

Move the
HOMER ADVISORY PLANNING COMMISSION
491 E. PIONEER AVENUE
HOMER, ALASKA

JANUARY 4, 2012
WEDNESDAY AT 6:30 P.M.
COWLES COUNCIL CHAMBERS

REGULAR MEETING AGENDA

- 1. Call to Order**
- 2. Approval of Agenda**
- 3. Public Comment**
The public may speak to the Planning Commission regarding matters on the agenda that are not scheduled for public hearing or plat consideration. (3 minute time limit).
- 4. Reconsideration**
- 5. Adoption of Consent Agenda**
All items on the consent agenda are considered routine and non-controversial by the Planning Commission and are approved in one motion. There will be no separate discussion of these items unless requested by a Planning Commissioner or someone from the public, in which case the item will be moved to the regular agenda and considered in normal sequence.
 1. Approval of Minutes of December 7, 2011
 2. Time Extension Requests
 3. Approval of City of Homer Projects under HCC 1.76.030 g.
 4. KPB Coastal Management Program Reports
- 6. Presentations**
- 7. Reports**
 - A. Staff Report PL 12-02, City Planner's Report
- 8. Public Hearings**
Testimony limited to 3 minutes per speaker. The Commission conducts Public Hearings by hearing a staff report, presentation by the applicant, hearing public testimony and then acting on the Public Hearing items. The Commission may question the public. Once the public hearing is closed the Commission cannot hear additional comments on the topic. The applicant is not held to the 3 minute time limit.
- 9. Plat Consideration**
 - A. Staff Report PL 12-01, Bay View Subdivision, Swan Addition Preliminary Plat
- 10. Pending Business**
- 11. New Business**
- 12. Informational Materials**
 - A. City Manager's Report dated December 12, 2011
 - B. Staff Report PL 08-70, Robert's Rules, Discussion and Findings
- 13. Comments of The Audience**
Members of the audience may address the Commission on any subject. (3 minute time limit)
- 14. Comments of Staff**

15. Comments of The Commission

16. Adjournment

Meetings will adjourn promptly at 9:30 p.m. An extension is allowed by a vote of the Commission. The next regular meeting will be held on January 18, 2012 at 6:30p.m. There will be a work session at 5:30.

Session 11-17, a Regular Meeting of the Homer Advisory Planning Commission was called to order by Chair Minsch at 6:30 p.m. on December 7, 2011 at the City Hall Cowles Council Chambers located at 491 E. Pioneer Avenue, Homer, Alaska.

PRESENT: COMMISSIONERS DOLMA, ERICKSON, HIGHLAND, MINSCH, SONNEBORN, VENUTI

ABSENT: COMMISSIONER BOS

STAFF: CITY PLANNER ABOUD
PLANNING TECHNICIAN ENGBRETSSEN
DEPUTY CITY CLERK JACOBSEN

APPROVAL OF AGENDA

The agenda was approved by consensus of the Commission.

PUBLIC COMMENT

The public may speak to the Planning Commission regarding matters on the agenda that are not scheduled for public hearing or plat consideration. (3 minute time limit).

There were no comments.

RECONSIDERATION

ADOPTION OF CONSENT AGENDA

All items on the consent agenda are considered routine and non-controversial by the Planning Commission and are approved in one motion. There will be no separate discussion of these items unless requested by a Planning Commissioner or someone from the public, in which case the item will be moved to the regular agenda and considered in normal sequence.

1. Approval of the November 16, 2011 minutes
2. Draft Decision and Findings for CUP 11-13, A Request to amend Conditional Use Permit (CUP) 10-06, for "Public Utility Facilities and Structures" for a communication site at 1033 Skyline Drive, Lot 5 Skyline View Subdivision Lying South of Skyline Drive 06 to allow construction of a 96 ft tower.
3. Draft Decision and Findings for Variance 11-02, A Request to Amend Variance 10-01 to allow the construction of a 96 ft tower in the 20' building setback at 1033 Skyline Drive, Lot 5 Skyline View Subdivision Lying South of Skyline Drive.

Items 2 and 3 were moved to new business at the request of Commissioner Sonneborn and the remaining Consent Agenda item was approved by consensus of the Commission.

PRESENTATIONS

REPORTS

- A. Staff Report PL11-123, City Planner's Report

City Planner Abboud reviewed his staff report.

PUBLIC HEARINGS

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Testimony limited to 3 minutes per speaker. The Commission conducts Public Hearings by hearing a staff report, presentation by the applicant, hearing public testimony and then acting on the Public Hearing items. The Commission may question the public. Once the public hearing is closed the Commission cannot hear additional comments on the topic. The applicant is not held to the 3 minute time limit.

A. Staff Report PL 11-122, An Ordinance of the City Council of Homer, Alaska, Enacting Homer City Code Chapter 21.27, East End Mixed Use District

Planning Technician Engebretsen reviewed the staff report.

Rika Mouw commented on behalf of Dorothy Melambianakis, a property owner in the area. She addressed Ms. Melambianakis' letter in the packet that encourages removal of the Rural Residential district from the proposed East End Mixed Use District for the reasoning listed in her letter.

Michael Kennedy, city resident and property owner in the area, expressed opposition to changes to the GC2 District. He explained that it is the only zoning that allows for industry, there is very little land zoned that way, it was created for a reason, and people purchased property in the area because it was the only GC2 zoned land accessible by road. The area was even expanded about 10 years ago. East End Mixed Use is going to make less use of GC2 land that is currently undeveloped. He concurs that Rural Residential should be left out too.

In response to Commission comments that the industrial uses are still allowed as conditional uses, Mr. Kennedy explained that conditional use devalues the property from what was originally allowed out right when people bought their property. When conditions are put on uses, it can make it economically unfeasible to use the land.

Mike Arno, property owner in the area, commented that he would like the zoning to remain the same. He agrees that rural residential does not mix with industrial. He has experienced clashes with neighbors regarding the noise and large trucks going by. The zoning is limited and if we want more business in Homer we have to have an area for it. He expressed concerns regarding conditional uses with residential land owners opposing industrial development making the permitting process even more difficult. More separation is better.

In response to Commission comments that the ordinance states conflicts will be resolved in favor commercial, Mr. Arno said regardless of what the paper says it still creates personality problems and clashes between people.

There were no further comments and the public hearing was closed.

DOLMA/SONNEBORN MOVED TO BRING DRAFT ORDINANCE CREATING THE EAST END MIXED USE ZONING DISTRICT AND AMENDING THE ZONING MAP TO THE FLOOR FOR CONSIDERATION.

There was no opposition expressed and discussion ensued.

HIGHLAND/DOLMA MOVED TO ADD AN ADDITIONAL CLAUSE TO READ WHEREAS WHILE RECOGNIZING VALUE OF THE EXISTING DEVELOPED COMMERCIAL PROPERTIES WE STILL NEED TO RECOGNIZE THE IMPORTANCE, VALUES, AND FUNCTIONALITY OF THE EXISTING WETLANDS AND DISCHARGE SLOPE.

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There was discussion that much of the area is wetlands that serve important uses that weren't recognized in the past, and while there is a need for GC2 there isn't enough land to satisfy all the needs. It was also suggested that people may think it is possible to easily build industrial uses in this area, when it isn't with all the wetlands in the area.

City Planner Abboud explained that whereas clauses should be related to the objective of the ordinance and while this is a thoughtful clause it isn't going to be adopted into the code.

VOTE: YES: HIGHLAND

NO: MINSCH, SONNEBORN, VENUTI, ERICKSON, DOLMA

Motion failed.

