

HOMER ADVISORY PLANNING COMMISSION  
REGULAR MEETING MINUTES  
OCTOBER 6, 2010

Session 10-17, a Regular Meeting of the Homer Advisory Planning Commission was called to order by Chair Minsch at 7:00 p.m. on October 6, 2010 at the City Hall Cowles Council Chambers located at 491 E. Pioneer Avenue, Homer, Alaska.

PRESENT: COMMISSIONERS DOLMA, HIGHLAND, KRANICH, MINSCH, VENUTI

ABSENT: COMMISSIONER BOS, DRUHOT

STAFF: CITY PLANNER ABBOUD  
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 public comments.

### RECONSIDERATION

There were no items scheduled for 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 September 15, 2010 Minutes
2. Draft Decisions and Findings for Conditional Use Permit 10-08 5655 Scenic View Place

Chair Minsch excused Commissioner Dolma from voting on the Consent Agenda because he was not present at the meeting.

The Consent Agenda was adopted by consensus of the Commission.

### PRESENTATIONS

- A. Harbor Dredge Spoils- Port and Harbor Director Hawkins and Public Works Director Meyer

Port and Harbor Director Hawkins and Public Works Director Meyer commented to the Commission about beneficial uses for dredged materials from the harbor. The recommendation is to use the material to replenish eroded material along the beaches on the east and west sides of the spit and also create additional parking pads. A Corps of Engineers permit is needed to accomplish this. When they apply for the permit it will trigger public comment periods through the state agencies that will span a wider area than what the City could cover.

## REPORTS

### A. Staff Report PL 10-95, City Planner's Report

City Planner Abboud reviewed his report that was included in the packet.

## 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.

### A. Staff Report PL 10-85, Ordinance 10-xx Amending 21.50 Site Development Standards to Require Storm Water Plans, Enacting 21.50.150 Fill Standards and Establishing Standards for Filling Land

City Planner Abboud commented there was no change to the staff report or ordinance.

Chair Minsch opened the public hearing. There were no comments and the public hearing was closed.

KRANICH/HIGHLAND MOVED TO APPROVE THE DRAFT ORDINANCE AMENDING 21.50 SITE DEVELOPMENT STANDARDS TO REQUIRE STORM WATER PLANS, ENACTING 21.50.150 FILL STANDARDS AND ESTABLISHING STANDARDS FOR FILLING LAND AND FORWARD IT TO COUNCIL FOR PUBLIC HEARING AND ADOPTION.

Commissioner Highland noted that the entire title of the ordinance wasn't read prior to the public hearing and wondered if there was public that intended to speak about the fill standards. It was determined that there was public wanting to comment and the opening of the hearing was not clear.

HIGHLAND/DOLMA MOVED TO POSTPONE DISCUSSION UNTIL AFTER THE PUBLIC HEARING IS RE-OPENED AND PUBLIC HAS THE OPPORTUNITY TO COMMENT.

Chair Minsch opened the public hearing.

Scott Adams, 30 year resident in the area and city resident by annexation, questioned why the City wants its own standards when the Corps of Engineers oversees whether you can put fill on your property. There was discussion that the ACOE addresses fill in the wetlands. Mr. Adams said they still look even if you aren't in the wetlands.

Beau Burgess, city resident, commented that the Corps of Engineers regulate any lot that has a portion of wetland; and upward of at least  $\frac{3}{4}$  the land mass in Homer does have wetland via discharge slope or semi riparian area. He is trying to fully understand the need to regulate the kinds of fill that can be used. It seems like we are not accounting for all the possibilities of kinds of fill or uses for the fill. We are simply trying to legislate to avoid particular instances like what occurred out East Road where a large amount of trash was being used. He understands the need for the ordinance but would like to see a lot more flexibility and far thinking foresight put into what people can do. There is not a sufficient process for redress in situations. In his business they frequently remove stumps and macro woody debris when

clearing lots and put it to good use as retaining walls, mulch, or other products that can actually reduce erosion and serve some of the purposes this ordinance is trying to address. If we think this is an important thing to regulate, granted we are already overlapping Corps of Engineers jurisdiction when talking about wetlands, are we really putting enough thought into kinds of fill, what's allowed and addressing every possible situation.

