

May 18, 2011
5:30 P.M.

Cowles Council Chambers
491 East Pioneer Avenue
Homer, Alaska

WORK SESSION Advisory Planning Commission AGENDA

1. Call To Order, 5:30 P.M.
2. Discussion of Items on the Regular Meeting Agenda
3. Presentation: City Hall Expansion Project, Carey Meyer
4. Staff Report PL 11-59, Draft Ordinance 11-xx, East End Mixed Use
(Please refer to page 183 of the regular meeting packet)
5. Staff Report PL 11-60, Draft Ordinance 11-xx, Conservation District
(Please refer to page 179 of the regular meeting packet)
6. Public Comments
The public may speak to the Planning Commission regarding matters on the work session agenda that are not scheduled for public hearing or plat consideration. (3 minute time limit).
7. Commission Comments
8. Adjournment



WORK SESSION
Planning Commission
AGENDA



**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 May 4, 2011 *Page 1*
 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 11-62, City Planner's Report *(Insert)*
- 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.

 - A. Staff Report PL 11-55, CUP 11-08, Amending CUP 10-04, University of Alaska, Kachemak Bay Campus College Expansion *Page 9*
 - B. Staff Report PL 11-56, A Public Hearing in the Remand from the Board of Adjustment to the Homer Advisory Planning Commission to consider new conditions regarding 1033 Skyline Drive *Page 35*
 - C. Staff Report PL 11-54, CUP 11-09, 3406 Main Street for request to build within the 20' setback and for "more than one building containing a permitted principal use on a lot" per HCC 21.12.030(n) *Page 137*
 - D. Staff Report PL 11-49, 1295 Mission Road, Alaska Bible Institute, for "more than one building containing a permitted principal use on a lot" per HCC 21.12.030(n). *Page 151*
- 9. Plat Consideration**
- 10. Pending Business**
 - A. Staff Report PL 11-60, Draft Ordinance 11-xx, Conservation District *Page 179*
 - B. Staff Report PL 11-59, Draft Ordinance 11-xx, East End Mixed Use *Page 183*
 - C. Staff Report PL 11-57, Internally Illuminated Signs *Page 193*
 - D. Staff Report PL 11-48, CUP 11-06, 4721 Homer Spit Road, Central Charters Boardwalk Expansion for HCC 21.28.030 (a) Restaurants and drinking establishments HCC 21.28.030(i) More than one permitted principal use on a lot,

HCC 21.28.030(j)Planned unit development, and HCC 21.28.040(d) More than 8,000
sf of building area *Page 195*

11. New Business

12. Informational Materials

- A. City Manager's Report dated May 9, 2011 *Page 219*
- B. Memo dated May 9, 2011 from Deputy City Clerk Jacobsen to the HAPC regarding Renewal of a Motion *Page 223*
- C. Letter dated May 11, 2011 from Dotti Harness-Foster, Planning Technician, to Property or Business Owners regarding Sandwich Board Signage *Page 225*

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 10 p.m. An extension is allowed by a vote of the Commission. The next regular meeting will be held on June 1, 2011 at 7:00p.m. There will be a work session at 5:30p.m.

Session 11-06, a Regular Meeting of the Homer Advisory Planning Commission was called to order by Chair Minsch at 7:01 p.m. on April 6, 2011 at the City Hall Cowles Council Chambers located at 491 E. Pioneer Avenue, Homer, Alaska.

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

ABSENT: COMMISSIONER BOS

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).

RECONSIDERATION

There were no items 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 April 20, 2011 minutes
2. Time Extension Requests
3. Approval of City of Homer Projects under HCC 1.76.030 g
4. KPB Coastal Management Program Reports

The Consent Agenda was approved by consensus of the Commission.

PRESENTATIONS

There were no presentations scheduled.

REPORTS

- A. Staff Report PL11-53, City Planner's Report

City Planner Abboud reviewed the staff report.