SONNEBORN/ERICKSON MOVED TO ALTER THE BOUNDARIES OF THE EAST END MIXED USE ARE TO INCLUDE VIKKI SIMPSONS LOT AT 5057 KACHEMAK DRIVE LOT 179-080-08.

There was brief discussion of the request from Ms. Simpson regarding her lot that borders the district.

VOTE: YES: HIGHLAND, SONNEBORN, MINSCH, VENUTI, ERICKSON

NO: DOLMA

Motion carried.

HIGHLAND/ERICKSON MOVED TO LEAVE THE RURAL RESIDENTIAL AS IS IN THE CURRENT ZONING OFF OF ALDER LANE.

There was discussion that that the other side of Alder Lane is remaining Rural Residential and the letters from Ms. Melambianakis raises good points as well as other comments regarding changes to this district.

VOTE: YES: SONNEBORN, DOLMA, ERICKSON, HIGHLAND, VENUTI

NO: MINSCH

Motion carried.

DOLMA/SONNEBORN MOVED TO ACCEPT THE AMENDED DRAFT ORDINANCE AND FORWARD IT TO CITY COUNCIL FOR ADOPTION.

There was no discussion.

VOTE: NON OBJECTION: UNANIMOUS CONSENT.

Motion carried.

PLAT CONSIDERATION

- A. Staff Report PL 11-120, Barnett Subdivision, Quiet Creek Addition No. 2 Preliminary Plat**

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Planning Technician Engebretsen reviewed the staff report.

Roger Imhoff, project surveyor, commented that he and Theodora Accinelli, attorney representing Alaska USA, were in attendance and asked to reserve comment until the end of the public comment period.

Bill Frank, homeowner in Quiet Creek, recognized it isn't in the Commissions scope to determine ownership. He provided brief history of a previous application to replat that was withdrawn. He said it is their belief that once the first condo unit was sold the land could not be withdrawn or re-platted because with the purchase of a unit you buy the footprint and an undivided pro rata share of the adjoining property. He questioned why the condo owners would have to sign the plat and raised the issue of the title company underwriter's instruction to not discuss the plat due to potential litigation.

Chair Minsch commented that the City does not have platting authority and is only advisory in their input to the Borough.

Roger Imhoff raised question about earlier comments the City Planner had made regarding steep slope ordinance and whether it applied to this subdivision. City Planner Abboud clarified he made a general comment regarding the ordinance. Mr. Imhoff said the condo owners would need to sign the plat due to their title interest in upper tract. He explained the plat divides out a portion of the plat that Alaska USA has title to. He summarized the certificate to plat noting that Alaska USA has title in 3 condo units; tract A, the parent plat, except for the condo units owned by other parties; and to any future development rights. This is outlined in the title statements supported by the underwriters. Alaska USA was the lender and after foreclosure became the owner with the fiduciary responsibility to the members of the credit union to try to recover losses. The staff is correct that this may end up in court, but the applicant wants to take this first step of preliminary approval from the City.

Theodora Accinelli offered a correction that Alaska USA took title to tract A, except for the condo unit project. The land that was foreclosed on consisted of a northern and southern section. She believes they are platting out the southern section but there will come a time when they plat the northern section and may have to address the steep slopes.

VENUTI/HIGHLAND MOVED TO ADOPT STAFF REPORT PL 11-120 BARNETT SUBDIVISION QUIET CREEK ADDITION NUMBER 2 PRELIMINARY PLAT WITH STAFF RECOMMENDATIONS.

Comment was made that everything appears in order for preliminary platting. It was clarified that before final plat the City will need to review and approve a steep slope plan as outlined in recommendation 2.

VOTE: NON OBJECTION: UNANIMOUS CONSENT

Motion carried.

B. Staff Report PL 11-121, Eker Estates Too Preliminary Plat

Commissioner Erickson stated that she has a conflict of interest.

HIGHLAND/VENUTI MOVED THAT COMMISSIONER ERICKSON HAS A CONFLICT OF INTEREST.

Commissioner Erickson explained that she has a financial conflict as outlined in City Code.
VOTE: NON OBJECTION: UNANIMOUS CONSENT.

Motion carried.

Commissioner Erickson left the table.

Planning Technician Engebretsen reviewed the staff report.

Geoff Coble explained that he did a geotechnical study on the property. He reported that the slope is at about 30% and that he is not qualified to discuss the percentage of property developed in relation to the slope.

There were no public comments regarding this preliminary plat.

Leah Handley, property owner, commented their intent is to follow what the city requires regarding the property. She explained that all the dirt work was completed 20 years ago and it has been set and stable since. The existing home will be on the larger part of the subdivision.

VENUTI/HIGHLAND MOVED TO ADOPT STAFF REPORT PL 11-121 EKER ESTATES TRACT TOO SUBDIVISION PRELIMINARY PLAT WITH STAFF RECOMMENDATIONS.

There was no discussion.

VOTE: NON OBJECTION: UNANIMOUS CONSENT.

Motion carried.

PENDING BUSINESS

NEW BUSINESS

- A. Draft Decision and Findings for CUP 11-13, A Request to amend Conditional Use Permit (CUP) 10-06, for "Public Utility Facilities and Structures" for a communication site at 1033 Skyline Drive, Lot 5 Skyline View Subdivision Lying South of Skyline Drive 06 to allow construction of a 96 ft tower.

The motion on the floor from the previous meeting is as follows:

HIGHLAND/SONNEBORN MOVED TO ADOPT STAFF REPORT PL 11-117, A REQUEST TO AMEND CONDITIONAL USE PERMIT (CUP) 10-06, FOR "PUBLIC UTILITY FACILITIES AND STRUCTURES" FOR A COMMUNICATION SITE AT 1033 SKYLINE DRIVE, LOT 5 SKYLINE VIEW SUBDIVISION LYING SOUTH OF SKYLINE DRIVE WITH STAFF RECOMMENDATIONS AND FINDINGS.

There was no further discussion.

VOTE: NON OBJECTION: UNANIMOUS CONSENT.

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Motion carried.

SONNEBORN/HIGHLAND MOVED TO ADOPT THE DECISION AND FINDINGS DOCUMENT FOR CUP 11-13.

Chair Minsch acknowledged that the Commission has thoroughly reviewed findings in the document in their deliberations.

VOTE: YES: MINSCH, DOLMA, VENUTI, HIGHLAND, SONNEBORN

Motion carried.

- B. Draft Decision and Findings for Variance 11-02, A Request to Amend Variance 10-01 to allow the construction of a 96 ft tower in the 20' building setback at 1033 Skyline Drive, Lot 5 Skyline View Subdivision Lying South of Skyline Drive.

The motion on the floor from the previous meeting is as follows:

HIGHLAND/SONNEBORN MOVED TO ADOPT STAFF REPORT PL 11-118, A REQUEST TO AMEND VARIANCE 10-01 TO ALLOW THE CONSTRUCTION OF A 96 FT TOWER IN THE 20' BUILDING SETBACK AT 1033 SKYLINE DRIVE, LOT 5 SKYLINE VIEW SUBDIVISION LYING SOUTH OF SKYLINE DRIVE WITH STAFF RECOMMENDATIONS AND FINDINGS.

There was no further discussion.

VOTE: YES: VENUTI

NO: DOLMA, SONNEBORN, MINSCH, HIGHLAND

Motion failed.

HIGHLAND/DOLMA MOVED TO ADOPT THE DECISION AND FINDINGS FOR VARIANCE 11-03 AT 1033 SKYLINE DRIVE.

Chair Minsch read the findings as provided in the packet into the record.

