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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,

2021.¹ 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

¹ 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.

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