed to meet the standards for a manufactured home (mobile home) determined by the U. S. Department of Housing and Urban Development and does not constitute a mobile home.

**Finding 2:** The proposal does not satisfy the criteria under HCC 21.71.030 (a) as “Mobile Home Park” is not applicable code in consideration of the proposed structure.


## Conclusion

Based on the foregoing findings of fact and law, Conditional Use Permit 20-14 is hereby denied.

Oct 22, 2020  
Date

  
Chair, Scott Smith

10/22/2020  
Date

  
City Planner, Rick Abboud, AICP

## NOTICE OF APPEAL RIGHTS

Pursuant to Homer City Code, Chapter 21.93.060, any person with standing that is affected by this decision may appeal this decision to the Homer Board of Adjustment within thirty (30) days of the date of distribution indicated below. Any decision not appealed within that time shall be final. A notice of appeal shall be in writing, shall contain all the information required by Homer City Code, Section 21.93.080, and shall be filed with the Homer City Clerk, 491 East Pioneer Avenue, Homer, Alaska 99603-7645.

## CERTIFICATION OF DISTRIBUTION

I certify that a copy of this Decision was mailed to the below listed recipients on 10.22, 2020. A copy was also delivered to the City of Homer Planning Department and Homer City Clerk on the same date.

10.22.2020  
Date

  
Rick Abboud, AICP, City Planner

Scott & Stacy Lowry  
907 Daly Road  
Ojai, CA 9323

Michael Gatti  
JDO Law  
3000 A Street, Suite 300  
Anchorage, AK 99503

Rob Dumouchel, City Manager  
491 E Pioneer Avenue  
Homer, AK 99603

Frank Griswold  
519 Klondike Ave  
Homer, AK 99603

Further discussion ensued on the screening requirement and height of screening landscape and the Commissioners expressed that the applicant could work it out with Planning Staff the landscape requirement.

VOTE.(Amendment). YES. BARNWELL, BENTZ, HIGHLAND, PETSKA-RUBALCAVA, SMITH

Chair Smith called for the vote on the main motion as amended.

VOTE. NON-OBJECTION. UNANIMOUS CONSENT.

Motion carried.

Commissioner Venuti was invited back to the meeting.

## **PLAT CONSIDERATION**

## **PENDING BUSINESS**

## **NEW BUSINESS**

- A. Decisions and Findings for Conditional Use Permit 20-14 to allow a second mobile home at 541 Bonanza Avenue.

Chair Smith introduced the item by reading of the title and invited City Planner Abboud to provide some clarification on changes.

City Planner Abboud provided clarification on Finding two to make sure it was tied to the criteria and wanted to make sure the Commission reviewed the document and does not have anything to amend.

Chair Smith requested a motion to adopt the Decisions and Findings as written.

BENTZ/VENUTI MOVED TO ADOPT THE DECISIONS AND FINDINGS FOR CONDITIONAL USE PERMIT 20-14 TO ALLOW A SECOND MOBILE HOME AT 541 BONANZA AVE AND ATTACHED FINDING TWO.

There was no discussion.

VOTE. NON-OBJECTION. UNANIMOUS CONSENT.

Motion carried.

## **INFORMATIONAL MATERIALS**



From: [Frank Griswold](#)  
To: [Melissa Jacobson](#)  
Cc: [Bonnie Krause](#)  
Subject: For the Record Re: Appeal of ZP 1020-782, Non-Renderings Taken by Appellant on December 16, 2020.  
Date: Tuesday, December 29, 2020 4:06:26 PM

---

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























From: [Frank Griswold](#)  
To: [Melissa Jacobsen](#)  
Cc: [Betsy Krause](#)  
Subject: For Inclusion Into ZP 1020-782 Appeal Record and Packet (Taken by Appellant on 12/30/2020)  
Date: Wednesday, December 30, 2020 1:16:22 PM

---

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



















From: [Frank Griswold](#)  
To: [Melissa Jacobsen](#)  
Cc: [Betsy Krause](#)  
Subject: Additional Photos For Inclusion Into ZP 1020-782 Appeal Record and Packet (Taken by Appellant on 12/30/2020)  
Date: Wednesday, December 30, 2020 1:47:21 PM

---

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















## City of Homer

[www.cityofhomer-ak.gov](http://www.cityofhomer-ak.gov)

## Office of the City Clerk

491 East Pioneer Avenue

Homer, Alaska 99603

[clerk@cityofhomer-ak.gov](mailto:clerk@cityofhomer-ak.gov)

(p) 907-235-3130

(f) 907-235-3143

### NOTICE OF HEARING AND SUPPLEMENTED RECORD

December 9, 2020

To Parties of Record: Frank Griswold, Appellant  
Scott and Stacy Lowry, Property Owner

A hearing on the appeal to the Planning Commission regarding Zoning Permit 1020-782 issued to Scott and Stacy Lowry for their property located at 541 Bonanza Avenue, has been set for Wednesday, January 6, 2021 at 5:30 p.m. The hearing will be conducted by Zoom Meeting and pursuant to Homer City Code 21.93.300 this meeting is open to the public.

To join the Zoom meeting on your computer go to [www.zoom.us](http://www.zoom.us) and select Join A Meeting. From there follow the prompts to enter the meeting ID and password below.

Meeting ID: 940 8082 9916 Passcode: 052186

To participate by phone only, you may dial one of the following phone numbers and enter the same meeting ID and passcode, 1-669-900-6833, 1-253-215-8782 or Toll Free 888-788-0099 or 877-853-5247.

Please be advised the Appeal Record is supplemented to include the meeting minutes from the September 2, 2020 Planning Commission meeting, at the request of the appellant. A copy of the minutes are included as a supplement to the record.

Melissa Jacobsen, MMC, City Clerk



Michael R. Gatti  
Max D. Holmquist  
JERMAIN DUNNAGAN & OWENS, P.C.  
3000 A St., Suite 300  
Anchorage, AK 99503  
Phone: (907) 563-8844  
Fax: (907) 563-7322  
[mgatti@jdolaw.com](mailto:mgatti@jdolaw.com)  
[mholmquist@jdolaw.com](mailto:mholmquist@jdolaw.com)

Attorneys for Appellee the City of Homer

CITY OF HOMER

APPEAL TO PLANNING COMMISSION

FRANK GRISWOLD	)	
	)	
	)	
Appellant,	)	
	)	
v.	)	
	)	
CITY OF HOMER,	)	
	)	
Appellee.	)	
		) Appeal of Issuance of Zoning Permit 1020-782

**MOTION TO CONTINUE APPEAL HEARING**

COMES NOW Appellee, the City of Homer (the “City”) by and through its counsel, Jermain, Dunnagan & Owens, P.C., and respectfully requests a continuance of the appeal hearing before the Homer Planning Commission (the “Commission”) in the above-captioned matter currently scheduled for January 6, 2021. The appeal record in this matter was prepared on or about November 10, 2020 and ordinarily the appeal hearing must be held within 60 days of the preparation of the appeal record. However,

this time period may extended by the Commission for good cause shown. HCC  
21.93.100(a).

In communications with the City, Appellant has raised several procedural issues regarding the hearing. There is good cause for a short continuance of the appeal hearing to allow the City to confer with Appellant in an attempt to resolve these issues. Accordingly, the City respectfully requests that the Commission continue the hearing in this matter at least ten days, and that the hearing be rescheduled on a date when all parties and the Commission are available.

DATED this 31st day of December, 2020, at Anchorage, Alaska.

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

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

ON APPEAL TO THE HOMER PLANNING COMMISSION

FRANK GRISWOLD,

Appellant,

v.

TRAVIS BROWN, SCOTT LOWRY,  
AND STACY LOWRY,

Appellees.

\_\_\_\_\_/ Appeal of Zoning Permit 1020-782

**APPELLANT FRANK GRISWOLD'S OPPOSITION TO MOTION TO CONTINUE  
APPEAL HEARING**

Appellant Frank Griswold hereby opposes the city's Motion to continue the appeal hearing currently scheduled for January 6, 2021. The deadline for this hearing is January 9, 2021 i.e., 60 days after the appeal record was prepared on November 10, 2020. While HCC 21.93.100(a) provides that this deadline may be extended by the Commission for good cause shown, no good cause has been shown. While the city claims it wishes to confer with Appellant in an attempt to resolve several procedural issues, it has had ample time to do so already and there is little likelihood that a continuance will culminate in any resolution. Furthermore, there is still ample time before the January 6, 2021 hearing for the parties to confer about procedural issues.



One of these procedural issues is who the parties are. Any discussions about procedural matters should include property owners Scott and Stacy Lowry who were not even listed as Appellees in the caption of the Motion to Continue Appeal Hearing. The true purpose of the proposed continuance appears to be to allow the city's newly assigned legal counsel time to bolster the position of the Appellees and deny Appellant his Constitutional due process rights.

On December 14, 2020 the Appellant asked City Clerk Melissa Jacobsen whether a Procedural Notice would be provided to the parties in advance of the January 6, 2021 appeal hearing. On December 16, 2020 she responded: "Yes, by December 21st. I will notify you if there are any delays." Obviously, no Procedural Notice was issued. Ultimately, it is not the parties who establish hearing procedures; when unspecified in HCC this is solely the role of the Commission. It is not clear whether the Commission was ever asked to clarify any hearing procedures or issue a Procedural Notice. The lay Commission might require assistance from legal counsel to do so. HCC 21.93.300(e), HCC 21.93.300(g), and HCC 21.93.310 authorize the Commission to seek legal counsel. The partisan legal counsel that now allegedly represents the City of Homer does not and cannot represent the

Commission which is serving as an impartial adjudicatory body which, if represented by legal counsel, must be represented by impartial legal counsel. If the subject procedural issues cannot be resolved among all of the parties prior to the January 6, 2021 hearing, the Commission can resolve them at that time, with or without the assistance of legal counsel.

Appellant hereby requests that the Commission instruct the City Clerk to include in the appeal record all relevant correspondence regarding disputed procedural issues along with the November 10, 2020 Notice of Completed Appeal Record, the Proposed Stipulation Regarding Procedure for Planning Commission Hearing, and the Public Hearing Notice with all attachments.

DATED: January 4, 2021.

By: Frank Griswold  
Frank Griswold

Michael R. Gatti  
Max D. Holmquist  
JERMAIN DUNNAGAN & OWENS, P.C.  
3000 A St., Suite 300  
Anchorage, AK 99503  
Phone: (907) 563-8844  
Fax: (907) 563-7322  
[mgatti@jdolaw.com](mailto:mgatti@jdolaw.com)  
[mholmquist@jdolaw.com](mailto:mholmquist@jdolaw.com)

Attorneys for Appellee the City of Homer

CITY OF HOMER

APPEAL TO PLANNING COMMISSION

FRANK GRISWOLD	)	
	)	
	)	
Appellant,	)	
	)	
v.	)	
	)	
CITY OF HOMER,	)	
	)	
Appellee.	)	
		) Appeal of Issuance of Zoning Permit 1020-782

**REPLY TO OPPOSITION TO MOTION TO CONTINUE APPEAL HEARING**

Appellee, the City of Homer (the “City”) by and through its counsel, Jermain, Dunnagan & Owens, P.C., hereby responds to Appellant Frank Griswold’s Opposition to Motion to Continue Appeal Hearing. Griswold’s Opposition underscores the necessity of a continuance for the Commission to address procedural issues prior to the hearing.

Griswold argues that several procedural issues need to be addressed prior the hearing including notice to the parties regarding hearing procedure, the identification of Griswold and the City as parties, and legal representation for the Commission regarding



procedural issues. These are but a few of the procedural issues Griswold has raised with regard to this hearing. Despite the fact that these issues remain unresolved, Griswold suggests that the Commission consider and resolve all of them at the hearing. Griswold contradicts himself by demanding advance notice of the hearing procedure while also arguing that the hearing procedure be decided at the hearing. It is unclear how Griswold or the City can adequately prepare for the hearing without knowing the procedure by which the hearing will proceed.

In the interest of due process and efficiency, the Commission should determine the procedure for this hearing before it takes place. A continuance would allow the City to continue negotiating with Griswold in good faith to reach an agreement on procedural issues. If Griswold and the City cannot reach an agreement, each could file a proposed hearing procedure. The Commission could then decide these issues and issue a ruling about hearing procedures in advance of the hearing.

For these reasons, the City respectfully requests that the Commission grant the City's Motion to Continue Appeal Hearing.

DATED this 4th day of January, 2021, at Anchorage, Alaska.

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

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





## City of Homer

[www.cityofhomer-ak.gov](http://www.cityofhomer-ak.gov)

## Office of the City Clerk

491 East Pioneer Avenue  
Homer, Alaska 99603

[clerk@cityofhomer-ak.gov](mailto:clerk@cityofhomer-ak.gov)

(p) 907-235-3130

(f) 907-235-3143

### Memorandum

TO: PLANNING COMMISSION

FROM: MELISSA JACOBSEN, MMC, CITY CLERK *MJ*

DATE: JANUARY 5, 2021

SUBJECT: MOTION TO CONTINUE APPEAL HEARING AND PROPOSED ORDER GRANTING  
MOTION TO CONTINUE

---

On December 31, 2021 Jermain Dunnagan & Owens, PC (JDO) filed a motion to continue the January 6, 2021 Appeal Hearing regarding the appeal of the issuance of Zoning Permit 1020-782 by Frank Griswold.

On January 4, 2021 Mr. Griswold filed an objection to the motion to continue.

On January 5, 2021 JDO filed their response to Mr. Griswold's objection and submitted a proposed order granting the motion to continue.

Homer City Code 21.93.100 (a) reads "All appeals must be heard within 60 days after the appeal record has been prepared. The body or officer hearing the appeal may for good cause shown extend the time for hearing. The decision on appeal must be rendered within 60 days after the appeal hearing." The 60 days to hear the appeal expires January 9<sup>th</sup>.

If the Planning Commission decides to grant the motion to continue the appeal hearing a date will need to be determined. For advertising purposes the earliest date the hearing could be scheduled is Monday, January 18<sup>th</sup>. I would suggest postponing to either January 19<sup>th</sup>, 21<sup>st</sup>, or 27<sup>th</sup>, which ever date works best for the most Commissioners and the parties involved.



**From:** [Rick Abboud](#)  
**To:** [Renee Krause](#)  
**Cc:** [Travis Brown](#)  
**Subject:** FW: Appeal of Issuance of Zoning Permit 1020-782 comment  
**Date:** Wednesday, January 6, 2021 2:21:32 PM

---

So, far this is all we have.

Rick

**From:** michelle borland <[rmborland@gmail.com](mailto:rmborland@gmail.com)>  
**Sent:** Tuesday, January 5, 2021 9:48 AM  
**To:** Department Planning <[Planning@ci.homer.ak.us](mailto:Planning@ci.homer.ak.us)>  
**Cc:** Randy Borland <[borlandr@gmail.com](mailto:borlandr@gmail.com)>  
**Subject:** Appeal of Issuance of Zoning Permit 1020-782 comment

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

Good Morning,

Please accept these comments in regards to the appeal of the issuance of Zoning Permit 1020-782, the converted shipping container at 541 Bonanza Ave in Homer.

My property is at 519 Bonanza Ave, and there is one regular lot separating my property from the property at 541 Bonanza.

I am **opposed to** allowing the converted shipping container. This neighborhood started life as the Barefoot Trailer Park, and in the time that I have owned my small single family home, more and more of the trailers have been phased out and homes have been built. In my opinion, that has been a positive development for this neighborhood in the 20 years I have owned my property.

I do not think that packing additional living spaces into the lots is beneficial to the overall quality of life and long-term property value of the neighborhood. I look forward to a time when there are small businesses and single family homes, not shipping containers packed into city lots.

Thank you for reconsidering the approval of this zoning permit. Again, I am against allowing the shipping container mobile home being allowed in this neighborhood.

If you have any further questions, please contact me at [rmborland@gmail.com](mailto:rmborland@gmail.com).

Sincerely,

Michelle Borland  
519 Bonanza Ave.  
Homer, AK 99603



**OATH OF OFFICE**  
**PLANNING COMMISSION**

I, Kalie Petska-Rubalcava, having been duly appointed to the Office of Commissioner of the Planning Commission of the City of Homer, Alaska, with a term of office to expire July 1, 2023, in compliance with Title 29, of the Alaska Statutes, and Homer City Code, do hereby prior to assuming the duties of said office effective July 15, 2020 solemnly affirm to defend and support the Constitution of the United States, the Constitution of the State of Alaska, and the Ordinances of the City of Homer, and do pledge to honestly, faithfully, and impartially perform all duties of the office which I am about to enter, according to law, and therein do equal right and justice to all.

In Witness Whereof, I hereunto set my hand this \_\_\_\_ day of  
12/30/2020 \_\_\_\_\_, 2020.

DocuSigned by:  
Kalie Petska-Rubalcava  
Kalie Petska-Rubalcava

Attest:

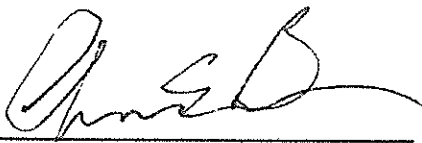
Renee Krause  
Renee Krause, MMC, Deputy City Clerk

**OATH OF OFFICE**

**PLANNING COMMISSION**

I, Charles Barnwell, having been duly appointed to the Office of Commissioner of the Planning Commission of the City of Homer, Alaska, with a term of office to expire July 1, 2023, in compliance with Title 29, of the Alaska Statutes, and Homer City Code, do hereby prior to assuming the duties of said office effective July 15, 2020 solemnly affirm to defend and support the Constitution of the United States, the Constitution of the State of Alaska, and the Ordinances of the City of Homer, and do pledge to honestly, faithfully, and impartially perform all duties of the office which I am about to enter, according to law, and therein do equal right and justice to all.

In Witness Whereof, I hereunto set my hand this 14<sup>th</sup> day of JULY, 2020.

  
Charles Barnwell

Attest:

  
Renee Krause, MMC, Deputy City Clerk



**From:** [Frank Griswold](#)  
**To:** [planning@ci.homer.ak.us](mailto:planning@ci.homer.ak.us)  
**Cc:** [citymanager@cityofhomer-ak.gov](mailto:citymanager@cityofhomer-ak.gov)  
**Subject:** CUP 20-14  
**Date:** Saturday, October 3, 2020 4:27:16 PM

---

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

Dear Commissioners,

At the September 2, 2020 HAPC meeting it was inappropriate for Chair Smith to redirect the discussion to the Commission's evaluation of the proposed use as an accessory dwelling unit because no public notice had been distributed pertaining to any proposal for accessory dwelling unit. The Commission's discussion should have been limited to whether the proposed second structure met the definitions of HCC 21.18.030(c) and satisfied the prerequisite review criteria prescribed under HCC 21.71.030(a)-(j). Furthermore, the accessory dwelling unit contemplated by the Commission under HCC 21.18.020(ii) is not a conditional use and therefore not initially subject to Commission approval. If City Planner Abboud subsequently determines that the proposed use is permissible under HCC 21.18.020(ii) and that decision is appealed to the Commission, the Commission can no longer function as an impartial quasi-judicial body since it has already made up its collective mind and pre-judged the matter. At page 8 of the minutes it states: "Chair Smith thanked the applicants for a very interesting topic and wanted to make them aware that the Commission was trying to advocate for them while addressing the concerns presented by Mr. Griswold and being applicable to city code." It is not the role of a quasi-judicial body to advocate for any party and it is alarming that Chair Smith does not realize this. At pages 10-11 of the minutes, Commissioner Venuti characterized Mr. Griswold as a pain in the neck for a long time who could be considered in a negative manner. In so doing, Mr. Venuti was attempting to sway the entire Commission in favor of the Applicants. Commissioner Venuti's animosity, bias, and perpetual lack of understanding about proper Commission conduct render him unfit to serve on the Commission. An extensive Commission training session and attorney oversight of Commission conduct is long overdue.

HCC 1.18.020 states in relevant part as follows:

"Partiality" applies only in quasi-judicial proceedings and means:

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.

HCC 1.18.048 (Procedure for declaring and ruling on partiality in quasi-judicial matters) states as follows:

*a. A City official or the City Manager who has partiality concerning a quasi-judicial matter shall not advise on matter, adjudicate the matter or serve as a member of a body adjudicating the matter.*

*b. A City official who is a member of a quasi-judicial body and who has or may have partiality concerning a matter to be adjudicated shall disclose the facts concerning the official's possible partiality to the body to the parties to the matter prior to the commencement of proceedings by the body. Any member of the body, and any party to a matter before the body, may raise a question concerning a member's partiality, in which case the member in question shall disclose facts concerning the official's possible partiality in the matter.*

*c. After such disclosure, the City official may excuse themselves for partiality without a vote of the body, otherwise the body (including a body comprised of City Council members when serving in a quasi-judicial capacity) shall by majority vote rule on whether the member must be excused from participation, which must be the ruling when the body determines the official has partiality concerning the matter.*

*d. Rule of Necessity. Exceptions to a ruling excusing a member from participation shall be made in cases where:*

*1. By reason of being excused for partiality the number of members of the Council or other body eligible to vote is reduced to less than the minimum number required to approve the official action;*

*2. No other body of the City has jurisdiction and authority to take the official action on the matter; and*

*3. The official action cannot be set aside to a later date, within a reasonable time, when the body could obtain the minimum number of members to take action who are not excused for partiality.*

When the body determines this exception applies, then all members, except the applicant when the applicant is a member of the body, shall participate in the official action.

Chair Smith and Commissioner Venuti are blatantly biased and therefore should not participate further in this matter. City Planner Rick Abboud has no authority to sign the Commission's Decision. Frank Griswold and Bob Shavelson actively participated in the September 2, 2020 proceedings and should therefore be included in the distribution of the Commission's Decision. Excluding opposing parties from the Decision's distribution and thereby potentially denying them their appeal rights per HCC 21.93.060 is further evidence of partiality/bias.

Frank Griswold



## City of Homer

[www.cityofhomer-ak.gov](http://www.cityofhomer-ak.gov)

## Office of the City Clerk

491 East Pioneer Avenue  
Homer, Alaska 99603

[clerk@cityofhomer-ak.gov](mailto:clerk@cityofhomer-ak.gov)

(p) 907-235-3130

(f) 907-235-3143

### Memorandum

TO: Frank Griswold, Appellant  
FROM: Melissa Jacobsen, MMC, City Clerk  
DATE: November 10, 2020  
SUBJECT: Appeal Record Complete – Appeal of Issuance of Zoning Permit 1020-782

---

Appeal: To the Planning Commission of the Planning Departments issuance of Residential New Construction Zoning Permit 1020-782 for Residential Zoning Permit at 541 Bonanza Avenue.

Pursuant to Homer City Code Section 21.93.300 the appellant shall be notified by mail when the record is complete.

Copies of the record are available at the City Clerk's office. Please call 235-3130 or email [clerk@ci.homer.ak.us](mailto:clerk@ci.homer.ak.us) if you have questions regarding this appeal record.

The date for the Appeal Hearing has not been set as of the mailing of this notice. The above mentioned parties shall be provided not less than 15 days' written notice of the time and place of the appeal hearing. Other parties who enter a notice of appearance, and neighboring property owners will be notified as well. This process is outlined in HCC 29.93.100(b).

Cc: City Manager, City Planner, Scott and Stacy Lowry



## PUBLIC HEARING NOTICE

Public notice is hereby given that the City of Homer will hold a public hearing by the Homer Planning Commission on Wednesday, January 6, 2021 at 5:30 p.m. via a virtual meeting, on the following matter:

**Memorandum PL 21-01, Appeal of Issuance of Zoning Permit 1020-782 to the Homer Planning Commission. Zoning Permit 1020-782 approved an accessory dwelling unit, a converted shipping container, at 541 Bonanza Ave., Lot 24A, Glacier View Subdivision No. 23., Sec. 20, T. 6 S., R. 13 W., S.M. HM 0930033.**

Anyone wishing to view the meeting packet, attend the virtual meeting, or participate in the virtual meeting may do so by visiting the Planning Commission Regular Meeting page on the City's online calendar at <https://www.cityofhomer-ak.gov/calendar>. This information will be posted by 5pm on the Friday before the meeting.

Visit the link above or call the City Clerk's Office to learn how to provide verbal testimony during the meeting via telephone or the Zoom online platform. Written comments can be emailed to [planning@ci.homer.ak.us](mailto:planning@ci.homer.ak.us) or mailed to Homer City Hall, 491 E. Pioneer Ave., Homer, AK, 99603. They may also be placed in the Homer City Hall drop box at any time. Comments must be received by 4pm on the day of the meeting.

If you have questions or would like additional information about the matter, please contact Rick Abboud with the Planning and Zoning Office at 235-3106. If you have questions about how to participate in the virtual meeting, please contact Renee Krause with the City Clerk's Office at 235-3130.

**NOTICE TO BE SENT TO PROPERTY OWNERS WITHIN 300 FEET OF PROPERTY**

\*\*\*\*\*

**VICINITY MAP ON REVERSE**

Vicinity Map

KLONDIKE AVE.

HEATHS-

BONANZA AVE.

X

Subject location

GRUBSTAKE AVE.

LUCKY SHOT ST.

Hazel Ave

SNOWBIRD ST.



City of Homer  
Planning and Zoning Department

### Appeal of a zoning permit at 541 Bonanza

Marked lots are within 300 feet and  
property owners notified.



**Disclaimer:**  
It is expressly understood the City of  
Homer, its council, board,  
departments, employees and agents are  
not responsible for any errors or omissions  
contained herein, or deductions, interpretations  
or conclusions drawn therefrom.

**From:** [tbrown@ci.homer.ak.us](mailto:tbrown@ci.homer.ak.us)  
**To:** [MIacobsen@ci.homer.ak.us](mailto:MIacobsen@ci.homer.ak.us)  
**Cc:** [RAbboud@ci.homer.ak.us](mailto:RAbboud@ci.homer.ak.us)  
**Subject:** zoning permit appeal procedures/mailout  
**Date:** Sunday, December 13, 2020 3:31:26 PM  
**Attachments:** [Mailout Notice.docx](#)

---

Melissa,

I'm out of the office all next week and just wanted to send you some info on this so you know what's coming from Planning and can address anything with Rick/Julie next week if need be.

I plan for our office to take care of the property owner mailout, per HCC 21.93.100(b) & 21.94.030, and assume you are taking care of the rest of the notification procedures. If that's not the case, let one of us know ☺

We plan to mail the attached notice (pending Rick's review) with vicinity map on Tues. Dec. 22. I will be in the office on Monday to finalize it.

Thanks,

Travis Brown  
Planning Technician  
City of Homer  
(907)235-3106



**From:** Rick Abboud RAbboud@ci.homer.ak.us  
**Subject:** RE: Memorandum PL 21-01  
**Date:** December 30, 2020 at 10:50 AM  
**To:** Frank Griswold fsgriz@alaska.net, Department Planning Planning@ci.homer.ak.us  
**Cc:** Melissa Jacobsen MJacobsen@ci.homer.ak.us

Mr. Griswold,

The notice that you received regarding Memorandum PL 21-01 was sent in error and was in addition to the required notice that the Clerks administer. We did not have the format of the hearing and previously we had used a much simpler process at this level than that which you require (hence, the memo). I am preparing a traditional brief for the hearing. if I am to create a memo, it would just state the format of the hearing (which I am unable to verify at this time).

Sincerely,

Rick Abboud, AICP  
City Planner  
491 E Pioneer Ave  
Homer, AK 99603  
(o) 907-235-3106  
(f) 907-235-3118

-----Original Message-----

**From:** Frank Griswold <fsgriz@alaska.net>  
**Sent:** Tuesday, December 29, 2020 5:01 PM  
**To:** Department Planning <Planning@ci.homer.ak.us>  
**Cc:** Melissa Jacobsen <MJacobsen@ci.homer.ak.us>  
**Subject:** Memorandum PL 21-01

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

Please email me Memorandum PL 21-01.

Frank



## City of Homer

[www.cityofhomer-ak.gov](http://www.cityofhomer-ak.gov)

## Office of the City Clerk

491 East Pioneer Avenue  
Homer, Alaska 99603

[clerk@cityofhomer-ak.gov](mailto:clerk@cityofhomer-ak.gov)

(p) 907-235-3130

(f) 907-235-3143

### NOTICE OF HEARING AND SUPPLEMENTED RECORD

December 9, 2020

To Parties of Record: Frank Griswold, Appellant  
Scott and Stacy Lowry, Property Owner

A hearing on the appeal to the Planning Commission regarding Zoning Permit 1020-782 issued to Scott and Stacy Lowry for their property located at 541 Bonanza Avenue, has been set for Wednesday, January 6, 2021 at 5:30 p.m. The hearing will be conducted by Zoom Meeting and pursuant to Homer City Code 21.93.300 this meeting is open to the public.

To join the Zoom meeting on your computer go to [www.zoom.us](http://www.zoom.us) and select Join A Meeting. From there follow the prompts to enter the meeting ID and password below.

Meeting ID: 940 8082 9916 Passcode: 052186

To participate by phone only, you may dial one of the following phone numbers and enter the same meeting ID and passcode, 1-669-900-6833, 1-253-215-8782 or Toll Free 888-788-0099 or 877-853-5247.

Please be advised the Appeal Record is supplemented to include the meeting minutes from the September 2, 2020 Planning Commission meeting, at the request of the appellant. A copy of the minutes are included as a supplement to the record.

Melissa Jacobsen, MMC, City Clerk

**From:** Frank Griswold fsgriz@alaska.net  
**Subject:** November 10, 2020 Notice of Completed Appeal Record  
**Date:** November 16, 2020 at 10:40 PM  
**To:** Melissa Jacobsen mjacobsen@ci.homer.ak.us  
**Cc:** citymanager@cityofhomer-ak.gov, Rick Abboud rabboud@ci.homer.ak.us

Melissa,

The first paragraph of your November 10, 2020 Notice states as follows: "Appeal: To the Planning Commission of the Planning Departments issuance of Residential New Construction Zoning Permit 1020-782 for Residential Zoning Permit at 541 Bonanza Avenue." Residential New Construction Zoning Permit 1020-782 was not issued for Residential Zoning Permit, it was issued for the construction of a 360 square foot single family dwelling at 541 Bonanza Avenue. [Exc. 5]

The Homer Advisory Planning Commission held a public hearing regarding CUP 20-14 on September 2, 2020, Zoning Permit 1020-782 was issued on October 5, 2020, and the Commission's Decision regarding CUP 20-14 was issued on October 22, 2020; all pertained to the subject structure at 541 Bonanza Avenue. I believe the Record on Appeal regarding my appeal of Zoning Permit 1020-782 is incomplete since the inextricably linked proceedings regarding CUP 20-14 were not included therein. I hereby reiterate my October 20, 2020 request that the City Planner now include a verbatim transcript of the September 2, 2020 Commission proceedings regarding CUP 20-14. Alternatively, I request that a recording of those proceedings plus the minutes and Decision regarding CUP 20-14 be included in the subject Record on Appeal.

Frank Griswold



**From:** Frank Griswold fsgriz@alaska.net  
**Subject:** Relevant Record ZP 1020-782 Appeal  
**Date:** November 18, 2020 at 9:41 AM  
**To:** Melissa Jacobsen mjacobsen@ci.homer.ak.us  
**Cc:** citymanager@cityofhomer-ak.gov, Rick Abboud rabboud@ci.homer.ak.us

Melissa,

The minutes of the September 2, 2020 HAPC meeting include the following: "City Planner Abboud provided clarification that the Commission could fail the motion and the Applicant would apply for a permit under the ADU [Accessory Dwelling Unit] and it would be handled administratively. He stated that there are three choices for the Commission: Approve the Conditional Use Permit [CUP 20-14], Approve with more conditions or deny the permit." . . . . "City Planner Abboud clarified that the applicant can contact the planning department to proceed to the next step for their project." This is unequivocal evidence that the CUP 20-14 proceedings were used by the Planning Department in making the decision currently under appeal. The City Planner had no right to exclude CUP 20-14 proceedings from the appeal record. In accordance with HCC 21.93.300(a), everything that was presented to and considered by the Commission re: CUP 20-14 should have been included in the appeal record for the ZP 1020-782 appeal proceedings.

