



City of Homer

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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 6th Special Meeting and in their brief submitted January 25th, that relate to the City Clerk's office.

1. Commissioner Petska-Rubalcava's Oath of Office, brought up on January 6th-

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 6th Special Meeting the Planning Department mailed out a notice to property owners. A second public notice was not sent out pertaining to the January 27th 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.