There was brief discussion that there isn't an avenue through a CUP or other means in the ordinance for doing something as Mr. Burgess has suggested.

Dr. Nancy Livingston, city resident, commented that she supports this document and referenced her property, noting that in the absence of any regulation on fill in residential areas the lot adjacent to her was completely filled so that water was diverted and she had flooding in her home and damming in the property she owns in front of her home. The Daybreeze Subdivision lot where her property is located is made up of over 60 small lots. Lots now are smaller and regulations are needed as to what can be done in good conscience according to professional and industry standards. In her case good standards were not applied and there was no good conscience in what happened to her property. Therefore she had to resort to litigation to resolve it rather than looking to building and construction codes that should have been aligned and accountable to what is going on when the town is developing itself with regard to high quality residence. She thinks what is written here well address that and with the greater growth we have in area, and the topography for drainage and flooding, this needs to be addressed legislatively. We can not rely on the hands of novices. Should this not happen she would submit that the City needs to look at warning waivers and liability documents for realtors to issue to people purchasing such small lots, clarifying that there are no code regulations that apply to damages from fill should you incur it from another property owner that is adjacent to you so that you know this going in that your recourse will be expensive litigation. She encouraged the Commission to support the ordinance.

There were no more public comments and Chair Minsch closed the public hearing.

The postponed motion to adopt is back on the floor.

The Commission considered the concepts suggested by Mr. Burgess and ways to incorporate them so there isn't abuse of fill, but have a mechanism to allow the creative ideas. It was suggested it could be through a waiver or CUP that could be considered by staff or the Commission to utilize the materials the manners Mr. Burgess spoke of. It was noted that the ordinance does allow stumps and organic fill in any manner except where housing will be built. It doesn't appear to prohibit fill and placing stumps for erosion control. The ordinance doesn't prohibit removing stumps off your lot and taking them to the landfill or a disposal site that is probably outside the city. People are misusing fill and Homer is far enough along in its development that there needs to be some rules in place for this.

There was brief discussion of placement of fill along property lines where adjoining property owners are in agreement for filling their lots why would we want a setback that could create a canyon between the two lots. Point was raised that this could impact drainage. Public Works Director noted that there are situations where two lots might fill next to each other and it is a big encumbrance to have to provide a swale or ditch between them deeper than needed for drainage. He suggested that no fill can be placed within 5 feet of a side lot line of an adjacent lot that is not receiving fill. Two adjoining lots that are proposed to be filled to the same elevation, the five foot setback does not apply. City Planner Abboud suggested that

this gets into an area where it goes beyond our expertise and you would be looking at a waiver per an expert in the field. Mr. Meyer noted that there is a provision in the ordinance that a grading plan be prepared that is approved by the City Engineer so maybe that is an opportunity for the possibility of fill being placed up to the property line.

Question was raised why concrete is prohibited; it is no worse than large stone and it is not prohibited by DEC. Public Works Director Meyer participated in the discussion about using concrete. He noted that it is an inert substance and perhaps it is better used in someone's back yard than taking up expensive space in the land fill and smaller chunks of concrete are better than larger chunks. He advised against asphalt as it has potentially toxic substances in it. It is best not to place concrete under buildings, but trucking stuff to the land fill is an expensive way for society to deal with that type of material. Point was raised that we don't have building inspections or an avenue for establishing where it should and should not be placed.

Commissioner Kranich said he would talk to staff wording for amendments.

KRANICH/HIGHLAND MOVED TO POSTPONE ADOPTION TO THE NEXT MEETING.

There was brief discussion.

VOTE: NON OBJECTION: UNANIMOUS CONSENT.

Motion carried.