Frank

From: Frank Griswold fsgriz@alaska.net  
Subject: Procedural Matters Re: Appeal of Zoning Permit 1020-782  
Date: December 14, 2020 at 10:24 PM  
To: Melissa Jacobsen mjacobsen@ci.homer.ak.us



Melissa,

1. As I stated to you previously, the City Planner had no right to exclude CUP 20-14 proceedings from the appeal record. In accordance with HCC 21.93.300(a), **everything** that was presented to and considered by the Commission re: CUP 20-14 should have been included in the appeal record for the ZP 1020-782 appeal proceedings. Please further supplement the appeal record accordingly.
2. What are the deadlines for filing an appeal brief, reply brief, and/or submitting additional evidence?
3. In accordance with HCC 21.93.300 (d), can I submit into evidence a city-prepared CD recording of the September 2, 2020 Commission proceedings re: CUP 20-14?
4. Will those testifying before the Commission be sworn?
5. Will parties have the right to question/cross-examine witnesses?
6. Are City Planner Rick Abboud or Planning Technician Travis Brown parties to this appeal and will they be available at the January 6, 2021 hearing for questioning?
7. Are there any time limits with respect to providing testimony and/or questioning witnesses at the hearing?
8. Will the Planning Department play any role in preparing the Commission's Decision?
9. Will the City Planner or any employee of the Planning Department sign the Commission's Decision?
10. Will a Procedural Notice be provided to the parties in advance of the January 6, 2021 appeal hearing?

Frank

From: Frank Griswold fsgriz@alaska.net  
Subject: Re: Procedural Matters Re: Appeal of Zoning Permit 1020-782  
Date: December 16, 2020 at 6:19 PM  
To: Melissa Jacobsen MJacobsen@ci.homer.ak.us

Melissa,

I would like to question Rick Abboud, Travis Brown, and the Applicants under oath at the January 6, 2021 evidentiary hearing and it is my constitutional right to do so. The fact that HCC 21.93.300 does not provide for calling witnesses or cross-examination is irrelevant; HCC 21.93.310 provides that 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. In all quasi-judicial evidentiary hearings, the applicant, appellant, and all other parties to the case have a constitutional right to present evidence, cross-examine witnesses, and present rebuttal evidence. Persons who are not parties to the case do not have a constitutional or statutory right to present evidence. Black's Law Dictionary defines "testimony" as follows: "Evidence given by a competent witness under oath or affirmation; as distinguished from evidence derived from writings, and other sources. Testimony is particular kind of evidence that comes to tribunal through live witnesses speaking under oath or affirmation in presence of tribunal, judicial or quasi-judicial."

You failed to answer my question as to whether Rick Abboud and/or Travis Brown are parties to this appeal.

HCC 21.93.300(d) provides that the Commission may accept new testimony and other evidence, including public testimony, and hear oral arguments **as necessary to develop a full record upon which to decide an appeal from an act or determination of the City Planner.** What happens if a full record is not developed in the 50 minutes allotted for the hearing? Who determined that 50 minutes would be allotted and what was the basis in HCC or otherwise for this determination? Who determines when/whether a full record has been developed? What happens if more than 50 minutes is required to develop a full record?

Because there is no legal basis for conducting the January 6, 2021 hearing via teleconference and/or Zoom it is not my responsibility to request a continuance to such a time that it can be attended in person.

Frank

On Dec 16, 2020, at 5:08 PM, Melissa Jacobsen <MJacobsen@ci.homer.ak.us> wrote:

Good evening,

My answers are included below, I included a response to #11 from your follow up email.

-Melissa

From: Frank Griswold <fsgriz@alaska.net>  
Sent: Monday, December 14, 2020 10:25 PM  
To: Melissa Jacobsen <MJacobsen@ci.homer.ak.us>  
Subject: Procedural Matters Re: Appeal of Zoning Permit 1020-782



Decision?

No

10. Will a Procedural Notice be provided to the parties in advance of the January 6, 2021 appeal hearing?

Yes, by December 21<sup>st</sup>. I will notify you if there are any delays.

11. How do I present photos, recordings, and other documentary evidence at the appeal hearing if it is conducted via teleconference and/or Zoom? Avoiding evidentiary issues may be why the Council declined to authorize Zoom Meeting and teleconference for quasi-judicial Commission hearings where the appeal record is still open (unlike BOA appeal hearings where the appeal record, established below, is closed).

We can work to accommodate the distribution of additional information you wish to present. Zoom allows for screen sharing and that can be accomplished by you or the Clerk at the meeting. Audio can be accommodated as well.

**SUBJECT: Procedural matters re: Appeal of Zoning Permit 1020-782**

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

Melissa,

1. As I stated to you previously, the City Planner had no right to exclude CUP 20-14 proceedings from the appeal record. In accordance with HCC 21.93.300(a), *everything* that was presented to and considered by the Commission re: CUP 20-14 should have been included in the appeal record for the ZP 1020-782 appeal proceedings. Please further supplement the appeal record accordingly.

CUP information will be provided as a supplement.

2. What are the deadlines for filing an appeal brief, reply brief, and/or submitting additional evidence?

Regarding briefs, HCC 21.93.300 reads any person may file a written brief or testimony in an appeal before the commission and doesn't identify deadlines for specific types of briefs. To be included in the packet any briefs or additional information needs to be provided by December 30<sup>th</sup>. Anything received after that will go to the Commission in as a laydown.

3. In accordance with HCC 21.93.300 (d), can I submit into evidence a city-prepared CD recording of the September 2, 2020 Commission proceedings re: CUP 20-14?

Yes

4. Will those testifying before the Commission be sworn?

I'll confirm this.

5. Will parties have the right to question/cross-examine witnesses?

HCC 21.93.300 doesn't provide for calling witnesses or cross examination. It does allow for public comment.

6. Are City Planner Rick Abboud or Planning Technician Travis Brown parties to this appeal and will they be available at the January 6, 2021 hearing for questioning?

City Planner Abboud will be in attendance on January 6<sup>th</sup>.

7. Are there any time limits with respect to providing testimony and/or questioning witnesses at the hearing?

50 minutes has been allotted for this hearing. There will be time provided for parties to present oral arguments and for public testimony.

8. Will the Planning Department play any role in preparing the Commission's Decision?

No

9. Will the City Planner or any employee of the Planning Department sign the Commission's

From: Frank Griswold fsgriz@alaska.net  
Subject: Fwd: Public Hearing Notice Re: Appeal of Zoning Permit 1020-782  
Date: December 27, 2020 at 10:39 PM  
To: Renee Krause RKrause@ci.homer.ak.us  
Cc: Melissa Jacobsen mjacobsen@ci.homer.ak.us

Begin forwarded message:

From: Frank Griswold <fsgriz@alaska.net>  
Subject: **Public Hearing Notice Re: Appeal of Zoning Permit 1020-782**  
Date: December 27, 2020 at 10:28:59 PM AKST  
To: Melissa Jacobsen <mjacobsen@ci.homer.ak.us>

Melissa,

The recently distributed Public Hearing Notice re: Zoning Permit 1020-782 references Memorandum PL 21-01, Appeal of Issuance of Zoning Permit 1020-782 to the Homer Planning Commission. Who wrote PL 21-01 and why wasn't I, as the Appellant, promptly provided a copy of it? The Public Hearing Notice states that Zoning Permit 1020-782 approved an **accessory dwelling unit, a converted shipping container**, at 541 Bonanza Ave. However, Zoning Permit 1020-782 says nothing about approving an accessory dwelling unit or a converted shipping container. It identifies the Building Use as "Res-Single Family" and under Description of Work it states: "360 square foot single family dwelling." This is why Allegation of Error #3 in my Notice of Appeal challenges the permitting of a second single family dwelling on one lot. Why wasn't my Notice of Appeal, including my 9 allegations of error, included in the Public Hearing Notice sent to the surrounding property owners so that they could better understand what the appeal is about? Why weren't the names and addresses of the surrounding property owners to whom the Public Hearing Notice was sent included in the Public Hearing Notice as has been the city's practice in the past? The Public Hearing Notice deceptively includes a photo-shopped conceptual depiction of the subject structure that is not identified as a conceptual photo-shopped depiction. Four actual photos of the converted Connex were included in Staff Report 20-58; why weren't those actual photos included in the Public Hearing Notice instead of the fanciful and highly prejudicial photo-shopped conceptual depiction?

Planning staff should not be allowed to prepare a Public Hearing Notice regarding matters in which the actions of the City Planner or planning staff are being appealed. I hereby request that this inaccurate, incomplete, and highly prejudicial Public Hearing Notice be rescinded and that an accurate, complete, and impartial Public Hearing Notice be prepared and distributed by the Clerk's Office.

Frank Griswold



**From:** Frank Griswold fsgriz@alaska.net  
**Subject:** ZP 1020-782 Appeal  
**Date:** December 28, 2020 at 12:27 PM  
**To:** Melissa Jacobsen mjacobsen@ci.homer.ak.us  
**Cc:** Renee Krause RKrause@ci.homer.ak.us



Melissa,

I am still waiting to hear whether Rick Abboud and/or Travis Brown are parties to my appeal of Zoning Permit 1020-782. If they are parties, they are prohibited by HCC 21.93.710(b)(2)(a) from discussing the matter with municipal staff or the Commissioners. If they are not parties to the appeal what are they, agents of the Applicants?

I am still waiting for a response to my 12-17-20 public records request. It was my hope to include some of the records requested in the Commission packet.

*i am still waiting for a Procedural Notice.*

The Public Hearing Notice states: "If you have questions or would like additional information about the matter, please contact Rick Abboud with the Planning and Zoning Office at 235-3106." Regardless of whether Mr. Abboud is a party to the appeal, his actions/non-actions with respect to the issuance of ZP 1020-782 are at issue in this appeal. Accordingly, he should not be providing biased, inaccurate, and self-serving information to the public. As I pointed out earlier, Zoning Permit 1020-782 did not approve "an accessory dwelling unit" or "a converted shipping container," it approved a single family residence. Furthermore, if my Notice of Appeal (including allegations of error), Zoning Permit 1020-782, and an actual photo of the subject structure had been included in the Public Hearing Notice, there would likely be no need for Mr. Abboud or anyone else to provide additional information to the surrounding property owners.

Frank Griswold

From: Frank Griswold fsgriz@alaska.net  
Subject: Re: Procedure for Planning Commission Hearing  
Date: December 29, 2020 at 12:34 AM  
To: Melissa Jacobsen MJacobsen@ci.homer.ak.us

Melissa,

The Proposed Stipulation states that *the parties* may file written briefs in support of their positions but HCC 21.93.300(d) states: "*Any person* may file a written brief or testimony in an appeal before the Commission." HCC 21.93.310 (other procedures) can only be applied where it is not inconsistent with this title, statutes, and the Constitution. Before I could agree to any stipulation regarding parties I would need to know who the parties are, why they are parties, and who made these determinations

The Public Hearing Notice indicates that written comments must be received by 4pm on the day of the meeting; presumably this would include written briefs. What is the difference here between a written brief and a written comment? Why does the Proposed Stipulation stipulate that "Briefs must be filed with the City Clerk" while the Public Hearing Notice states that written comments may be emailed to the Planning Department? Is the filing of a written brief required in order to present oral argument or rebuttal oral argument at the Hearing? Does the 7-page limit on written briefs also apply to written comments? If I were to email 10 pages of written comments to the Planning Department at 3pm on June 6, 2021, would they be accepted into the appeal record?

The Proposed Stipulation limits Appellant to 20 minutes to present testimony, other evidence, and present oral argument. I do not believe this is sufficient time for me to develop a full record as stipulated in HCC 21.93.300(d). This arbitrary time limitation constitutes a violation of due process.

The Proposed Stipulation limits Appellant to 10 minutes to cross-examine witnesses and present rebuttal oral argument. I do not believe this is sufficient time for me to develop a full record as stipulated in HCC 21.93.300(d). This arbitrary time limitation constitutes a violation of due process.

I have requested to question/cross-examine Rick Abboud, Travis Brown, and the Applicants, all under oath. The Proposed Stipulation fails to state whether witnesses will be sworn or whether Rick Abboud, Travis Brown, and/or the Applicants will be available for questioning and/or cross-examination. Why are the Applicants not listed as Appellees? I consider them indispensable parties to this appeal and do not believe a full record can be developed without at least one of them participating in the January 6, 2021 proceedings. Travis Brown issued Zoning Permit 1020-782 and is therefore also an indispensable party. Rick Abboud did not issue Zoning Permit 1020-782, did not file a cross-appeal, and therefore has no standing to be a party to this appeal.

Is there a time limit on Commission questioning of parties? Can the Commission question non-parties? Will those questioned by the Commission be sworn?

In light of Covid, I agree to participate telephonically on January 6, 2021 even though HCC does not provide for telephonic participation at quasi-judicial hearings before the Commission.

Frank Griswold

**From:** Frank Griswold fsgriz@alaska.net  
**Subject:** Re: Procedure for Planning Commission Hearing  
**Date:** December 29, 2020 at 1:19 AM  
**To:** Melissa Jacobsen MJacobsen@ci.homer.ak.us



Melissa,

Somebody has grossly underestimated how long it could take to hear the appeal of Zoning Permit 1020-782. The Proposed Stipulation doesn't even mention preliminary matters such as ex-parte communications, bias, conflicts of interest, and standing which could easily consume 30 minutes or more. If 10 people show up to testify that could consume another 30 minutes. I should not be asked to forfeit my due process appeal rights in order to squeeze my appeal into a 50-minute time slot. After receiving the Public Hearing Notice I am not even sure what Zoning Permit is at issue. Was a different Zoning Permit 1020-782 issued besides the one dated 10/5/2020 permitting a single family residence? That zoning permit is only one page. A whole lot of confusion would have been avoided had it been included in the Public Hearing Notice instead of the fake "rendering" of the Connex.

Frank

On Dec 28, 2020, at 2:05 PM, Melissa Jacobsen <MJacobsen@ci.homer.ak.us> wrote:

Good afternoon Frank,

The procedure for the upcoming Planning Commission Hearing is attached for your review and signature. I'm out of the office today, but will be available tomorrow, Tuesday the 29<sup>th</sup>.

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 fsgriz@alaska.net  
**Subject:** Fwd: Memorandum PL 21-01  
**Date:** December 30, 2020 at 11:24 AM  
**To:** Melissa Jacobsen mjacobsen@ci.homer.ak.us  
**Cc:** rdumouchel@ci.homer.ak.us, Rick Abboud rabboud@ci.homer.ak.us

Mr. Abboud's response below is further evidence that the Public Hearing Notice Re: ZP 1020-782 is inaccurate, misleading, and prejudicial. Within the Public Hearing Notice, the public is instructed to contact Rick Abboud with the Planning and Zoning Department "if they have any questions or would like additional information about the matter." Mr. Abboud, *allegedly the Appellee in this matter*, is not an impartial source of information. Note that the public was not instructed to contact me, the Appellant, if they had questions or would like additional information. Under the direction of Mr. Abboud, the Planning Department has bungled every aspect of this matter at great expense to the city (and me). Zoning Permit 1020-782 is patently illegal on its face; it and Mr. Abboud should be summarily vitiated.

Begin forwarded message:

**From:** Rick Abboud <RAbboud@ci.homer.ak.us>  
**Subject:** RE: Memorandum PL 21-01  
**Date:** December 30, 2020 at 10:50:26 AM AKST  
**To:** Frank Griswold <fsgriz@alaska.net>, Department Planning <Planning@ci.homer.ak.us>  
**Cc:** Melissa Jacobsen <MJacobsen@ci.homer.ak.us>

Mr. Griswold,

The notice that you received regarding Memorandum PL 21-01 was sent in error and was in addition to the required notice that the Clerks administer. We did not have the format of the hearing and previously we had used a much simpler process at this level than that which you require (hence, the memo). I am preparing a traditional brief for the hearing. If I am to create a memo, it would just state the format of the hearing (which I am unable to verify at this time).

Sincerely,

Rick Abboud, AICP  
City Planner  
491 E Pioneer Ave  
Homer, AK 99603  
(o) 907-235-3106  
(f) 907-235-3118

-----Original Message-----

**From:** Frank Griswold <fsgriz@alaska.net>  
**Sent:** Tuesday, December 29, 2020 5:01 PM  
**To:** Department Planning <Planning@ci.homer.ak.us>  
**Cc:** Melissa Jacobsen <MJacobsen@ci.homer.ak.us>  
**Subject:** Memorandum PL 21-01

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

Please email me Memorandum PL 21-01.



# Kenai Peninsula Borough, Alaska

## Assessing Department

[Go Back](#)[Property Search](#)[Print Report](#)[Property Taxes](#)

### General Info

**Property Owner:**  
LOWRY SCOTT RYAN  
LOWRY STACY ANN  
907 DALY RD  
OJAI CA 93023-1939  
  
Change of Address  
  
Owner(s)

**Property ID** 17710421  
**Address** 541 BONANZA AVE  
**Transfer Date** 6/4/2019  
**Document / Book Page** 20190015270  
**Acreage** 0.2800  
  
**Tax Authority Group** 20 - HOMER CITY

### Legal Description

#### Description

T 6S R 13W SEC 20 Seward Meridian HM 0930033 GLACIER VIEW SUB NO 23 BLOCKS 8 9 & 10 LOT 24A

### Value History

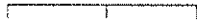
Year	2020	2019	2018	2017	2016	2015	2014	2013	20
Reason	Main Roll Certification	Main Roll Certification	Main Roll Certification	Main Roll Certification	Main Roll Certification	Main Roll Certification	Main Roll Certification	Main Roll Certification	Main Roll Certification
Land Assd	\$40,300	\$40,300	\$39,800	\$38,800	\$42,700	\$42,700	\$42,700	\$42,700	\$42,700
Imp Assd	\$37,800	\$23,000	\$23,100	\$23,500	\$27,800	\$29,200	\$28,700	\$24,500	\$24,500
Total Assd	\$78,100	\$63,300	\$62,900	\$62,300	\$70,500	\$71,900	\$71,400	\$67,200	\$67,200

### Extension Details

R01

Type	MHS
Type	UNCONVENTIONAL STRUCTURE
Occupancy	Single family
Occupancy	Single family
Roof Structure	Flat or Shed
Roof Structure	Gable
Roof Cover	Metal
Roof Cover	Metal
Heating	Space heater
Heating	Space heater
Stories	1.0
Stories	1.0

Scale: 5 ft  
02



1	Exterior Wall	Wood board & batten
1	Interior Wall	Normal for Class
1	Interior Flooring	Base Allowance

Address 541 BONANZA AVE  
 Type MHS  
 Grade F  
 Year Built 1968  
 MH Make  
 Value \$9,500

#### Sketch Legend

Code	Description	Year	Building	Length	Width	Units	Unit Type	Value
DRIVE	Gravel Driveway	3000	R01	0	0	1	IT	\$2,000
WDDK		2002	R01	10	4	40	SF	\$200
EFP		2002	R01	11	8	88	SF	\$2,500
ADDN	Dwelling Additions	1994	R01	0	0	0		\$22,500
POLEBLDG	General Purpose Bldg Wood Pole Frame	1994	R01	47	10	470	SF	\$1,100



**From:** Frank Griswold fsgriz@alaska.net  
**Subject:** 541 Bonanza Avenue  
**Date:** September 3, 2020 at 12:22 PM  
**To:** dgardner@ci.homer.ak.us  
**Bcc:** Frank Griswold bcf@bcfaklaw.com



Dan,

In 1993, Driveway Permit 1199 was issued for 551 Bonanza Avenue and Driveway Permit 1432 was issued for 541 Bonanza Avenue. Later, these two lots were subdivided/combined and 551 Bonanza Avenue ceased to exist leaving just the expanded 541 Bonanza Avenue. Is the driveway that serves the mobile home and addition on the eastern portion of this now single lot authorized by either of the 1993 driveway permits and if so, which one? A new driveway was recently installed on the western portion of the combined lot designated 541 Bonanza Avenue. Was this construction authorized by either of the 1993 driveway permits and if so, which one? Are there site plans on file showing which driveway permit applies to which driveway location? As one combined lot, can 541 Bonanza Avenue have two distinct driveways or does some provision of code prohibit this?

Planning Staff Report 20-58 indicates that Public Works recently issued and approved utility connection permits for a second (Connex) structure at 541 Bonanza: "City water and sewer connections have been made and approved by the Public Works Department" (page 6). "Utilities are already installed within existing public rights of ways and utility easements" (page 7). "Utility connection permits have been acquired" (page 11). Presumably, city utilities already serve the mobile home and addition located on the eastern portion of the lot. Can a single CBD lot have multiple utility connections? No zoning permit has been issued for the recently installed Connex. Can city utility connections be approved/acquired/installed prior to the issuance of a zoning permit? Who at Public Works approved the utility connection permits for the recently installed Connex structure at 541 Bonanza Avenue? Where can I find the rules pertaining to the permitting and installation of city utilities?

Frank Griswold

203

CITY OF HOMER  
491 E. Pioneer Ave.  
Homer, Alaska 99603

BUILDING PERMIT NUMBER 93-5

DATE April 23, 1993

Issued to Kenneth P. and Anna Knudsen certifies that the applicant has met the requirements of the City of Homer for the construction/destruction or installation of:

10 x 55 ft. Mobile Home  
591  
at 551 ~~551~~ Kenan Avenue 24-A 9 Glacier View Subd. No. 2  
Street Lot Block Subdivision

KPB Assessor Number 177-104-07

For a period from 4/23/93 to 4/23/94  
This permit may not be transferred or assigned by the original permittee and shall be displayed in a prominent, readily visible place at the site. If the work is not completed within the above specified time, application for an extension MUST be made to the City of Homer.

The City assumes no responsibility for the accuracy of any City held asbuilt drawings or for the permittee's interpretation thereof.

This permit is issued with the expressed understanding that the City of Homer assumes no responsibility hereunder with regard to maintenance of private drainage systems that terminate in City ditch lines or drainages, including but not limited to foundation drains; proper location of lot lines or site dimensions. The permittee, by his signature below, agrees to hold the City harmless from any and all suits, actions, or claims arising from any work undertaken.

The issuance of this permit does not imply that the permittee has met all the requirements of any agency of the State of Alaska or the Kenai Peninsula Borough. It is the responsibility of the permittee to meet whatever requirements any agency may have which may apply to the construction/destruction or installation specified in this permit.

Permit Issued by Steven P. Beahm  
Planning & Zoning

Permittee Kenneth P. and Anna Knudsen

Address/Phone \_\_\_\_\_

\*\*\*\*\*  
Plot Plan Required: Yes \_\_\_\_\_ No X \_\_\_\_\_

Utilities: Water: Municipal #1099 Private System \_\_\_\_\_  
Sewer: Municipal #1099 Private System \_\_\_\_\_

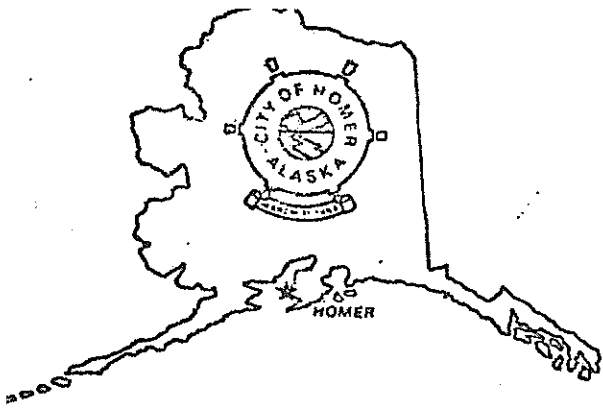
**\*\* PRIVATE SEWER SYSTEM MUST BE APPROVED BY ADEC. \*\***

Zoning: GBD Building Setback: 20 feet from right-of-way

Driveway Permit No. #1199/#1432 City \_\_\_\_\_ State \_\_\_\_\_ Existing \_\_\_\_\_

Fee from Schedule: 125 Estimated Value: \$5,500

SPECIAL CONDITIONS: Final Plot Approval of Lot 24-A, Glacier View No. 2



# CITY OF HOMER

BOX 335  
HOMER, ALASKA 99603

BUILDING PERMIT NUMBER 77-3-9

DATE March 2, 1977

Issued to Pooler Home Builders certifies that the applicant has met the standards and requirements of the City of Homer for the construction of:

three bedroom, one bath, carport home

at Lot 25, Block 9, Glacier View Sub. No.2 177-104-0600

for a period from March 2, 1977 to December 31, 1977

This permit may not be transferred or assigned by the original permittee and shall be displayed in a prominent, readily visible place at the site of the building. If the work is not completed within the above specified time, application for an extension must be made to the City of Homer.

This permit is issued with the expressed understanding that the City of Homer assumes no responsibility hereunder with regard to proper location of lot lines or site dimensions and the permittee, by his signature below, agrees to hold the City harmless from any and all suits, actions, or claims arising from any work undertaken.

The issuance of this permit does not imply that the permittee has met all the requirements of any agency of the State of Alaska or the Kenai Peninsula Borough. It is the responsibility of the permittee to meet whatever requirements any agency may have which may apply to the construction specified in this permit.

Permit Issued By Charles J. Allen  
Office of the City Clerk

Permittee Marvin J. Pooler

Address S.R. 2ND Eagle River

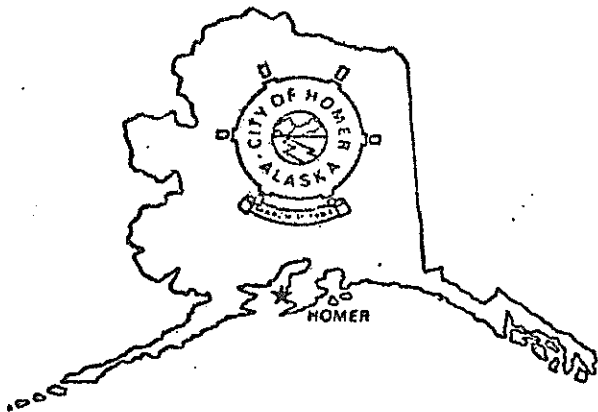
SUBDIVISION Glacier View HOUSE NUMBER 541  
177-104-0600 703 E. Bonanza

UTILITIES: WATER: Municipal available Private System \_\_\_\_\_

SEWER: Municipal available Private System \_\_\_\_\_  
Private sewer systems must be approved by the District Sanitarian.

ZONING Commercial BUILDING SETBACK: 20 feet from dedicated right-of-way

DRIVEWAY PERMIT REQUIRED: YES X NO \_\_\_\_\_



# CITY OF HOMER

BOX 335  
HOMER, ALASKA 99603

BUILDING PERMIT NUMBER 77-3-10

DATE March 2, 1977

Issued to Pooler Home Builders certifies that the applicant  
has met the standards and requirements of the City of Homer for the construction of:  
three bedroom, one bath home, with carport  
at Lot 24, Block 9, Glacier View Subdivision 177-104-07  
for a period from March 2, 1977 to December 31, 1977

This permit may not be transferred or assigned by the original permittee and shall be displayed in a prominent, readily visible place at the site of the building. If the work is not completed within the above specified time, application for an extension must be made to the City of Homer.

This permit is issued with the expressed understanding that the City of Homer assumes no responsibility hereunder with regard to proper location of lot lines or site dimensions and the permittee, by his signature below, agrees to hold the City harmless from any and all suits, actions, or claims arising from any work undertaken.

The issuance of this permit does not imply that the permittee has met all the requirements of any agency of the State of Alaska or the Kenai Peninsula Borough. It is the responsibility of the permittee to meet whatever requirements any agency may have which may apply to the construction specified in this permit.

Permit Issued By [Signature]  
Office of the City Clerk

Permittee Marrin Y Pooler

Address S.R. Box 211 D Eagle River

SUBDIVISION Glacier View No. 2 HOUSE NUMBER 55/ 721 E. Bonanza

UTILITIES: WATER: Municipal available Private System           

SEWER: Municipal available Private System             
Private sewer systems must be approved by the District Sanitarian.