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 11-48 CUP 11-06, 4721 Homer Spit Road, Central Charters Boardwalk Expansion

City Planner Abboud reviewed the staff report.

Kenton Bloom, surveyor and applicant's representative, commented that the City Planner's comments were appropriate to what is happening with this project. The applicant, Bill Lovett, has been a shop owner on the spit for over 22 years. When he bought Central Charters he saw that what was happening didn't have the structure for long term sustainability, given the dynamics of the economics on the spit. It is seasonal out there and it would be a stretch to say that it is a full three month program. This project is an effort to diversify and expand the economic foundation to keep the boardwalk sustainable. He said the Michaels' who own Captain Patties have a similar situation where the restaurant building is maxed out, storage and configurations are awkward, and there aren't enough tops for the summer influx. The expansion in their regard has to do with providing a better dining experience, a more efficient work experience, and a more sustainable restaurant operation for the long term. Mr. Bloom explained that in planning this they looked at code, the spit, and the specific area to see what could be done for architectural integration. As part of the process they looked at the other buildings and they are working with features to create a cohesive maritime atmosphere using muted tones on the paints to diminish the buildings and accentuate the signs so people passing by will see something cohesive, attractive, and appropriate. Mr. Bloom said they feel their solution leads a way forward on the spit in terms of development and it represents an infusion of financial resources into an existing boardwalk. The lift between the two boardwalks is going to be over three and a half feet; they have kept the buildings low. The lodging unit is in the middle of the five pieces to break up the roof line. They think the restaurant square footage is modest but it does big things for the restaurant itself. The space between the restaurant and cabins is there because the Sea Lion uses the space as their view shed so they wanted to protect that, and because of the difference in boardwalk heights, there are porches and stairs that are already there and to move the cabins over means that those things would have to be demolished or reconfigured. To cut the corner off the last unit will take out the kitchen piece and ruin the symmetry of the buildings and moving over 5 feet cuts into the upstairs deck of Sea Lion. Regarding parking Mr. Bloom added that they showed the other 16 spaces as they feel they exist for the purposes of noting that they are adding four new spaces to what has been out there. Regarding signage he said they were able to look at the proposed signage model that the Commission is working on and the two things they came up with were is one, the purpose of signage is more critical than he realized in that driving by it is like a window shopping factor that appears to be a big piece in how people choose their activities. It is important not to underestimate that. Secondly, quality signs attract people to a business in the way that a banner or something like that might not. He said his clients wanted him to talk about the relationship and difference between art and signage as they want to integrate sculptural or paintings and so forth. The total signage that is there today is below the limits proposed in the sign documents. He believes that the applicants tried to propose something forward looking that will be attractive, cohesive, and something the community can be proud of.

There was brief discussion to clarify parking in relation to the seasonal activity of the units.

Chair Minch noted for the record that there were laydown items provided to the Commission, one letter from Timothy Cashman, and two documents from Frank Griswold. She opened the public hearing.

John Michaels, part owner of Captain Patties, commented that Mr. Bloom did a good job of explaining what Captain Patties would like to do. He said it will be a stunning addition if it is allowed. With all the glass it will be significant beautification of the property. Economically it will allow Captain Patties to have about 15 more employees to work from March to the end of September.

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

The Commission asked questions of Mr. Bloom and he responded with the following comments.