VOTE: YES: SONNEBORN, VENUTI, HIGHLAND, DOLMA, MINSCH

Motion carried.

Commissioner Erickson returned to the table.

INFORMATIONAL MATERIALS

- A. City Manager's Report dated November 28, 2011

COMMENTS OF THE AUDIENCE

Members of the audience may address the Commission on any subject. (3 minute time limit)

There were no audience comments.

COMMENTS OF STAFF

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There were no staff comments.

COMMENTS OF THE COMMISSION

Commissioner Highland reiterated her dream of harmony and balance between the economy and environment. She wished everyone a Merry Christmas.

Commissioner Erickson said thanks for dinner and wished everyone Merry Christmas and Happy New Year.

Commissioner Sonneborn had no comment.

Commissioner Venuti commented that he had some concern about the decision on the tower and doesn't think the decision was in the interest of the common good. He wonders how it would have worked out if it had been KBBJ requesting a tower. He doesn't think the decision was right. But he said he is enjoying the Commission and wished everyone Merry Christmas.

Commissioner Dolma commented this is a great Commission to be on, even if they don't agree they get things done. It is nice to work with the dedicated members.

Chair Minsch said everyone did great, she recognized it can be confusing and she felt like she didn't to a good job tonight. She hopes they can do some role playing when the attorney is here for training.

ADJOURN

There being no further business to come before the Commission, the meeting adjourned at 8:15 p.m. The next regular meeting is scheduled for January 4, 2012 at 6:30 p.m. in the City Hall Cowles Council Chambers.

MELISSA JACOBSEN, CMC, DEPUTY CITY CLERK

Approved: _____



City of Homer Planning & Zoning

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STAFF REPORT PL 12-02

TO: Homer Advisory Planning Commission
FROM: Rick Abboud, City Planner
MEETING: January 4, 2011
SUBJECT: Planning Director's Report

December 12th City Council

Ordinance 11-44, An Ordinance of the City Council of Homer, Alaska, Amending Homer City Code 21.14.020, Permitted Uses and Structures; 21.16.020, Permitted Uses and Structures; and 21.18.020, Permitted Uses and Structures; to Add One Detached Dwelling Unit as a Permitted Accessory Building to a Principal Single Family Dwelling in the Urban Residential, Residential Office, and Central Business Zoning Districts. Planning.

Recommended dates: Introduction November 28, 2011, Public Hearing and Second Reading December 12, 2011.

Ordinance 11-44(S) An Ordinance of the City Council of Homer, Alaska, Amending Homer City Code 21.14.020, Permitted Uses and Structures; 21.16.020, Permitted Uses and Structures; and 21.18.020, Permitted Uses and Structures; to Add One Detached Dwelling Unit as a Permitted Accessory Building to a Principal Single Family Dwelling in the Urban Residential, Residential Office, and Central Business Zoning Districts. Planning.

Memorandum 11-154 from City Planner as backup.

There was no public testimony.

SUBSTITUTE ADOPTED with discussion

January 9th City Council

Worksession & Regular Meeting

Ordinance 12-, An Ordinance of the City Council of Homer, Alaska, Amending Homer City Code 21.60.040, Definitions; Homer City Code 21.60.060, Signs Allowed on Private Property With and Without Permits; Homer City Code 21.60.070, Permits Required; Homer City Code 21.60.080 Design, Construction, and Maintenance; Homer City Code 21.60.090, Signs in the Public Right-Of-Way; Homer City Code 21.60.095, Electoral Signs; Homer City Code 21.60.100, Signs Exempt From Regulation Under This Chapter; Homer City Code 21.60.110 Signs Prohibited Under This Chapter; Homer City Code 21.60.130, Temporary Signs-Private Property; Homer City Code 21.60.150, Time of Compliance-Nonconforming Signs and Signs Without Permits; and Homer City Code 21.60.170, Enforcement and Remedies; and Repealing Homer City Code 21.60.120, General Permit Procedures; Homer City Code 21.60.140, Temporary Signs-Public Rights-Of-Way; and Homer City Code 21.60.160, Violations; Regarding the Regulation of Signs. Planning. Recommended dates: Introduction January 9, 2012, Public Hearing and Second Reading January 23, 2012.

Regular Meeting

Resolution 12-, A Resolution of the City Council of Homer, Alaska, Amending the Homer Advisory Planning Commission Bylaws and Policies and Procedures Manual. Planning.

Comments regarding City Council hearing

After not being asked a question through two worksessions and one regular meeting, I was asked several very specific questions regarding the 'More Than One' Ordinance. I was caught a bit by surprise and responded to the specifics asked of me but never really had a chance to explain the larger picture regarding the ordinance (we are following the concepts in our comprehensive plan regarding density, walkability, and incorporating elements supported by the climate action plan, following utility development and etc....) The ordinance then passed on a tie vote decided by the Mayor.

While I believe that Council People received some later calls with concerns about how the ordinance might affect urban residential lots, I feel that we did not really get our message across. I believe that staff and the Planning Commission could do a better job of communicating our goals and objectives to the Council. I have some suggestions of how we might do better.

Until now my Council memos have basically been a statistical report with the Commission's recommendation. I relied upon the backup information in the packet to show the decision making process. I am now going to provide a better summary that explains why we worked on something and how we arrived at the decision.

I also believe it would be beneficial for Planning Commissioners to present at the Commission Reports section of the Council Meeting. This gives the Council chances to see and hear from Commissioners. We have tended to perform a lot of work in our worksessions. These sessions are not documented in the backup material. This provides an opportunity to have the council and radio public to become more familiar with the subjects with which we are wrestling.

Towers, antenna, telecommunications

Telecommunications defined: *The science and technology of sending and receiving information such as sound, visual images, or computer data over long distances through the use of electrical, radio, or light signals, using electronic devices to encode the information as signals and to decode the signals as information.*

Over the past 20 years, towers have become more common, as cell phones and wireless technology has grown. Some communities heavily regulate these structures; some do not regulate them at all. In Homer since about 2004, larger towers have been required to go through the Conditional Use Permit process as public utility, faculties and structure. Shorter communications equipment installed on rooftops has not gone through a permit process. They have been treated like TV antennas or other common rooftop installations, and are exempt from the height restrictions in code.

Staff has researched some of the approaches other communities have used to regulate this infrastructure (Kenai, Anchorage, a few California cities). Some codes are very complicated, and there are relevant federal regulations that somewhat limit how much a local community can regulate towers. But, there are some reasons to have specific code on telecommunication towers in particular. One common code requirement for a new tower is that an applicant must explain why they can't use an existing tower, or co-locate, rather than put up a new tower.

There have been three recent conditional use permits regarding towers. If the Commission wishes to specifically address telecommunications through code, staff can draft some talking points. Staff does not feel there are any issues that need to be particularly addressed at this time.

Activities:

FEMA's additional analysis regarding the revised FIRM's is taking longer than expected. We are looking at a conference with them in mid to late January, after which a new time line for adoption will be proposed.

The City Hall addition is finished. The Clerks have temporarily moved into the Planning Offices downstairs while their office is remodeled. We are looking to move back when the clerks can get back to their office, and may wait until the rest of the Administration Department is ready to move.

Holly is planning on a training day January 24th. She has suggested a full day of training that could involve Council and other Committees and Commissions. We have not worked out all the details yet. I am thinking that most of the in-depth training subjects for the Planning Commission are somewhat unique and would be of limited value to others. I am planning to keep the opportunity for Commissioner training in the afternoon. Of course I will keep all informed of our plans.