ZONING Commercial BUILDING SETBACK: 20 feet from dedicated right-of-way

DRIVEWAY PERMIT REQUIRED: YES X NO





# CITY OF HOMER WATER/SEWER PERMIT

No 1099

APPLICATION DATE April 23, 1993 ACCOUNT #         
\*APPLICANT Kenneth P. and Anna nudsen OWNER SAME  
MAILING ADDRESS P.O. on 271, Sterling AK 99672  
PHONE NUMBER (HOME) 262-5153 (WORK)         
SERVICE ADDRESS 541 East onanza  
LOT 4-1 BLOCK 209 SUBDIVISION Glacier View No 2  
PARCEL NUMBER 177-104-06 CONTRACTOR         
BOND # (OR VERIFY \$1,000 CONTRACTOR'S DEPOSIT)         
SIZE OF SERVICE 3/4 SIZE OF METER 1/8 METER #         
DATE CONNECTED        RELAY         
METER READING        RT/SEQ #         
DEC APPROVAL OF SEPTIC SYSTEM REQUIRED YES N/A NO         
REQUESTED SERVICE: WATER X SEWER X  
(X) EXTENSION X CONNECTION        EXTENSION X CONNECTION         
WATER RATE: TYPE Res. MONTHLY SERVICE CHARGE \$22.74  
COST PER 1000 GALLONS \$2.94 OUTSIDE CITY SURCHARGE         
SEWER RATE: TYPE Res. COST PER 1000 GALLONS \$5.19

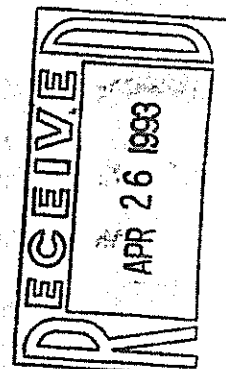
FEES	
WATER PERMIT	\$ 250
METER LEASE FEE	\$ 74
SEWER PERMIT	\$ 200
RENTER/LESSEE DEPOSIT	\$ 75
CONNECTION FEE	\$ 30
CITY R.O.W. PERMIT (MINOR)	\$ 0
CITY/MAJOR	\$ 0
STATE R.O.W. PERMIT (MINOR)	\$ 0
STATE/MAJOR	\$ 0
DEFERRED SERVICE	\$ 0
DEVELOPMENT PERMIT	\$ 0
OTHER	\$ 0
SUBTOTAL	\$ 629
TAX	\$ 27.50
TOTAL CHARGE	\$ 656.50

DATE PAID        AMOUNT PAID \$ 656.50

\*\*\* READ INSTALLATION INSTRUCTIONS ON THE BACK OF THIS PAGE. \*\*\*

SIGNATURE Kenneth P. nudsen  
\*(CUSTOMER RESPONSIBLE FOR MONTHLY BILLINGS)

COMMENTS Permit issued contingent upon Hot 24-A, Glacier View Subd. No. 2 Final Plat  
\*CUSTOMER MUST BE OWNER OR AN AUTHORIZED AGENT OR RENTER/LESSEE.  
(White Copy Applicant. Orange Copy Planning. Blue Copy Public Works)

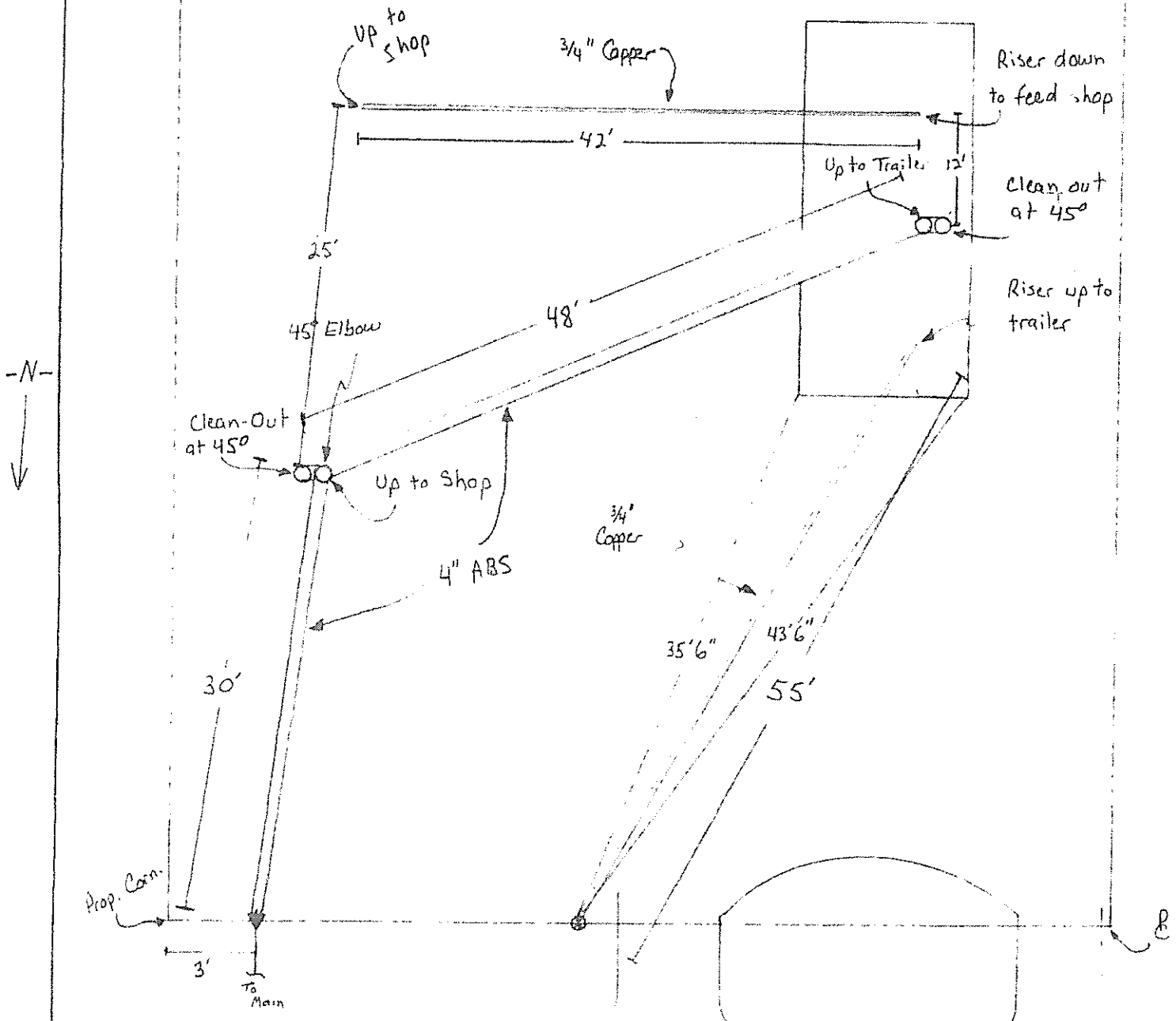


541 Bonanza

PUBLIC WORKS DEPT.	TITLE: <u>Water/Trailer As-Built</u>				PROJECT/W.O. NO. <u>1099</u>
	LOT. <u>24</u>	BLK. <u>9</u>	SUBDV. <u>Glacierview #2</u>	KPB. NO. <u>177-104-0600</u>	FILE NO. _____
	COMP. _____	CHK. _____	REV. _____	PAGE _____ OF _____ PAGES	
	DATE _____	DATE _____	DATE _____	ADDRESS: <u>541 Bonanza Knudsen</u>	
	INSP. _____	DMG <u>5/28/93</u>		OWNER _____	
	DATE <u>5/4/93</u>				CONTRACTOR <u>Roderick</u>

APPROVED AS-BUILT  
CITY OF HOMER CITY OF HOMER

SCALE  
N. T. S.



341 BONARIST

Memorandum of Understanding

SUBJECT: Glacier view subdivision no. 2, addition no 22, a combination of lots 24 and 25, block 9, glacier view subdivision no 2. located within the SE 1/4 NW 1/4 section 20, T6S, R13W, S.M., Homer, Alaska.  
The final plat will be recorded as Glacier View No. 23.  
City of Homer Policy allows only one water service per lot. Lot 24 and Lot 25 each have a water service. The water service to one of the lots must be abandoned before the two lots are resubdivided into one, single parcel.

The owner of the lot agrees to remove the curb box and stem from one of the water services. At the time this work is done The City of Homer will inspect the work. The owner agrees to secure the proper permits required to accomplish this work.

Kenneth P. Knudsen  
Property Owner

Anna R. Knudsen

Date  
5-27-93

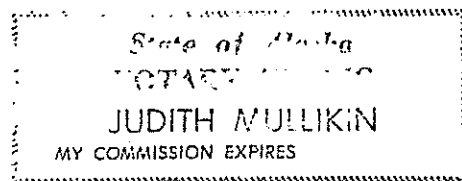
State of Alaska )  
 ) ss.  
Third Judicial District )

Hugh R. Bevan  
Hugh R. Bevan  
Director of Public Works  
6/9/93  
Date

The foregoing instrument was acknowledged before me this date  
5/27/93 by Kenneth P. Knudsen and Anna R. Knudsen, Property Owner.

Judith Mullikin  
Notary Public for the State of Alaska  
My Commission expires: 6-18-95

State of Alaska )  
 ) ss.  
Third Judicial District )



The foregoing instrument was acknowledged before me this date  
June 1, 1993 by Hugh R. Bevan, known to me to be the Director of Public Works, City of Homer Alaska.

Shirley E. Boley  
Notary Public for the State of Alaska  
My Commission expires: 2/20/95

**From:** [Stacy Lowry](#)  
**To:** [finance@cityofhomer.ak.gov](mailto:finance@cityofhomer.ak.gov)  
**Subject:** 541 Bonanza Ave  
**Date:** Friday, November 13, 2020 6:50:21 AM  
**Attachments:** [410 E Oak St-payments.pdf](#)  
[Stacy & Scott Lowry.pdf](#)

---

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

Hello,

Attached is all the forms to set up the water service in our name (we are the owners), it is currently in our renter's name, Jared Hemphill.

I've also attached a pdf of 2 years of good standing with our current water company.

Let me know what else you need from me, and when our acct is set up.

Thanks,

Stacy

299-4070





CITY OF HOMER

PERMIT NO. 3002

WATER / SEWER PERMIT

SERVICE CODE

SERVICE ADDRESS 541 Bonanza Avenue

APPLICATION DATE 6-23-2020

ACCOUNT #

APPLICANT Scott Lowry

OWNER Same

MAILING ADDRESS 201 E. Oak Street, Ojai CA 93023

PHONE NUMBER (HOME) 805-509-1757

(WORK)

LOT 24A

BLOCK

SUBDIVISION Glacier View Sub No. 23

KPB PARCEL # 177-104-21

CONTRACTOR J.C. Johnson and Son

SIZE OF SERVICE

SIZE OF METER

DATE CONNECTED

ORION #

METER READING

RT/SEQ #

REQUESTED SERVICE: WATER

SEWER

WATER RATE: Commercial/Residential

SEWER RATE: Commercial/Residential

Living Units in Apartments

Served by mainline lift station Y/N

## FEES

WATER PERMIT/INSPECTION PERMIT

METER LEASE FEE

DEPOSIT

CONNECTION FEE

SEWER PERMIT/INSPECTION PERMIT

DEFERRED SERVICE - WATER

DEFERRED SERVICE - SEWER

CITY ROW PERMIT - MINOR

CITY ROW PERMIT - MAJOR

DEVELOPMENT PERMIT

OTHER

SUBTOTAL

TAX

TOTAL CHARGES

DATE PAID

AMOUNT PAID

\$

\$

\$

\$

\$ 100.00

\$

\$

\$

\$

\$

\$

\$ 100.00

\$ 7.85

\$ 107.85

\$

\$ 107.85

## CODES

2107 T

2102 T (prv also)

2103

2101 T

2108 T

WADEF

SEDEF

2111

2112

122

Received By: JEH

Paid By: Scott Lawry

Date: 6-23-2020

PAID VISA \$107.85

Re: 1174537 Con: 04644D

\*\*\* READ INSTALLATION INSTRUCTIONS ON SECOND PAGE

SIGNATURE

\*CUSTOMER RESPONSIBLE FOR MONTHLY BILLINGS

COMMENTS Inspection Permit Only

\*Customer must be owner or an authorized agent or renter/lessee.

Original - Applicant, Copy : Planning, PW, Finance)

**CITY of HOMER  
LANDLORD TENANT UTILITY AGEEMENT**

Owner name Stacy L Scott Lowry  
Billing address 907 Daly Rd  
Djail CH 93023  
Service address 541 Bonanza Ave Homer, AK 99603  
Home Phone \_\_\_\_\_ Cell Phone 299-4070  
E-Mail Address Stacya0@gmail.com

**The owner agrees to:**


1. Assume responsibility for payment of billing during periods when either no tenant has properly signed a connect order and paid appropriate fees, or tenant has signed a disconnect order, or the tenant's account has become delinquent and is subject to disconnection of service.
2. Assume responsibility for advising tenant that proper application and paying all appropriate fees is required.
3. All service for the specified service address will be charged in accordance with section 14.08.080 and 14.04.040 of the Homer Municipal Code.
4. Owner agrees to sign a disconnect order and provide written notification to cancel this agreement when the property is sold.

**The City of Homer reserves the right to:**

1. Disconnect the water/sewer services to the above service address and apply any applicable deposits when the owner or tenant is delinquent in payment of billing.
2. Cancel this agreement if the owner is delinquent in payment of billing.

The City of Homer assumes no liability or obligation other than those stated in this agreement. This agreement shall become effective when accepted by the City of Homer. This agreement may be canceled by either the City of Homer or the owner upon written notification to the other party.

IN WITNESS WHEREOF, the parties hereto have caused the agreement to be executed by their duly authorized representatives.

By:  By: \_\_\_\_\_  
(Owner Signature) (Accepted by City of Homer)

Date: Nov. 11, 2020 Date: \_\_\_\_\_

Canceled by: \_\_\_\_\_ Date: \_\_\_\_\_



## ESTABLISH SERVICE ORDER

Last Name LOWRY  
(As it appears on your ID)

First & Middle Names

Stacy & Scott

Service Address

541 Kananaka Ave

Mailing Address 907 Entry Bl

Ujai, CH 92023

Account #

Misc. Info

Previous Unit Customer?

When

Owner

Rem.

in Household

2

Unit

Service Unit

Multi Family

Commercial

of Units

Holding Tank

Seasonal

Lift Station

Out of Town

Spit

Pub. Authority

Other

Phone 299-4070

License # F3619016 DOB 03/24/84  
(We must see your ID)

E-mail stacyaqq@gmail.com

Establish Service (2101)

Deposit (2103)

Other

Tax (2104)

TOTAL FEES

DATE FEES PAID

### SCHEDULE OF RATES

Water Customer Charge: \$13 per meter / per month

Multi Units \$5 per unit / per month

Water per gallon: \$0.0132 per gallon, (\$1.32 / 100 gal)

Sewer Customer Charge: N/C for single unit service

Multi Units \$5 per unit / per month

Sewer per gallon: \$0.0145 per gallon, (\$1.45 / 100 gal)

Sewer W/Lift Station: \$0.0224 per gallon, (\$2.24 / 100 gal)

DEPOSIT The deposit will be according to meter size and description. The deposit will be refunded, plus interest within forty-five days after the date of disconnection, provided that the deposit and interest shall first be applied to any outstanding balance. On continuing accounts with one year of timely payments, deposit will be refunded, plus interest.

CHARGES All charges will commence on the date the service is turned on. All monthly charges will continue to be billed to the customer who has signed the connect order until a disconnect order is requested. Monthly sewer billings will not be discontinued unless the water service is disconnected. Each reconnect will be charged at the regular fee as listed in the schedule of rates. Monthly service charges are based on the monthly water usage and billed at the end of the month.

AUTHORIZED BY

Stacy Lowry  
Signature (Customer responsible for the monthly billings)

DATE: Nov 12, 2020

Printed Name:

Stacy Lowry

City of Homer 491 E. Pioneer Ave., Homer AK 99603 Ph: 235-8121 Ext. 0 / Fax: 235-3140

\*\*\*\*\*  
For use of meter tech:

\_\_\_\_\_ Establish Service / Connect Water

\_\_\_\_\_ Meter Read Only

\_\_\_\_\_ Contact Customer to schedule appt.

\_\_\_\_\_ Start w/ last Read

Effective Date \_\_\_\_\_

Service Address \_\_\_\_\_

Phone Number \_\_\_\_\_

Parcel Number \_\_\_\_\_

Relay Number \_\_\_\_\_

Route \_\_\_\_\_ Service \_\_\_\_\_ Size of Meter \_\_\_\_\_

Meter Reading: \_\_\_\_\_

E-Mailed: \_\_\_\_\_ @ \_\_\_\_\_

Posted to: \_\_\_\_\_

**From:** [scott lowry](#)  
**To:** [Travis Brown](#)  
**Subject:** Re: Zoning Permit Issued  
**Date:** Monday, October 5, 2020 6:58:37 PM

---

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

Thank you Travis, we will get this permit posted in the door window as soon as possible. I suppose we can move forward with the wood fence install correct?

**From:** Travis Brown <[tbrown@ci.homer.ak.us](mailto:tbrown@ci.homer.ak.us)>  
**Date:** October 5, 2020 at 5:54:49 PM PDT  
**To:** scott lowry <[srl8@me.com](mailto:srl8@me.com)>  
**Subject:** Zoning Permit Issued

Scott,

Here is your approved zoning permit. It should be posted onsite for the remainder of construction.

Sincerely,

Travis Brown  
Planning Technician  
City of Homer  
(907)235-3106

<541 Bonanza Ave ZP 2020.pdf>





CITY OF HOMER

PERMIT NO. 3002

WATER / SEWER PERMIT

SERVICE CODE

SERVICE ADDRESS 541 Bonanza Avenue

APPLICATION DATE 6-23-2020

ACCOUNT #

APPLICANT Scott Lowry

OWNER Same

MAILING ADDRESS 201 E. Oak Street, Ojai CA 93023

PHONE NUMBER (HOME) 805-509-1757

(WORK)

LOT 24A

BLOCK

SUBDIVISION Glacier View Sub No. 23

KPB PARCEL # 177-104-21

CONTRACTOR J.C. Johnson and Son

SIZE OF SERVICE

SIZE OF METER

DATE CONNECTED

ORION #

METER READING

RT/SEQ #

REQUESTED SERVICE: WATER

SEWER

WATER RATE: Commercial/Residential

SEWER RATE: Commercial/Residential

Living Units in Apartments

Served by mainline lift station Y/N

## FEES

WATER PERMIT/INSPECTION PERMIT

\$

METER LEASE FEE

\$

DEPOSIT

\$

CONNECTION FEE

\$

SEWER PERMIT/INSPECTION PERMIT

\$

DEFERRED SERVICE - WATER

\$

DEFERRED SERVICE - SEWER

\$

CITY ROW PERMIT - MINOR

\$

CITY ROW PERMIT - MAJOR

\$

DEVELOPMENT PERMIT

\$

OTHER

\$

SUBTOTAL

\$

TAX

\$

TOTAL CHARGES

\$

DATE PAID

\$

AMOUNT PAID

\$

## CODES

2107 T

2102 T (prv also)

2103

2101 T

2108 T

WADEF

SEDEF

2111

2112

122

Received By:JEH

Paid By:Scott Lawry

Date:6-23-2020

PAID VISA \$107.85

\*\*\* READ INSTALLATION INSTRUCTIONS ON SECOND PAGE \*\*\*

SIGNATURE

*Scott Lowry for Scott Lawry*

\*CUSTOMER RESPONSIBLE FOR MONTHLY BILLINGS

COMMENTS Inspection Permit Only

\*Customer must be owner or an authorized agent or renter/lessee.

Original - Applicant, Copy : Planning, PW, Finance)



# Kenai Peninsula Borough, Alaska

## Assessing Department

[Go Back](#)
[Property Search](#)
[Print Report](#)
[Property Taxes](#)

### General Info

**Property Owner:**  
 LOWRY SCOTT RYAN  
 LOWRY STACY ANN  
 907 DALY RD  
 OJAI CA 93023-1939

**Change of Address**

**Owner(s)**

**Property ID** 17710421

**Address** 541 BONANZA AVE

**Transfer Date** 6/4/2019

**Document / Book Page** 20190015270

**Acreage** 0.2800

**Tax Authority Group** 20 - HOMER CITY

### Legal Description

#### Description

T 6S R 13W SEC 20 Seward Meridian HM 0930033 GLACIER VIEW SUB NO 23 BLOCKS 8 9 & 10 LOT 24A

### Value History

Year	2020	2019	2018	2017	2016	2015	2014	2013	2012
Reason	Main Roll Certification	Main Roll Certification	Main Roll Certification	Main Roll Certification	Main Roll Certification	Main Roll Certification	Main Roll Certification	Main Roll Certification	Main Roll Certification
Land Assd	\$40,300	\$40,300	\$39,800	\$38,800	\$42,700	\$42,700	\$42,700	\$42,700	\$42,700
Imp Assd	\$37,800	\$23,000	\$23,100	\$23,500	\$27,800	\$29,200	\$28,700	\$24,500	\$28,700
Total Assd	\$78,100	\$63,300	\$62,900	\$62,300	\$70,500	\$71,900	\$71,400	\$67,200	\$71,400

### Extension Details

R01

Attributes

Floor Areas

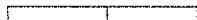
Story

Attribute

Detail

Type	MHS
Type	UNCONVENTIONAL STRUCTURE
Occupancy	Single family
Occupancy	Single family
Roof Structure	Flat or Shed
Roof Structure	Gable
Roof Cover	Metal
Roof Cover	Metal
Heating	Space heater
Heating	Space heater
Stories	1.0
Stories	1.0
Stories	1

Scale: 5 ft  
02



1 Exterior Wall Wood board & batten  
1 Interior Wall Normal for Class  
1 Interior Flooring Base Allowance

Address 541 BONANZA AVE  
Type MHS  
Grade F  
Year Built 1968  
MH Make  
Value \$9,500

#### Sketch Legend

Code	Description	Year	Building	Length	Width	Units	Unit Type	Value
DRIVE	Gravel Driveway	3000	R01	0	0	1	IT	\$2,000
WDDK		2002	R01	10	4	40	SF	\$200
EFP		2002	R01	11	8	88	SF	\$2,500
ADDN	<i>Dwelling Additions</i>	1994	R01	0	0	0		\$22,500
POLEBLDG	General Purpose Bldg Wood Pole Frame	1994	R01	47	10	470	SF	\$1,100

## Planning Commission Considers Rule Changes

The City of Homer Planning Commission is considering changes to its rules that would solidify a policy about how many meetings a commissioner could miss before losing their seat. Changes also could require fewer members to approve measures.

The Planning Commission is one of the most powerful bodies in city government. It approves and enforces things like zoning issues and conditional-use permits. So if there aren't enough people attending one of its regular meetings, delays happen. During the meeting Wednesday night, only four of the seven members were in attendance.

They also had to postpone a discussion about the city's definition of "discontinued" in its zoning code because Commission Chair Franco Venuti had a perceived conflict of interest with that issue. And the commission must actually approve his perceived conflict, but with only three members left to vote that wasn't even possible.

Changes to the number of required votes to approve items could make things run a little smoother. The commission is considering needing only four votes for variance requests or conditional-use permit approvals. Those items currently need a five-vote majority. During the commission's work session before the meeting, Planning Technician Julie Engebretsen mentioned the delays make life more difficult for applicants.

"I don't ever want to be in this position as staff having to tell an applicant 'I'm sorry, twice in a row we have to delay your conditional use permit for six weeks.' And we also in the past have had to schedule special meetings or work around time frames. And that's really hard on the applicant," she said.

Commissioner Larry Sloan said he thinks a four-vote, simple majority makes sense because the city Planning Department has already done most of the leg-work for an issue.

"Most of the preliminary work is done by the staff. The staff has already reviewed it to make sure it complies with the ordinance... so that being the case, for the most part, all our job is as commissioners is to rubberstamp it," he said.

There will be more discussion about this rule change during the commission's next regular meeting. Another amendment could change the number of unexcused absences allowed before a commissioner is voted off the board.

## Support My Station

Contribute Now



## On Air on KBBI 890AM

Paradigm Shift  
Tune in: KBBI  
890AM

## Sign Up to Our Monthly E- Newsletter

Join KBBI's  
monthly e-  
newsletter to find  
out the latest on  
what's happening at  
the station, KBBI  
related events,  
highlights,  
programming  
changes, and much  
more. Sign up here.

## Your Input

KBBI's Community  
Advisory Board  
(CAB) seeks your  
input on our  
programming and  
community  
engagement  
activities. Email  
them at



Sloan mentioned he would like to see a new rule that allows three consecutive unexcused absences or six missed meetings over the course of a calendar year before someone is possibly removed.

here for more info  
about our CAB.

“Really you're not conducting the public's business as well as you should if you've missed more than three. You need to make arrangements to organize your time so that you don't miss any more than three,” he said.

Commissioner Roberta Highland was learning more toward allowing four absences. She said it's difficult to find people willing to fill vacancies.

“And so, to make it more difficult and to tell people if you miss so many then you're off, I think we would be possibly shooting ourselves in the foot,” she said.

“But, there's the other side of it in that there's a responsibility with coming and take one of these seats,” Planning Commission Chair Venuti said. “And I've been involved with this for four years and I've only missed one because I was too sick to attend.... It's a real responsibility and a commitment you have to make.”

Commissioner Jennifer Sonneborn said some flexibility in attendance might be necessary for the future of the group.

“It's a volunteer position... people do it for years and years... the more flexible the commission can be, the more likely they are to keep functioning,” she said.

The rule changes will come up again during the commission's next meeting, which is set for Dec. 4 at 6:30 p.m. A work session is scheduled for 5:30 that evening.

2014-01-07 10:00 AM

2014-01-07 10:00 AM

2014-01-07 10:00 AM

Session 21-02, a Regular Meeting of the Planning Commission was called to order by Acting Chair Roberta Highland at 5:41 p.m. on January 6, 2021 at Cowles Council Chambers in City Hall located at 491 E. Pioneer Avenue, Homer, Alaska, via Zoom Webinar. One seat vacant due to resignation.

PRESENT: COMMISSIONERS HIGHLAND, PETSKA-RUBALCAVA, BARNWELL, VENUTI AND BENTZ

ABSENT: COMMISSIONER SMITH (EXCUSED)

STAFF: CITY PLANNER ABBOD  
DEPUTY CITY CLERK KRAUSE

The Commission met at 5:30 p.m. for a Special meeting prior to the regular meeting to address a Motion for Continuance for an appeal filed on Zoning Permit 1020-782. No worksession was held prior to this regular meeting.

#### **APPROVAL OF THE AGENDA**

Vice Chair Highland requested a motion to approve the agenda.

VENUTI/BARNWELL – MOVED TO APPROVE THE AGENDA.

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 December 2, 2020

Vice Chair Petska-Rubalcava requested a motion to approve the Consent Agenda.

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

There was no discussion.

VOTE. NON-OBJECTION. UNANIMOUS CONSENT.

Motion carried.

## **PRESENTATIONS/VISITORS**

- A. Main Street Sidewalk Project. Janette Keiser, PE, Director of Public Works/Acting City Engineer

Vice Chair Petska-Rubalcava introduced the item by reading of the title and invited Public Works Director Keiser to speak to the Commission.

Public Works Director Keiser provided a brief update on the design process for the Main Street Sidewalk project noting the following:

- Each design represented a singular 5 foot wide sidewalk on the west side of the road
- Each design reflected curb and gutter with connections to the Main Street Storm drain
- One design shows a 4 foot shoulder on the east side , which could be paved and striped to allow a bike path
- The intent is to have the possible bike path as an alternative and depending on the pricing when the bids come in and funding they could construct the project with the alternative
- Requested input from the Commission on which design they would prefer to see and a recommendation to Council.
- Project will be presented to the EDC, PARC Advisory Commissions and City Council
- If all aligns and funding source is found it is planned to have this project ready for the 2021 Construction season

Commissioner Venuti inquired about issuing the invitation to bid without the cost of the project.

Public Works Director Keiser responded that once they reach 65% design they would have a better idea on the overall costs of the project and would not issue an Invitation to Bid until the funding source was secured.

Commissioner Bentz expressed excitement at the prospect of the construction of this project since it has been a priority and in the CIP for such a long time for the city. She then noted the links to the various plans that the city has and appreciated the presentation on this project and similar ones being considered by the city as time goes on.

A brief discussion ensued between the Commission facilitated by the City Planner and Public Works Director on a working group established to update the Transportation Plan; updates to the Homer Non-motorized Transportation Plan and relevant city code language and the likelihood of the southern portion of Main Street getting a sidewalk while it may be needed as badly as the upper portion.

## **REPORTS**

### **A. Staff Report 21-01, City Planner's Report**

Vice Chair Petska-Rubalcava introduced the item and invited City Planner Abboud to provide his report to the Commission.

City Planner Abboud reviewed Staff Report 21-01 for the Commission commenting on the following:

- Wayfinding and Streetscape Plan Committee
- Lampert Lake and property conservation and public use easements
- Donation for improvements to Woodard Creek Nature Trail in Karen Hornaday Park
- Salmon Sisters leasing old Auction Block facility on the Spit
- City is still under Code Red so limiting the number of staff in office
- Significant development is being proposed in the center of town and will be coming before the Commission

Commissioner Highland volunteered to report at the upcoming January 11<sup>th</sup> City Council meeting.

## **PUBLIC HEARINGS**

### **A. Staff Report 21-02, Conditional use Permit (CUP) 2021-01, for more than one building containing a permitted principle use at 1308 Lakeshore Drive**

Vice Chair Petska-Rubalcava introduced the item by reading of the title and invited City Planner Abboud to provide his report.

City Planner Abboud provided a summary of Staff Report 21-02. Upon reaching the section of his report dealing with Zoning he stated that it would be a good time for any Commissioners to declare any conflicts.

Vice Chair Petska-Rubalcava declared she had a conflict.

HIGHLAND/VENUTI MOVED THAT COMMISSIONER PETSKA-RUBALCAVA HAD A CONFLICT OF INTEREST.

Commissioner Petska-Rubalcava provided details on her conflict that she participated in the design of this project.

VOTE. YES. HIGHLAND, BENTZ, BARNWELL, VENUTI.

Motion carried.



Commissioner Petska- Rubalcava turned the meeting over to Commissioner Highland, turned her camera and mic off and did not participate in the proceedings.

City Planner Abboud continued providing a summary of Staff Report 21-02.

Acting Chair Highland invited the applicant to present to the Commission.

Stephanie and Forrest Greer, Applicant, Mrs. Greer stated they did not have a presentation but was available for questions. She requested clarification on the RV parking.

City Planner Abboud explained that city code does not allow the use of RV as housing for employees.

Acting Chair Highland opened the Public Hearing, after confirming with the Clerk if there were members of the audience wishing to provide testimony and hearing there were none, she closed the public hearing, opening the floor to questions from the Commission.

Commissioner Barnwell requested clarification from the Applicant on the need for a RV space.

Mrs. Greer explained that the business is currently seasonal and as is common knowledge there is a lack of housing opportunities in the summer in Homer. They were going to use it as employee housing. She added that they initially intended to have two RV spaces one for Manager and the second for employee housing however they were told then they had to apply for an RV park permit so they downsized to the one space. Due to the seasonal nature of the business it did not make sense to build employee housing. They will need to review and adjust their plans and move forward.

City Planner Abboud stated that he was not prepared to analyze that at this time in response to Commissioner Barnwell's question regarding tiny homes.

Acting Chair Highland inquired about the requirements for a storm water plan seeing that the proposed project is on Beluga Lake. She expressed concerns on the transfer of dirt and debris from the project into the lake during construction and if the Commission can add requirements to accommodate that.

City Planner Abboud noted that the Commission could request additional requirements but reminded the Commission of the other activities that were allowed on the water such as internal combustion engines and that it was not a salmon stream. He then noted that the project would have to trigger additional requirements such as additional impervious surface or movement of large quantities of dirt.

Acting Chair Highland hearing no further questions from the Commission requested a motion.

VENUTI/BARNWELL MOVED TO ADOPT STAFF REPORT 20-02 AND APPROVE CONDITIONAL USE PERMIT 21-01 WITH FINDINGS 1-10 AND CONDITIONS 1 AND 2.

CONDITION 1: OCCUPANCY OF AN RV IS NOT PERMITTED

CONDITION 2: OUTDOOR LIGHTING MUST BE DOWNLIT PER HCC 21.59.030 AND THE COMMUNITY DESIGN MANUAL.

There was a brief discussion on amending the motion to require a development activity plan. There were no amendments offered.

VOTE. NON-OBJECTION. UNANIMOUS CONSENT.

Motion carried.

Vice Chair Petska-Rubalcava returned to the meeting.

## **PLAT CONSIDERATION**

## **PENDING BUSINESS**

## **NEW BUSINESS**

### **A. Staff Report 21-03, Main Street Sidewalk Project**

Vice Chair Petska-Rubalcava introduced the item and requested input from City Planner Abboud.

City Planner Abboud reminded the Commission on the information provided by Ms. Keiser and that they did not really have any discussion at that time. He can keep it on his City Planner's Report for the future or Commissioner Highland can report at City Council.

Commissioner Highland stated that a recommendation from Commission was requested and opined that they should at minimum discuss the options presented. She continued that normally they make a motion then discuss.

Deputy City Clerk Krause stated that the item had been introduced, which essentially put on the floor for discussion.

Discussion ensued on the additional impervious surface added to the project if the alternative design with the east side paved shoulder is used; creation of additional storm water runoff; the steepness of the road; building in resistant features to address storm water management; consideration that this is the primary route by emergency vehicles which would add safety concerns with non-motorized transportation; implementing the use of green infrastructure.

City Planner Abboud will forward the section of the minutes to Ms. Keiser so that the concerns of the Commission can be addressed as the design/project progresses.

### **INFORMATION MATERIALS**

- A. City Manager's Report for December 14, 2020 City Council Meeting
- B. Letter (Email) from Jason Pinsky dated December 28, 2020 re: Coal Burning

Vice Chair Petska-Rubalcava noted the materials provided and inquired if there were any comments from the Commission.

Commissioner Highland commented that the City Manager's Report was very thorough and interesting and expressed concerns with the burning of coal and if this would be an issue that the Commission could address.

City Planner Abboud stated that he would prefer to get direction from the City Council on this issue.

### **COMMENTS OF THE AUDIENCE**

### **COMMENTS OF THE STAFF**

Deputy City Clerk Krause complimented Commissioners Petska-Rubalcava and Highland on conducting the meetings tonight stating that they conducted efficient and very effective meetings.

### **COMMENTS OF THE COMMISSION**

Commissioner Highland commented that they had very interesting meetings tonight. They are lucky to be back and not be arguing, compared to the phase that the United States seems to be going through right now. Thank you everyone.

Commissioner Barnwell complimented the City Planner on his report and appreciated the graphs, information and presentation from Ms. Keiser on the project. It was a pretty peaceful meeting compared to some very eventful crazy days. He then wished everyone a Happy New Year.

Commissioner Venuti commented that it was an interesting meeting and complimented Commissioner Highland on conducting a great meeting as well as Commissioner Petska-Rubalcava. He then noted what happened earlier in the day in Washington, D.C. opining that it was a complete embarrassment. Commissioner Venuti recalled that as a youngster he joined the Marine Corps., and swore to uphold the Constitution for the betterment of America and what he

saw was not what he worked for and only hoped that the country can move past this. He continued stating that perhaps more rational thinking may occur in Washington, D.C.