- The 5 foot walk way by the mechanical room is the setback and it leaves a maintenance area for the entirety of that side of the building.
- The ramp next to the Crab Shack is a universal access designed to serve all of the outside deck and provide access to the new lifted part of Captain Patties.
- Some reasoning they don't want to move the building over five feet out of the set back is that Central Charters is established with its location and views and putting the buildings in front of Central Charters devalues what they have and the north end of the site is more of a transitional area in relation to what is already there. It will be a small triangular piece of the north westerly corner of the first unit in the setback. He tried to avoid it to keep it cleaner but decided to ask the Commission for the variance. It doesn't appear to be a major imposition and he feels they have shown that they tried to work around it.
- The stairway behind the Sea Lion is an egress stairway for the people upstairs; there is a porch that is part of the stairway. The stairway and deck are in the clearance of the walk way to have full head room coming behind the cabins. They can't really move any farther toward Captain Patties with the cabins without impacting the whole piece. On the other side of the Sea Lion needs to be clear for access to the propane and other utilities.
- In reference to comments that the addition doesn't seem aesthetically pleasing or appear to have a nautical feel from the street side Mr. Bloom explained that with the exception of about 30 feet, the addition is behind the other buildings. Due to privacy concerns and wanting to keep the level of the cabin buildings below the existing buildings, it will be as shown in the drawings with the two doors showing, one to a cabin and one to the washroom. They are using an unremarkable wood surfaced board and batten type approach. They looked at other kinds of roof lines but felt that because of the different grade in the boardwalk a flat roof would be less of an impact as gable roofs which would create a situation with the roofs being way over what is already there and cause a real visual impact from the street side.
- In relation to the development in the tsunami zone, they looked at the FEMA preparedness piece and what is happening on the spit and reached a conclusion that the addition of a few rooms won't change the dynamic out there. There are numerous other living situations on the spit.
- The signage is not compliant with the current sign code but is compliant with the proposed amendments that the Commission is working toward.

There was discussion regarding parking to clarify that the additional parking being added is in the state right-of-way. City Planner Abboud added that the parking table in code doesn't apply to the spit. Spit parking is reliant on two things, seasonal/year round employees and dwellings. Concern was expressed to adding traffic in a place where there isn't any parking available. Mr. Bloom noted that on the spit a lot of people park in the bigger lots and walk to businesses on the spit and both clients have said a big part of their business is the foot traffic.

HOMER ADVISORY PLANNING COMMISSION
REGULAR MEETING MINUTES
MAY 4, 2011

There is a handicapped parking space included in the 8 spaces, but can't specifically lay one out on that other 16 but will show that there is room for another one.

BOS/HIGHLAND MOVED TO ADOPT STAFF REPORT PL 11-48 CUP 11-06, 4721 HOMER SPIT ROAD, CENTRAL CHARTERS BOARDWALK EXPANSION.

Commissioner Bos expressed concern with a few items, the parking is a little problematic but if staff and city is going to stand by what is there then it he is good with it. They took advantage of all available space, but Commissioner Bos thinks it could be possible to make it work without having to get into the setback and there is not enough hardship caused to allow a variance. He feels that based on Mr. Bloom's comments it will be a good project.

Commissioner Venuti expressed that it's a great idea but his concern is allowing the CUP when the signage isn't in compliance.

BOS/VENUTI MOVED TO GO INTO DELIBERATIONS AT THE END OF THE MEETING.

There was no discussion.

VOTE: NON OBJECTION: UNANIMOUS CONSENT.

Motion carried.

B. Staff Report 11-49, 1295 Mission Road, Alaska Bible Institute, for "more than one building containing a permitted principle use on a lot" per HCC 21.12.030(n)

Commissioner Venuti disclosed a business relationship with Alaska Bible Institute (ABI).

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

Commissioner Venuti explained that he was contacted by ABI to do inspections for their work. There is no contract in place as of yet but it is possible that he may work with them if the CUP is approved. When asked about financial interest he disclosed that the amount would be less than \$5000 but would likely be more than \$1000 if he does the work.

Commissioner Dolma asked if not having the contract and just the possibility of income at some point would clad his decision making for this process. Commissioner Venuti said he felt he could make a fair decision regardless, but acknowledged there is an appearance of a conflict which is why he is disclosing this.

Commissioner Bos noted that an inspection is objective, unless there is the perception of helping them with the CUP to get the work.

VOTE: YES: BOS, MINSCH, HIGHLAND
NO: DOLMA

Motion fails for lack of a majority.

