



City of Homer

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Memorandum 21-153

TO: MAYOR CASTNER AND HOMER CITY COUNCIL

FROM: MELISSA JACOBSEN, MMC, CITY CLERK

DATE: SEPTEMBER 7, 2021

SUBJECT: MOTIONS FILED BY APPELLANT FRANK GRISWOLD RELATED TO THE APPEAL OF CUP 20-15 AND ZONING PERMIT 1020-782

Appellant Frank Griswold has filed a Motion for Reconsideration and the Motion for Leave to Supplement Points on Appeal to Address Planning Commission's Dismissal of Appeal regarding the appeal of CUP 20-15 and Motion for Reconsideration regarding the appeal of Zoning Permit 1020-782 in an effort to get these matters back before the Board of Adjustment.

The appeal of CUP 20-15 was regarding the Planning Commission Decision on Conditional Use Permit 20-15 under HCC 21.18.040(b)(4) a building within the twenty foot building setback and HCC 21.18.040(d) building area in excess of 30 percent of the lot area on a lot in the central business district on Chamberlain & Watson No. 4, Lot 1-A and T 6S R 13W SEC 19 Seward Meridian HM 2011002 Inlet Trading Post Condominiums Unit 2 at 106 W. Bunnell Avenue, Homer, Alaska. Council remanded the matter to the Planning Commission and following the remand the applicant withdrew her CUP application. The Planning Commission approved a Motion to Dismiss submitted by Attorney Holmquist on behalf of the City based on the finding that the applicant withdrew her conditional use permit application which voids Conditional Use Permit 20-15 and moots all pending issues in this appeal.

The appeal of Zoning Permit 1020-782 was regarding an Appeal of the Planning Commission Decision on appeal of Zoning Permit 1020-782 issued for the property located at 541 Bonanza Avenue, Homer, Alaska.

Final decisions were issued regarding both matters and the decisions were mailed to parties in accordance with Homer City Code. The appellant argued that the notice of appeal rights was not printed on the final decision document related to the zoning permit, so that accommodation has been made and re-issued to the parties.

An appeal from a final decision may be taken directly to the Superior Court by a party who actively and substantively participated in the proceedings before the hearing officer or by the City Manager or City Planner or any governmental official, agency, or unit, and that an appeal to the Superior Court shall be filed within 30 days of the date of distribution of the final decision to the parties appearing before the hearing officer.

Homer City Code provides no provisions for an appellant to submit motions to bring a matter back before the Board of Adjustment after a final decision has been issued. I have advised Mr. Griswold as such, but he disagrees. Because of this I'm asking Council to advise me on how to proceed with these matters. Attorney Scott Brandt-Erichsen, who provided procedural advice to the Board of Adjustment in this matter, has advised that the Homer City Code does not authorize reconsideration, and HCC 21.91.130 as applied to this case makes the final decision appealable directly to the superior court without reconsideration. Further, he advises that addressing a motion for reconsideration and granting or denying the motion where there is no authority to do so would inject a potential procedural error into the

proceedings, and therefore he recommends that the response be that the Board of Adjustment declines to take up the motion as it is out of order, and to direct the clerk to so advise the parties.

If the Council agrees it should convene as Board of Adjustment to take up and consider the motions, Council will need to provide me with direction on process for noticing parties, noticing the public, opportunities for responses or briefing related to the motions that have been filed, and when to schedule the special meeting to take up the matters.

Recommendation:

Make a Motion that the Board of Adjustment declines to take up the motions of reconsideration as it is out of order and that the Clerk is directed to advise the parties that reconsideration will not be taken up and that they have 30 days from the final decision to appeal to the superior court.