Vice Chair Petska-Rubalcava thanked Commissioner Venuti for his service.

Commissioner Bentz apologized for the earlier internet issues. She commented that some days are better for virtual meetings than others. She commented that if they have another special meeting it would be beneficial if the Commissioners can review city code regarding the appeal process stating that she found it very helpful to her today especially if they are going to work on the Commission's role in determining procedures for appeal process. It may be a good place to start. She expressed excitement on the Main Street Sidewalk project moving forward and if there was a group or task force working on related issues around stormwater planning or non-motorized trails and things like that it would be great to see collaborative efforts.

Commissioner Petska-Rubalcava commented that she appreciated the Commission bearing with her internet issues earlier today, and Commissioner Highland willingness to step in during the Special meeting and again during the Public Hearing tonight. She hoped that everyone had really great holidays and a great start to the New Year despite today. She expressed her appreciation for all the work that City Planner Abboud and Deputy City Clerk Krause do to make these meetings run smoothly.

#### ADJOURN

There being no further business to come before the Commission, the meeting adjourned at 7:50 p.m. The next Regular Meeting is scheduled for Wednesday, January 20, 2021 at 6:30 p.m. A Worksession is scheduled at 5:30 p.m. All meetings are 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

Approved: January 20, 2021





## City of Homer

[www.cityofhomer-ak.gov](http://www.cityofhomer-ak.gov)

## Office of the City Clerk

491 East Pioneer Avenue  
Homer, Alaska 99603

[clerk@cityofhomer-ak.gov](mailto:clerk@cityofhomer-ak.gov)

(p) 907-235-3130

(f) 907-235-3143

### Memorandum

TO: HOMER PLANNING COMMISSION

FROM: MELISSA JACOBSEN, MMC, CITY CLERK

DATE: JANUARY 14, 2020

SUBJECT: PROCESS FOR APPEAL OF ZONING PERMIT 1020-782

A Special Meeting of the Planning Commission was held on January 6, 2021 to hear the Appeal of the City Planners Issuance of Zoning Permit 1020-782. Prior to the meeting, JDO, the law firm that represents the City, submitted a proposed process for the hearing and the appellant objected to the proposed process. A motion to continue was requested on behalf of the City by JDO to allow time to come to agreement on a meeting process. At the Special Meeting the Planning Commission approved continuing the hearing to January 27, 2021 at 5:30 p.m. with direction that they be involved in developing a hearing process.

Regarding process related to appeals to the Planning Commission, HCC 21.93.300 d. provides the opportunity for the Commission to accept new testimony and other evidence, including public testimony, and hear oral arguments as necessary to develop a full record upon which to decide an appeal from an act or determination of the City Planner. Any person may file a written brief or testimony in an appeal before the Commission.

Homer City Code is silent regarding requirements for establishing a hearing process. However, defining a process prior to the hearing is good practice so the Commission and the parties know what to expect.

In reviewing past appeal hearing processes, the following items appear to be consistent and seem to fall in line with HCC 21.93.310 Other procedures:

- Calling the meeting to order
- Approving the agenda
- Announcing the hearing subject
- Identifying parties present
- Taking up preliminary issues
- Ruling on preliminary issues
- Hearing oral arguments
- Providing opportunity for Appellant's rebuttal
- Providing opportunity for questions of the Appellant
- Establishing time limits
- Undertaking deliberations independent of the hearing
- Issuing a decision within 60 days of the hearing

Establishing time limits for oral arguments is beneficial so all parties can plan their oral arguments and have an equal amount of time to present. At the hearing the Commission may allow additional time for a party to present their argument if they feel it's necessary, and with the understanding it should be allowed for the other parties as well.

Setting a deadline to receive written briefs and testimony will provide the Commission and parties the opportunity to read the information prior to the hearing.

If the Commission agrees to provide an opportunity for questioning witnesses, a list of requested witnesses should be provided to the City Clerk's Office so they can be requested to attend. The City does not have subpoena powers and can't require participation. All witnesses participating will be sworn in by the Commission's recording Clerk.

Here is a starting outline for a process for the January 27<sup>th</sup> appeal hearing:

1. Any written brief or testimony to be addressed during the hearing, and list of requested witnesses, must be provided to the City Clerk no later than 4:00 pm on Friday, January 22, 2021 to allow time for delivery to the Planning Commission and parties for review, and to advise witnesses that their presence is requested at the hearing.
2. Open the meeting.
3. Address preliminary matters and rule on each preliminary matter raised. Allot 15 to 20 minutes.
4. Hear oral arguments from Appellant Frank Griswold and Appellee City Planner Abboud. Allot 20 minutes for each party. This time includes time to present arguments, testimony, and other evidence.
5. Open the floor for comments from interested persons. Allot 3 minutes per person.
6. Appellant cross examination of witnesses and rebuttal oral arguments. Allot 10 minutes.
7. Adjourn the hearing.
8. Deliberate and issue a decision by March 29, 2021

Please review the information provided with this memorandum and be prepared to discuss the process and provide feedback to the Clerk, who will then prepare a final process to distribute to the parties.

Attachments:

- HCC 21.93.020 Decisions subject to appeal to Planning Commission, 21.93.100 General appeals procedure, 21.93.300 Appeals to the Planning Commission, and 21.93.310 Other procedures
- Proposed Process submitted by JDO

## **PROCEDURE FOR PLANNING COMMISSION HEARING**

Pursuant to HCC 21.93.300-310, the following procedure has been established for the Homer Planning Commission's consideration of the appeal of Homer's grant of Zoning Permit 1020-782.

An appeal hearing will be held on January 27, 2021. Due to the COVID-19 pandemic the hearing will be conducted by Zoom Meeting and pursuant to Homer City Code 21.93.300 this meeting is open to the public.

To join the Zoom meeting on your computer go to [www.zoom.us](http://www.zoom.us) and select Join A Meeting. From there follow the prompts to enter the following meeting ID and password:

Meeting ID: 940 8082 9916 Passcode: 052186

To participate by phone only, you may dial one of the following phone numbers and enter the same meeting ID and passcode, 1-669-900-6833, 1-253-215-8782 or Toll Free 888-788-0099 or 877-853-5247.

The parties may file written briefs in support of their positions. Briefs must be filed with the City Clerk by 4:30 p.m. Monday, January 25, 2021.

At the hearing the parties may testify, call witnesses, submit evidence, and present oral argument. A list of witnesses must be provided to the City Clerk no later than 4:30 p.m. on Monday, January 25, 2021 so they may be requested to attend.

The hearing shall be subject to the following order and time limitations:

1. Open the hearing and identify all persons in attendance;
2. Address preliminary matters and rule on each preliminary matter raised: 20 minutes;
3. Appellant: 30 minutes to present testimony, other evidence, question witnesses, and oral argument;
4. Appellee: 30 minutes to present testimony, other evidence, question witnesses, and oral argument;
5. Open the floor for comments from interested persons: 10 minutes each;
6. Appellant: 10 minutes to cross-examine witnesses and present rebuttal oral argument;
7. Adjourn.

The hearing need not be conducted according to technical rules relating to evidence and witnesses. The rules of privilege are effective to the same extent that they are recognized in a civil action. Irrelevant and unduly repetitious evidence shall be excluded. The Commission may question each of parties listed above. The Commission may deliberate and render a decision as provided in HCC 21.93.300(e)-(g).

**From:** [Frank Griswold](#)  
**To:** [Melissa Jacobsen](#)  
**Subject:** Appeal of ZP 1020-782 - List of Requested Witnesses  
**Date:** Friday, January 15, 2021 2:02:33 PM

---

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

Melissa,

I hereby request that the following witnesses be made available for questioning at the January 27, 2021 appeal hearing:

Travis Brown, Dan Gardner, Rick Abboud, Stacy Lowry, Scott Lowry.

Frank Griswold





ON APPEAL TO THE HOMER PLANNING COMMISSION

FRANK GRISWOLD,

Appellant,

v.

TRAVIS BROWN, SCOTT LOWRY,  
AND STACY LOWRY,

Appellees.

\_\_\_\_\_/ Appeal of Zoning Permit 1020-782

**APPELLANT'S BRIEF**

**1. City Planner Rick Abboud is not a legitimate a party to this appeal and has no authority to represent any entity of the City of Homer in this matter**

City Planner Rick Abboud did not file an appeal or cross-appeal. He has no ownership interest in the subject property or neighboring property and is not otherwise aggrieved by Planning Technician Travis Brown's issuance of Zoning Permit 1020-782. Accordingly, he has no authority to represent Mr. Brown or the Lowrys in this matter. HCC 21.93.050(b) provides that the City Manager or City Planner or any governmental official, agency, or unit have standing to appeal an appealable action or determination of the City Planner to the Commission but it does not authorize the City Planner to participate as a party in administrative appeals filed by others and it does not give him standing to appeal an action or determination of his staff.

Alaska Statutes and Homer City Code mandate that all parties to a zoning appeal must be "aggrieved." The fact that Mr. Abboud may experience disappointment or hurt feelings when an action or determination of his staff is appealed does not make him an aggrieved person or otherwise give him standing to participate in that appeal. The City Planner should be objective and impartial and not an advocate for those who apply for zoning permits. HCC 1.18.048(a) states: "A City official or the City Manager who has partiality concerning a quasi-judicial matter shall not advise on [the] matter, adjudicate the matter or serve as a member of a body adjudicating the matter." Homer Personnel Regulation 8.7.3 states: "No employee shall use the implied authority of their position to unduly influence the decision of others or promote a personal interest in the community."

A corporation is an artificial entity created by law that cannot represent itself. AS 22.20.040 provides that a corporation, either public or private, shall appear by an attorney in all cases unless an exception has been explicitly made by law. Mr. Abboud is not an attorney and therefore cannot legally represent the Planning Department or any other entity of the City of Homer in any quasi-judicial proceeding. Individuals may represent themselves pro se but this exception does not apply to corporations. A non-lawyer (officer, agent or employee)

cannot represent a corporation in any judicial or quasi-judicial matter. See *Stone Street Partners LLC vs. The City of Chicago Dept. of Administrative Hearings*, 2014 IL App(1<sup>st</sup>) 123654 (Illinois, 2014). Any non-lawyer who represents others in a quasi-judicial proceeding engages in the unauthorized practice of law.

If City Planner Abboud is deemed to be a legitimate party to this appeal, HCC 21.93.710(a)(2)(a) prohibits ex parte communications between him and Planning Commissioners. HCC 21.93.710(c): "If before an appeal commences, a member of the Commission or Board receives an ex parte communication of a type that could not properly be received while an appeal is pending, the member shall disclose the communication in the manner prescribed in subsection (d) of this section at the first meeting of the Commission or Board at which the appeal is addressed."

**2. The role of the Homer City Attorneys in this matter is not clear.**

Appellant received no entry of appearance regarding this matter from JDO. JDO has not specifically indicated which entity of the City of Homer it is representing. There was no JDO logo on the proposed appeal procedures submitted by JDO. JDO has not indicated whether it will be be "assisting" in the preparation

of the Commission's decision. One has to wonder why the Administration is represented by legal counsel while the Commission is apparently not. Depriving the lay Commissioners of impartial legal counsel encourages them to rely on the biased advice of legal counsel for the Administration i.e., JDO which, in turn, is highly prejudicial to the Appellant.

**3. The original Public Notice mailed to neighboring property owners was inaccurate and biased**

The original Public Notice includes a biased computer generated rendering of the subject structure provided by the Applicant instead of an actual photo. This Public Notice falsely claims ZP 1020-782 is for an accessory dwelling unit and refers to Memorandum PL 21-01 which does not exist. Recipients of this public notice were instructed to contact City Planner Rick Abboud if they have questions or would like more information about the matter; Mr. Abboud claims to be a party to this appeal and was not positioned to provide impartial answers and/or information to the neighboring property owners or general public. The original Public Notice contained no certification of service or list of property owners served. The second public notice pertaining to the January 27, 2021 appeal hearing, if mailed at all, may not have been timely provided to neighboring property owners or otherwise have complied with HCC 21.94.030.



**4. Commission Chair Scott Smith is not an impartial adjudicator and should be disqualified from participation in this matter**

HCC 1.18.040(a) states: "A City official or the City Manager who has partiality concerning a quasi-judicial matter shall not advise on matter, adjudicate the matter or serve as a member of a body adjudicating the matter. HCC 1.18.020 states in relative part as follows: "Partiality" applies only in quasi-judicial proceedings and means:

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.

HCC 1.18.048 Procedure for declaring and ruling on partiality in quasi-judicial matters:

- "a. A City official or the City Manager who has partiality concerning a quasi-judicial matter shall not advise on matter, adjudicate the matter or serve as a member of a body adjudicating the matter.
- b. A City official who is a member of a quasi-judicial body and who has or may have partiality concerning a matter to be adjudicated shall disclose the facts concerning the official's possible partiality to the body to the parties to the matter prior to the commencement of proceedings by the body. Any member of the body, and any party to a matter before the body, may raise a question concerning a member's partiality, in which case the member in question shall disclose facts concerning the official's possible partiality in the matter.

c. After such disclosure, the City official may excuse themselves for partiality without a vote of the body, otherwise the body (including a body comprised of City Council members when serving in a quasi-judicial capacity) shall by majority vote rule on whether the member must be excused from participation, which must be the ruling when the body determines the official has partiality concerning the matter.

d. Rule of Necessity. Exceptions to a ruling excusing a member from participation shall be made in cases where:

1. By reason of being excused for partiality the number of members of the Council or other body eligible to vote is reduced to less than the minimum number required to approve the official action;

2. No other body of the City has jurisdiction and authority to take the official action on the matter; and

3. The official action cannot be set aside to a later date, within a reasonable time, when the body could obtain the minimum number of members to take action who are not excused for partiality.

When the body determines this exception applies, then all members, except the applicant when the applicant is a member of the body, shall participate in the official action."

At the conclusion of the September 2, 2020 Commission meeting, Chair Smith addressed the applicants for CUP 20-14 (an unrelated, distinct proceeding) as follows: "I think you can see that we're trying to advocate for you, and balancing our lay down from Mr. Griswold with code and your desires was an interesting process. So we'll trust that you get back with the city planner and are able to move forward." Chair Smith clearly revealed his implicit bias in favor of development. An impartial adjudicator advocates for no party in a quasi-judicial proceeding and cares not whether the application under

consideration moves forward. An impartial adjudicator sets his personal feelings aside and makes his decision based solely on the evidence. Implicit bias, by definition, pertains to attitudes and stereotypes that affect one's understanding, actions, and decisions in an unconscious manner. Nonetheless, it constitutes a bias/partiality that is prohibited under HCC 1.18.040(a) and HCC 1.18.020. The application to serve on the Homer Planning Commission asks: "Have you ever developed real property other than a personal residence"? [See Exhibit 4 attached hereto]. This inquiry inappropriately selects for Commissioners like Chair Smith who favor development thus fostering and perpetuating implicit and overt pro-development bias.

**5. Planning Technician Travis Brown did not have the authority to issue Zoning Permit 1020-782**

Planning Technician Travis Brown issued Zoning Permit 1020-782 [R. 5] but he did not have the legal authority to do so. HCC 21.70.030(a) states: "The City Planner will review the application to determine whether the proposed building or structure, and intended use, comply with the zoning code and other applicable provisions of the City Code, and to determine whether all permits and approvals required by applicable Federal, State, or local law or regulation have been obtained.

The City Planner may also refer the application to other City officials for review, comment or approval for compliance with applicable City Code. If the application meets all of the requirements, **the City Planner will issue a written zoning permit.**" (Emphasis added). Thus, while Planning Technician Travis Brown had the authority to review the application for Zoning Permit 1020-782 for compliance with applicable code, he did not have the authority to issue the permit; this would have been solely the duty of the City Planner. HCC 21.70.030(c) states: "[i]n granting a zoning permit, no City official or employee has authority to grant a waiver, variance, or deviation from the requirements of the zoning code and other applicable laws and regulations, unless such authority is expressly contained therein. Any zoning permit that attempts to do so may be revoked by the City Manager as void. The applicant, owner, lessee, and occupant of the lot bear continuing responsibility for compliance with the zoning code and all other applicable laws and regulations."

**6. Contrary to the caption on Zoning Permit 1020-782, the subject structure does not constitute "New Construction"**

At the top of Zoning Permit 1020-782 it states: "Residential Zoning Permit New Construction." [R. 5] The subject structure is a rusty old converted connex shipping container



transported to Homer from Kenai [R. 13; SR. 14] but Zoning Permit 1020-782 does not identify it as such. It appears that Planning Staff was attempting to obfuscate the fact that Zoning Permit 1020-782 pertained to an old, rusty, converted connex shipping container and was being issued after-the-fact in violation of HCC 21.70.010(b).

**7. Zoning Permit 1020-782 was not obtained prior to commencement of the activity for which it was required in violation of HCC 21.70.010(b)**

Staff Report 20-58 regarding CUP 20-14 states: "The current property is one large lot. At one point it was two lots, but the interior lot line was vacated in 1993 so the current configuration is one large lot. Staff brings this to the Commission's attention because it is possible for the applicant to re-subdivide the lot, and have one mobile home on each lot without a conditional use permit. The applicant placed a "connex" single family dwelling on the property on July 20, 2020. No zoning permit was applied for, so the structure is in violation of city code. . . ." [SR. 13] HCC 21.70.010(b) states: "The 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." The Commissioners swore an Oath of Office to defend and support the Ordinances of the City of Homer, including HCC 21.71.010(b) and

Appellant's Brief/Page 9

HCC 21.70.030(c) which states: "In granting a zoning permit, no City official or employee has authority to grant a waiver, variance, or deviation from the requirements of the zoning code and other applicable laws and regulations, unless such authority is expressly contained therein. Any zoning permit that attempts to do so may be revoked by the City Manager as void. The applicant, owner, lessee, and occupant of the lot bear continuing responsibility for compliance with the zoning code and all other applicable laws and regulations." HCC 21.70.090 states: "No person shall use or occupy a building or structure that has been erected, constructed, enlarged, altered, repaired, moved, improved, or converted after January 1, 2000, without a properly issued and unrevoked zoning permit required by this chapter." The subject connex was occupied by tenants long before the illegal issuance of Zoning Permit 1020-782 on October 5, 2020.

**8. The subject structure constitutes a single family residence which is not allowed on the subject lot because the lot already contains a single family dwelling**

Applicants described the use of the existing structure as "existing residential 2 BR/1BA mobile home/house" and the use of the proposed structure as "residential 1BR 1BA 360 sq. ft."

[R. 6] Zoning Permit 1020-782 identifies the structure permitted as a "360 square foot single family dwelling." [R. 5] The

subject lot already contains a single family (mobile home) dwelling. [R. 13 ] HCC 21.18.030(j) requires a conditional use permit for more than one building containing a permitted principal use on a lot. HCC 21.71.070 states: "Nothing in this chapter shall relieve the applicant of the obligation to obtain a conditional use permit, sign permit, variance, or other permit or approval required by other provisions of the zoning code. The zoning permit required by this chapter shall be in addition to any other applicable permit or approval requirements. ***If any such additional permits or approvals are required, they must be obtained prior to the issuance of the zoning permit under this chapter.***" (Emphasis added).

**9. The subject structure violates nuisance standards prescribed in HCC 21.18.080**

HCC 21.18.080(c) states: "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 subject connex violates HCC 21.18.080(c) which states: "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." At the September 2, 2020 Homer Planning Commission meeting, the Commission entertained a motion to find that the structure in question was not used for transportation of merchandise and therefore HCC 21.18.080 Nuisance standards, item c, does not apply. This motion failed unanimously. [SR. 7] Nonetheless, the Commission's ensuing Decision denying CUP 20-14 states as follows: "The Commission also noted that the structure was not used for the transportation of merchandise, so it did not constitute equipment used for the transportation of merchandise described in HCC 21.18.080(c)." [SR. 52] The subject connex was originally constructed to be a shipping container designed for the transportation of merchandise and, regardless of what use it is later capable of or put to including conversion to a dwelling unit, it remains a shipping container subject to the nuisance standards of HCC 21.18.080(c). When a connex or other type of shipping container is being used for the transportation of merchandise, it does not constitute a nuisance or require screening from public view provided it only remains on the premises long enough for loading and unloading operations to take place. If it lingers on the premises, it is arguably being

Appellant's Brief/Page 12



maintained for storage purposes. This terminology is somewhat ambiguous as it could mean the connex itself is being stored, it could mean the connex is being used to store things inside, or it could mean both. The intent, however, is clear: shipping containers not engaged in the loading or unloading of merchandize are considered a nuisance in the CBD and must therefore be screened from public view. Even if a permanently or semi-permanently situated shipping container contains nothing, it constitutes a nuisance. The exterior is the objectionable part and its interior contents are, for the most part, irrelevant. Thus, any connex shipping container parked for an extended period of time on any parcel in the CBD must be screened from public view. The two unsightly shipping containers that have been parked/stored on Al Waddell's CBD property across from the Post Office for decades are clearly not in the process of being loaded or unloaded so they are subject to the nuisance standards of HCC 21.18.080(c). [SR. 73-76] Installing cooking facilities etc. inside and calling them dwelling units would not alter the fact that they are stored shipping containers which therefore require screening from public view. The fact that these two derelict shipping containers may no longer be suitable or capable of transporting merchandize is irrelevant; if anything, this makes them even more of an eyesore and a public

nuisance. HCC 21.18.020(o) allows Ministorage in the CBD as a permitted use but if that storage takes place within a permanently stored connex shipping container, that connex would need to be screened from public view pursuant to the nuisance standards set forth in HCC 21.18.080(c).

**10. The subject structure does not constitute a detached Accessory Dwelling Unit (ADU)**

Zoning Permit 1020-782 was clearly intended to permit a (second) single family dwelling on the subject lot, not a detached accessory dwelling unit. However, the original Public Hearing Notice, submitted into the record as a laydown, states: "Public notice is hereby given that the City of Homer will hold a public hearing by the Homer Planning Commission on Wednesday, January 6, 2021 at 5:30 p.m. via a virtual meeting, on the following matter: **Memorandum PL 21, Appeal of issuance of Zoning Permit 1020-782 to the Homer Planning Commission. Zoning Permit 1020-782 approved an accessory dwelling unit, a converted shipping container, at 541 Bonanza Ave., Lot 24A, Glacier View Subdivision No. 23., Sec. 20, T.6S., R.13 W., S.M. HM 0930033.**" During its discussions on September 2, 2020 regarding CUP 20-14, the Commission considered whether the converted connex might qualify as a detached accessory dwelling unit (ADU). [SR. 6-7] HCC 21.18.020(ii) permits one detached dwelling unit, excluding

mobile homes, as an accessory building to a single family dwelling on a lot. Definitions per HCC 21.03.040:

"Dwelling" or "dwelling unit" means 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.

"Dwelling, single family" means a detached dwelling unit designed **for residential occupancy by one family**.

"Accessory building" means an **incidental** and subordinate building customarily **incidental** to and located on the same lot by [sic] the principal use or building, such as a detached garage **incidental** to a residential building.

Definitions otherwise:

Incidental means accompanying but not a major part of something.

Subordinate means less in rank or position - of lesser importance.

The subject connex is a stand-alone rental unit that is totally independent of the other rental unit on the lot. It has separate utilities, a separate driveway, and is physically separated from the mobile home portion of the lot by a 100-foot-long fence. [SR 61-62] The converted connex is smaller than the mobile home structure but it is neither subordinate to nor incidental to it, as would be the case if it were a detached garage or greenhouse etc. Applicant's testimony is recorded as follows in the September 2, 2020 Commission minutes: "There is an older mobile home on the property that is currently rented and that tenant has resided on the property prior to them purchasing the

Appellant's Brief/Page 15

property. They intend to use the new structure as a vacation home as they come to Homer every summer since they have family here. . . . The Applicant explained that they had future plans to replace the existing mobile home with a new structure." [SR. 4] Scott and Stacy Lowry are not related to the tenant of the existing mobile home, a former classmate of Stacy Lowry presumably named Jared Hemphill, [laydown] or to the new unidentified tenants of the connex. The tenants of the connex are not related to the tenant of the existing mobile home. Accordingly, the requirement for an accessory dwelling unit that the two dwelling units be designed for residential occupancy by one family is clearly not met.

**11. Application procedures set forth under HCC 21.70.020 were not fully complied with**

HCC 21.70.020(b) requires that the application include the following highlighted missing information:

1. The name, residence address, and mailing address of the applicant, the owner of the lot, and *any lessee of the lot.*

4. *The zoning code use classification under which the permit is sought.*

5. *If construction or a new or changed use under a zoning permit will change the quantity or location of required off-street parking, a survey, plat, or plan, drawn to a scale of not less*



than one inch equals 20 feet showing the actual dimensions of the lot, the exact location of the buildings and structures erected or to be erected thereon, adjacent street rights-of-way, utility easements and facilities, building setbacks, drainage, parking lot ingress and egress points, driveways, parking lot aisles, and the number and location of off-street parking spaces and loading spaces. Where off-site parking will be provided to meet a requirement for off-street parking, a similar survey, plat or plan also shall be provided for the off-site parking, accompanied by the document required by HCC 21.55.060(d). A site plan prepared according to Chapter 21.73 HCC may be substituted for the survey, plat, or plan required by this subsection.

7. Copies of any building permits or other permits required by applicable Federal, State or local law or regulations. The 1993 Memorandum of Understanding regarding 541 Bonanza states in relevant part as follows: "City of Homer Policy allows only one water service per lot. Lot 24 and Lot 25 each have a water service. The water service to one of the lots must be abandoned before the two lots are resubdivided into one, single parcel. The owner of the lot agrees to remove the curb box and stem from one of the water services. At the time this work is done, the City of Homer will inspect the work. The owner agrees to secure the proper permits required to accomplish this work." [laydown]

On September 2, 2020 Scott Lowry testified to the Commission that there were already two sewer systems on the lot. There is no evidence in the record that any permits were obtained to remove any curb box or water stem. The connex and the mobile home are now connected to separate water services i.e., there are two water services illegally serving one lot.

**12. A new (second) driveway permit was not obtained thus violating HCC 11.08.040(a)**

The former driveway at 541 Bonanza Avenue was vacated when two lots were combined into one after which the driveway that formerly served 551 Bonanza became the driveway for the entire lot now designated 541 Bonanza. Driveway permit 1199 originally applied to 551 Bonanza while Driveway Permit 1432 applied to 541 Bonanza. Following subdivision, Driveway Permit 1199 applied to the combined lot which was arbitrarily designated 541 Bonanza and Driveway Permit 1432 was thereafter void. The site of that abandoned driveway was recently de-fenced, graveled, and graded but no new driveway permit was ever obtained authorizing this construction. This violates HCC 11.08.040(a) which states: "Any owner of abutting property desiring to gain access, or to enlarge or change the location of an existing access, to a road or street right-of-way shall do so only in strict accordance with the provisions of a permit issued by the City. Written

application must be made to secure such a permit from the City through the City Planner. Each application for a permit shall be accompanied by a fee in the amount determined by Council resolution and set forth in the City of Homer fee schedule." HCC 11.08.070(d)states: "No alteration shall be made without securing a permit." HCC 11.08.120(b) states: "There shall not be more than two driveways for any one property. Additional drives [sic] should not be requested unless there is a clear necessity for them. Additional driveways must be approved by the Director of Public Works." After the second driveway was vacated following the subdivision that combined two lots into one, the construction of an additional driveway was never approved by the Director of Public Works.

For all of the reasons above, Zoning Permit 1020-782 cannot be sustained.

DATED: January 25, 2021.

By:   
Frank Griswold

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](mailto:mgatti@jdolaw.com)  
[mholmquist@jdolaw.com](mailto:mholmquist@jdolaw.com)

Attorneys for City of Homer

BEFORE THE HOMER PLANNING COMMISSION

In the Matter of

APPEAL OF ZONING PERMIT 1020-782

**CITY OF HOMER'S BRIEF**

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. 6-14] The property has an existing residential single family home. [R. 6] 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. [R. 6] 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 lighting that would be installed on the dwelling, photographs of the property, and a design rendering of the anticipated completed dwelling. [R. 6-14] The Applicants also obtained a water/sewer permit for the dwelling. [R. 16-17]



On October 5, 2020, HCP approved and issued Residential Zoning Permit 1020-782 (the “Permit”). [R. 5] HCP found that the proposed 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. 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 (1.5 times the ordinary fee per the City’s fee schedule) for commencing construction without a permit. [R. 5, 15]

On October 8, 2020, Frank Griswold filed a notice that he was appealing HCP issuance of the Permit to the Homer Planning Commission (the “Commission”). [R. 3-4] The Homer City Clerk completed the Appeal Record on November 10, 2020. The appeal hearing was initially scheduled for January 6, 2021. However, at that hearing the Commission granted the City’s Motion to Continue Appeal Hearing and scheduled a new hearing for January 27, 2021.

### **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. 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. Griswold’s “Allegations of Error” are factually and legally meritless. The City’s response to each of Griswold’s “Allegations of Error” is provided below:

**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.

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 Mr. Brown did not have this authority is incorrect.

**2. The Inclusion of the Phrase "New Construction" on the Permit is Irrelevant to the Legality of the Permit**

The Permit is titled "Residential Zoning Permit New Construction." [R. 5] Griswold apparently disagrees with describing the dwelling as a "new construction." The phrase "new construction" is not defined in the Zoning Code. As a matter of practice, HCP uses the phrase "new construction" to describe improvements that are not part of an existing structure regardless of other improvements on the lot or the materials used in the structure. Nothing in the Zoning Code prohibits this practice. Moreover, the inclusion of the phrase "new construction" is irrelevant to the underlying legality of the permit. HCC 21.18.020(ii) expressly allows the detached accessory dwelling unit that is the subject of the Permit. Whether the Permit refers to the dwelling as "new construction" is an irrelevant semantic issue.

### 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.

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 prescribe 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 to 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...” Homer Ord. 11-44(S). 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 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. Griswold appears to be referring to HCC 21.18.080(c). It 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 screen from public view.

The accessory dwelling is a converted shipping container. [R. 13-14] While it may have been used for transporting merchandise in the past, it is certainly not used for that purpose on the Property. It has been converted to an accessory dwelling<sup>1</sup> with a water and sewer connection. HCO has viewed the interior of the accessory dwelling and it is fully provisioned as a dwelling including sleeping, cooking, and sanitation facilities. 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.<sup>2</sup>

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. HCC 21.90.020(c)(4).

---

<sup>1</sup> See HCC 21.03.040 (defining "Dwelling" or "Dwelling Unit" 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 and "Building" as "any structure used or intended for supporting or sheltering any use or occupancy").

<sup>2</sup> *Id.*

{01103252}



The Alaska Supreme Court held that discretionary enforcement decisions are not subject to review.<sup>3</sup> 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.

### **5. The Application Was Not Deficient**

The Applicants provided all information requested on the City's Zoning Permit Application. [R. 6-8] The City Planner has the discretion to determine whether a zoning permit application is incomplete. HCC 21.70.030(b). In this case, HCP found no errors or omissions in the application and exercised its discretion to review and grant the application. It is impossible to respond to Griswold's argument regarding compliance with HCC 21.70.020 because he does not identify the procedure he believes was "not fully complied with." To the extent any information was omitted, it was not material and did not hinder HCP's review of the application.

### **6. The Applicants Paid the Appropriate Fee**

HCC 21.70.060 requires an applicant for a zoning permit to pay a fee according to the fee schedule established by the Homer City Council. HCC 21.70.060. Per the fee schedule, the fee for a zoning permit for a single family home or duplex is \$200.<sup>4</sup> The fee when the applicant commences the permitted activity without a permit is "assessed at the regular rate multiplied by one and one half (1.5) for Residential..."<sup>5</sup> In this case, the

---

<sup>3</sup> See *Yankee v. City and Borough of Juneau*, 407 P.3d 460 (Alaska 2017).