City of Homer Planning & Zoning

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STAFF REPORT PL 12-01

TO: Homer Advisory Planning Commission
THROUGH: Rick Abboud, City Planner
FROM: Julie Engebretsen, Planning Technician
MEETING: January 4, 2012
SUBJECT: Bay View Subdivision Swan Addition Preliminary Plat

Requested Action: Preliminary Plat approval for the creation of four lots from one large lot.

GENERAL INFORMATION

Applicants:	Robert and Katherine Norberg 3500 Landings St Homer AK 99603	Gary Nelson, P.L.S. Ability Surveys 152 Dehel Ave Homer, AK 99603
Location:	Lakeshore Dr, between Landing and A Street, on Beluga Lake	
Parcel ID:	17919105	
Size of Existing Lot(s):	2.645 acres	
Size of Proposed Lots(s):	21,700 to 38,060 sq ft, or about ½ acre to just shy of an acre	
Zoning Designation:	General Commercial One District	
Existing Land Use:	Vacant	
Surrounding Land Use:	North: Beluga Lake South: Commercial storage, vacant, residential East: Float plane business, Residential West: Office/ Rooming House	
Comprehensive Plan:	Goal 1 Objective B, Page 4-5 GC1/Residential: allow residential uses, encourage water dependant uses along Beluga Lake, and encourage small commercial enterprises on Lakeshore Drive.	
Wetland Status:	The 2005 wetland mapping shows wetland areas. The area is mapped as discharge slope. An Army Corps of Engineer permit is required for any development.	
Flood Plain Status:	Zone A, shallow flood hazard area and X, outside the 500 year flood	
BCWPD:	Not within the Bridge Creek Watershed Protection District.	
Utilities:	City water and sewer are available.	
Public Notice:	Notice was sent to 69 property owners and lease holders of 58 parcels as shown on the KPB tax assessor rolls.	

ANALYSIS:

This subdivision is within the General Commercial 1 District. This plat created four lots from one larger lot. All will be served by city water and sewer, and Lakeshore Drive.

Preliminary Approval, per KPB code 20.12.0060 Form and Contents Required. The commission will consider a plat for preliminary approval if it contains the following information at the time it is presented and is drawn to a scale of sufficient size to be clearly legible.

1. Within the title block:
 - a. Names of the subdivision which shall not be the same as an existing city, town, tract or subdivision of land in the borough, of which a map or plat has been previously recorded, or so nearly the same as to mislead the public or cause confusion;
 - b. Legal description, location, date, and total area in acres of the proposed subdivision;
 - c. Name and address of owner and registered land surveyor;
 - d. Scale.

Staff Response: The plat meets these requirements.

2. North point;

Staff Response: The plat meets these requirements.

3. The location, width and name of existing or platted streets and public ways, railroad rights-of-way and other important features such as section lines, political subdivision or municipal corporation boundaries abutting the subdivision.

Staff Response: The plat meets these requirements.

4. A vicinity map, drawn to scale showing location of proposed subdivision, north arrow if different from plat orientation, township and range, section lines, roads, political boundaries and prominent natural and manmade features, such as shorelines or streams.

Staff Response: The plat meets these requirements.

5. All parcels of land including those intended for private ownership and those to be dedicated for public use or reserved in the deeds for the use of all property owners in the proposed subdivision together with the purposes, conditions or limitation of such reservations.

Staff Response: Private parcels are shown. No public use areas are noted.

6. The names and widths of public streets and alleys and easements including drainage easements existing and proposed, within the subdivision. [Additional City of Homer HAPC policy: Drainage easements are normally thirty feet in width centered on the drainage. Final width of the easement will depend on the ability to access the drainage with heavy equipment. An alphabetical list of street names is available from City Hall.]

Staff Response: The plat meets these requirements.

7. The names of adjacent subdivisions or an indication that the adjacent land is not subdivided.

Staff Response: The plat meets these requirements.

8. Approximate location of areas subject to inundation, flooding or storm water overflow. Indicate if a recognized flood plain is present. Identify and locate the major drainage systems.

Staff Response: The plat does not meet this requirement. The floodplain should be noted on the plat.

9. Approximate locations of areas subject to tidal inundation including the mean high water line.

Staff Response: The plat meets these requirements (not applicable to this area). There is a plat note about the meander boundary along Beluga Lake.

10. Block and lot numbering per Section 20.16.110 of the borough subdivision code.

Staff Response: The plat meets these requirements.

11. The general location of existing water and sewer utilities, and the intent and methods of the subdivision to utilize and access such utilities.

Staff Response: The plat meets these requirements. Lots will be served by city water and sewer.

12. Provide a contour map of the subdivision and road profiles if road grades exceed 6% on arterial and 10% on other streets.

Staff Response: The plat meets these requirements. No Rights of Way are to be dedicated by this action.

13. Identify and locate on the plat all areas in excess of 20% grade.

Staff Response: The plat meets these requirements.

PUBLIC WORKS COMMENTS:

1. Although the existing 10' utility easement along the Lakeshore ROW seems adequate to Mr. Nelson, the code still requires the 15 utility easement. And, with the possibility of utilities relocating and gas coming to town, one can't know that 10' is adequate. PW is recommending that the standard 15' utility easement be dedicated.

2. As discussed with the owner, the water and sewer mains that are stubbed to the existing tract will need to be extended in order to serve all four lots. The extension, and subsequent taps for the four services, will take place within the two panhandles of Lots A2 and A3. Water and sewer easements need to be dedicated within the panhandles.

3. The owner may want to consider dedicating the panhandles as access easements to be shared by Lots A2 and A3. This is not a requirement as is the water and sewer easement. But, the access easement should be considered so that a shared driveway could be constructed within the panhandles if so desired. The shared driveway may be beneficial when seeking corps approval for development, and allow for more effective maintenance of the driveway access.

FIRE DEPARTMENT COMMENTS: No comments were received prior to packet printing.

STAFF COMMENTS/RECOMMENDATIONS:

Planning Commission recommend approval of the preliminary plat with the following comments:

1. An installation or subdivision development agreement will be required for water and sewer stub outs.
2. Dedicate appropriate water and sewer easements per PW request.
3. Dedicate at 15 ft utility easement along all rights of way as required by HCC 22.10.051 (a).
4. Subdivider may want to consider shared driveway easements.
5. Add a plat note about flood plain. FIRM panel 6045, number 0201076045B dated September 25, 2009. A portion of the subdivision is in an unnumbered A zone. The first finished and habitable floor of a building constructed within a flood plain shall be built one foot or more or above the 100-year flood level.

ATTACHMENTS

1. Preliminary Plat

ABILITY SURVEYS

SURVEYING HOMER SINCE 1975

LAND SURVEYING - CONSTRUCTION SURVEYING - DESIGN SURVEYING
152 DEHEL AVE. , HOMER, AK. 99603 PH. 907-235-8440 FAX. 235-8440

12/16/2011

City of Homer Planning Dept.
491 E. Pioneer Ave.
Homer, AK 99603

Re: Preliminary Plat submittal of **BAY VIEW, SWAN COVE ADDN.**

Enclosed herewith are 2 copies (one full sized 18X24 and one reduced 11X17) of the preliminary plat and a check # **4135** in the amount of \$400 for the City of Homer filing fee.

The current owner understands that it is zoned General Commercial #1.

The proposed subdivision is located between Beluga Lake and Lakeshore Drive.

The proposed subdivision divides one lot into four.

The Lots are proposed to be serviced by city water and sewer.