Commissioner Highland questioned if she misunderstood the question based on the result of the vote. Deputy City Clerk stated that a yes vote means that you agree that Commissioner Venuti has a conflict because of his potential financial gain.

Chair Minsch called for a short break at 8:19 p.m. to review code regarding the conflict of interest parameters. The meeting resumed at 8:27 p.m.

Chair Minsch expressed that the options are for Commissioner Dolma to reconsider or the Commission could vote to postpone. Commissioner Dolma asked for clarification about the effect of reconsideration and he was advised that it would bring the question of Commissioner Venuti's conflict back to the floor for further consideration.

BOS/HIGHLAND MOVED TO POSTPONE ACTION ON CUP 11-07 FOR ALASKA BIBLE INSTITUTE TO THE NEXT MEETING.

There was brief discussion.

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

Motion carried.

PLAT CONSIDERATION

A. Staff Report PL 11-51, Bollenbach (N/C) Preliminary Plat

City Planner Abboud reviewed the staff report.

Roger Imhoff, project surveyor, commented that he wants to make sure they understand the name of the subdivision will not be Bollenbach Subdivision, but the applicant has not come up with her final name. He explained that they are taking property that was portions of three government lots and vacating those common lot lines and creating two side by side lots out of the three. Both lots will front on Kachemak Drive and Kachemak Bay. They will be asking for an exception to the Borough's 3:1 portion of the code for length to width ratio. As is common in these types of lots that have an upland area, steep bluff, and beach frontage, the upland area does meet the 3:1 ratio so he feels they have a good argument for the exception.

Amy Bollenbach, property owner, commented that she is trying it make the land more useable. The original lot lines don't make any sense and it will be more saleable to have two lots with access to the road and the waterway.

There were no further public comments.

Commissioner Venuti noted that after subdivision another structure can not be built within 40 feet of the bluff.

BOS/DOLMA MOVED TO ADOPT STAFF REPORT PL 11-51.

Chair Minsch commented that if this is approved then the structure presently on the edge of the bluff becomes nonconforming. City Planner Abboud noted that if an application comes in to build, consideration will have to be given to what is happening with the lot at the time the

HOMER ADVISORY PLANNING COMMISSION
REGULAR MEETING MINUTES
MAY 4, 2011

application comes in. He noted that the issue of the setback to the slope isn't relevant to the purpose of this action.

Commissioner Highland questioned the 3:1 ratio. City Planner Abboud explained that is something dealt with at the Borough and not through Homer City Code. He noted that if a Commission had opposition they could express it for the record. He thinks the relation between the upland and low land area makes the issue negligible.

VOTE: NON OBJECTION: UNANIMOUS CONSENT.

Motion carried.

BOS/VENUTI MOVED TO POSTPONE THE REST OF THE AGENDA TO GO INTO DELIBERATION.

There was brief discussion.

VOTE: NON OBJECTION: UNANIMOUS CONSENT.

Motion carried.

PENDING BUSINESS

- A. Staff Report PL 11-52, Draft Ordinance 11-xx East End Mixed Use
- B. Staff Report PL 11-45, Draft Ordinance Amending Chapter 21.34, Conservation District

NEW BUSINESS

- B. Staff Report PL 11-57, Internally Lit Signs

INFORMATIONAL MATERIALS

- A. City Manager's Report April 11, 2011
- B. 'Planning Made Easy' Excerpt of Chapter 5- Ethics

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

Deputy City Clerk Jacobsen recommended that the Commission become familiar with the dollar amounts outlined in the Ethics portion of City Code specific to conflicts of interest. Code outlines \$1000 per occurrence or \$5000 per year. So if a Commissioner states that there is the potential to earn more than \$1000 then that is the Commission's cue that there is in fact a conflict per Homer City Code. It doesn't matter if you ask if a Commissioner can make an unbiased decision and they say yes. A no vote for a conflict of interest cannot be justified when a commissioner states that the amount, if hired, would exceed \$1000. She said if the CUP passes, and the Commissioner who stated their conflict earns in excess of the \$1000 for the project, she is confident that the results will not reflect favorably on the Commission.