<sup>4</sup> See City of Homer Fee Schedule, [https://www.cityofhomer-ak.gov/sites/default/files/fileattachments/city\\_clerk039s\\_office/page/7514/2020\\_07\\_fee\\_schedule.pdf](https://www.cityofhomer-ak.gov/sites/default/files/fileattachments/city_clerk039s_office/page/7514/2020_07_fee_schedule.pdf), p. 16.

<sup>5</sup> *Id.*, p. 12 (n.1).

{01103252}

Applicants paid a \$300 application fee, comprised of the ordinary \$200 zoning permit fee and an additional \$100 penalty for commencing activities prior to obtaining a permit. [R. 5, 15] The applicants paid precisely the correct fee pursuant to the fee schedule. Griswold's assertion to the contrary is incorrect.

### **7. HCP Did Not Waive Any Zoning Code Requirements**

HCP followed HCC 21.70 and all other applicable laws and regulations to review and grant the Permit. HCP did not waive any such provisions. It is impossible to respond to Griswold's argument because he does not specify which provisions he believes were not complied with.

### **8. 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 discretionary enforcement authority to address such violations and there is no requirement for HCP to prescribe any particular penalty (or any penalty at all) for a violation. HCC 21.90.020(c)(4). 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. 5; 15] 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.

### **9. A Zoning Permit Appeal is not the Proper Venue to Address Driveway Permitting**

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). HCC 21.70.070. HCC 11.08 regulates driveway permits and is not part of the Zoning Code. The Homer Public Works Department processes and reviews driveway permit applications. HCP is not involved in driveway permitting.

Whether a new driveway permit is required for the Property is irrelevant to this appeal of a zoning permit issued under HCC 21.70. That issue is within the sole discretion of the Homer Public Works Department. Accordingly, driveway permitting is not a basis to challenge the issuance of the Permit. Even if it were, Griswold's argument is meritless. The Applicants submitted driveway permits for the Property with the application. [R. 18-19] Contrary to Griswold's assertion, HCC 11.08.040(a) does not require a new driveway permit when two existing lots are combined into a single lot.

### **CONCLUSION**

HCP properly issued the Permit. The proposal to construct an accessory dwelling on the Property is allowed under the Homer Zoning Code. The accessory dwelling is not a nuisance under HCC 21.18.080. HCP appropriately followed all applicable Zoning Code requirements in considering the application and issuing the Permit. Griswold's

remaining arguments are meritless. Accordingly, the Commission should uphold HCP's decision to issue the Permit.

DATED this 25th day of January, 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. 0011057

Michael R. Gatti  
Max D. Holmquist  
JERMAIN DUNNAGAN & OWENS, P.C.  
3000 A St., Suite 300  
Anchorage, AK 99503  
Phone: (907) 563-8844  
Fax: (907) 563-7322  
[mgatti@jdolaw.com](mailto:mgatti@jdolaw.com)  
[mholmquist@jdolaw.com](mailto:mholmquist@jdolaw.com)

Attorneys the City of Homer

BEFORE THE HOMER PLANNING COMMISSION

In the Matter of

APPEAL OF ZONING PERMIT 1020-782

**ENTRY OF APPEARANCE**

COMES NOW, Jermain Dunnagan & Owens, P.C., and enters their appearance on behalf of Appellee, the City of Homer. Copies of all pleadings and other documents, excluding service of process, are to be served at 3000 A Street, Suite 300, Anchorage, AK 99503.

DATED this 25th day of January, 2021, at Anchorage, Alaska.

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

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



Michael R. Gatti  
Max D. Holmquist  
JERMAIN DUNNAGAN & OWENS, P.C.  
3000 A St., Suite 300  
Anchorage, AK 99503  
Phone: (907) 563-8844  
Fax: (907) 563-7322  
[mgatti@jdolaw.com](mailto:mgatti@jdolaw.com)  
[mholmquist@jdolaw.com](mailto:mholmquist@jdolaw.com)

Attorneys the City of Homer

BEFORE THE HOMER PLANNING COMMISSION

In the Matter of

APPEAL OF ZONING PERMIT 1020-782

**CITY OF HOMER'S WITNESS LIST**

Appellee, the City of Homer (the "City") by and through its counsel, Jermain, Dunnagan & Owens, P.C., hereby provides its list of witnesses who may testify at the Appeal Hearing.

1. Rick Abboud
2. Travis Brown
3. Any other individuals identified by Appellant or necessary for rebuttal purposes.

DATED this 25th day of January, 2021, at Anchorage, Alaska.

JERMAIN DUNNAGAN & OWENS, P.C.  
Attorneys for the 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  
3000 A STREET, SUITE 300  
ANCHORAGE, ALASKA 99503  
(907) 563-8844  
FAX (907) 563-7322

{01103054}

**CITY OF HOMER'S WITNESS LIST**  
Appeal of Zoning Permit 1020-782

Page 2 of 2



## City of Homer

[www.cityofhomer-ak.gov](http://www.cityofhomer-ak.gov)

## Office of the City Clerk

491 East Pioneer Avenue  
Homer, Alaska 99603

[clerk@cityofhomer-ak.gov](mailto:clerk@cityofhomer-ak.gov)

(p) 907-235-3130

(f) 907-235-3143

### Memorandum

TO: HOMER PLANNING COMMISSION

FROM: MELISSA JACOBSEN, MMC, CITY CLERK

DATE: JANUARY 27, 2020

SUBJECT: ADDRESSING POTENTIAL PRELIMINARY MATTERS OF ZONING PERMIT  
1020-782

---

I apologize that I am unable to attend the appeal hearing tonight, I have been called away unexpectedly because of a family matter.

This memo addresses potential preliminary matters that were brought forward by the Appellant at the January 6<sup>th</sup> Special Meeting and in their brief submitted January 25<sup>th</sup>, that relate to the City Clerk's office.

1. Commissioner Petska-Rubalcava's Oath of Office, brought up on January 6<sup>th</sup>-

Deputy Clerk Krause assisted with research regarding the oath of office in Homer City Code and Alaska Statutes Title 29 and found –

Homer City Code (HCC) 4.01.110 Oath of Office - Oaths of office shall be administered for City offices including Councilmen and Mayor, which shall affirm in writing that they will honestly, faithfully and impartially perform their duties. These oaths will be kept on file at City Hall by the City Clerk. [Ord. [95-1\(S\)](#), 1995; Ord. [82-6](#) § 21, 1982].

Alaska Statutes 29.20.600 Oaths of office. Before taking office a municipal official shall affirm in writing that the duties of the office will be honestly, faithfully, and impartially performed by the official.

When Commissioner Petska-Rubalcava's appointment to the Commission was confirmed at the Council's Special meeting of July 1, 2020 she should have been provided an Oath of Office to sign. Unfortunately that did not happen and remained undiscovered until the Appellant submitted a Public Records Request for Commissioner's Oaths of Office. Upon this discovery Ms. Petska-Rubalcava was provided an oath to sign. The language in the document provided to her by the Clerk for the Planning Commission read in a manner that she was signing prior to taking office. This situation is not the Commissioner's fault, she proceeded as requested by Clerk's office staff.

2. Public Notice mailed to neighboring property owners, item 3 in the Appellants brief-

Prior to the January 6<sup>th</sup> Special Meeting the Planning Department mailed out a notice to property owners. A second public notice was not sent out pertaining to the January 27<sup>th</sup> rescheduled date, only the parties were noticed by the Clerk's Office.

Homer City Code 21.93.100 General Appeals Procedure reads- *b. 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](#).*

I interpreted this section of code to pertain to Board of Adjustment hearings.

The hearing was continued 20 days. This second meeting has been noticed in the newspaper and on the City of Homer website.

If the Commission determines there is a notice error, the only resolution I can suggest is a second continuance to allow for the Clerk's Office to mail notice 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 hearing would need to be continued to a date on or after February 16, 2021.

### 3. Witnesses –

I contacted the requested witnesses and they responded as follows:

- City Planner Abboud and Planning Technician Brown have agreed to participate.
- Public Works Superintendent Dan Gardner declined to participate due to his lack of involvement in this matter.
- Property owner's Scott and Stacy Lowry declined the request to be questioned, but will be in attendance.

As I mentioned in previous correspondence, the City doesn't have subpoena power that would require those called to be questioned.

Session 21-04, a Special Meeting of the Planning Commission was called to order by Chair Scott Smith at 5:45 p.m. on January 20, 2021 at Cowles Council Chambers in City Hall located at 491 E. Pioneer Avenue, Homer, Alaska, via Zoom Webinar.

PRESENT: COMMISSIONERS HIGHLAND, PETSKA-RUBALCAVA, BARNWELL, VENUTI, BENTZ, CONLEY AND SMITH

STAFF: DEPUTY CITY CLERK KRAUSE

### **APPROVAL OF THE AGENDA**

Chair Smith requested a motion to approve the agenda.

HIGHLAND/BENTZ– SO MOVED.

There was no discussion.

VOTE. NON-OBJECTION. UNANIMOUS CONSENT.

Motion carried.

### **NEW BUSINESS**

- a. Appeal Hearing of City Planning Staff Issuance of Zoning Permit 1020-782 issued to Scott and Stacy Lowry for their property located at 541 Bonanza Avenue.

Chair Smith announced the action before the Commission stating the purpose of the hearing was to hear oral argument from the Appellant Frank Griswold; regulations to conduct the appeal and noted the items that were provided to the Commission regarding the action before them.

Deputy City Clerk Krause acknowledged all persons in attendance for the record as follows:

Appellant: Frank Griswold

Appellee: Max Holmquist, Esq. & Michael R Gatti, Esq. Jermain, Dunnagan & Owens, P.C.  
Attorneys for the City of Homer

Witnesses for Appellee: Rick Abboud, City Planner and Travis Brown, Planning Technician

Property Owner: Scott & Stacy Lowry



## PRELIMINARY ISSUES

Chair Smith stated that the Commission would address preliminary matters at this time. He continued by relaying that at the January 6, 2021 Special Meeting two preliminary matters were raised by Mr. Griswold and a third was outlined in his brief. Due to one of those issues involving Vice Chair Petska Rubalcava and himself, he would pass the gavel to Commissioner Highland to address those preliminary matters raised against them first.

Max Holmquist interjected that the City would like to address a preliminary matter on the notice issue that was discussed in memorandum from City Clerk Jacobsen. He believed that may present an issue with going forward and suggested that the Commission may want to address that matter before other preliminary issues.

Deputy City Clerk Krause responded that the notice issue was referenced in the City Clerk's memorandum and will be handled under additional preliminary issues under the procedural outline provided.

Commissioner Smith turned the meeting over to Commissioner Highland.

Acting Chair Highland addressed what she believed was an error in stating the Zoning Permit number and wanted that corrected for the record and recognizing that the property owners, Scott & Stacy Lowry were present as she believed they were not recognized by the Clerk. She then addressed Mr. Griswold, stating that the Commission has read his brief, asking if he had any additional information to share, not included in his brief, regarding Commissioner Smith.

Mr. Griswold stated that he had other issues, but felt it was explained in his brief and he had nothing to add regarding Mr. Smith.

Acting Chair Highland requested a motion.

BENTZ/PETSKA-RUBALCAVA – MOVED TO EXCUSE MR. SMITH FROM PARTICIPATION IN THIS APPEAL HEARING DUE TO HIS INABILITY TO SERVE AS AN IMPARTIAL ADJUDICATOR AS SUGGESTED BY THE APPELLANT.

City Attorney Holmquist responding for the City stated that in accordance with Homer City Code 1.18.048 Commissioner Smith comments highlighted in Mr. Griswold's brief did not demonstrate that he has any bias or partiality with regard to the Zoning Permit since they were in context of denying the Conditional Use Permit, so in their perspective it is hard to imagine how the comments can be construed as bias in favor of the applicants who were applying for the conditional use permit.

Commissioner Bentz stated a recollection from the September 2, 2020 meeting and believed Commissioner Smith from his tone and demeanor did not exhibit bias but was trying to work

through the issue and trying to make sure that everyone was aware of the process and that the Commission tries to consider all voices and move forward as a service to the city.

Deputy City Clerk Krause noted for the record that the Appellant had his hand raised.

Acting Chair Highland requested clarification from the Clerk if that would be permissible.

Deputy City Clerk Krause stated the Commission allowed the Appellee to comment and so to be fair they should allow the Appellant to comment.

Mr. Griswold stated that the procedures that were cited by the City Attorney indicated that it would be appropriate for Mr. Smith to be included in these discussions. He believed Mr. Smith should be the one that should be asked questions about his potential partiality or animosity. He wanted to further state that just because the Commission denied CUP 20-14 does not mean that Commissioner Smith was not biased or lacked partiality. There was an implied agreement that that request would be denied and quickly replaced by an alternative that would put the Lowry's in the position that they wanted to be in.

Commissioner Bentz acknowledged that typically when motions of conflict are made they do ask the Commissioner if they feel they have a conflict and would put that question to Commissioner Smith.

Commissioner Smith responded that he feels he does not carry any bias, his comments at the time were meant to recognize that there were various players in the discussion including Mr. Griswold's laydown at the time. He is fully aware of the position and process that he represents and that it is a part of the system, public hearing and public testimony, it needs to be there. He fully embraces his role so does not currently, or then, carry bias on the matter.

Acting Chair Highland stated for the record that she was going to exercise caution and vote that Commissioner Smith does have a conflict and should not participate in this matter. She inquired if there were any additional objections, noting her own.

There were no additional comments from the Commission.

Acting Chair Highland called for a roll call vote.

VOTE. NO. BENTZ, PETSKA-RUBALCAVA, CONLEY, VENUTI  
VOTE. YES. HIGHLAND.

Motion failed.

Commissioner Highland turned the meeting back over to Chair Smith.

Chair Smith requested Mr. Griswold to address the matter regarding Commissioner Petska-Rubalcava.

Mr. Griswold stated that he expressed his concerns at a previous hearing and believed that the Commission did not address his concerns regarding the oath of office, although that is not as well defined in City Code as bias and conflict of interest. He then acknowledged the memorandum from City Clerk Jacobsen and the circumstances as presented but he will reserve it as a point on appeal because he believed that if someone does not have a valid oath of office anything that they participate in is potentially invalidated. One of his concerns in particular is the issue on appeal is whether the city can allow an “after the fact zoning permit” and in this case, this is an “after the fact oath of office” so that particular connection bothers him and if somebody thinks that an “after the fact oath of office” is okay they might believe “after the fact zoning” is okay.

Chair Smith thanked Mr. Griswold for his comments noting that they were in record.

City Attorney Holmquist stated in rebuttal that Commissioner Rubalcava did not take any action on this matter prior to signing her oath of office and so there is no reason that she should be precluded from participating in this hearing or in this matter.

Chair Smith called for a motion.

HIGHLAND/BENTZ MOVED TO EXCUSE COMMISSIONER PETSKA-RUBALCAVA FROM PARTICIPATION IN THIS APPEAL HEARING DUE TO CONFLICT WITH HER OATH OF OFFICE AS RAISED BY THE APPELLANT.

Commissioner Highland expressed that she would be erring to the side of caution and voting that Commissioner Petska –Rubalcava had a conflict.

Commissioner Bentz requested clarification on the date that the oath of office should have been signed since her reappointment, noting that they have not met in person due to COVID 19 and if the previous oath on record would not be effective.

Deputy City Clerk Krause stated that currently the content of the oaths of office as written expire with the Commissioner’s term of office.

Chair Smith believed that whether or not Commissioner Petska-Rubalcava was in good standing when they addressed CUP 20-14, she is now and is on similar footing as Commissioner Conley and does not believe that technicality, at this level, of not having the piece of paper signed, does not present an issue for this hearing while maybe in higher courts it may. He believed that Commissioner Petska-Rubalcava did not have any divisive intent or trying to work around the rules. He believed the Commissioner to be in good standing as the rest of the commission is today and capable of hearing this appeal with total authority.

Chair Smith inquired if there were any additional comments, hearing none he requested the Clerk to perform a roll call vote.

VOTE. NO. SMITH, CONLEY, VENUTI, BENTZ  
VOTE. YES. HIGHLAND.

Motion failed.

Chair Smith then requested Mr. Griswold to add to his expressed complaint regarding Commissioner Venuti.

Mr. Griswold proceeded to explain that the motions regarding conflict of interest do not require a second because they are mandatory and when brought forth they are obligated to discuss them but he would hate to see this disregarded just because they did not have a second.

Mr. Griswold continued by stating that Mr. Venuti made derogatory remarks about him that was addressed by Mr. Bob Shavelson at the end of the meeting. Mr. Venuti claimed that because of the past litigation with the city those negative comments were justified and furthermore similar sentiments have been expressed to City Council by Mrs. Venuti, his wife, who thinks that he has too many opportunities to win his cases, suggesting it is not fair to the city that I have appeal rights, but when a city official expresses publically, an appellant or citizen who raises concerns and not only expresses those concerns but encourages others or justifies the negative comments of others, it does show animosity whether overt or implicit it affects Mr. Venuti's ability to be impartial and in this case, Mr. Griswold stated he included in his brief the various reasons that you can look at to determine partiality or when someone has animosity towards one party or favors another.

Chair Smith then asked the Appellee if they wanted to offer rebuttal.

City Attorney Holmquist stated that the city did not have comment on this issue.

Chair Smith requested a motion.

HIGHLAND/BENTZ MOVED TO EXCUSE COMMISSIONER VENUTI FROM PARTICIPTION IN THIS APPEAL HEAIRNG DUE TO HIS BIAS AS SUGGESTED BY THE APPELLANT.

Commissioner Highland stated that she will be voting that Commissioner Venuti has a conflict of bias.

Commissioner Venuti stated that he had no agenda, his purpose in participating in public service is to serve the community in a friendly and inclusive manner. He continued by stating that his mantra has always been to act purposely and with civility in this life and believed that his remarks

were twisted around to become confrontational which deflects from the successful resolution of this appeal.

Commissioner Venuti further stated that his comments were intended to support any individual a right to disagree that the Planning Commission's decisions and absolutely no animosity toward anyone was intended and he is sorry that the Appellant has misinterpreted his remarks and is trying to use this to cloud the issue at hand.

There were no further comments and Chair Smith called for the vote.

VOTE. NO. BENTZ, PETSKA-RUBALCAVA, CONLEY, SMITH.

VOTE. YES. HIGHLAND.

Motion failed.

Chair Smith inquired if Mr. Griswold had any other preliminary issues.

Mr. Griswold noted that there was an issue with the Notice as the City Clerk noted in her memorandum. He then stated that was his understanding on delaying this appeal 21 days in order to notice the neighboring property owners as directed under Homer City Code. He believed a new date was suggested of February 16<sup>th</sup> which he stated that it would be very prejudicial to his side since he will be preparing for another appeal. He further stated that it would be perilous to proceed in this hearing when the Commission has not properly followed code and notified the property owners within the 300 foot periphery.

Chair Smith stated that currently the Commission cannot obtain legal counsel, the city attorney is representing the city, Mr. Abboud is a witness and stated his understanding of this hearing and he may be wrong but that this meeting did not have a Public Hearing attached to it.

Chair Smith requested input from the other commissioners on this matter.

Chair Smith acknowledged that City Attorney Holmquist would like to offer rebuttal.

Commissioner Bentz stated that in reflecting on city code and echoing her thoughts on the matter about parties eligible to appeal the notice of appearance for the party, witnesses called and did not really want to speak to the public notice for this meeting versus the previous initial public notice that was sent out for this appeal hearing but the fact of new evidence or changed circumstances in the code the Board is not supposed to be accepting new evidence or change of circumstances but making their decision on the record.

Commissioner Highland requested clarification on the sentence that was shown in city code 21.93.100.(b) that the neighboring property owners should have been notified or is Commissioner Smith and Bentz correct.



Chair Smith requested the cited code by Commissioner Highland.

Deputy City Clerk Krause requested a moment to pull up the city code to review the cited language.

Commissioner Bentz read the language as cited in 21.93.100(b) confirming that was done with the Clerk.

Chair Smith stated that this meeting was not a Public Hearing and only a Special Meeting so he opined that it would fall under a different criteria and requested clarification from the Clerk.

Deputy City Clerk Krause noted that city code addresses the appeal hearing which is what this meeting is and city code does not cite what the process is in continuance but notice is required to be sent to the property owners.

Commissioner Bentz recited city code 21.94.030 into the record and believed that it was done prior to the January 6, 2021 meeting which was the first meeting on this matter.

City Attorney Holmquist speaking on behalf of the city and reiterating that they cannot provide legal advice to the Commission and did not find out about the notice issue until this afternoon but believe that notice should be sent out in accordance with 21.94.030 and would request a continuance based on the requirement as cited in city code.

Chair Smith acknowledged Mr. Griswold raised hand and requested he wait just a few moments until he could receive input from the Commission.

There were no further comments from the Commissioners and Chair Smith requested Mr. Griswold make his comment if it was in regards to a continuance.

Mr. Griswold commented on the previous gross misunderstanding on this being a closed record and explaining that it is an open evidentiary hearing and they are supposed to take evidence from parties and the public. The public doesn't just speak when the meeting is over, referring to the adopted procedures, the commission then opens the floor to comments of interested persons and they get 10 minutes, not just three minutes to provide testimony. It would then be part of the record that if later it gets appealed, then it would go to the Board of Adjustment and be a closed record.

Mr. Griswold continued by explaining that if the surrounding property owners have no knowledge of the hearing being conducted then they do not have the opportunity to file briefs or provide testimony on the subject. He further commented on being astounded that people would misinterpret the improper code and deciding that this is not a public hearing and opined that is why the Commission needed their own attorney to keep them straight and he further noted that if they failed to honor the public notice it would be automatic grounds for reversal.

Chair Smith requested a motion for a continuance.

BENTZ/VENUTI MOVED TO CONTINUE THE APPEAL HEARING TO SUCH A TIME AS THAT COULD BE PROPERLY NOTICED.

Chair Smith opened discussion on possible date for continuance opining that this needed to be resolved by a specific date due to time requirements.

Mr. Griswold requested permission to comment relaying that he could resolve that question.

Chair Smith gave the floor to Mr. Griswold who proceeded to state that the Commission would need to decide the issue either 45 or 60 days after the hearing. Until the hearing is completed they are under no deadline. The City Clerk suggested the earliest date that this could be continued to is February 16, 2021 in accordance with her memorandum.

Commissioner Bentz questioned the requirement that all appeals must be heard within 60 days after the appeal record has been prepared and would like to know what date that was completed.

Deputy City Clerk Krause responded that the record was ready on December 30, 2020.

City Attorney Holmquist offered that the continuance is allowed by city code beyond the timeframe for good cause shown and I believe this would be a good cause to continue this hearing further.

Commissioner Highland noted that Mr. Griswold previously stated he could not attend February 16, 2021 and wondering if we can schedule this later in February or March or even for our next meeting date of February 17<sup>th</sup> instead of a worksession.

The Commissioners briefly discussed possible dates and determined that it would be best to leave it in the hands of the Clerk's Office to arrange a mutually acceptable date between all parties involved.

Chair Smith inquired if Mr. Griswold was acceptable to that solution.

Mr. Griswold responded that for the record he did not state that February 16<sup>th</sup> was any worse than any other day and that it was not in his best interest to delay this, but he thought of the necessity that it be delayed and that no matter what date it would be, he has another appeal before the Board of Adjustment and it is just a bad situation as he has spent time to be prepared for tonight but he recognizes that it would be improper for the Commission to hold the meeting tonight without the proper notice.

Chair Smith requested confirmation from Mr. Griswold that he was okay with allowing the Clerk to establish a date by March 16<sup>th</sup>.

Mr. Griswold responded that he would, but hope that it would be done well in advance of that but he was okay with the Clerk contacting parties and establishing a mutually agreeable time.

Chair Smith confirmed with the City Attorney Holmquist and Mr. and Mrs. Lowry regarding the continuance that the procedure would be acceptable.

Chair Smith inquired if there was any further discussion, hearing none he asked if there was any objections to the motion to continue to a date to be determined, there were none.

The Commission agreed by consensus to the continuance of the Appeal Hearing on Zoning Permit 1020-782.

Chair Smith recognized that Mr. Griswold had his hand raised, then confirmed with the Clerk that there were no additional items that they had to address before concluding the meeting.

Chair Smith inquired what Mr. Griswold would like to address.

Mr. Griswold stated that in the memorandum submitted by City Clerk Jacobsen on page two that the city did not have subpoena powers, then proceeded to explain what a subpoena actually was and that the Lowry's were in attendance and that they declined being questioned, but noted that the Commission's recently adopted procedures authorizes parties and the Commission to question the Lowry's. He noted that there is no place in city code or the adopted procedures that allows that the Lowry's can attend but decline to be questioned. The prospective witness, Superintendent Dan Gardner also declined to attend. The city does not require subpoena powers to request a Public Works supervisor with professional knowledge about a critical issue on appeal to attend the hearing and he believed it would be critical to address these issues now.

Chair Smith acknowledged Mr. Griswold's comments, even though it is written regarding the Lowry's decision to attend but not be questioned and even though it is understood about Mr. Gardner's participation, he chose not to attend. The Commission did not plan to address that type of decision at this meeting and he believed it would be appropriate for all parties to be able to prepare for and reflect on what responses to that might be, rather than trying to process that now since the Commission does not have legal counsel now nor will they obtain legal counsel, he believed, in the future over this matter. Chair Smith stated that it would be best for the Commission not to process that request at this time unless there is overwhelming objection by other Commissioners.

Chair Smith opened the floor to comments from the Commission and there were none offered.

Chair Smith opened the floor to City Attorney Holmquist for comment.

City Attorney Holmquist noted that the city was prepared to respond at this time but would not be opposed to discussing at the beginning of the next hearing as well whichever the Commission would prefer.

Deputy City Clerk Krause confirmed for Chair Smith that a motion was not required, that the Commission dispensed of the motion to continue the hearing, noted Mr. Griswold's objection and stated that it can be addressed at that time.

Chair Smith asked if there were any additional items that required to be addressed at this time.

City Attorney Holmquist stated that Mr. Griswold filed what was titled a reply brief and that was not authorized under the hearing procedures that the City Clerk distributed and the City would move to strike it. They can do this in writing following this hearing if that would be the Commission's preference. The City would be prejudiced if the Appellant, Mr. Griswold, is allowed to file an additional brief that was not authorized by the procedure that was given out by the Commission prior to the hearing. The city has not had the same opportunities as Mr. Griswold if that brief is allowed so the city is requesting that the brief be stricken from the record.

Mr. Griswold requested permission to respond.

Chair Smith stated no, he did not think it was appropriate to respond in this situation. He stated that Mr. Griswold would be able to address it at the next meeting.

Mr. Griswold interjected why not and proceeded to state that this showed how biased that Chair Smith was since he was denying him his due process rights to respond to an issue that was brought up by City Attorney Holmquist regarding his reply brief. He opined that it was blatantly biased.

Chair Smith continued to explain that he meant no bias, he was trying to give everyone a fair process, he was no lawyer but that in all fairness Mr. Griswold had submitted an additional brief and the city did not; so the city should also have the ability to submit an additional brief and to not allow them the ability or time to submit one would show bias, so I do not give you, Mr. Griswold, at this time the ability to respond.

Mr. Griswold stated that Chair Smith made his decision without hearing his response and that was prejudicial and that he was unfit to be a Chair or a Commissioner.

Chair Smith recognized Commissioner Highland.

Commissioner Highland noted that the procedures stated that briefs must be filed with the City Clerk by 4:30 p.m. on Monday, January 25, 2021.

Mr. Griswold interjected that he would like the Commission to vote on whether he has an opportunity to respond to the City Attorney's objection to his brief.

Commissioner Bentz referencing the procedural aspect of the issue, but that since the Commission voted to continue the hearing that the issue should be addressed at that time when there would be ample time to discuss their concerns. But since we are at the end of our meeting I believe it would be wise to continue to hear what the three minute comments are to make sure they are hearing the issues fully and then the issues can be addressed when the hearing is continued.

Deputy City Clerk Krause stated that the Commission dispensed with a motion to continue the hearing and should proceed to Comments of the Audience.

Chair Smith noting the comments received he will proceed. He informed Mr. Griswold that if he comments under this topic in rebuttal to City Attorney Holmquist statement they will not be addressed he will have opportunity at the continuance to present his objections.

#### **COMMENTS OF THE AUDIENCE**

Frank Griswold commented that he warned the Commission when they were doing the procedures, through emails to the City Clerk that they were not allowing near enough time for any of these different points and that they allocated only 20 minutes for preliminary matters and they have gone well over one hour; he pointed out that in the procedures it states specifically that the hearing parties may testify and among other things submit evidence. He further stated that he had requested from the City Clerk direction on how he was to submit evidence at the meeting if it was being conducted telephonically. She did not respond so he submitted his brief well in advance of the meeting as evidence and that other provision that had a deadline of January 25<sup>th</sup> that applied to the opening briefs, it did not address reply briefs and you have so stifled the parties from giving testimony that if I had taken the time that you allocated me to present my oral argument, which I would have done in the brief, I would not have had time to question witnesses or anything else, so it's your own actions that have so prejudiced me that I am forced to provide my reply brief as evidence at the meeting. Instead of leisurely giving oral argument so your procedures are to blame, not me and you just categorically say oh, it looks like we are not going to have legal counsel and probably never going to have, well the big question here is all these legal issues that come up, why don't you get legal counsel, you need it more than anybody. You need it more than anybody, the planning department can take care of themselves, the board of adjustment is mandatory that they have legal counsel, you should demand legal counsel. The only reason you don't is the system of hiring legal counsel for the planning department forces you to rely on their legal advice and not your own. This is prejudicial to an appellant and he wished that someday the commissioners would be able to be an appellant and then see how prejudicial this whole system is, you do not want to hear anybody question the authority or a decision of your city planner or planning staff. It is very apparent and this may be implicit but to an outsider the views, the commission may think they are acting properly but when you allow one side to raise



an argument and not allow the other side to respond, you would not do that if I were represented by counsel, if I was represented by a suit and tie you would show more respect. That's all I got good night.

Chair Smith thanked Mr. Griswold for his comments and will carry them forward to the next meeting.

City Attorney Holmquist stated that in regards to those comments the board of adjustment procedure does call for reply briefs specifically, but if you look at the procedure for the Planning Commission appeal hearings it just simply states that any person may file a written brief and the procedure set by the Commission prior to the hearing had a deadline for a written brief so the intention was that each party gets to file the written brief but there are no reply briefs and Mr. Griswold is trying to find a way around that by filing an extra brief. If Mr. Griswold has an extra argument that he would like to make he can certainly do that during oral arguments during the course of this hearing but filing of an extra brief would be prejudicial to the city and it would be disregarding the procedures that were established prior to the hearing.

Commissioner Conley thanked the Lowry's for their patience.

Commissioner Bentz expressed appreciation for the patience from all parties noting that the Commissioners have never dealt with an appeal as the body is composed and that they are learning as they go and are very interested in following due process and are doing the best that they can in their voluntary appointed positions.

Chair Smith agreed with Commissioner Bentz and that they do not mean any disrespect to the parties involved. He believed that it was important to hear all sides and to follow the process that is legal.

#### **ADJOURN**

There being no further business to come before the Commission, the meeting adjourned at 6:48 p.m. The next Regular Meeting is scheduled for Wednesday, February 3, 2021 at 6:30 p.m. A Worksession is scheduled at 5:30 p.m. All meetings are 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

Approved: April 7, 2021

ON APPEAL TO THE HOMER PLANNING COMMISSION

FRANK GRISWOLD,

Appellant,

v.

TRAVIS BROWN, SCOTT LOWRY,  
AND STACY LOWRY,

Appellees.