B. Staff Report PL 10-84, Ordinance 10-xx Amending Draft Steep Slope Ordinance

City Planner Abboud reviewed laydown item noting that if the intent of the Commission to regulate setbacks from steep slope that they add they add the term steep slope into the list of ravine and non coastal bluff. He also suggests adding where they have 1/3 the height of the bluff, add or steep slope but not less than 15 feet.

Chair Minsch opened the public hearing.

Scott Adams, 30 year resident in the area and city resident by annexation, has a lot with slope development on East Hill. He agrees with the slope of 15 to 30% and not exceed the 25% of total area. He said when it comes to an area with a slope over 30% you are only allowed 10%, if you have a space that requires a long driveway, it is going to eat up a lot of the allowable area. He suggested it be increased to 15%. It states if a person wants to clear, fill, or grade they have to get a permit and he said that it is a lot of oversight by the city, and he questioned if he needs a permit to clear a few trees off his property or ditching around his house. Mr. Adams also noted that it gets vague when it comes to development of slopes 45% or greater. There should be a specific number so people can see what is happening and express their opinions about that. He knows Homer has interesting ground under each location so thinks that he has a hard time with this. His wife purchased a neighboring lot for a retirement property. With restrictions like this it is costly to develop and puts this expense on property owners.

There were no further comments and Chair Minsch closed the public hearing.

KRANICH/HIGHLAND MOVED TO BRING TO THE FLOOR FOR DISCUSSION AND RECOMMENDATION FOR FURTHER REVIEW BEFORE FORWARDING TO COUNCIL.

Commissioner Kranich raised concern about the formatting and layout as to the area of development and being able to have an engineer prepare a site plan allow for development exceeding the percentage limits. He is not sure he has the answer he wants that the information is readily available to a member of the public coming in to look at code. He would like to have it prepared in a clearer manner for the public to understand.

KRANICH/HIGHLAND MOVED TO POSTPONE TO THE NEXT MEETING AND HAVE IT AS AN ACTION ITEM.

There was no discussion.

VOTE: YES: HIGHLAND, DOLMA, KRANICH  
NO: MINSCH, VENUTI

Motion failed for lack of a majority.

There was further discussion about Commissioner Kranich's concern regarding the clarity of the ordinance with regard to requirements for development on a slope greater than 45% and where the requirements are clearly outlined in code.

MINSCH/HIGHLAND MOVED TO RECONSIDER THE MOTION TO POSTPONE.

There was no discussion.

VOTE: NON OBJECTION: UNANIMOUS CONSENT.

Motion carried.

There was brief discussion on the motion to postpone.

VOTE: NON OBJECTION: UNANIMOUS CONSENT

Motion carried.

C. Staff Report PL 10-86, Section Line Easement Vacation at Lot 4B-1 Dierich Addition

City Planner Abboud reviewed the staff report.

Roger Imhoff, project surveyor, said he was available to answer questions.

Chair Minsch opened the public hearing. There were no comments and the public hearing was closed.

KRANICH/DOLMA MOVED TO BRING TO THE FLOOR FOR ADOPTION STAFF REPORT 10-86, SECTION LINE EASEMENT VACATION AT LOT 4B-1 DIERICH ADDITION WITH STAFF RECOMMENDATIONS AND FINDINGS.

Commissioner Kranich commented that this is straight forward and the property fronts a dedicated right-of-way even though it is not constructed.

VOTE: NON OBJECTION: UNANIMOUS CONSENT

Motion carried.

D. Staff Report PL 10-93, Draft Ordinance 10-xx, Rezones

City Planner Abboud reviewed staff report.

Chair Minsch opened the public hearing. There were no public comments and the public hearing was closed.

KRANICH/HIGHLAND MOVED TO BRING THE DRAFT ORDINANCE TO THE FLOOR TO DISCUSS AND MAKE RECOMMENDATION AND/OR FORWARD TO COUNCIL.

There was no objection expressed and discussion ensued.