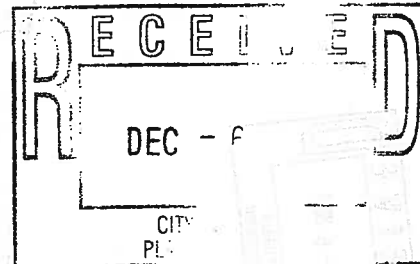
Exceptions requested;

To HCC 22.10.051, all lots to be served by a 15 foot utility easement.;
Utility easements required by the 1983 Planning Commission are in place and seem to be adequate.

Thank you for your assistance and consideration in this endeavor. Please don't hesitate to call for any reason.

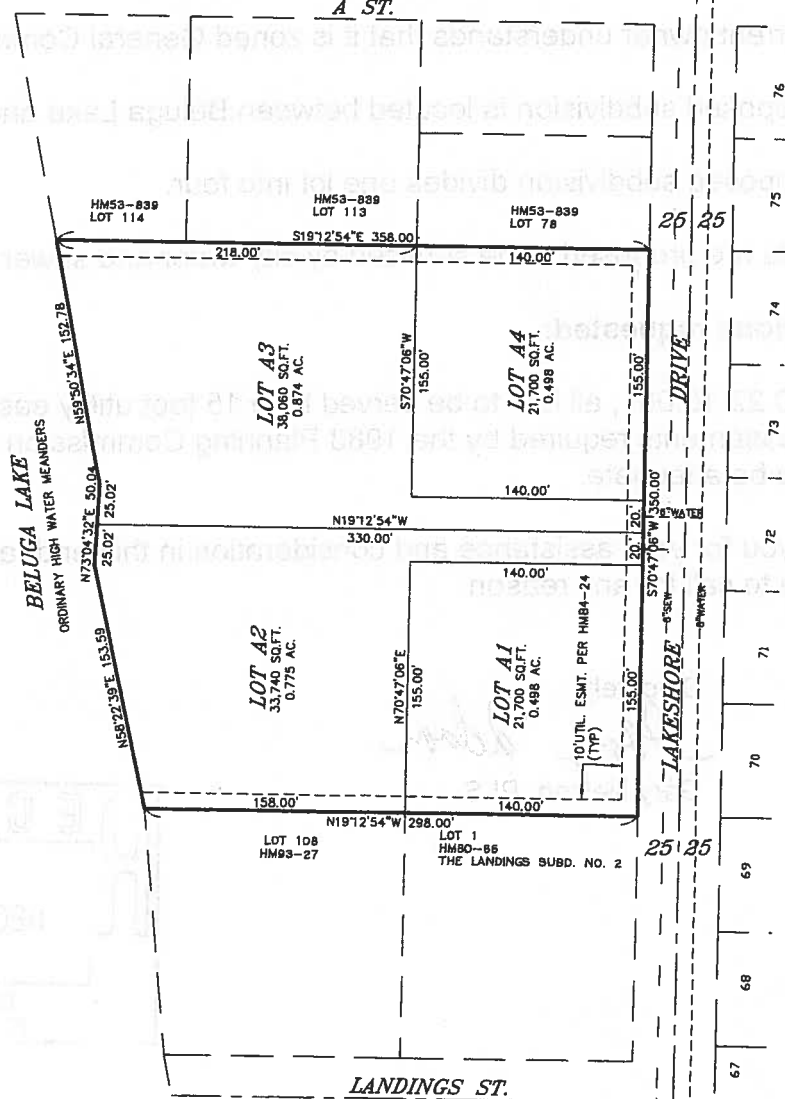
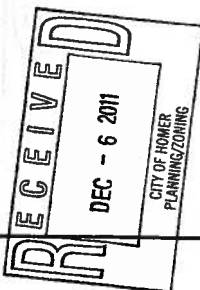
Sincerely,

Gary Nelson
Gary Nelson, PLS



NOTES

1. DEVELOPMENT ON THESE LOTS IS SUBJECT TO HOMER CITY REGULATION.
2. THESE LOTS MAY CONTAIN WETLANDS. PERSONS CONTEMPLATING DEVELOPMENT SHOULD CHECK WITH THE ARMY CORPS OF ENGINEERS FOR CURRENT WETLAND STATUS AND REGULATION.
3. NO PERMANENT STRUCTURE SHALL BE CONSTRUCTED OR PLACED WITHIN AN EASEMENT WHICH WOULD INTERFERE WITH THE ABILITY OF A UTILITY TO USE THE EASEMENT.
4. NO STRUCTURES ARE PERMITTED WITHIN THE PANHANDLE PORTION OF THE FLAG LOTS.
5. THE ORDINARY HIGH WATER LINE AS DIMENSIONED WAS USED ONLY FOR RECORD PURPOSES. THE ORDINARY HIGH WATER LINE FORMS THE LITTORAL BOUNDARY AND GENERALLY IS IN A STATE OF CHANGE.



CERTIFICATE OF OWNERSHIP

We hereby certify that we are the owners of the real property shown on this plan, and that we hereby adopt this plan of subdivision by our free consent grant all easements to the use shown.

ROBERT B. NORBERG
3500 LANDINGS ST.
HOMER, AK. 99603

KATHERINE J. NORBERG
3500 LANDINGS ST.
HOMER, AK. 99603

NOTARY'S ACKNOWLEDGEMENT

For Robert B. Norberg
Subscribed and sworn to before me this _____ day of _____, 2012.
Notary public for Alaska _____ My Commission Expires _____

NOTARY'S ACKNOWLEDGEMENT

For Katherine J. Norberg
Subscribed and sworn to before me this _____ day of _____, 2012.
Notary public for Alaska _____ My Commission Expires _____

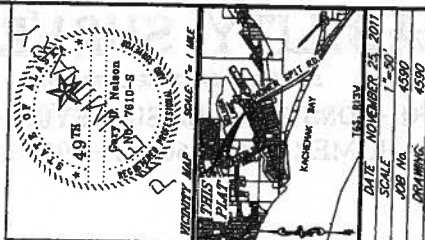
PLAT APPROVAL

This plat was approved by the Kenai Peninsula Borough Planning Commission at the meeting of _____
KENAI PENINSULA BOROUGH

BY _____
Authorized Official

WASTEWATER DISPOSAL PLANS FOR WASTEWATER DISPOSAL, THAT MEET REGULATORY REQUIREMENTS, ARE ON FILE AT THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION.

CORY D. NELSON, LICENSE 7870-S DATE _____



BAY VIEW, SWAN COVE ADDN.

A SUBDIVISION OF TRACT A, HOMER BOROUGH, (HM84-24), WITHIN BAY VIEW, SITUATE IN THE NE 1/4, SW 1/4, S 20, T8S, R13W, S.M. CITY OF HOMER, KENAI PENINSULA BOROUGH, THIRD JUDICIAL DISTRICT, HOMER RECORDING DISTRICT, STATE OF ALASKA, CONTAINING 2.645 ACRES

ABILENE SURVEYS
CAMPBELL, P.L.L.C.
152 DENEL AVE., HOMER, ALASKA

REC DIST	_____
Date	2012
Time	_____
Requested By	_____
Address	_____

APB FILE No. 2012- _____

NOTICE OF SUBDIVISION

Public notice is hereby given that a preliminary plat has been received proposing to subdivide or replat property. You are being sent this because you are an affected property owner within 500 feet of a proposed subdivision and are invited to comment.