\_\_\_\_\_/ Appeal of Zoning Permit 1020-782

**MOTION FOR APPOINTMENT OF LEGAL COUNSEL TO REPRESENT THE  
PLANNING COMMISSION**

Appellant Frank Griswold hereby moves that the Planning Commission be represented by impartial, independent legal counsel for all future proceedings concerning this matter. During the January 27, 2021 appeal hearing, the Commission displayed widespread ignorance about applicable appeal procedures and at one point confused Board of Adjustment appeal procedures with Commission appeal procedures. The Commission allowed the attorney representing the Planning Department/Administration, Max Holmquist, to give the Commission legal advice as to whether Chair Smith and Commissioner Venuti should be disqualified from participation due to bias despite the fact that no provision of HCC 21.18.048 allows a party or his legal counsel to comment on or otherwise influence the Commission's determination as to whether a Commissioner's ability to make an

Motion for Appointment of Legal Counsel/Page 1



Originally filed  
w/ clerk 1-28-21  
first filing misplaced

impartial decision is impaired. Couching legal advice with "I am not your attorney but ..." does not make it otherwise. Attorney Max Holmquist does not represent the Commission as a whole or its members individually and should not be dispensing partisan legal advice to the Commission. The lay Commission is repeatedly forced to seek and adopt legal advice proffered by Mr. Holmquist because the Commission has no attorney of its own. This is highly prejudicial to the Appellant and will continue to be so at the upcoming continued appeal hearing(s) unless independent, impartial, legal counsel is appointed to represent the floundering Commission, no disrespect intended. At some point the Commission will need to go into deliberations and then prepare findings of fact and issue a formal decision. It would be both helpful and prudent for the Commission to deliberate in consultation with an impartial attorney as allowed by HCC 21.93.300(e) and have the assistance of impartial legal counsel in the preparation of the ensuing decision and findings of fact as allowed by HCC 21.93.300(g).

DATED: January 28, 2021.

By: Frank Griswold  
Frank Griswold



## City of Homer

[www.cityofhomer-ak.gov](http://www.cityofhomer-ak.gov)

## Office of the City Clerk

491 East Pioneer Avenue  
Homer, Alaska 99603

[clerk@cityofhomer-ak.gov](mailto:clerk@cityofhomer-ak.gov)

(p) 907-235-3130

(f) 907-235-3143

### NOTICE OF HEARING

To Parties of Record: Frank Griswold, Appellant  
Scott and Stacy Lowry, Property Owner  
Rick Abboud, City Planner

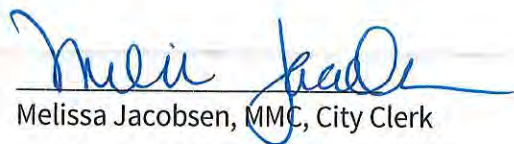
The hearing on the appeal to the Planning Commission regarding Zoning Permit 1020-782 issued to Scott and Stacy Lowry for their property located at 541 Bonanza Avenue, was continued and will be held on Thursday, March 11, 2021 at 5:30 p.m. The hearing will be conducted by Zoom Meeting and pursuant to Homer City Code 21.93.300 this meeting is open to the public.

To join the Zoom meeting on your computer go to [www.zoom.us](http://www.zoom.us) and select Join A Meeting. From there follow the prompts to enter the meeting ID and password below.

Meeting ID: 940 8082 9916 Passcode: 052186

To participate by phone only, you may dial one of the following phone numbers and enter the same meeting ID and passcode, 1-669-900-6833, 1-253-215-8782 or Toll Free 888-788-0099 or 877-853-5247.

Pursuant to Homer City Code Section 21.94.030 property owners within a 300-foot periphery of the site that is the subject of the proposed action shall be noticed.



Melissa Jacobsen, MMC, City Clerk

Cc: Attorney Gatti, City Manager

ON APPEAL TO THE HOMER PLANNING COMMISSION

FRANK GRISWOLD,

Appellant,

v.

TRAVIS BROWN, SCOTT LOWRY,  
AND STACY LOWRY,

Appellees.

\_\_\_\_\_/ Appeal of Zoning Permit 1020-782

**Evidence**

The Commission's recently adopted "Procedure for Planning Commission Hearing" expressly states that **at the hearing** the parties may submit evidence. In accordance with this Procedure and because the March 11, 2021 appeal hearing is being conducted in a virtual (Zoom) meeting where the physical introduction of written evidence is not feasible, Appellant Frank Griswold hereby submits this evidence prior to the hearing.

HCC 21.93.300(d) underscores the importance of developing a full record. The Procedure sets unreasonably short time limits for presenting testimony, other evidence, questioning witnesses, oral argument, cross-examination, and rebuttal oral argument. While time limits may be appropriate for Board of Adjustment proceedings where the record is closed, the Commission is acting as a trial court where the record is still being established.



The Commission does not have the authority to set arbitrary time limits on the presentation of that evidence or otherwise suppress the introduction of evidence to thwart the development of a full record.

In a parallel but unrelated appeal before the Homer Board of Adjustment, one of the first orders of business was "Identification of the Parties." This procedure should be followed in this appeal as well. The Commission's Procedure states: "The Commission may question each of [the] parties listed above." However, the Procedure merely cites "Appellant" and "Appellee" above without naming the associated parties. There are multiple Appellees in this appeal, including property owners Stacy Lowry and Scott Lowry. The Procedure fails to acknowledge that pursuant to HCC 21.93.300(d) members of the general public have the right to submit written briefs or testimony and sets no deadline for the filing of those written briefs or testimony.

Among others, I requested that Dan Gardner and the Lowrys be made available for questioning as witnesses. This should not require any subpoenas. A subpoena is a writ ordering a person to attend a tribunal; it is not something needed to require a person already in attendance to respond to direct questioning and/or cross-examination. In proceedings covered by the Alaska Evidence/Page 2

Administrative Procedures Act, subpoenas are governed by AS 44.62.430. AS 44.62.430(a) provides that before the hearing begins, the agency shall issue subpoenas at the request of a party, in accordance with ALASKA R. CIV. P. 45(g). AS 42.62.590 allows the superior court in the judicial district where the hearing is being held to use the court's contempt powers to enforce a hearing officer's subpoena or other lawful order. The agency prepares a written certification setting out the details of the alleged subpoena violation. The person seeking to compel the subpoena initiates the enforcement proceeding by filing a petition requesting enforcement of the subpoena and including the written certification. The court will then issue an order to show cause why the person failing to honor the subpoena should not be held in contempt. Anyone who is competent can be compelled by the Commission to give evidence in this matter. The Commission and/or Administration can compel Public Works Supervisor Dan Gardner, who has knowledge about matters relevant to this appeal, to attend the March 11, 2021 hearing as a witness without the need for a subpoena. At the September 2, 2020 Commission meeting when they were not under oath to tell the truth, both Stacy and Scott Lowry were eager to testify to the Commission and respond to its questions regarding CUP 20-14. However, at the January 27, 2021 continued appeal hearing

regarding Zoning Permit 1020-782, the Lowrys indicated that they did not intend to respond to questioning. The Lowrys gave their implied consent to respond to questioning when they submitted their application for Zoning Permit 1020-782. The Commission should compel them to respond to material questions regarding their application and if they refuse to do so they should be held in contempt by the Commission and sanctioned appropriately. Alaska Rule of Evidence 512(d) permits a negative inference to be drawn against a party who asserts the Fifth Amendment in a civil (non-criminal) action.

The representation role of the Homer City Attorneys is impermissibly ambiguous, prejudicial, and contrary to their prescribed duties thereby creating a potential conflict of interest. The City Attorney(s) should be required to disclose which party or parties they are representing. City Planner Rick Abboud is not a legitimate appellee because he is not a captioned party, would not be aggrieved by the invalidation/denial of Zoning Permit 1020-782, and did not file an appeal or cross appeal. Boroughs and cities are not individual legal entities recognized in the U. S. Constitution, but states are. The Kenai Peninsula Borough derives its zoning powers from the State of Alaska and the City of Homer derives its zoning powers from the KPB and the Homer Planning Commission derives its

powers from the City of Homer. *Governmental Entity* means any (a) multinational, federal, national, provincial, territorial, state, regional, municipal, local or other government, **governmental or public department**, central bank, court, **tribunal**, arbitral body, **commission**, **administrative agency**, **board**, bureau or agency, domestic or foreign, (b) subdivision, agent, **commission**, **board**, or **authority of any of the foregoing**, or (c) quasi-governmental or private body exercising any regulatory, expropriation or taxing authority under, or for the account of, any of the foregoing, in each case, that has jurisdiction or authority with respect to the applicable Party. Thus, the Homer Planning Commission, the Planning Department/Administration, and the Homer Board of Adjustment are all distinct, legally recognizable entities of the City of Homer. Different agencies within a government entity should be considered separate clients when they have opposing positions in matters in controversy. Josephson & Pierce, To whom Does the Government Lawyer Owe the Duty of Loyalty When Clients Are in Conflict, 29 Howard Law J. 540; Stern & Gressman, *Supreme Court Practice* (5th Ed. 1978), at 768. HCC 2.16.010 addresses the City Attorneys' duty of loyalty as follows: "The City Attorney shall act as legal advisor to and be attorney and counsel for the Council and shall be solely responsible to the City

Council." HCC 2.16.010(a) states: "He [referring to the City Attorney] shall advise any officer or department head of the City in matters relating to his official duties when so requested and shall file with the City Clerk a copy of all written opinions given by him." This is qualified by HCC 2.16.010(e) which states: "He shall at all times cooperate with the City Manager and shall provide such information and reports and perform such duties as are requested by the City Manager *so long as they are not inconsistent with the duties of his office as provided in this section.*" Advocating for the City Planner and/or for the City Administration in an appeal before the Commission is clearly inconsistent with the duties of the City Attorney prescribed in HCC 2.16.010.

When the application for Zoning Permit 1020-782 was submitted, no public notice was provided to surrounding property owners. In this particular case the city's failure to so notify the surrounding property owners is essentially moot in light of the fact that this appeal was nonetheless filed. However, the public interest exception to the mootness doctrine applies because of the negative due process implications for future zoning permit appeals. Whenever a zoning permit is issued, all property owners within a 300-foot perimeter of the subject lot should be notified so that they may exercise their appeal



rights. The requirement that recipients of a zoning permit post it in a visible location is rarely complied with and never enforced and therefore does not provide a valid substitution for written public notification.

This Commission is being hoodwinked. The Lowrys applied for a zoning permit to construct a 360 square foot single family dwelling; they did not apply for an accessory dwelling unit and they did not receive a zoning permit for an accessory dwelling unit. HCC 21.70.020(b) requires that the application for zoning permit include the zoning code use classification under which the permit is sought. Accessory dwelling unit is not mentioned on the application or zoning permit. The water/sewer permit for the modified connex was illegally issued; one lot cannot have two water/sewer services. This is why the Memorandum of Understanding required the former owner to remove one such service when in 1993 he combined two lots into one. At page 2, the City Attorneys claim that "HCP found that the proposed 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." Note that no reference to the record was provided for this claim and here is why: No such finding was ever made and the converted connex does not constitute an accessory dwelling unit. The City Attorneys posit that HCC



21.90.020(b) authorized Mr. brown to issue the permit but it did not. There is also no evidence in the record that Planning Technician Travis Brown was being supervised by City Planner Rick Abboud when he issued Zoning Permit 1020-782. Furthermore, HCC 21.70.030(a) takes precedent over HCC 21.90.020(b) because it is more specific. The longstanding rule in Alaska is that "if two statutes conflict, then the specific controls over the general." *Allen v. Alaska Oil and Gas Conserv. Com'n.*, 147 P.3d 664 at 668 (Alaska 2006). Furthermore, where there is a conflict in land use codes, the more restrictive code governs. *Bluett v. County of Cook*, 19 Ill. App. 2d 172, 153 N.E.2d 305 (1958); *City of Richiawn v. McMakin*, 313 Ky. 265, 230 S.W.2d 902 (1950); *Szilvasy v. Saviers*, 70 Ohio App. 34, 44 N.E.2d 732 (1942). HCC 21.70.030(a) specifically states that the City Planner will review the application to determine whether the proposal complies with the zoning code and other applicable provisions of HCC and determine whether all permits, including driveway permits and water/sewer permits, and all approvals required by applicable Federal, State, or local regulation have been obtained. HCC 21.70.030(a) authorizes the City Planner to refer the application to other city officials for review, comment, or approval for compliance with HCC but ultimately only the City Planner can issue the zoning permit. Planning Technician Travis

Brown is a city employee but he is not a city official. HCC 1.18.020 defines "city official" as follows: "City official" means a person who holds elective office under the ordinances of the City, or who is a member of a board or commission whose appointment is subject to confirmation by the City Council." HCC 1.10.010 addresses indemnification from liability and distinguishes between city employees and city officials.

It was inappropriate and deceitful for HCP to categorize the subject structure as "new construction" on the zoning permit when, in fact, it is an old converted connex shipping container. I never stated or implied that a CUP is required for a detached accessory dwelling unit; I maintained that the subject structure is, as indicated on the application and ensuing zoning permit, a single family dwelling and not a detached accessory dwelling unit. A second single family dwelling on the subject lot would clearly require a CUP per HCC 21.18.030(j). As I stated in my brief, the two totally independent structures on the lot are not occupied by a single family and the converted connex is not incidental to or subordinate to the mobile home.

No provision of HCC 21.18.080(c) requires a shipping container to have been used for transporting merchandize to the Property or to be storing items inside to be considered a nuisance requiring screening from public view. HCP has

discretionary enforcement authority but it does not have the authority to approve a zoning permit that violates city code. That is what the City Planner's review under HCC 21.70.030(a) is designed to prevent. I appealed the issuance of Zoning Permit 1020-782, not some non-existent enforcement order.

The procedures not fully complied with on the Application form are clearly delineated in my brief. If simultaneous briefing were not city policy, Appellees could have responded to my brief instead of my less developed Points on Appeal. The information omitted from the application was extremely material and severely hindered HCP's review of the application.

Applicants' failure to obtain the prerequisite zoning permit prior to craning in the converted connex cannot be dismissed as a mere technical violation. Neither HCP nor the Commission has the discretion to waive HCC 21.70.010(b). HCC 21.70.030(c) states as follows: "In granting a zoning permit, no City official or employee has authority to grant a waiver, variance, or deviation from the requirements of the zoning code and other applicable laws and regulations, unless such authority is expressly contained therein. Any zoning permit that attempts to do so may be revoked by the City Manager as void. The applicant, owner, lessee, and occupant of the lot bear continuing responsibility for compliance with the zoning code



and all other applicable laws and regulations." Most Commissioners swore an Oath of Office to defend and support the Ordinances of the City of Homer, not the fee schedule. The additional \$100 fee for after-the-fact zoning permits was enacted by Resolution, not by Ordinance, and provides no deterrent whatsoever to violating HCC 21.70.010(b). In fact, limiting a potential violator's liability to such a de minimus amount encourages violations.

HCP was required to investigate driveway permits. HCC 21.70.030(a) requires the City Planner to review the application to determine whether the proposal complies with the zoning code **and other applicable provisions of HCC** and determine whether all permits, including driveway permits, and all approvals required by applicable Federal, State, or local regulation have been obtained.

HCC 21.90.090 lists the following as violations of Title 21:

A structure, alteration of a structure, or use of land or a structure that conflicts with a provision of the Homer Zoning Code, or a regulation or a permit issued under the Homer Zoning Code.

To use or occupy a structure, land or water other than as allowed by the Homer Zoning Code, regulations, or a permit issued under the Homer Zoning Code.

To erect, construct, reconstruct, enlarge, move, repair or alter a structure or part thereof other than as allowed by the Homer

Zoning Code, a regulation or a permit issued under the Homer Zoning Code.

To develop, occupy or use any land or structure contrary to or in violation of the terms of this title or the terms of any permit issued under this title.

To develop, occupy or use any land or structure in any manner for which a permit is required under the Homer Zoning Code without such a permit or after a required permit has been suspended or revoked.

To knowingly act in any manner declared by the Homer Zoning Code to be prohibited, unlawful, a violation, or an offense.

To cause another to commit a violation of this title.

Each act or condition in violation of this title, and every day upon which the act or condition occurs, is a separate violation.

A violator is a person who:

1. Commits or causes a violation of this title; or
2. Occupies, maintains, keeps, alters, constructs or establishes a structure, or use of land or a structure, in violation of the Homer Zoning Code, a regulation or a permit; or
3. Owns, controls or has the right to control land or a structure where the land or structure is used, occupied, maintained, kept, altered, constructed or established in violation of the Homer Zoning Code, a regulation or a permit."

The Commission should neither advocate for nor coddle zoning violators. Zoning Permit 1020-782 should be invalidated.

DATED: March 9, 2021.

By: s/Frank Griswold/  
Frank Griswold

**From:** [Frank Griswold](#)  
**To:** [Melissa Jacobsen](#)  
**Cc:** [Renee Krause](#)  
**Subject:** Notice to Surrounding Property Owners of March 11, 2021 Appeal Hearing Re: Zoning Permit 1020-782  
**Date:** Wednesday, March 10, 2021 12:36:48 AM

---

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

Melissa,

Please email me a copy of the notice of the March 11, 2021 public hearing which was required under HCC 21.94.020 to be published last week in a paper of general circulation within the City. Please also email me a copy of the notice of the March 11, 2021 hearing mailed to surrounding property owners as required under HCC 21.94.030, plus the Clerk's Affidavit of Distribution and the mailing list of those surrounding property owners. HCC 21.94.030 stipulates that a copy of the newspaper notification, or notice containing at least the same information required under HCC 21.94.020(b)(1-4), 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. HCC 21.94.020(b)(2) requires "[a] legal or common description of the property involved and a street address" while HCC 21.94.020(b)(4) requires "[a] statement that the complete proposal is available for review, specifying the particular City office where the proposal may be examined."

**1. Does the subject notice presumably published last week in the local newspaper contain all of the information required under HCC 21.94.020(b)(1-4)? If not, why not?**

**2. Does the copy of the newspaper notification or Notice of Hearing that the Clerk's Office presumably mailed to surrounding property owners regarding the March 11, 2021 appeal hearing contain a legal or common description of the subject property (besides the street address)? If not, why not?**

**3. Does the copy of the newspaper notification or Notice of Hearing that the Clerk's Office presumably mailed to surrounding property owners regarding the March 11, 2021 appeal hearing contain a statement that the complete proposal is available for review, specifying the particular City office where the proposal may be examined? If not, why not?**

Thank you for your prompt reply.

Frank

**From:** [Frank Griswold](#)  
**To:** [Melissa Jacobsen](#)  
**Subject:** March 11, 2021 Appeal Hearing Re: Zoning Permit 1020-782  
**Date:** Wednesday, March 10, 2021 12:20:47 PM

---

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

Melissa,

In your Memorandum to the Commission dated January 27, 2020 [sic] you stated: "The hearing was continued 20 days. **This second meeting has been noticed in the newspaper** and on the City of Homer website." The third meeting is now scheduled for March 11, 2021. I was unable to find any notice of this meeting in the March 4, 2021 edition of the Homer News. Was the March 11, 2021 Commission appeal hearing advertised in the Homer News or other local newspaper? If not, why was the second meeting so noticed but not the third? HCC 21.93.300(d) provides that "Any person may file a written brief or testimony in an appeal before the Commission." Furthermore, the Procedure adopted by the Commission provides, under item 5, that the floor will be opened for comments from interested persons with a time limit of 10 minutes each. This sounds very much like a public hearing for which the notification procedure under HCC 21.94.020 (advertising the week before in a local newspaper) is required.

The Agenda for the March 11, 2021 Planning Commission Special Meeting does not provide for any comments from interested persons limited to 10 minutes each; it only provides for Comments of the Audience limited to 3 minutes each at the end of the meeting. The members of the general public were not provided with the Commission's Procedure so how would they know they have a right to comment for up to 10 minutes during the March 11, 2021 appeal hearing and/or submit written briefs or written testimony at or prior to the appeal hearing?

The Notice of (the March 11, 2021) Hearing you mailed to Parties of Record identifies City Planner Rick Abboud as a Party of Record. Why is Mr. Abboud considered a party to this appeal? Why are Scott and Stacy Lowry only identified as property owners and not as Appellees? Why is Travis Brown considered neither a party nor Appellee? Why didn't you date that Notice of Hearing? Please bring these concerns, questions, and your responses to them to the immediate attention of the Commission and Parties, whoever they are. Please do the same for the questions I asked in my previous email regarding notice to surrounding property owners.

Thank you.

Frank

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](mailto:mgatti@jdolaw.com)  
[mholmquist@jdolaw.com](mailto:mholmquist@jdolaw.com)

Attorneys for City of Homer

BEFORE THE HOMER PLANNING COMMISSION

In the Matter of

APPEAL OF ZONING PERMIT 1020-782

**MOTION TO STRIKE**

Appellee the City of Homer (the “City”), by and through its attorneys, Jermain, Dunnagan & Owens, P.C., hereby moves to strike from the record Appellant’s Reply Brief and Appellant’s pleading entitled “Evidence.” The Homer Planning Commission’s (the “Commission”) Procedure for Planning Commission Hearing (“Procedural Order”) applicable to this matter limits the parties to a single written brief to be filed by January 25, 2021. Appellant Frank Griswold’s Reply Brief and “Evidence” clearly do not comply with the Procedural Order. The Commission should strike them from the record and not consider them for any purpose.

The Procedural Order states: “The parties may file written briefs in support of their positions. Briefs must be filed with the City Clerk by 4:30 p.m. Monday, January 25, 2021.” The City and Griswold filed written briefs with the City Clerk on January 25,



2021.<sup>1</sup> In accord with the Procedural Order, the City did not respond in writing to Griswold's brief. Griswold, however, did not comply with the Procedural Order. Rather, he filed his Reply Brief on January 27, 2021. At the January 27, 2021 hearing, the City objected to Griswold's Reply Brief and moved to strike it from the record.

On March 9, 2021, Griswold filed a pleading entitled "Evidence." Griswold asserts that because the Procedural Order allows the parties to submit evidence at the hearing, the Commission should accept this filing. This is incorrect for two reasons. First, Griswold's pleading does not contain any evidence. Rather, it is simply additional briefing on procedural and substantive issues related to this appeal. It appears that Griswold is attempting to circumvent the Procedural Order's briefing limitation and deadline by calling his late-filed additional briefing "evidence." Second, the Procedural Order only allows the submission of evidence during the hearing. The City intends to comply with the Procedural Order by only presenting evidence during the hearing within the prescribed 30-minute period. The Commission should require Griswold to do the same.

The Commission should not allow Griswold to disregard the Procedural Order by presenting additional untimely briefing. That would allow Griswold to have three bites at the proverbial apple, despite the fact that the Procedural Order only allows one. If the Commission allows and considers this briefing, the City will be unfairly prejudiced because it followed the Procedural Order and did not file additional briefing. Accordingly, the City respectfully requests that the Commission strike Griswold's Reply

---

<sup>1</sup> See City of Homer's Brief, filed January 25, 2021; Appellant's Brief, filed January 25, 2021.

Brief and “Evidence” pleading from the record and that it not consider those pleadings for any purpose.

DATED this 11th day of March, 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  
3000 A STREET, SUITE 300  
ANCHORAGE, ALASKA 99503  
(907) 563-8844  
FAX (907) 563-7322

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](mailto:mgatti@jdolaw.com)  
[mholmquist@jdolaw.com](mailto:mholmquist@jdolaw.com)

Attorneys for City of Homer

BEFORE THE HOMER PLANNING COMMISSION

In the Matter of

APPEAL OF ZONING PERMIT 1020-782

**[PROPOSED] ORDER GRANTING MOTION TO STRIKE**

The Homer Planning Commission, having reviewed the City of Homer's Motion to Strike and any opposition thereto, hereby GRANTS the same. Appellant Frank Griswold's "Reply Brief" filed January 27, 2021 and pleading entitled "Evidence" filed March 9, 2021 are stricken from the record and will not be considered for any purpose.

DATED: \_\_\_\_\_

\_\_\_\_\_  
SCOTT SMITH  
CHAIR – HOMER PLANNING  
COMMISSION

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

ON APPEAL TO THE HOMER PLANNING COMMISSION

FRANK GRISWOLD,

Appellant,

v.

TRAVIS BROWN, SCOTT LOWRY,  
AND STACY LOWRY,

Appellees.

\_\_\_\_\_/ Appeal of Zoning Permit 1020-782

**APPELLANT'S REPLY TO CITY'S MOTION TO STRIKE EVIDENCE**

The Commission's recently adopted Procedure does not expressly limit the parties' submission of evidence to a single written brief filed by January 25, 2021. Furthermore, the filing of written briefs is purely optional. The Procedure states: "At the hearing the parties may testify, call witnesses, **submit evidence**, and present oral argument." Neither the Procedure nor HCC differentiates between written briefs and written evidence. On February 24, 2021 I emailed City Clerk Melissa Jacobsen as follows:

"All parties had the opportunity to submit written briefs prior to the January 6, 2021 hearing but no briefs were submitted. When the Commission continued the January 6, 2021 hearing to allow the Commission to develop hearing procedures, the briefing deadlines were extended to just before the January 27, 2021 hearing. Further extending the briefing deadlines to just before the March 11, 2021 hearing would now be consistent with the Commission's previous course of action. Note that there is no page limit on written briefs and HCC does not expressly prohibit

the filing of reply briefs. The March 11, 2021 hearing is an **evidentiary** hearing and no timely submitted evidence should be refused; due process requires that I too have a right to be heard and treated fairly. HCC 21.93.300(d) underscores the importance of developing a full record and provides that neighboring property owners and "any person may file a written brief or testimony in an appeal before the Commission." If I refile my Reply Brief as written testimony would that be acceptable? I previously asked the Clerk's Office to explain the difference between a written brief and written testimony but received no response."

HCC 21.93.530(b), which applies to Board of Adjustment procedures, expressly provides for the filing of reply briefs. In appeals before the Board, the record is closed but in appeals before the planning Commission the record is open which is all the more reason to encourage the introduction of evidence. When time allows, there is no reason to suppress the introduction of reply briefs or other evidence; doing so would be contrary to the intent of HCC 21.93.300(d). The City Attorneys missed the deadline to file an opening brief for the January 6, 2021 hearing so they requested a continuance on other grounds which was granted. Thereafter, the Commission extended the briefing deadline to January 25, 2021. The January 27, 2021 hearing was continued to March 11, 2021 and there is no valid reason for not extending the briefing deadline again.

Like the City Clerk, the City Attorneys cannot explain the difference between written briefing and written evidence. They



indicate that they intend to present evidence at the virtual hearing but that is presumably non-written evidence. My right to submit written evidence at the **evidentiary** hearing should not be infringed simply because of a virus. Technically speaking, the Commission does not have the authority to conduct virtual meetings because the City Council failed to include quasi-judicial Commission meetings in the emergency legislation it recently enacted authorizing Zoom Meetings. If tonight's meeting were non-virtual, I could simply hand my written evidence to the City Clerk for the Commission's consideration. Furthermore, if the Commission had not imposed such unreasonably short time limits on the presentation on testimony, **other evidence**, questioning of witnesses, and oral argument, I may have had time to present my written evidence orally. Note that the Procedure characterizes **testimony** to be evidence by following it with "**other evidence**." So whether I read my evidence to the Commission at the hearing or submit it in written form prior to the hearing, it constitutes timely filed evidence. Quasi-judicial bodies should never suppress material evidence merely for the sake of expediency. In the landmark case of *Brady v. Maryland*, 373 U.S. 83 (1963), the Supreme Court declared that, regardless of the good faith or bad faith of the prosecution, the suppression of evidence favorable to the accused violates

due process where the evidence is material to either guilt or penalty.

DATED: March 11, 2021.

By: s/Frank Griswold/  
Frank Griswold

### CLERK'S AFFIDAVIT OF DISTRIBUTION

I, Renee Krause, Deputy City Clerk for the City of Homer, Alaska, do hereby certify that the Notice of Appeal Hearing Scheduled was mailed on February 16, 2021 to the appellant, the property owner subject to the action, as well as property owners within a 300-foot periphery of the site that is the subject of the proposed action, in accordance with HCC 21.93.100(b) and 21.94.300(a).

Copies of said notice and mailing list are attached.

IN TESTIMONY WHEREOF, I have hereunto set my hand and seal of said City of Homer this 11<sup>th</sup> day of March, 2021.

*Renee Krause*

Renee Krause, MMC, Deputy City Clerk





## City of Homer

[www.cityofhomer-ak.gov](http://www.cityofhomer-ak.gov)

## Office of the City Clerk

491 East Pioneer Avenue  
Homer, Alaska 99603

[clerk@cityofhomer-ak.gov](mailto:clerk@cityofhomer-ak.gov)

(p) 907-235-3130

(f) 907-235-3143

### NOTICE OF HEARING

To Parties of Record: Frank Griswold, Appellant  
Scott and Stacy Lowry, Property Owner  
Rick Abboud, City Planner

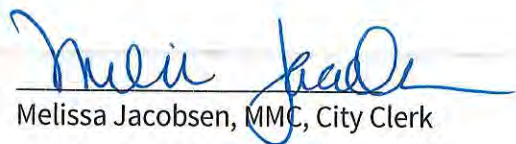
The hearing on the appeal to the Planning Commission regarding Zoning Permit 1020-782 issued to Scott and Stacy Lowry for their property located at 541 Bonanza Avenue, was continued and will be held on Thursday, March 11, 2021 at 5:30 p.m. The hearing will be conducted by Zoom Meeting and pursuant to Homer City Code 21.93.300 this meeting is open to the public.

To join the Zoom meeting on your computer go to [www.zoom.us](http://www.zoom.us) and select Join A Meeting. From there follow the prompts to enter the meeting ID and password below.

Meeting ID: 940 8082 9916 Passcode: 052186

To participate by phone only, you may dial one of the following phone numbers and enter the same meeting ID and passcode, 1-669-900-6833, 1-253-215-8782 or Toll Free 888-788-0099 or 877-853-5247.

Pursuant to Homer City Code Section 21.94.030 property owners within a 300-foot periphery of the site that is the subject of the proposed action shall be noticed.