Commissioner Kranich commented that what qualifies for rezone is a muddy topic, but doesn't think there is any way to have it clear in black and white from the decisions of several court cases.

Chair Minsch said they have come a long way from a few sentences in their policy and procedures manual to codifying and making a stab at this. It is a moving target but it's a place to start.

KRANICH/HIGHLAND MOVED TO FORWARD THIS DRAFT ORDINANCE TO COUNCIL FOR PUBLIC HEARING AND ADOPTION.

There was no further discussion.

VOTE: NON OBJECTION: UNANIMOUS CONSENT.

Motion carried.

#### **PLAT CONSIDERATION**

A. Staff Report PL 10-98, Dierich Section Line Easement Vacation Preliminary Plat

City Planner Abboud reviewed the staff report.

There were no comments from the applicant or the public.

KRANICH/HIGHLAND MOVED TO ADOPT STAFF REPORT PL 10-98 DIERICH SECTION LINE EASEMENT VACATION PRELIMINARY PLAT WITH STAFF RECOMMENDATIONS.

There was discussion regarding the section line easement vacation process and the time it takes for it to make the rounds through the City, Borough, and State.

VOTE: NON OBJECTION: UNANIMOUS CONSENT.

Motion carried.

**PENDING BUSINESS**

There were no pending business items on the agenda.

**NEW BUSINESS**

A. Staff Report PL 10-92, Draft Subdivision Code Amendment

City Planner Abboud reviewed the staff report.

KRANICH/HIGHLAND MOVED TO SCHEDULE THE SUBDIVISION ORDINANCE UNDER STAFF REPORT 101-92 FOR PUBLIC HEARING AT THE NEXT MEETING.

Commissioner Kranich explained that the Commission had good discussion at the worksession. The ordinance clarifies granting utility easements which has been ambiguous to the Commission in the past. There is information regarding the Non Motorized Transportation and Trails Plan he encouraged everyone review this to ensure it is correct. City Planner Abboud said he would distinguish what is the Planning Commissions work and what is the staff and attorneys work.

VOTE: NON OBJECTION: UNANIMOUS CONSENT

Motion carried.

B. Staff Report PL 10-97, Draft Sign Code Amendment

City Planner Abboud reviewed the staff report.

KRANICH/HIGHLAND MOVED TO POSTPONE ACTION AND SCHEDULE AT THE NEXT WORKSESSION AND NEXT MEETING AS AN ACTION ITEM.

It was noted that the next worksession is Commission training with the City Attorney so the Commission agreed to have it on the next available worksession.

VOTE: NON OBJECTION: UNANIMOUS CONSENT

Motion carried.

C. Staff Report PL 10-96, Draft Zoning Enforcement Ordinance (Outdoor Storage)

City Planner Abboud reviewed the staff report.

There was brief discussion about including commercial districts, provision for vehicles used for work, and if items can be concealed. It was suggested that seasonal use vehicles like tractors or snow plows can sit through the off season.

KRANICH/DOLMA MOVED TO POSTPONE THIS TO A WORKSESSION FOR FURTHER DISCUSSION.

City Planner Abboud noted that it will likely be December before it comes back.

VOTE: NON OBJECTION: UNANIMOUS CONSENT.

Motion carried.

### INFORMATIONAL MATERIALS

- A. City Manager's Report
- B. Eker Estates No. 3 Replat Preliminary Plat and Driveway Permit
- C. Hillstrand's Homestead Preliminary Plat, Excerpt from KPB September 27, 2010 packet
- D. Letter dated September 29, 2010 to James Dolma from Mayor Hornaday regarding appointment to the Homer Advisory Planning Commission

### COMMENTS OF THE AUDIENCE

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

Beau Burgess, city resident, thanked the Commission for taking more time to review the fine details of the steep slope and fill ordinances. He thinks there should be some attention to recourse of how to constructively use concrete and macro woody debris rather than seeing it in a land fill. On a humorous note, he said he does drive a small dump truck and parks it on his property.