Proposed subdivisions under consideration are described as follows:

Bay View Swan Addition Preliminary Plat

The location of the proposed(s) subdivision is provided on the attached map(s). A preliminary plat showing the proposed subdivision may be viewed at the Planning Department. Subdivision reviews are conducted in accordance with the City of Homer Subdivision Ordinance and the KPB Subdivision Ordinance. A copy of the Ordinance is available from the Planning Department. **Comments should be guided by the requirements of those Ordinances.**

A public meeting will be held by the Homer Advisory Planning Commission on Wednesday, January 4, 2011 at 6:30 p.m. at Homer City Hall, 491 East Pioneer Avenue, Homer, Alaska.

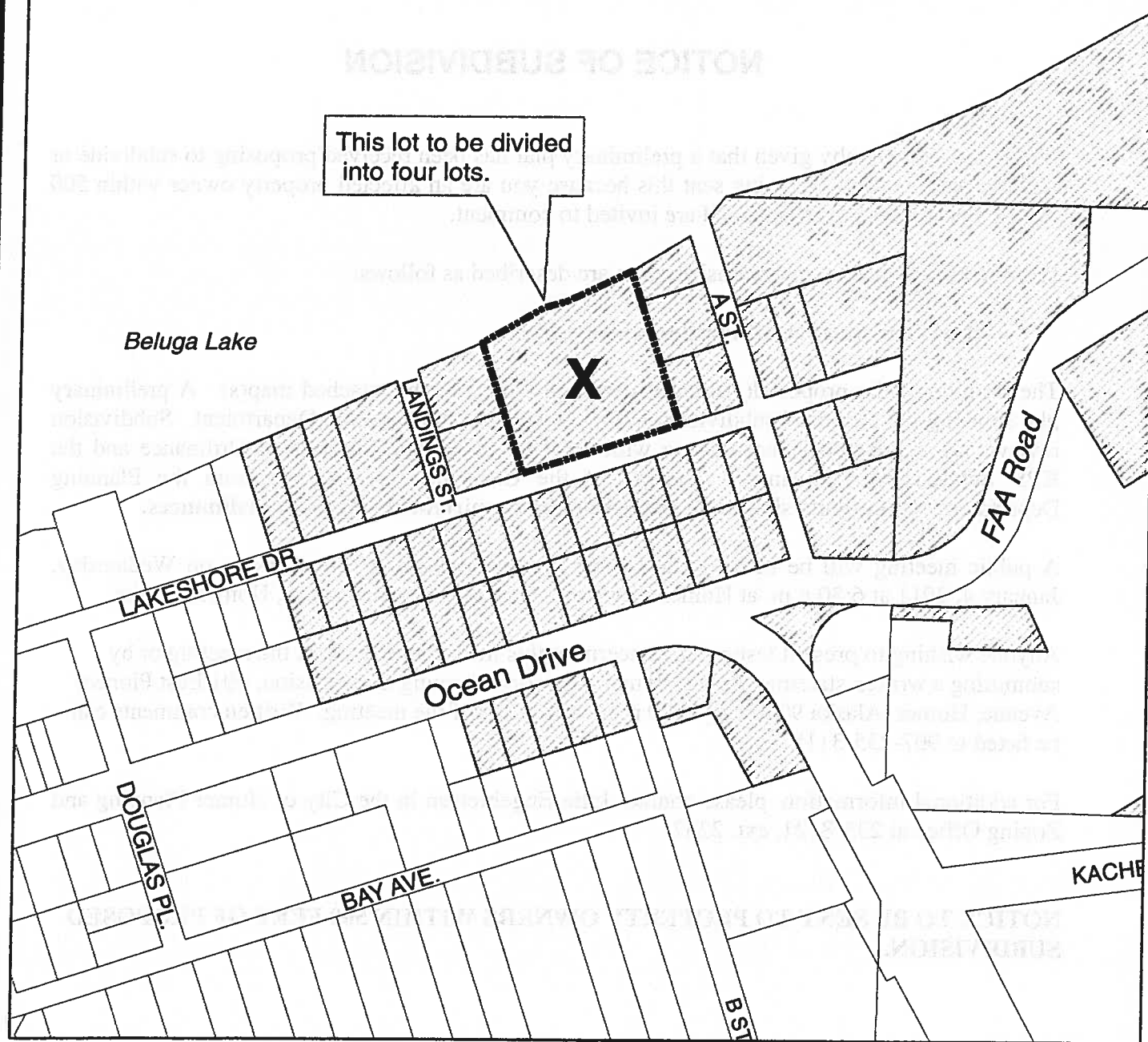
Anyone wishing to present testimony concerning this matter may do so at the meeting or by submitting a written statement to the Homer Advisory Planning Commission, 491 East Pioneer Avenue, Homer, Alaska 99603, by 4:00 p.m. on the day of the meeting. Written comments can be faxed to 907-235-3118.

For additional information, please contact Julie Engebretsen in the City of Homer Planning and Zoning Office at 235-8121, ext. 2237.

NOTICE TO BE SENT TO PROPERTY OWNERS WITHIN 500 FEET OF PROPOSED SUBDIVISION.

VICINITY MAP ON REVERSE

Vicinity Map



*City of Homer
Planning and Zoning Department*

December 22, 2011

Bay View Subdivision Swan Addition Preliminary Plat

Marked lots are w/in 500 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.

MANAGERS REPORT

December 12, 2011

TO: MAYOR HORNADAY / HOMER CITY COUNCIL

FROM: WALT WREDE

UPDATES / FOLLOW-UP

1. **Revolving Energy Fund:** Earlier this year, the Council transferred money from the Revolving Energy Fund into a project fund to improve energy efficiency and lower energy costs at city buildings and facilities. That project is now complete and I will ask Carey to provide you with a final project report. You may recall that the ordinance establishing the Revolving Energy Fund called for the fund to be replenished with the savings that are realized from reduced energy costs. These savings will need to be accounted for and audited beginning in 2012. The Draft 2012 Budget before you does not take this into account. In other words, it does not show transfers from the General Fund, Water and Sewer Fund, and Port and Harbor Fund to the Revolving Energy Fund (or to the depreciation funds). This could be done with a budget amendment later in 2012. It is not necessary to complicate the budget discussions at this late hour. However, we do have some concerns about the accounting process required by the REF ordinance. We are also concerned about the impacts the ordinance may have on the budget given that energy prices continue to rise and the projected savings, while real (these improvements have protected the City from even higher bills), are not likely to be evident in terms of the approved budget. In other words, the City likely won't see real savings within the budget that can simply be transferred to the REF account. Council would have to come up with more money, above and beyond the existing budget, to make those transfers. We would suggest a workshop later this winter to go over this in more detail before taking action.
2. **Proposed Workshop / Insurance Broker:** Last week, Jeff Paxton, from the Mercer Company was here for three days. Jeff is the City's new insurance broker. He proved to be a wealth of information and it did not take very long for me to realize that hiring his company will be well worth the money. He has already saved the City quite a bit (see number 3 below). Jeff has a great deal of information and insight into trends in health care costs and benefit packages. He is also very knowledgeable about the new health care law and the potential impacts it may have on the City's finances and the insurance coverage it provides to employees. Jeff recommends that any changes the City makes to insurance coverage or premiums it charges employees should be done with the new health care law in mind. I would strongly suggest that we schedule a Council workshop with Jeff later this winter to discuss some of these issues. We shared some of this information (and some of Jeff's time) with the Employee Committee when it met on Thursday. In my view, the more the Council and the employees know about the City's self insured plan, current trends and industry standards, and the new health care law, the better. Informed choices are generally the best ones.