Melissa Jacobsen, MMC, City Clerk

Cc: Attorney Gatti, City Manager

## MAILING LABEL LISTING

PARCEL_ID	OWNER	ADDRESS	CITY	STAT	ZIPCODE
17710404	BAYES MICHELLE M	62243 SKYLINE DR	HOMER	AK	99603
17710717	BOOTSTRAP ENTERPRISES LLC	PO BOX 1962	HOMER	AK	99603
17710215	CARR TIMOTHY C DECLARATION OF TRUST	3236 LAKE ST	HOMER	AK	99603
17710410	CAVE JESSE AND LINDA FAMILY TRUST	903 N SLICK ROCK CREEK RD	OTIS	OR	97368
17710723	DERRY DAVID M	PO BOX 2882	KENAI	AK	99611
17710716	DERRY SEAN M & DERRY RYAN D	PO BOX 2882	KENAI	AK	99611
17710411	FINNEY PAUL G & SUANNE Y	1588 HILLSIDE PL	HOMER	AK	99603
17710214	GILLIAM ANTHONY J & BETH A	552 BONANZA AVE	HOMER	AK	99603
17710202	GLIDDEN AARON	495 KLONDIKE AVE	HOMER	AK	99603
17710201	GRISWOLD FRANK	519 KLONDIKE AVE	HOMER	AK	99603
17710219	GUSTAFSON JARL	PO BOX 952	HOMER	AK	99603
17710219	GUSTAFSON KATHLEEN	PO BOX 952	HOMER	AK	99603
17710206	HAMILTON ANNIE	PO BOX 2118	HOMER	AK	99603
17710206	HAMILTON TIM	PO BOX 2118	HOMER	AK	99603
17710408	HATELY JOAN C	2518 LOUSSAC DR	ANCHORAGE	AK	99517
17710408	HATELY WILLIAM	2518 LOUSSAC DR	ANCHORAGE	AK	99517
17711025	HEATH STREET INVESTMENTS LLC	127 W PIONEER AVE	HOMER	AK	99603
17710725	HODGDON PAUL R & LUELLA J	PO BOX 1150	HOMER	AK	99603
17712032	HOMER ELECTRIC ASSN INC	3977 LAKE ST	HOMER	AK	99603
17710422	LANDFIELD KEN	PO BOX 2013	HOMER	AK	99603
17710211	LANGMAN REBECCA J	584 BONANZA AVE	HOMER	AK	99603
17710409	LEE GRANT A	573 BONANZA AVE	HOMER	AK	99603
17710417	LINDBERG KRISTINE	PO BOX 84	HOMER	AK	99603
17710421	LOWRY SCOTT RYAN	907 DALY RD	OJAI	CA	93023
17710421	LOWRY STACY ANN	210 E OAK ST	OJAI	CA	93023
17710416	MILLER SHEVAWN	PO BOX 798	HOMER	AK	99603
17710418	MONTGOMERY MARY E	508 GRUBSTAKE AVE	HOMER	AK	99603
17710423	MUNGER HOMER PROPERTY LLC	12900 OLD SEWARD HWY	ANCHORAGE	AK	99515
17710722	MURPHY MEGAN	1429 E 2000 NORTH RD	WHITE HEATH	IL	61884
17710405	SHAVELSON PAM	PO BOX 1498	HOMER	AK	99603
17710721	SIMS SHELBY D	527 GRUBSTAKE AVE	HOMER	AK	99603
17710210	SMITH THOMAS & CONNIE	583 KLONDIKE AVE	HOMER	AK	99603
17710216	STOUT FRED A M	530 BONANZA AVE	HOMER	AK	99603
17710220	TALLON TANA C & SHAWN C	5250 TWILIGHT DR	RAPID CITY	SD	57703
17710738	TOOTHKEEPER LLC	PO BOX 3616	HOMER	AK	99603
17710401	WADDINGTON PETER	PO BOX 797	HOMER	AK	99603
17710415	WEEKS LINDA LEE	542 GRUBSTAKE AVE	HOMER	AK	99603
17710419	WEISER DYLAN	480 GRUBSTAKE AVE	HOMER	AK	99603
17710422	WOHLGEMUTH SUSAN	312 LEE DR	HOMER	AK	99603



Session 21-07, a Special Meeting of the Planning Commission was called to order by Chair Scott Smith at 5:31 p.m. on March 11, 2021 at Cowles Council Chambers in City Hall located at 491 E. Pioneer Avenue, Homer, Alaska, via Zoom Webinar.

PRESENT: COMMISSIONERS BARNWELL, VENUTI, SMITH, CONLEY, PETSKA-RUBALCAVA, BENTZ, AND HIGHLAND

STAFF: CITY CLERK JACOBSEN  
DEPUTY CITY CLERK KRAUSE

### **APPROVAL OF THE AGENDA**

Chair Smith requested a motion to approve the agenda.

HIGHLAND/VENUTI – SO MOVED.

There was no discussion.

VOTE. NON-OBJECTION. UNANIMOUS CONSENT.

Motion carried.

### **NEW BUSINESS**

- A. Appeal Hearing on Appeal of the City Planning Staff Issuance of Zoning Permit 1020-782 issued to Scott and Stacy Lowry for their property located at 541 Bonanza Avenue

Chair Smith stated for the record the action before the Commission being a continuance of the Appeal Hearing for Zoning Permit 1020-782 from January 27, 2021. The notice of appeal and nine allegations of error can be found on page three of the appeal record. The Commission was to hear oral arguments regarding this appeal.

Deputy City Clerk Krause identified the following were in attendance:

- Frank Griswold
- Max Holmquist, City Attorney
- Scott and Stacy Lowry
- Rick Abboud, City Planner
- Travis Brown, Planning Technician

Chair Smith stated that the process for this hearing that was developed, provided to parties, and posted on the City's website in January and will be followed for this meeting. He then reminded those in attendance on the conduct that was expected throughout the hearing.

Chair Smith announced that the Commission will address preliminary matters and asked if any Commissioners needed to make any declarations of conflict of interest or ex parte contacts.

No disclosures were made.

Chair Smith then stated the first preliminary issue to address was a reply brief submitted by Appellant Griswold on January 27, 2021 prior to the last scheduled hearing. Homer City Code 21.93.300 addresses appeals to the Planning Commission and subsection "d" reads that any person may file a written brief or testimony in an appeal before the Commission. He noted that both parties filed their written briefs by the deadline provided in the noticed meeting process and the attorney for the Appellee has filed a motion to strike the reply brief.<sup>1</sup>

Chair Smith requested a motion and second.

HIGHLAND/CONLEY MOVED TO STRIKE THE REPLY BRIEF SUBMITTED BY FRANK GRISWOLD.

City Clerk Jacobsen addressed the interference with the audio was due to Mr. Griswold unmuting his connection.

Mr. Griswold called a point of order stating the Chair skipped the ex parte communication.

City Clerk Jacobsen explained to Mr. Griswold since he did not hear, that the question on the matter of ex parte communication was addressed by the Chair.

Chair Smith assured Mr. Griswold he asked the question and repeated the question that he asked of the Commissioners and stated that there were none disclosed.

Chair Smith restated the motion on the floor and asked for confirmation that the Commissioners were able to read the associated documents.

Commissioner Bentz noted that she was unable to review the information due to late submission.

Chair Smith asked if any of the other Commissioners were unable to review the documents.

Commissioner Highland voicing concerns on the interference she was experiencing with regards to the audio, then requested confirmation that the document in question was submitted on January 27, 2021.

---

<sup>1</sup> Audio interference was experienced when Appellant unmuted their connection throughout the meeting making transcription difficult at times.

Chair Smith responded that it was the brief submitted on January 27, 2021 that was the document in question at this time.

Commissioner Bentz apologized and requested her comment to be stricken as she was referring to the filing of March 9, 2021.

Chair Smith inquired if there was any objection to the motion.

Mr. Griswold requested the opportunity to comment to the motion.

After a brief discussion with Mr. Griswold expressing his right to comment Chair Smith allotted Mr. Griswold three minutes.

Mr. Griswold provided further reasons to allow him to comment as follows:

- City Code allows the Commission to accept new testimony and evidence necessary to develop the record and does not establish time limits.
- The City Attorney does not want the record to be fully established and wanted his evidence stricken so that it cannot be considered by this Commission or future reviewing parties.
- The Commission does not even have to read all this stuff tonight since they have 60 days to deliberate and render a decision.
- This is an evidentiary hearing and to intentionally reject evidence is appealable and if it goes to the Board of Adjustment it will be remanded back.
- The extension of the filing deadline to accommodate the City Attorney and the policy that was set by the Commission was extended twice before and there was no reason that the briefing period could not be extended a third time.

City Clerk Jacobsen noted for the record that it would be appropriate, having given time to the Appellant that the same consideration be extended to the Appellee.

City Attorney Holmquist stated the following as support for striking the documents entitled "Reply Brief" and "Evidence":

- A deadline was established as January 25, 2021 at 4:30 p.m. and both parties filed written briefs by the established deadline.
- In the Commission hearing procedures there were no additional briefings allowed.
- The document entitled, "Evidence" does not actually contain evidence it contains argument, evidence would be other documents or testimony to support the argument.
- Written argument, is also known as a brief
- The City will not object to Mr. Griswold reading his brief entitled "Evidence" into the record
- Objection to the additional filing of written briefing that is contrary to the procedural order in this case as the City would be prejudiced if Mr. Griswold would be allowed to file that additional briefing when the City was not afforded the same opportunity.
- The two untimely additional briefs of Mr. Griswold's are unfair to the City and prejudicial so the City is asking that they be stricken.

There was a brief discussion on clarification of the status of the motion on the floor, that the document in question is the one entitled "Reply Brief" dated January 27, 2021 and if the Commission can allow ample time for the Appellant to read the document into the record to allow for all evidence to be presented.

City Clerk Jacobsen confirmed that it would be addressed separately in response to a question from the Chair on process.

Chair Smith stated that the procedure allows thirty minutes for the Appellant and the Appellee and if the time is extended for one side then it requires the time to be extended to the other party. If the time is extended it is by Commission approval not because either side wants to run long. The Commission's posture is that thirty minutes is sufficient and that both the Appellant and Appellee have had significant time to draft their information and become very familiar and concise with what they want to say during that thirty minutes. The Commission needs to be cautious with extending the time period especially in favor of one party.

VOTE. NON-OBJECTION. UNANIMOUS CONSENT.

Motion carried.

Chair Smith read the next preliminary matter into the record: A motion filed by Frank Griswold for Legal Counsel for the Planning Commission. He then recited HCC 21.93.300 (g) into the record and requested a motion.

HIGHLAND/BENTZ MOVED THAT THE COMMISSION REQUEST THE ASSISTANCE OF LEGAL COUNSEL AND OR CITY STAFF AS DESIGNATED BY THE CITY MANAGER IN THE PREPARATION OF THE DECISION AND FINDINGS OF FACT.

Mr. Griswold commented on hiring legal counsel for the Commission to answer the questions that they have and that the only attorney present is for the city and that being the only attorney present the Commission would give deference to his legal opinion and he is partisan and will do anything to make sure his party prevails. He then commented on the meeting may need to be continued because of insufficiency of the public notice like it has been twice already and if it continued, especially if you are going to hire an attorney it will be helpful to have that attorney present at the beginning and save the Commission reversible errors.

Attorney Holmquist acknowledged the motion made by the Appellant and stated that it is the City's position that the Commission can hire attorney if it wants to, it is not required to do so, and that it is discretionary. He then noted that in the motion, Mr. Griswold mischaracterized the record by claiming that he provided legal advice to the Commission and the opposite is true. Attorney Holmquist stated he identified the City as his client and advised that he does not represent the Commission and then provided the city's position on the issue that was being discussed.

Commissioner Highland stated that due to all the questions that she does not have answers for she would like to have legal counsel and then questioned addressing the possible issue with public notice.

Commissioner Bentz expressed that she would be voting yes on the motion requesting legal assistance.

Commissioner Petska-Rubalcava questioned who they would be requesting legal counsel from and where those funds would be coming from and how they would obtain legal counsel.

Chair Smith stated that he was unaware of the experience the other Commissioners have regarding a legal hearing and so they are pretty green when it comes to procedure, so they may make procedural errors as far as evaluating a permit application and all the different information surrounding this particular decision he believed that the Commission was competent and capable without legal representation to do so and city code is not overly complicated. This Commission is fairly thorough and because of that he would vote no.

Commissioner Conley questioned that they could consult an Attorney during deliberations considering they were having the hearing now and they can move on.

Chair Smith responded that he believed so but there was still the issue of budget so did not believe it would be possible and noted that they would have to submit the request to Council. He then stated that it would be good for future discussion since it has exposed a need and appreciated the effort to bring this to a motion but without legal representation they would also be extending this meeting all over again.

Commissioner Bentz reminded the Commission that the motion on the floor was for legal counsel for the preparation of the Decision and Findings of Fact. She then confirmed with City Clerk Jacobsen that procedurally the Commission would submit the request for legal counsel to the City Manager.

City Clerk Jacobsen responded that it would be up to the City Manager to decide who would be the appropriate staff person to work with the Commission and the same request for an attorney as well, but unfortunately there is no professional services budget for the Commission so that would require locating the funding.

Commissioner Venuti requested the motion on the floor to be stated.

Chair Smith repeated the motion before the Commission.

VOTE. NO. SMITH, HIGHLAND, CONLEY, BARNWELL, VENUTI  
YES. PETSKA-RUBALCAVA, BENTZ



Motion failed.

Chair Smith read the next preliminary item regarding the document filed by Mr. Griswold entitled "Evidence" submitted on March 9, 2021. He then read from Homer City Code 21.93.300 (d) regarding the Commission accepting new testimony or other evidence, including public testimony and hear oral arguments to develop a full record upon which to decide the appeal.

HIGHLAND/BARNWELL - MOVED TO STRIKE THE DOCUMENT ENTITLED "EVIDENCE" SUBMITTED BY FRANK GRISWOLD.

Mr. Griswold stated the following in support of accepting the document entitled "Evidence":

- There is no definition in city code as to what constitutes written evidence
- If they were meeting in person he would have been able to submit the document as a laydown
- The Commission has created a very strict time limit and opined that it would not be sufficient for oral arguments, question witnesses and present evidence.
- HCC 21.93.300 (d) addresses developing a full record and you must allow sufficient time to perform that.
- The Commission while having the authority to write procedures they cannot be contrary to city code.
- The City Attorney did not have objection to him reading the document into the record because it would use up all his time and he not be able to exercise his right to question the parties.

Attorney Holmquist stated the following to support the motion to strike:

- It is not evidence but written argument
- Not objecting to Mr. Griswold reading the document into the record because he has 30 minutes to present oral argument.
- The City objects to the filing of additional briefing that doesn't comply with the procedural order.

Commissioner Conley requested clarification on the filing of the document.

Chair Smith responded that the document was filed on March 9, 2021 at 1:52 p.m.

Commissioner Highland stated that they have a lot of facts from city code and what was presented to the Commission but the Commission established the procedure and January 25, 2021 was the deadline.

City Clerk Jacobsen confirmed for Commissioner Bentz that the procedure that was developed for continued Planning Commission hearings is on the website and was approved by both parties. She further noted that this procedure was developed prior to the first hearing, when the hearing

was continued the Commission did not take any additional action to make amendments to the procedure.

Chair Smith acknowledged Mr. Griswold and noted that his opportunity to speak has passed and it was with the Commission now.

VOTE. YES, PETSKA-RUBALCAVA, HIGHLAND, CONLEY, BARNWELL, VENUTI, SMITH.  
NO. BENTZ.

Motion carried.

Chair Smith stated that the next preliminary matter is two emails submitted to the City Clerk on March 10th that have been provided and raise issues regarding notice, opportunity to comment, and parties to the appeal.

City Clerk Jacobsen reported the date and time of the first email and that it raised questions regarding the notice of the appeal hearing. She responded as follows:

- HCC 21.94.020 (b) 1-4 does not apply to Administrative Appeals 21.93 does not require notice in accordance with that section of city code.
- The notice mailed to surrounding property owners does not contain a legal or common description of the property as the appeal section of city code requires written notice of the time and place of the appeal hearing be submitted to the parties as outlined in HCC 21.93.100 (b)
- The newspaper notification does not contain information regarding the review of documents since the section of city code, 21.93.100 (b), as previously stated does not require this to be done. That is outlined under 21.94.020 (b) 1-4 which does not apply to appeals.

City Clerk Jacobsen then addressed the issues raised in the second email after noting the date and time received:

- The second notice of meetings is not addressed by 21.94.020 (b) 1-4
- Regarding the agenda not specifically identifying that the public may provide testimony or comment for up to 10 minutes or written comment since they were not provided with the Commission's procedures all documents regarding this hearing were posted to the City webpages and the meeting was advertised in the local newspaper in accordance with Homer City Code 1.14 Notice of Meetings
- Mr. Abboud is party to this appeal since it is an appeal of an action by the City Planner or his staff
- Scott and Stacy Lowry are the applicants and property owners and the appeal is against the City Planner or his staff for issuance of the permit.
- Travis Brown is not a party since it was addressed to the Planning Office and since Mr. Abboud is the Department Director it was routed through him.

- There was no date on the notice that was mailed out, it was an oversight, the notice was prepared by staff, I reviewed it and signed it. There is an affidavit of distribution noting the mailing date.

City Clerk Jacobsen responded to questions on the following:

- It is at the discretion of the Commission to extend the time at any portion of the agenda.
- The Commission can use their discretion to accepting written testimony submitted by any person by motion as previously done.

City Clerk Jacobsen noted a point of order on finishing discussion on the notice issue raised.

Mr. Griswold stated that the City Clerk is wrong regarding the requirements of notice in city code. He then read the requirement from 21.94.020 requires newspaper notice for all public hearings and then notice to surrounding property owners if stated in 21.94.030, stating that these two are linked and you have to refer to the previous paragraph 21.94.020 (b) 1-4. This outlines the information that must be contained in the notice to property owners, and two items were missing regarding legal description and where they can find information. He further noted that the notice could be mailed to property owners. Mr. Griswold then noted that there was nothing to indicate that members of the public can testify for 10 minutes or submit written briefs. He believed that people were not properly noticed and that it was grounds for automatic reversal.

Attorney Holmquist argued that the notice for this hearing falls under Homer City Code 21.93.100 and it was properly noticed.

Chair Smith called for a motion.

There were no motions offered by the Commission.

Mr. Griswold requested a motion by Commission that the notice was sufficient.

Chair Smith asked the Commission again for a motion. There were none offered.

Chair Smith noted that Mr. Griswold's request was noted and in the record but it appeared the Commission did not feel there was a necessity to address the matter.

Chair Smith asked if Mr. Griswold had any additional preliminary matters and if he did to bring them forward one at a time to be addressed by the Commission.

Mr. Griswold brought forward the issue of who the party or parties are being represented by the City Attorney. He noted that there is no individual listed by name as Appellee.

Commissioner Highland stated that there is no motion on the floor but that it has been very clear that the City Attorney is representing the city and not the Commission.

Commissioners Petska-Rubalcava and Conley echoed those same sentiments.

Chair Smith requested the next preliminary matter from Mr. Griswold.

Mr. Griswold stated that in a parallel but unrelated appeal before the Homer Board of Adjustment the second order of business was identifying the appeal, was “identification of the parties”, this procedure should be followed for this appeal as well. The Commission’s procedure states that, “the Commission may question each of the parties listed above” however the procedure merely cites Appellant and Appellee without naming the associated parties. There are multiple appellees in this appeal including property owners, Scott and Stacy Lowry, they should be recognized as parties and Appellees and subject to questioning. Travis Brown issued the zoning permit and the Commission should make a decision as to whether he is a party to the appeal and an Appellee.

Chair Smith noted that they are not the Board of Adjustment and opinion of procedures being transferred from one board to the Commission unfortunately does not legally apply here and that is his personal opinion. It does not seem logical for the Commission to be governed by the rules of another board when they are not specified in their own code.

Commissioner Petska-Rubalcava requested a brief recess.

Chair Smith called for a five minute recess at 6:45 p.m. The meeting was called back to order at 6:50 p.m.

Chair Smith asked for additional preliminary matters from Mr. Griswold.

Mr. Griswold provided his opinion on how preliminary matters should be addressed by the Commission and that they should vote on a matter regardless. He then requested a determination by the Commission on whether they will allow exclusion of witnesses.

Chair Smith requested Mr. Griswold to provide an example of exclusion of witnesses.

Mr. Griswold provided a definition on how exclusion of witnesses is conducted in Court when testimony may be influenced by a person attending the action before the Court.

City Clerk Jacobsen provided an explanation on how they can separate the two witnesses that are present.

HIGHLAND/BENTZ MOVED THAT THE COMMISSION ALLOW EXCLUSION OF WITNESSES.

Attorney Holmquist stated that the Exclusionary Rule does not always apply in court and it is not used in Administrative Appeals and is not stated anywhere in city code to his knowledge. He

then provided details on how exclusionary rule is applied to witnesses with regard to testimony and cross examination.

Mr. Griswold stated that Attorney Holmquist was wrong he was not speaking of the exclusionary rule which was related to evidence. It does not apply to witnesses. The City Clerk indicated that it was not a problem to exclude the witnesses and if the Commission was interested in honest answers from the witnesses, they should allow it.

Commissioner Highland commented that it was something that was not difficult to do so she was going to vote yes and called for the question.

City Clerk Jacobsen stated for the record that procedurally all debate on the question is done and a vote on the call for the question is conducted in case other people wanted to comment.

VOTE. (Call for the Question). YES. HIGHLAND, CONLEY, BENTZ, BARNWELL, VENUTI  
NO. SMITH, PETSKA-RUBALCAVA.

Motion carried.

Deputy City Clerk read the main motion currently on the floor.

VOTE. (Main Motion). NO. PETSKA-RUBALCAVA, SMITH, VENUTI, BARNWELL  
YES. BENTZ, CONLEY, HIGHLAND

Motion failed.

Chair Smith requested additional preliminary matters from Mr. Griswold.

Mr. Griswold stated that Scott and Stacy Lowry indicated at the last meeting that they declined to respond to questioning and he believed when they filed this application that they gave consent to pursuant procedures and that there should be some sanction or penalty or they should not be allowed to attend. He then cited information on pleading the fifth (or equivalent) in a non-criminal trial does not have a negative connotation where in a proceeding such as this it could be taken negatively. He would like a determination on if the Lowry's would be allow to participate and not answer questions.

Attorney Holmquist stated the following for the record:

- The Commission does not have subpoena power to compel witnesses to testify like a court could.
- It does not have the authority to hold any party or witness in contempt or impose sanctions.



- The Administrative Procedures Act does not apply to this appeal, the Homer City Code applies and it does not provide the Commission with any authority to subpoena witnesses or compel testimony or hold a party in contempt.
- Mr. Brown and Mr. Abboud are city witnesses and have agreed to testify on the city's behalf. Mr. Griswold will have an opportunity to cross examine them after they testify for the City. The City would object to Mr. Griswold calling Mr. Brown or Mr. Abboud as his witnesses for his case.
- Mr. Griswold has the right to call witnesses and present evidence but does not have the right under city code or a due process right to compel a witness to testify as part of this hearing and neither does the Commission.

City Clerk Jacobsen clarified that Mr. Griswold has requested the Lowry's to be called as witnesses for him and when contacted, they declined to be witnesses but she did not give them any indication that they would not be able to participate as any other interested party would be able to and they were not advised any differently.

Chair Smith acknowledged Mr. Lowry's wish to speak but noted that the time was not appropriate.

City Clerk Jacobsen confirmed that it would not be appropriate to take comments from other parties other than the Appellant or Appellee during preliminary matters.

Chair Smith asked if there was a motion to address this matter.

There was a brief discussion on the ability of the Commission to enforce a person being called as a witness to provide testimony.

City Clerk Jacobsen requested, for clarification to assist the Commission in verbiage, for Mr. Griswold to repeat his request.

Mr. Griswold repeated that he would like the Commission to determine if the Lowry's can be compelled to respond to questioning by the Commission and other parties. He then pointed out that a Commissioner stated Mr. Holmquist said the questioning was voluntary using it as an example that the Commission is taking what he says as legal advice and if the Commission had an independent attorney you might get a very different response so just because Mr. Holmquist does something and I state the opposite every single time. The Commission has sided with Mr. Holmquist and my side is not that week. You also denied Mr. Lowry the right to respond and that is not right as they are the property owner, they are Appellees, they are indispensable parties and if it goes to Superior Court it would be thrown out if I did not list them as parties.

Commissioner Bentz stated that the preliminary matter would be that the Commission would need to vote on whether to compel witnesses to respond to the request for questioning.

City Clerk Jacobsen confirmed that it was the request.

BENTZ/HIGHLAND MOVED THAT THE COMMISSION SHOULD COMPEL WITNESSES TO RESPOND TO REQUEST FOR QUESTIONING.

Discussion ensued regarding the Commission not having the authority to operate at that level of judiciary process.

VOTE. NO. CONLEY, BENTZ, BARNWELL, VENUTI, SMITH, PETSKA-RUBALCAVA, HIGHLAND.

Motion failed.

Chair Smith complimented Mr. Griswold on how clever he was as he addressed each topic in his submission and believed that they have covered them all but noted that they would like to begin oral arguments.

Mr. Griswold stated that they had no idea what preliminary matters he wanted to bring up, he had a right to bring these issues up under preliminary matters whether it was in his evidence or not and he was giving them a heads up so it was a bonus for the Commission. He denied it was clever or devious.

Mr. Griswold requested that the Commission make a determination on the times specified to handle oral arguments, to include time for testimony, cross examination and rebuttal stating that it was not sufficient for him. He would need at minimum one hour. He noted the time allotted in a recent Board of Adjustment Hearing was 45 minutes.

Chair Smith thanked Mr. Griswold and wanted the record to reflect that his comment about Mr. Griswold being clever was by no means nefarious it was a compliment. We will move past that.

Commissioner Highland inquired about a list of witnesses.

City Clerk Jacobsen noted that City Attorney Holmquist is available for comment and then she will address Commissioner Highland's question regarding witnesses.

Chair Smith recognized City Attorney Holmquist.

City Attorney Holmquist stated that with regard to this type of hearing in response to Mr. Griswold's reference to due process a number of times, the following:

- Courts have held that due process for quasi-judicial hearings require notice and an opportunity to be heard.
- Regarding specific hearing procedures, the Courts hold that due process requirements as to the particular procedure employed for the hearing, such as the length of the hearing,

time limits for the hearing, the manner in which evidence can be presented, timeframe to present evidence based on the nature of the issue being decided.

- A very complex issue requires a more elaborate and longer proceeding, a similar issue requires less evidence testimony and argument, so a shorter and simple proceeding satisfies the process that the Commission has the authority under Homer City Code to set a hearing procedure that is appropriate in light of the nature of the appeal.
- This hearing is regarding a zoning permit and is not a complex issue. Mr. Griswold has raised issues that could make it complex but that is not the issue at hand.
- In the potential range of Administrative Hearings, a zoning permit is fairly simple, it has a brief record and the issues are relatively simple.
- Hearing procedures set by the Commission in the city's opinion are adequate to satisfy the due process requirement and the Commission should proceed with the hearing procedure as established in January.
- The City is not taking a position on the time necessary for a full record.

City Clerk Jacobsen commented on the reference to the Board of Adjustment hearing the time allotted was 30 minutes and Mr. Griswold requested additional time and the Board allowed 45 minutes which included his opportunity for rebuttal. Any remaining time could be reserved for rebuttal up to 45 minutes. There was a witness list provided in the materials and on the website.

Chair Smith asked if there was a motion from the Commission to address the request for additional time.

No motion was offered by the Commission.

Mr. Griswold stated that he requested Dan Gardner to appear as a witness and he declined. Mr. Gardner is a city employee and could be compelled to testify as a condition of his employment with the City. He further stated that he believed Mr. Gardner would be able to answer questions.

Attorney Holmquist stated that he believes this falls under the same issue that was discussed previously with regard to compelling witnesses to testify.

Chair Scott requested a motion from the Commissioners to address this matter.

No motion was offered by the Commission.

City Clerk Jacobsen noted that it was the Appellee's opportunity to bring forth preliminary matters before Oral Arguments.

Chair Smith asked City Attorney Holmquist if he had any preliminary matters he would like to address.

City Attorney Holmquist addressing Chair Smith and City Clerk Jacobsen stated that he reviewed his documents and did not have any preliminary matters to bring before the Commission.

Chair Smith announced that they will move to Oral Argument starting with the Appellant. He invited Mr. Griswold to begin, noting that he had 30 minutes to present testimony, other evidence, question witnesses and oral argument.

Mr. Griswold called City Planner Mr. Abboud.

City Clerk Jacobsen noted for the record that witnesses needed to be sworn in.

City Attorney Holmquist objected to Mr. Griswold calling Mr. Abboud stating that he cannot be compelled to testify on behalf of Mr. Griswold. He further noted that it was his understanding that Mr. Abboud was not willing to testify and will defer to Mr. Abboud to tell the Commission himself.

Mr. Abboud stated for the record that he agreed to testify for the City, not for Mr. Griswold.

Commissioner Bentz noted that would be a question procedurally for the Clerk, but the Appellant could call his next witness.

Chair Smith stated that the Commission cannot compel a witness to testify and believed that to be accurate.

Mr. Griswold stated that he was following the procedures and using his time and the Commission would not allow additional time, to question witnesses or accept written evidence and Mr. Abboud was on my list and he cannot question him.

Chair Smith recognized Mr. Griswold's dilemma but stated that the Commission has ruled on those issues. He encouraged Mr. Griswold to continue producing his evidence and testimony.

Mr. Griswold stated his belief of the Chair's partiality and cannot direct him on how to present his case. He then called Mr. Travis Brown as his next witness.

City Attorney Holmquist objected to the calling of Mr. Brown as he is a witness for the City on behalf of their case and cannot be compelled to testify. He will defer to Mr. Brown if he wishes to testify for Mr. Griswold.

Chair Smith noted that Mr. Griswold would have an opportunity to cross exam the witnesses and invited Mr. Griswold to continue.

Mr. Griswold then read into the record, section of the document submitted on March 9, 2021 entitled "Evidence" starting at page 7, first paragraph, line five. This covered the following points:

- The application of a zoning permit by the property owner was for a 360 sf single family dwelling not an accessory dwelling unit.
- HCC 21.70.020(b) requires that the application include the zoning code use and Accessory Dwelling Unit is not shown on the application
- Water and Sewer permits were illegally issued as there cannot be two water and sewer services on one lot
- No finding was found in the record and the converted connex does not constitute an accessory dwelling unit
- Mr. Brown did not have authority under 21.90.020 (b) to issue the zoning permit and there is no evidence in the record that he was being supervised by City Planner Abboud when he did issue the permit.
- HCC 21.70.030 (a) takes precedent over HCC 21.90.020 (b) since it is more specific, stating that the City Planner will review the application to determine if it complies
- HCC 21.70.030 (a) authorized the City Planner to refer the application to other city officials, Mr. Brown is not a city official
- The subject structure is not new construction, it is a converted connex.
- A second single family dwelling on the subject lot would require a conditional use permit per HCC 21.18.030 (j)
- The structures are independent of each other and not occupied by a single family
- Violation of the applicants failure to obtain a zoning permit prior to placement of the converted connex
- The additional fee was not sufficient for the violation.
- The City Planner did not investigate the driveway permit thoroughly.

Mr. Griswold then noted for the record that he would reserve his remaining time for rebuttal.

Chair Smith noted that Mr. Griswold reserved 10.5 minutes and opened the floor to the Appellee noting that he had 30 minutes to present testimony, other evidence, question witnesses and oral argument.

City Attorney Holmquist called the City's first witness Mr. Travis Brown.

Deputy City Clerk Krause swore in Mr. Brown.

City Attorney Holmquist questioned Mr. Brown, and it was brought forward for the record the following information:

- Mr. Brown is an employee of the City of Homer in the Planning Department as the Planning Technician and is supervised by the City Planner
- His responsibilities are Zoning Permits, Code Enforcement and General Office Administration.
- He was involved with the processing of the Zoning Permit Application for 541 Bonanza Avenue in that he initially contacted the owner regarding the dwelling the property owners put on the property as a mobile home and they would need a conditional use permit. The



property owners were cooperative and submitted an application which went forward to the Commission for Public Hearing and approval. The Commission did not approve the Conditional Use Permit since they determined that it did not meet the definition of a mobile home. He consulted with his supervisor, City Planner Abboud, who reviewed city code on how it should be applied to this structure. It was determined that they should consider it an accessory dwelling on a lot. He contacted the property owners who completed the Zoning Permit Application. They worked back and forth until the application was completed. Mr. Brown stated he then reviewed it and issued the permit.

- Mr. Brown inspected the property during this time and while unable to physically get into the structure he was able to view the inside and was able to determine the interior content had appliances and some furniture, cooking facilities, sleeping areas, two entrances/exits.
- Mr. Brown stated that he checked with Public Works Department to verify that the property owners had connected utilities which included sanitation and those were also visible from outside the structure.

Mr. Griswold raised an objection.

Chair Smith acknowledged Mr. Griswold.

Mr. Griswold objected to the leading questions that City Attorney Holmquist was using with his witness.

Chair Smith noted that this was not a court of law but a hearing to gather information. Mr. Griswold's objection is noted for the record.

City Attorney Holmquist noted for the record that the procedural orders for the hearing state that they need not be conducted according to technical rules relating to evidence and witnesses which is the nature of the objection.

Mr. Brown continued his response to questions:

- Homer City Code 21.18.020 (ii) allows for the detached accessory dwelling unit
- Initially there was some missing information and this is typical when the Planning Department receives an application for zoning permits, they usually work through the deficiencies with the applicant who were responsive and provided the missing information so that they could review the application to see that it was meeting city code.
- The application was complete when approved, Mr. Brown confirmed her signed this permit himself and that this work was completed under the supervision of the City Planner.