Dr. Nancy Livingston, city resident, thanked the Commission for consideration of the fill ordinance and urged them to move something forward in a reasonable time frame and not stall indefinitely something that has been going on for a historical period of time. More complicatedly with the number of subdivisions in Homer the fact that those subdivisions have very small lots and anything done between two property owners on one common line not only affects the two property owners but also properties below them. Drainage down her lot line affects two houses below hers and the home adjacent to hers affects three. She was not afforded an opportunity of agreement with the common land owner but confronted with a situation that caused disastrous damage that should not have to happen to the 59 other homeowners in the subdivision. As it stands there is a total absence of this not recurring by not having any definition to the fill codes. She submits that there needs to be guidelines that are applicable to large and small estates and there needs to be some common base line that is more focused as opposed to just having a privilege for two people who share a common lot line and agree on their property. They can not mandate what happens on other adjoining properties and what might satisfy two may be very damaging to others. That being a given the Commission could consider a moratorium on subdivision or in real estate for selling these properties without people being forewarned through warning waiver and liability.

Scott Adams, city resident, advised the Commission that he was unaware of the CUP 10-08 at 5655 Scenic View Place. He said he is one of the affected land owners and he did not receive any notice about the proposed CUP. He questions where they propose to put the additional building because he thinks it will be on Skyline Drive, which affects his property because they abut a driveway to his property and that happened about 4 years ago. He has the property on Skyline and also on Scenic Place. He said he is not happy about this situation.

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Chair Minsch explained that the action has been completed and encouraged him to contact to Planning staff to address the issue of the public notice.

**COMMENTS OF STAFF**

City Planner Abboud had no comments.

**COMMENTS OF THE COMMISSION**

Commissioner Highland reiterated her dream that we have a balance between economy and environment. She thanked everyone for their time and welcomed Mr. Dolma to the Commission.

Commissioner Kranich welcomed Mr. Dolma and said it is good to have a full Commission again and looks forward to continue working with this group.

Commissioner Venuti thanked everyone.

Commissioner Dolma thanked the group for making him feel welcome.

Chair Minsch commented that they didn't get as much done as she hoped but there was good discussion and we will keep moving forward.

**ADJOURN**

There being no further business to come before the Commission, the meeting adjourned at 9:30 p.m. The next regular meeting is scheduled for October 20, 2010 at 7:00 p.m. in the City Hall Cowles Council Chambers. There is a worksession at 5:30 p.m. prior to the meeting.

  
MELISSA JACOBSEN, CMC, DEPUTY CITY CLERK

Approved: November 3, 2010

HOMER ADVISORY PLANNING COMMISSION  
REGULAR MEETING MINUTES  
OCTOBER 20, 2010

Session 10-18, a Regular Meeting of the Homer Advisory Planning Commission was called to order by Chair Minsch at 7:00 p.m. on October 20, 2010 at the City Hall Cowles Council Chambers located at 491 E. Pioneer Avenue, Homer, Alaska.

PRESENT: COMMISSIONERS BOS, DOLMA, DRUHOT, HIGHLAND, KRANICH, MINSCH, VENUTI

STAFF: CITY PLANNER ABOUD  
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 public comments.

### RECONSIDERATION

There were no items to be reconsidered.

### 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 October 6, 2010 Minutes
2. Time Extension Requests
3. Approval of City of Homer Projects under HCC 1.76.030g
4. KPB Coastal Management Program Reports

Commissioner Highland requested the minutes be addressed under new business.

The amended consent agenda was approved by consensus of the Commission.

### PRESENTATIONS

- A. Legal Issues Facing the Homer Advisory Planning Commission - Holly Wells, City Attorney

City Attorney Wells completed her presentation in the worksession.

### REPORTS

- A. Staff Report PL 10-100, City Planner's Report

City Planner Abboud reviewed his report that was included in the packet.

### PUBLIC HEARINGS