3. Health Insurance Plan Savings: The City's new insurance broker is already at work trying to obtain the most cost effective health insurance coverage possible. Several City insurance contracts are about to expire on December 31. Jeff has been seeking bids and negotiating prices with insurance providers. In the last few days, we decided to switch life insurance providers from Lincoln Financial to Prudential. This resulted in a 23% savings or about \$4,000. We also switched stop loss coverage. We renewed coverage with the current provider but switched PPO networks (Facility Steerage). Under the new PPO, South Peninsula Hospital and two commonly used Homer clinics are preferred providers. This move has resulted in savings of \$88,000. Jeff is currently working with the City's third party administrator to see if we can amend that contract and negotiate a lower price.
4. City Hall Expansion and Renovation Update: This project continues to progress on time and on schedule. Construction of the new section of the building is now essentially complete. The Clerk's office and the Finance office have moved into the new section. Work has now begun on remodeling the rest of the building. It is anticipated at this time that the project will be basically complete by the end of this year. If everything stays on schedule and there are no unanticipated delays, we are planning to move Administration, Planning, and IT personnel out of the old school and back into City Hall either the last week of December or the first or second week in January.
5. Administration Budget Amendments: Your packet contains several proposed FY 2012 budget amendments that I hope Council will move to place on the table and vote on. These are all items you have been informed about and I hope are anticipating. The first is a change in the personnel budget. Council recently approved a change in job description and compensation for Anne Marie's old position. This requires an increase in the Economic Development salary budget of about \$12,000. At the same time, the Admin Assistant in the City Manager's office is transferring to Public Works. That position is being downgraded back to its original job description and compensation, saving approximately \$12,000. So this amendment is basically budget neutral. The second amendment has to do with the damaged fenders on the Deep Water Dock. This is something that needs to be fixed as soon as possible or usage of the dock will be restricted and safety compromised. The budget amendment calls for \$125,000 to be transferred from the Port and Harbor reserves to a project budget for design and construction. We are proposing this to give us the flexibility to act quickly. We hope we will not have to spend most of this money. This damage may be covered by insurance and we would only have to pay the deductible if that is the case. Further, the legislative grant scope of work on the \$6 Million in cruise ship funds that Council is about to accept calls for replacing all of the fenders on the dock. So, if we can get everything in place quickly, we may be able to use grant funds for this project and protect the reserves. The third amendment we discussed has to do with furniture at City Hall. At the time this report was drafted, staff was still compiling a list of the most necessary items and cost estimates. Measurements are also being taken and since the new offices are now occupied, folks can see how furniture fits and what configurations might work best. So, there is no proposed amendment at this time. We will talk to you about this further in January when the dust settles and we have a clearer picture of what is needed.

6. Budget Amendments / Employee Committee: At the last Committee of the Whole, the Council asked if it was possible for the Employee Committee to provide a recommendation on potential changes to the health insurance plan by this meeting. The Committee held a meeting on Thursday December 1st and it send a survey out to employees on Monday December 5th. The Committee received a very clear message from the employees. Well over 70 percent of them responded to the survey and their preference was clear. Matt Clark, the Chair of the Committee will be available at the Committee of the Whole to discuss all of this. He has also prepared a short power point and a memo which discusses the alternatives the Committee can up with and the choice made by the employees. I hope Council will provide him some time. It is important to keep in mind that the alternative favored by the employees is not on the table at this time. The employees are not intending to simply say here, cut our benefits or charge us a premium. Doing so would be a real hardship for many. What they are saying, is that if the Council determines that it is in the overall best interest of the City to make changes this year, and it has the votes to do that, this proposal should be substituted for the proposed amendment which is on the table.
7. Health Insurance Fund: Health Insurance claims vary widely from month to month as you might expect. The fund was operating in the black for most of the early part of this year. What I mean by that is that monthly costs were consistently below the approved budget. However, the number of claims and overall costs to the plan increased dramatically during several months in the summer and fall. We now have the numbers through the end of October and we are more confident in projecting that the plan will end the year with a deficit of around \$150,000 to \$200,000. Hopefully it will be less than that depending upon what occurs the last two months of the year. If a deficit occurs, there are adequate funds in the health insurance reserves to cover it this year. The bigger problem is the trend going forward. We budgeted the same amount for per employee contributions in the budget for FY 2012 as we did in 2011. That seemed reasonable back in September based up past plan usage trends and the health of the reserve fund. However, we are now projecting a budget deficit this year. And the City's insurance broker, based upon what he knows about industry trends, predicts that health care costs will rise at least 10 percent in 2012. So in other words, he agrees with the statement Francie made at the last meeting that the proposed budget for monthly per employee contributions (\$1,300) is probably too low. I mention this now because the Council may have to amend the budget at mid-year or sooner based upon how our expenses go as we start the new year. Also, if the Council decides to charge employees a premium beginning next year, the funds raised by this premium must be used for health insurance costs by law. I would strongly recommend that the Council not lower the budgeted amount for health insurance contributions. It should be kept at the same level and increased by the amount of the employee contribution.

ATTACHMENTS

1. Memorandum from Library Director re: Books
2. Finance Department Award.



City of Homer Planning & Zoning

491 East Pioneer Avenue
Homer, Alaska 99603-7645

Telephone (907) 235-8121
Fax (907) 235-3118
E-mail Planning@ci.homer.ak.us
Web Site www.ci.homer.ak.us

STAFF REPORT PL 08-70

TO: Homer Advisory Planning Commission
FROM: Julie Engebretsen, Acting City Planner
MEETING: June 18, 2008
SUBJECT: Robert's Rules, discussion and findings

GENERAL INFORMATION

Below is part of a staff report I wrote for the Parks and Recreation Advisory Commission, to help them navigate Robert's Rules. Their roll is much more general than the HAPC, but I thought the big picture would be useful. Please read through the information. At the work session, I would like you to discuss the section on discussion, and findings of fact.

Jobs of the Commission

The Chair

The Chair generally does not make motions or participate in the debate. The point is that the chair is supposed to be somewhat impartial and to make sure that all sides are heard during discussion. And it is a job in itself to keep the meeting and discussion running smoothly. It's the Chair's job to make sure that no one member takes over the meeting, and if one member is quiet, that they are asked for their view. If the chair feels strongly about something, they can 'pass the gavel' to the vice chair, and say their piece. When debate is over, the vice chair passes the gavel back.

Individual Commissioners

In order for business to go smoothly, each commissioner needs to come prepared to the meeting. If you have missed a meeting, read the minutes of that meeting so you are up to speed. If you still have questions, ask the Clerk or staff.

You can also ask questions before the meeting – and I don't mean an hour before the meeting; Monday morning is a great time to ask. Staff needs time to research your questions.

Staff

Staff has to hold up their end by providing enough information to enable you to make a decision. We try to give you enough detail without going overboard.

NOTE TO THE HAPC: staff really struggles with you on this! Staff thinks they have provided enough information to make a decision based on code, and then, seemingly from left field, you request something totally different at the meeting. This is why we always ask you to ask questions before the meeting. Staff really wants to be on the same page! We'll talk more about staff reports, format, etc as a separate topic.

How Roberts Rules works

Using Roberts Rules really can make meetings quick and efficient! Below is a script. (I wrote this for the P&R Commission; The Planning Commission does the following just fine.)

Script:

Chair: "New Business Item 1. Emerald Park Master Plan. I would entertain a motion."

Commissioner A: "I move to approve the emerald Park Master Plan."

Commissioner B: "Second."

Chair: "It has been moved and seconded to approve the emerald park master plan. Discussion by the maker of the motion."

Commissioner A: "I support, or I do not support the emerald park plan because it's a great plan." or they may ask questions, etc.....