City Attorney Holmquist stated that his questions for this witness is now complete and he calls on his next witness, Rick Abboud.

Deputy City Clerk Krause swore in Mr. Abboud.

City Attorney Holmquist posed numerous questions to Mr. Abboud who responded with the following information:

- He is employed as the City Planner for Homer.
- His responsibilities include reviewing applications and decisions on zoning applications and enforcement of City Code regarding zoning.
- He did review the appeal record in this case.
- He was involved with the consideration of the application for the zoning permit for 541 Bonanza Avenue and the applicants desired to build an dwelling on the lot and there was an opportunity to have an accessory dwelling on the lot which is more specific than the general dwelling.
- Provided a description of the project as a secondary structure onto the lot and needed to meet all requirements for such in city code.
- He confirmed that zoning code allows for a zoning permit for that purpose and that Homer City Code 21.18.020 (ii)
- He did not agree with Mr. Griswold interpretation of 21.18.020 (ii) that an accessory dwelling unit must be occupied by the same family as the single family home on the lot because they were talking about one structure the accessory dwelling which is a dwelling designed for use by one family.
- No conditional use permit was required as construct or place the accessory dwelling unit as it was not listed in the city code 030 section which lists the specific uses that require a conditional use permit. He confirmed that the 020 section of code lists the permitted uses that can be approved by his office.
- Mr. Abboud described his involvement with the application stating that once the Commission determined that this structure was not a mobile home, it looks like a dwelling by definition and by association is an accessory dwelling by measures of becoming secondary to the principle primary dwelling.
- The zoning permit application was complete and there was no missing information or documentation.
- The zoning permit does not specifically state it is for an accessory dwelling unit does that affect the application in making it incomplete, there is a dwelling there and circumstances on the dictate that it is an accessory dwelling unit.
- Mr. Abboud confirmed that there were conversations with the applicant about the fact that this would be considered an accessory dwelling unit and was required to apply for the zoning permit.
- Mr. Abboud confirmed that the applicants started the project prior to getting a zoning permit, he then stated that the applicants paid the zoning permit fee of \$300 which included a penalty for starting the project prior to obtaining that permit. He provided a breakdown of the permit fee of \$200 plus a \$100 violation fee.
- Mr. Abboud did not feel that this structure met the city code for nuisance, it was converted to a dwelling as described by city code and with the features it now has as a dwelling it would not be suitable for the use of a container.

- Mr. Abboud stated that Mr. Brown signed and has authority to sign the permit, he was working under his supervision and it is stated in city code, but could not recall the citation.
- Mr. Abboud stated that new construction is new on the lot whether it is prefabbed or not, it was connected to the ground improvements were done to it.
- Public Works Department handles the driveway, water and sewer permits and they received these permits from the Public Works. He noted that they have copies of the driveway permits and no driveway permit had been excluded or abandoned to his knowledge. There is only one connection to water and sewer for the lot and did not understand the accusation and this was confirmed by the technician at Public Works.

City Attorney Holmquist noted that he had seven minutes left and would use that time for oral argument. He thanked the Commission for their time and acknowledged that they are volunteers dealing with this matter. He then made the following points to support the Commission upholding the issuance of Zoning Permit 1020-782:

- The zoning code allows a property owner to construct an accessory dwelling unit in the commercial business district.
- It is an outright permitted use listed in city code.
- The application included all the required information for Planning Department to review the application.
- The Planning Department appropriately interpreted code to allow the accessory dwelling.
- The appropriate fees were charged and paid by the applicant

Chair Smith opened the floor for comments of interested persons noting they had 10 minutes.

Larry Slone, city resident, stated that he did not have any evidence but wanted to make comment on the procedures. He believed that the Planning Commission should definitely consider obtaining legal counsel, with respect to the appellant process, Mr. Griswold is clearly an unusually technically, knowledgeable, dedicated, and persistent appellant, which regularly demonstrated his capacity to introduce highly nuanced procedural issues that the Commission and staff are not prepared to legally and definitively refute not that they should necessarily be expected to. The Commission is composed of ordinary citizens without necessary legal background or experience as admitted by the Chairman, to properly evaluate Mr. Griswold's extensive arguments, particularly with regard to whether or not to apply city code, administrative procedure or legal procedures. While I think the Planning Commission and staff are fully capable of engaging in mutually beneficial background discussion, intersection and interaction with the vast majority of those applying for development or a development permit in a manner that serves their desire, allows guided development within the city, while also maintaining fundamentally the integrity of the city code, the Staff is not an expert in a specialized field either. Nor in any case were they able or allowed to participate in procedural discussion. While he believed that the issuance of the zoning permit to the Lowry's was substantially consistent with city code, it was also evident that, as Mr. Griswold stated, undisputed items, procedural items, the Commission has relied on interpretations by the City Attorney, in their uncertainty, as a basis for many of their decisions. Past experience in the case of Mr. Griswold, will utilize any undisputed or any disputed issues as

a basis for subsequent court action that ultimately will cost the city more money. So when an Appellant raises the bar for thought processes procedurally, as is evident here, the city needs to up the quality of its game also.

Chair Smith opened the floor to the Appellant for cross examination of witnesses and rebuttal comments.

Mr. Griswold confirmed with Chair Smith that he still had his 10.5 minutes from oral arguments.

Mr. Griswold called Mr. Abboud for cross examination. Mr. Abboud provided the following responses:

- The Planning Commission does not issue stop orders.
- The Planning Department enforces the zoning code and the most recent incident was in February 2021, a person was occupying a lot that they should not on Mariner Drive.
- He did not recall stating at a meeting that it was a "saving grace" not to be required to enforce the zoning code.
- To his knowledge no asbuilt survey has been submitted as required for Zoning Permit 1020-782
- The difference between a single family dwelling and a detached accessory dwelling unit is the relationship to another structure. It is associated with the primary principal dwelling. The connex meets the definition of an accessory dwelling unit. It is subsequent to the mobile home due to being smaller and less prominent.
- A second structure could be subordinate to another just due to size, subordinate in this case means subsequent and smaller, less prominent and incidental means subsequent or even not in greater stature.
- The zoning permit does not specifically state that the application was for an accessory dwelling unit, it stated that it was for a residential one bedroom, one bath 360 square foot structure, it did not state a single family dwelling but that is what a single family residence is.
- Mr. Abboud could not confirm or deny he was physically present in the office when Mr. Brown issued the Zoning permit on October 5, 2021
- Mr. Abboud did not recall the amount of time or the degree of his involvement in review of the application prior to issuance. He did not personally inspect the interior of the converted connex.
- Mr. Abboud stated that Mr. Brown is authorized under his supervision to issue the zoning permit and it is standard office procedure. He did not waive or ignore HCC 21.70.030 (a) and it is customary to delegate the issuance of zoning permits to subordinate members of the planning staff.

Chair Smith noted that the Appellant had used his time allotted.

Mr. Griswold requested to use his reserve time.

City Clerk Jacobsen noted that Mr. Griswold reserved his time at the end of his testimony and the Chair agreed to that at that time. It would be appropriate to honor that agreement and allow the additional 10.5 minutes.

There was no objection from the Commission and Chair Smith requested Mr. Griswold to continue.

Mr. Griswold repeated the last question to Mr. Abboud regarding the customary delegation of issuing zoning permits to subordinate planning staff in which Mr. Abboud responded affirmatively. Mr. Abboud then provided the following responses to additional questions:

- Mr. Abboud stated he has personally issued zoning permits but did not have that information to specifically cite which ones or the time period he did.
- Mr. Abboud provided no guarantees nor implied that he would not issue any enforcement action with regards to the connex.
- Mr. Abboud stated that he had conversations with the Lowry's but none since the filing of the appeal regarding Zoning Permit 1020-782. He additionally affirmed that he has had no conversations with the Planning Commission regarding this subject either.
- Mr. Abboud was not prepared to respond to the question of his actions if the Commission denies Zoning Permit 1020-782 and the property owners do not bring the converted connex into compliance with Homer City Code
- Mr. Abboud stated that he believed last year, there was one commissioner who attended training this year, he would have to review the calendar when the last training session was offered but he believed it was a year ago. He did not recall the information on who provided the training so was unable to provide accurate information.

City Attorney Holmquist objected to the line of questioning as irrelevant.

Mr. Griswold noted that this was an informal proceeding and official court proceeding do not apply.

Mr. Griswold inquired who made the decision to hire the City Attorney for the Planning Department.

City Attorney Holmquist directed Mr. Abboud not to respond as that was Attorney Client privilege.

Mr. Griswold objected to the Commission allowing City Attorney Holmquist to interject without permission from the Commission. He then requested to cross examine Mr. Brown.

City Clerk Jacobsen confirmed that Mr. Brown was still under oath as was Mr. Abboud.

Mr. Griswold then proceeded to cross examine Mr. Brown who provided the following responses:

- He has an environmental undergraduate degree in urban development, he is not a member of AICP

- He is always under supervision by Mr. Abboud and issued the permit under his direction.
- Mr. Abboud was present in the office when he approved the permit.
- He could not provide the percentage of time that he was directly in communication and supervision but Mr. Abboud was consulted throughout the permit process which is typical. He signs most of the zoning permits issued.
- Mr. Brown was unable to respond to the questions regarding the City Planner signing zoning permits outlined in city code since he did not have that code citation in front of him.
- He affirmed that he personally viewed the interior of the structure.
- He affirmed that he knew the difference between a single family dwelling and a detached accessory dwelling unit when he signed the zoning permit.
- Since he did not have the record in front of him so he could not state what the description on the permit was for the structure but it could be looked up
- He issued a permit for a single family dwelling but it was an accessory dwelling on the lot.

Chair Smith interrupted Mr. Griswold stating that he has reached his time limit. He confirmed with City Clerk Jacobsen that this concluded the hearing and thanked everyone who participated and that the Commission will deliberate the matter and render their decision within the 60 day timeframe allowed.

Chair Smith then noted that City Attorney Holmquist appeared and reviewing his agenda, stated that it was his understanding that they were at the conclusion of the public hearing and requested clarification from the City Clerk.

City Clerk Jacobsen clarified that it was an appeal hearing, not public hearing for the record.

Commissioner Highland stated that the Commission has an opportunity to ask questions at this time.

Chair Smith reported he was missing a part of his agenda and requested clarification from the City Clerk.

City Clerk Jacobsen clarified for the Chair referring to the procedures that the Commission had the opportunity to ask questions.

Chair Smith opened the floor to questions from the Commission hearing none he opened the floor to audience comments.

### **COMMENTS OF THE AUDIENCE**

Larry Slone, city resident, apologized for commenting earlier he was unclear on when he was to comment. He referred to the comments made about additional procedure which allowed him to



make comments at the end of this procedure. He reiterated his recommendation that the Commission hire legal representation.

Chair Smith requested clarification from City Clerk Jacobsen on who constituted a member of the audience.

City Clerk Jacobsen responded that anyone in attendance can comment for three minutes with the restriction that they cannot provide additional evidence or testimony regarding the hearing.

Frank Griswold commented that Mr. Slone just proved his point about notification of the public and used to be a Planning Commissioner and he could not figure out when or how much time he had to present testimony, evidence or otherwise and I would like to point out that the Chair at the very conclusion of my remarks, that you asked Mr. Holmquist if the Chair had the authority to give Mr. Holmquist time for rebuttal that is a question you would ask of your attorney, you are treating the city attorney, who represents my opposition, as your attorney, and you are not even aware of it.

City Attorney Holmquist thanked the Commission for their time and consideration.

Commissioner Venuti questioned when they would be setting a date for deliberations.

Chair Smith responded that they would leave that to the Clerk to coordinate and sort out the calendar for that.

Commissioner Barnwell commented that it strikes him as a simple case, not a complex case and he thought that what they have heard here and what their role as a Planning Commissioner and in recent training performed by the American Planning Association he was told that the foremost function of a Planning Commission is to ensure compliance with the Comprehensive Plan and they stressed that key function. What he has been hearing at this meeting and in the last couple of months is calling our role into analyzing and judging the proper procedural conduct of the planning department and the city staff and he does not believe that is their role. He believed that they should be in a watch dog role but not in a higher capacity to oversee in detail planning function such as making recommendations on zoning permits such as this one. So he had to say that he has perceived this to be an inordinately excessive amount time not only by the Commission but by staff, which costs money in this case and that he states this carefully and guardedly as he fully respects Mr. Griswold's right to question city procedures but I just want to say that this has been an inordinately excessive use of Commission time.

City Clerk Jacobsen expressed her appreciation for everyone's work tonight.

## **ADJOURN**

There being no further business to come before the Commission, the meeting adjourned at 8:47 p.m. The next Regular Meeting is scheduled for Wednesday, March 17, 2021 at 6:30 p.m. A

worksession is scheduled prior to the regular meeting at 5:30 p.m. All meetings are 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

Approved: April 7, 2021



ON APPEAL TO THE HOMER PLANNING COMMISSION

FRANK GRISWOLD,

Appellant,

v.

TRAVIS BROWN, SCOTT LOWRY,  
AND STACY LOWRY,

Appellees.

\_\_\_\_\_/ Appeal of Zoning Permit 1020-782

**MOTION FOR THE DISQUALIFICATION AND TERMINATION OF CHAIR SMITH**

Appellant Frank Griswold hereby moves that the Planning Commission disqualify Commission Chair Scot Smith from further participation in the above-captioned matter and all other Commission matters due to the inappropriate remarks Mr. Smith made during the March 17, 2021 regular Commission meeting regarding the March 11, 2021 appeal hearing. During the March 17, 2021 Commission meeting, Chair Smith stated to the Commission that he had learned a lot in that previous meeting and that he had never been a part of a public hearing like that so some of the procedures he obviously had never been exposed to so it was a steep learning curve. He further stated to the Commission as follows: "I giggled at the end of it when I got off, that's for sure." The highly contentious appeal hearing regarding Zoning Permit 1020-782 was no laughing matter! For

Chair Smith to portray it as such not only reveals his unsuitability to participate in the pending appeal, but his unsuitability to serve as a Homer Planning Commissioner under any circumstances. The Commission should not tolerate, condone, or otherwise be complicit in Chair Smith's reprehensible conduct. Chair Smith should be summarily disqualified from any further participation in the instant appeal and furthermore be permanently voted off of the Homer Planning Commission, that's for sure.

DATED: April 6, 2021.

By: s/Frank Griswold/  
Frank Griswold



## City of Homer

[www.cityofhomer-ak.gov](http://www.cityofhomer-ak.gov)

## Office of the City Clerk

491 East Pioneer Avenue  
Homer, Alaska 99603

[clerk@cityofhomer-ak.gov](mailto:clerk@cityofhomer-ak.gov)

(p) 907-235-3130

(f) 907-235-3143

## Memorandum

TO: Planning Commission  
FROM: Melissa Jacobsen, MMC, City Clerk  
DATE: April 9, 2021  
SUBJECT: Appellant Motion for the Disqualification and Termination of Chair Smith

---

Attached for the Planning Commission's consideration is a motion filed by Frank Griswold for the disqualification and termination of Chair Smith that was submitted on April 7, 2021.

The Commission should address the issue of disqualification. I'd suggest this be taken up in a manner consistent with the way the Commission addressed preliminary issues at the March 11<sup>th</sup> hearing and allow the appellant and appellee three minutes each to make their comments on the matter. Upon completion of comments, the Commission should make a motion to disqualify, discuss the merits of the motion, and then vote.

Regarding the motion to terminate, in my review of City Code I do not see a reference that gives the Planning Commission authority to terminate one if it's members.

Pursuant to Homer City Code (HCC) 2.58.035 Commission and board member terms, appointment and removal of members of City boards and commissions shall be by recommendation of the Mayor and confirmation of the Council, except as specifically provided otherwise in the Alaska Statutes and/or other provisions of the code.

HCC 2.58.050 Required Procedures section h. addresses conditions by which a an appointment is vacated if-

- A member fails to qualify to take office within 30 days after their appointment;
- A member resigns;
- A member is physically or mentally unable to perform the duties of the office;
- A member is convicted of a felony or of an offense involving a violation of their oath of office;
- A member misses three consecutive regular meetings without being excused, or 30 percent of all meetings within a calendar year.

The Planning Commission bylaws includes that an appointment is vacated if a member misses six regular meetings in a calendar year.

From my reading, Alaska Statutes 29.20.320 references Boards and Commissions but doesn't specify conditions for vacancy.

It reads that (a) The governing body may by ordinance establish advisory, administrative, technical, or quasi-judicial boards and commissions, and (b) Members of boards and commissions, except for members of the board of

adjustment and assembly members serving on the board of equalization, are appointed by the mayor and confirmed by the governing body.

If the Commission wishes to make a recommendation to Mayor and Council to consider terminating Commissioner Smith from the Planning Commission, the Commission may do so by making a motion recommending termination and identifying the applicable section of code that substantiates the termination.



Published on *City of Homer Alaska Official Website* (<https://www.cityofhomer-ak.gov>)

[Home](#) > [Submit Written Testimony for Commission and Board Meetings](#) > [Webform results](#) > Submission #10

#### Submission information

Form: [Submit Written Testimony for Commission and Board Meetings](#) <sup>[1]</sup>

Submitted by Visitor (not verified)

Thu, 04/15/2021 - 4:24pm

162.142.118.11

**First Name** Robert & Jill

**Last Name** Shimko

**Email** shimkojill@gmail.com

**Phone Number**

**Are You A City or Non-City Resident?** Non-City Resident

**Which commission/board meeting do you want to attend?** Planning Commission

**What is the type of meeting you want to participate in?** Special Meeting (if scheduled)

**Date of Meeting you want to participate in?** Thu, 04/15

**What type of comments will you be giving?**

Comments of the Audience - Citizens may comment on any topic.

#### Written Testimony

Regarding Commissioner Scott Smith - chair of Planning Committee.

In regards to his dismissal. There are no grounds for dismissal - he is upstanding, caring and fair adult. On the person that is filing this motion to dismiss - I believe that there is substantial background on him and his continuous attacks on the councils within the city of Homer, to see past the smoke he is creating - make a fair judgement in favor of Mr Scott Smith.

#### Electronic Signature

Jill C Shimko

I understand that checking this box constitutes a legal signature confirming that I acknowledge and agree that I am the person identified above and that I acknowledge and agree to the above Terms of Acceptance.

**Source URL:** <https://www.cityofhomer-ak.gov/node/60481/submission/46229>

**Links**

[1] <https://www.cityofhomer-ak.gov/cityclerk/submit-written-testimony-commission-and-board-meetings>

**From:** [Julie Engebretsen](#)  
**To:** [Melissa Jacobsen](#)  
**Cc:** [Rick Abboud](#)  
**Subject:** FW: Written Testimony for Commission/Board Meetings  
**Date:** Thursday, April 15, 2021 1:35:12 PM

---

Hi Melissa,

Would you please provide this to the PC for tonight's meeting?

Thanks

Julie

---

**From:** Travis Brown <[tbrown@ci.homer.ak.us](mailto:tbrown@ci.homer.ak.us)>  
**Sent:** Thursday, April 15, 2021 1:18 PM  
**To:** Julie Engebretsen <[JEngebretsen@ci.homer.ak.us](mailto:JEngebretsen@ci.homer.ak.us)>; Rick Abboud <[RAbboud@ci.homer.ak.us](mailto:RAbboud@ci.homer.ak.us)>  
**Subject:** FW: Written Testimony for Commission/Board Meetings

---

**From:** Jones  
**Sent:** Wednesday, April 14, 2021 5:26:04 PM (UTC-09:00) Alaska  
**To:** Travis Brown  
**Subject:** Written Testimony for Commission/Board Meetings

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

Written Testimony for the Planning Commission Name: Terry Jones Email: [tjonesrjones@gmail.com](mailto:tjonesrjones@gmail.com) Phone: 19074357694 Residency: Meeting to Participate In: Planning Commission Special Meeting (if scheduled) Thu, 04/15 Comments of the Audience - Citizens may comment on any topic. Written Testimony:  
The petition to ban Scott Smith from the Planning Commission submitted by Frank Griswald has no merit. Scott Smith is a man of great integrity and honesty. He is the kind of person Homer needs on its planning commission.  
Electronic Signature: Terry Jones Submitted on Wednesday, April 14, 2021 - 5:26pm The results of this submission may be viewed at: <https://www.cityofhomer-ak.gov/node/60481/submission/46222>

**From:** [Matt & Jill Hockema](#)  
**To:** [Department Clerk](#); [Mayor Email](#); [francovenuti@ci.homer.ak.us](mailto:francovenuti@ci.homer.ak.us); [syverinebentz@ci.homer.ak.us](mailto:syverinebentz@ci.homer.ak.us); [charlesbarnwell@ci.homer.ak.us](mailto:charlesbarnwell@ci.homer.ak.us); [bradconley@ci.homer.ak.us](mailto:bradconley@ci.homer.ak.us); [scottsmith@ci.homer.ak.us](mailto:scottsmith@ci.homer.ak.us); [kalliepetska-rubalcave@ci.homer.ak.us](mailto:kalliepetska-rubalcave@ci.homer.ak.us); [robertahighland@ci.homer.ak.us](mailto:robertahighland@ci.homer.ak.us); [rickabboud@ci.homer.ak.us](mailto:rickabboud@ci.homer.ak.us); [julieengebretsen@ci.homer.ak.us](mailto:julieengebretsen@ci.homer.ak.us); [robdumouchel@ci.homer.ak.us](mailto:robdumouchel@ci.homer.ak.us); [jankeiser@ci.homer.ak.us](mailto:jankeiser@ci.homer.ak.us)  
**Subject:** Special Planning Commission Meeting on 4/15/2021  
**Date:** Thursday, April 15, 2021 11:10:31 AM

---

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

We are writing to oppose the motion for disqualification and termination of Commissioner Scott Smith submitted by Frank Griswold.

We do not feel Mr. Smith's remarks were inappropriate or reprehensible as Mr. Griswold claims. Mr. Smith admitted that he has not participated in public hearings, nor has he been exposed to the procedures prior to serving on this board. As each of you know, there is always a learning curve when stepping up to serve on any board or commission. The comment from Mr. Smith, "I giggled at the end of it when I got off, that's for sure," does not, and should not, disqualify him from serving on the Planning Commission, nor does it make him unsuitable to serve on the board or in any pending appeals.

Once again, Mr. Griswold is wasting the city's time, resources, and money with another frivolous appeal/lawsuit. Please vote to to allow Mr. Smith to continue on as a chair on the Planning Commission and dismiss Mr. Griswold's appeal.

Sincerely,  
Matthew & Jill Hockema  
907-235-3798  
Homer, AK

**From:** [Cassie Lawver](#)  
**To:** [Department Clerk](#); [Mayor Email](#)  
**Subject:** Special Planning Commission Meeting on 4/15  
**Date:** Wednesday, April 14, 2021 8:51:06 PM

---

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

Commissioner Frank Venuti  
Commission Syverine Bentz  
Commissioner Charles Barnwell  
Commissioner Brad Conley  
Commissioner Scott Smith  
Commissioner Kalie Petska-Rubalcave  
Commissioner Roberta Highland  
Rick Abboud, City Planner  
Julie Engebretsen, Deputy City Planner  
Ken Castner, Mayor  
Rob Dumouchel, City Manager  
Jan Keiser, Public Works Director

I am writing in opposition of Frank Griswold motion for disqualification and termination of Commissioner Scott Smith. As each of you know, it is it a learning curve when you step up to serve on a commission/board. Unfortunately it is "learn as you go". And Mr. Griswold also quoted Mr. Smith. I don't think that quote is grounds for disqualification. I am just shock that your time is being wasted on this motion. Nothing I read in Mr. Griswold motion was "inappropriate". Please vote to throw out this motion. It does not hold merit and is a time waster. Mr. Smith should carry on as a chair on the Planning Commission.

Thank you,  
Cassie Lawver

**From:** [Matt & Jill Hockema](#)  
**To:** [Department Clerk](#); [Mayor Email](#); [francovenuti@ci.homer.ak.us](mailto:francovenuti@ci.homer.ak.us); [syverinebentz@ci.homer.ak.us](mailto:syverinebentz@ci.homer.ak.us); [charlesbarnwell@ci.homer.ak.us](mailto:charlesbarnwell@ci.homer.ak.us); [bradconley@ci.homer.ak.us](mailto:bradconley@ci.homer.ak.us); [scottsmith@ci.homer.ak.us](mailto:scottsmith@ci.homer.ak.us); [kalliepetska-rubalcave@ci.homer.ak.us](mailto:kalliepetska-rubalcave@ci.homer.ak.us); [robertahighland@ci.homer.ak.us](mailto:robertahighland@ci.homer.ak.us); [rickabboud@ci.homer.ak.us](mailto:rickabboud@ci.homer.ak.us); [julieengebretsen@ci.homer.ak.us](mailto:julieengebretsen@ci.homer.ak.us); [robdumouchel@ci.homer.ak.us](mailto:robdumouchel@ci.homer.ak.us); [jankeiser@ci.homer.ak.us](mailto:jankeiser@ci.homer.ak.us)  
**Subject:** Special Planning Commission Meeting on 4/15/2021  
**Date:** Thursday, April 15, 2021 11:10:31 AM

---

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

We are writing to oppose the motion for disqualification and termination of Commissioner Scott Smith submitted by Frank Griswold.

We do not feel Mr. Smith's remarks were inappropriate or reprehensible as Mr. Griswold claims. Mr. Smith admitted that he has not participated in public hearings, nor has he been exposed to the procedures prior to serving on this board. As each of you know, there is always a learning curve when stepping up to serve on any board or commission. The comment from Mr. Smith, "I giggled at the end of it when I got off, that's for sure," does not, and should not, disqualify him from serving on the Planning Commission, nor does it make him unsuitable to serve on the board or in any pending appeals.

Once again, Mr. Griswold is wasting the city's time, resources, and money with another frivolous appeal/lawsuit. Please vote to to allow Mr. Smith to continue on as a chair on the Planning Commission and dismiss Mr. Griswold's appeal.

Sincerely,  
Matthew & Jill Hockema  
907-235-3798  
Homer, AK



**From:** [AdamHykes@protonmail.com](mailto:AdamHykes@protonmail.com)  
**To:** [Department Clerk](#)  
**Subject:** Special Planning Commission Meeting 4/15  
**Date:** Wednesday, April 14, 2021 4:56:10 PM

---

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

Dear City Planning Commision or whom it may concern,

I am in no way troubled by Commissioner Smith's comments, which now have him "in the hot seat". I am however a bit suprised that this simple comment is the basis for Mr. Griswold attempt to remove Mr. Smith from his position. Its a fairly innocuous comment, I had to read it twice because I thought I had missed something. This strikes me as a political move rather than anything remotely close to "reprehensible conduct", as Mr. Griswold asserts.

Its a small town, and I can vouch for the conduct of Mr. Scott Smith. I have known him for a number of years, and his integrity is impeccable. He is a pretty straight shooter though, and his "just says it like it is" style is likely to ruffle the feathers of some. This is simply Mr. Smiths personality. Its fine if someone doesn't like him on a personal level, but that's not a matter of professional conduct. Lets be adults here.

Respectfully,  
Adam Levi Hykes

Published on *City of Homer Alaska Official Website* (<https://www.cityofhomer-ak.gov>)

[Home](#) > [Submit Written Testimony for Commission and Board Meetings](#) > [Webform results](#) > Submission #8

#### Submission information

Form: [Submit Written Testimony for Commission and Board Meetings](#) <sup>[1]</sup>

Submitted by Visitor (not verified)

Wed, 04/14/2021 - 5:26pm

104.254.227.72

**First Name** Terry

**Last Name** Jones

**Email** tjonesrjones@gmail.com

**Phone Number**

**Are You A City or Non-City Resident?**

**Which commission/board meeting do you want to attend?** Planning Commission

**What is the type of meeting you want to participate in?** Special Meeting (if scheduled)

**Date of Meeting you want to participate in?** Thu, 04/15

**What type of comments will you be giving?**

Comments of the Audience - Citizens may comment on any topic.

#### Written Testimony

The petition to ban Scott Smith from the Planning Commission submitted by Frank Griswald has no merit. Scott Smith is a man of great integrity and honesty. He is the kind of person Homer needs on its planning commission.

#### Electronic Signature

Terry Jones

I understand that checking this box constitutes a legal signature confirming that I acknowledge and agree that I am the person identified above and that I acknowledge and agree to the above Terms of Acceptance.

**Source URL:** <https://www.cityofhomer-ak.gov/node/60481/submission/46222>

#### Links

[1] <https://www.cityofhomer-ak.gov/cityclerk/submit-written-testimony-commission-and-board-meetings>

**From:** [Doug](#)  
**To:** [Department Clerk](#)  
**Subject:** Special planning commission meeting  
**Date:** Thursday, April 15, 2021 11:36:34 AM

---

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

Scott Smith should not be removed from planning commission for the reason stated! It was insignificant and clearly an attempt to remove him without just cause! Thanks Doug Stuart

Sent from my iPhone

Session 21-10, a Special Meeting of the Planning Commission was called to order by Chair Scott Smith at 5:30 p.m. on April 15, 2021 at Cowles Council Chambers in City Hall located at 491 E. Pioneer Avenue, Homer, Alaska, via Zoom Webinar.

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

ABSENT: COMMISSIONERS BENTZ (EXCUSED)

STAFF: CITY CLERK JACOBSEN

### **AGENDA APPROVAL**

HIGHLAND/VENUTI MOVED TO APPROVE THE AGENDA.

There was no discussion.

VOTE: NON OBJECTION: UNANIMOUS CONSENT

Motion carried.

### **PENDING BUSINESS**

#### **NEW BUSINESS**

- a. Memorandum from City Clerk Re: Appellant Motion for the Disqualification and Termination of Chair Smith from further participation in the appeal of Zoning Permit 1020-782 and of his seat on the Planning Commission.

Chair Smith passed the gavel to senior member Highland to serve as Acting Chair.

Acting Chair Highland explained that the commission would be taking up separately the two matters raised in the motion that was filed regarding Chair Smith. The disqualification will be addresses first, then the termination. She further explained Mr. Griswold and Attorney Holmquist would be give three minutes each to comment regarding the motion. She opened the floor to Mr. Griswold.

Frank Griswold, appellant, read from the motion he filed that was included in the packet to state the reasoning for disqualifying and terminating Chair Smith.

Attorney Holmquist, representing the City as appellee, rebutted that the reasoning provided doesn't warrant disqualification from participation and City Code outlines that the Commission does not have the authority to terminate a Commissioner, only Council has that authority.

Acting Chair Highland opened the floor for a motion and discussion regarding the disqualification of Chair Smith.

VENUTI MOVED TO DISQUALIFY CHAIR SMITH FROM FURTHER PARTICIPATION IN THE PENDING APPEAL.

Motion failed with lack of a second.

Acting Chair Highland opened the floor for a motion and discussion regarding the termination of Chair Smith's appointment.

VENUTI MOVED TO RECOMMEND TO MAYOR AND CITY COUNCIL THAT CHAIR SMITH'S APPOINTMENT BE TERMINATED.

Motion failed with lack of a second.

Chair Smith resumed the gavel.

**COMMENTS OF THE AUDIENCE** (3 minute time limit)

**ADJOURN**

VENUTI/HIGHLAND MOVED TO ADJOURN AND DELIBERATE IN PRIVATE.

There was brief discussion confirming their desire to deliberate despite the absence of Commissioner Bentz.

VOTE: NON OBJECTION: UNANIMOUS CONSENT.

Motion carried.

There being no further business to come before the Commission Chair Smith adjourned the meeting at 6:08 p.m. The next Regular Meeting is Wednesday, April 21, 2021 at 6:30 p.m. and a Worksession at 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.

---

Melissa Jacobsen, MMC, City Clerk

Approved:\_\_\_\_\_