COMMENTS OF THE COMMISSION

Commissioner Highland said she is enjoying the Planning Made Easy information they are receiving wants to continue working for balancing development and the environment.

There were no further Commission comments.

ADJOURN

There being no further business to come before the Commission, the meeting adjourned at 8:51 p.m. The next regular meeting is scheduled for May 18, 2011 at 7:00 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 11-55

TO: Homer Advisory Planning Commission
THROUGH: Rick Abboud, City Planner
MEETING: May 18, 2011
SUBJECT: Conditional Use Permit 11-08, 533 E Pioneer Ave, Amending CUP 10-04

SYNOPSIS: The College is requesting the removal of the fence requirement along Heath Street and an extension of the time line for planting as outlined in CUP 10-04, Condition #4.

Applicants: Kachemak Bay Campus
Carol Schwartz
533 E Pioneer Ave
Homer, AK 99603

Location: Heath Street of college campus, Glacier View Sub Campus Addn Lot 3-A-2
Parcel ID: 17720409
Lot Size(s): 3.13 acres
Zoning Designation: Central Business District
Existing Land Use: College
Surrounding Land Use: North: Commercial/City Hall
South: Residential
East: Commercial/HEA yard
West: Commercial/Radio Station

Comprehensive Plan: Encourage a concentrated, pedestrian oriented, attractive business/commerce district in the Central Business District....pg 4-15

Implementation strategies: Use public/private partnerships, Business Improvement Districts, or Tax Increment Financing to improve streetscapes, including better sidewalks, landscaping, and building facades. Develop an attractive, business friendly commercial streetscape for Pioneer Avenue and ensure the Town Square/City Hall project is designed to benefit Pioneer Avenue and Old Town businesses. Pg 4-16.

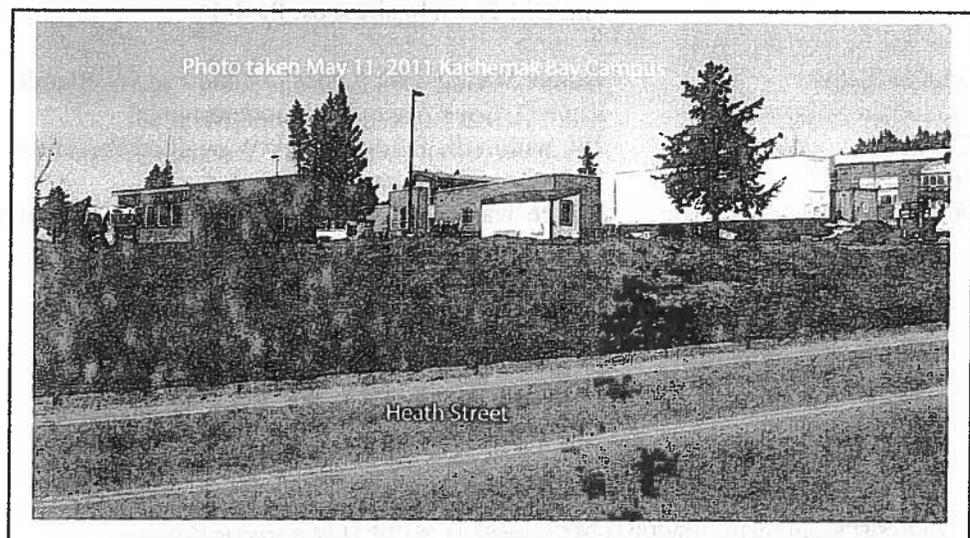
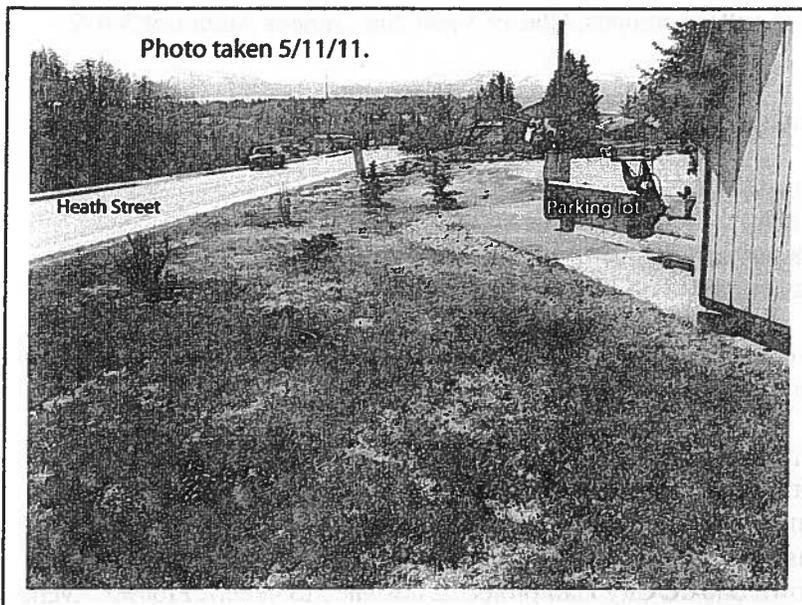
Wetland Status: Homer Wetland Map does not show any wetlands.
Flood Plain Status: Zone D, flood hazards are undetermined
BCWPD: Not within the Bridge Creek Watershed Protection District
Utilities: Served by city water and sewer
Public Notice: Notice was sent to 39 property owners of 64 parcels as shown on the KPB tax assessor rolls.