NOTE: The first person who gets to talk about the item is the person who makes the motion. When they are done, any commissioner can speak when they are recognized by the chair.

When A is done speaking the Chair says: "Any other discussion?"

Discussion: how it should go.

Commissioners ask questions, etc, but the discussion should be short and to the point. This is not a back and forth conversation between commissioners: you are discussing the issue at hand to make a decision, and you should speak only to ask a question or to raise a point that has not already been discussed. Once you have spoken twice, you should be done talking! The other commissioners either will agree with your viewpoint, or not, and they will use their vote to decide. The chair will go around the table for any last comments before the vote. That way each commissioner has a chance to speak, particularly if they were silent during the discussion.

HAPC NOTE: with certain actions, such as a CUP, I expect you will have more discussion. But, each Commissioner has a vote and has presumably asked any questions so that they are comfortable making a decision. It's their job to be prepared to make a decision, not yours to try and change their minds.

Findings of Fact

In my research, Robert's Rules does not talk about findings. I used the Alaska Planning Commissioners Handbook, (Blue book you all should have a copy of, and its on-line on our website) to research the state's recommendations for planning bodies. I starred the attached sections dealing with findings. The way we do things may not match their guidelines exactly, but in general, staff writes the decisions and findings document, based on the evidence in the record and presented at the public hearing, and based on your determinations and decisions. How does staff know what was just discussion, and what was a final decision? Good question! When you have an hour long decision on a topic and covering everything from landscaping to parking, signage, traffic, etc, you need to summarize your main points and make it crystal clear how and why you have reached a decision. According to your bylaws, it is the Chair that

states this statement. With this summary, staff can then prepare the formal decisions and findings document.

EXACTLY how and when does this happen?

There are two clean options:

1. At the end of discussion, the chair goes around the table and asks for final comments. NO DISCUSSION HERE. Each commissioner states why they do or do not support the motion (I agree with staff findings., or I disagree with staff because...) Then after the vote, the chair summarizes the statements made by the prevailing side.
2. If the above does not happen, such as for Lighthouse village, then after the vote the prevailing side makes a statement of why they voted as they did, and the chair repeats it. (I do not support the motion because). You can even take a break, and come back after the break and make a statement into the record. Staff then prepares the written decisions and findings from this statement.

What do the HAPC bylaws say about findings?

I. Findings:

Findings will be recorded for conditional use permits, variances, acceptance of nonconforming status and zoning ordinance amendments. The findings will include the result of the vote on the item and the basis of determination of the vote, as summarized by the Chairman or Vice-Chairman, in the absence of the Chairman.

HAPC Policies and procedures, for CUPS:

The Commission may approve, approve with conditions, or disapprove an application. The Commission must prepare written findings and reasons supporting its decision. Approval of a Conditional Use Permit requires five yes votes. If a conditional use permit is denied, the written findings and reasons for that decision will be approved by those who voted against the permit, even if the number against is less than a majority of the Commission.

Conclusion

Staff can't predict endless outcomes for decisions, and supply findings. We provide you with reasonable findings for approval occasionally, for denial, based on code and staff recommendations.

STAFF COMMENTS/RECOMMENDATIONS:

Planning Commission talk about how to make findings when staff findings are not used.

Attachments

Alaska Planning Commission Handbook, excepts on Findings

What Makes a Good Finding?

The best findings include the following five key elements:

1. An identification of the parties, property, and the requested. This will ensure that everyone has reached a decision on the same subject. It will "frame the issues."
2. A list of the witnesses, documents, and exhibits relied upon. Use only evidence that was introduced at the hearing. Personal knowledge may be used if that knowledge is commonly shared by others in the community. Knowledge that is not widely shared may be used so long as it is announced and the parties are given the opportunity to rebut it.
3. An identification of the standard established by the ordinance for the action requested by the applicant. The standard might be "undue hardship," "public safety," or "exceptional circumstances." By stating the standard, the commission acknowledges that it knows the standard, and it helps the commission focus on the standards that must be met.
4. An explanation, fact by fact, why the evidence does or does not establish that the standard has been met. Try not to leave out any facts. Even if the court disagrees with the commission's judgment, it is likely to uphold the decision if it feels that a hard look was taken at all the evidence.
5. If the request or relief is granted, a description of it and any conditions should be attached. This is invaluable for the parties and staff. Findings can be prepared after a decision is made and adopted at the next meeting. Almost any finding is better than no finding. If the commission does not announce the reasons for a decision, it will reflect poorly on the commission, and the decision could be jeopardized.

How Do You Make Findings?

There are several methods of making findings. Three methods are commonly used in Alaska.

1. The commission to compose each of the findings through the commission's usual decision-making process. This can be an extremely time consuming method and often produces inadequately drafted, incomplete, ambiguous, or confusing language.
2. The commission discusses the evidence received and determines its decision along with a summary of findings that it believes support its decision. The matter is then referred back to staff with directions to draft detailed findings and a decision consistent with the commission's discussion and summary of findings. The staff draft is then returned to the commission for its final approval.

There are drawbacks to this method. It delays the final decision for two to five weeks, depending on how often the commission meets. This can be troublesome if the code requires the final decision be issued within a specified time from the close of the hearing. It also creates the risk that there will be difficulty getting commission approval of the draft final findings if all members who were present at the hearing are not present at the subsequent meeting when the draft is presented for approval. If members who were absent from the hearing are present at the subsequent meeting, a serious question arises as to whether such members who did not hear the evidence can vote to approve the draft final decision.

The great advantage to this method is that it provides the best opportunity for the commission to approve well-written findings. It also gives staff a chance to consult with the municipal attorney if there appear to be problems with the commission summary of findings and decision.



“One of the most important things that you do is make “findings of fact”. It is important to clearly elucidate the reasons for your decision. The facts should be clearly tied to city codes, comprehensive plans, and standards by which the merits of the case should be judged.

Subjective statements can only be loved by attorneys.”

- Dwayne Adams,

MOA Planning Commissioner

An alternative to commission approval of the staff draft is to delegate to the member who presided at the hearing the authority to review and approve the staff draft.

3. For staff to include proposed findings and decision with its report on the application. This method has drawbacks, too. The staff recommended findings would be based solely on what staff has learned from its review and investigation of the application; it will contain no consideration of evidence that is presented at the hearing. Further, if the commission disagrees with the staff recommendation, then the commission is

left to attempt to compose its own findings with the likely result being incomplete, confusing, or ambiguous findings and decision. To avoid the risk of having staff recommended findings and decision that differ from what the commission wants, some planning staffs will provide two sets of proposed findings and decision: one supporting approval of the application and one supporting denial. This may set the stage for a successful appeal by a disappointed applicant or other party to the proceeding as it suggests that there is some arbitrariness in the decision finally made by the commission.

Rules of Appeal

A party who is disappointed in a quasi-judicial decision of a commission may appeal that decision to the Superior Court within 30 days of the issuance of the final decision if the land use regulations do not provide for an appeal to some other municipal body. However, Rule 602(a)(2) of the Rules of Appellate Procedure provides that the 30 days does not begin until the commission issues a decision that “clearly states that it is a final decision and that the claimant has thirty days to appeal.” If words to this effect are not included in the decision, a disappointed party may be able to file an appeal to the Superior Court long after

everyone thought the thirty days had expired.

Even if the land use regulations provide for an appeal to another municipal body (e.g., the city council, assembly or a special appeals board), it is a wise practice to include a statement in the decision that sets out the name of the

municipal body to which the appeal may be taken, the municipal office where the appeal must be filed and the number of days a person has to file an appeal.