On April 7, 2010 the Commission approved CUP 10-04 for the College Expansion with eleven (11) conditions. Condition #4 requires a fence and planting along Heath Street and describes the dumpster location. The College is requesting the removal of the fence requirement and the extension of the planting timeline and is moving the dumpster:

CUP 10-04, Condition #4: ~~“Construct a fence and Pplant evergreen and deciduous trees from the dumpster enclosure south to the lot line along Heath Street. Complete by August (September) 31, 2011.”~~

Existing Heath Street landscaping: The College has planted grass and eleven (11) small trees and shrubs along 80 feet of Heath Street frontage. On average, the tree separation is 7.2 feet. The shrubs range from 1 ft to 3 ft in height with a trunk size of 1- 2 inches. The tree density is sparse, but with full grown out the planting may provide a visual buffer. A general rule of thumb is that trees should have a separation of half their total spread at maturity. For example, a 10 ft high mature shrub/tree should have a separation of at least 5 feet.

The new plantings along Heath Street are small, spatially separated and will take years to provide any screening or solid hedge that softens the visual impact from the Heath Street.



The letter stamp dated April 27, 2011 item #4 indicates that the College will be planting a total of 23 trees along the remaining 180 feet of Heath Street frontage which provides an average separation of approximately 7.8 feet.

Since the letter was submitted, the College has increased the number of new plantings to 29 trees. These plantings to provide a visual buffer from the SE corner of the property, north along Heath, approximately 200 feet. Future planting to have a minimum trunk diameter of 1 ½ inches and consist of at least 70% evergreens. Extending the timeline for plantings to September 31, 2011 is a reasonable request.

The landscape buffer requirements along a Heath Street are outlined in the Site Development Standards HCC 21.50.030 and the Community Design Manual (CDM). First the Site Development Standards:

HCC 21.50.030(f)(1)(b)(i). A minimum of ten percent of the area of parking lots with 24 spaces or more shall be landscaped in islands, dividers, or a combination of the two;

Analysis: CUP 10-04 states that the “landscaping is provided in bump out areas within the parking lot and between the parking area and property lines along rights of way” so islands and dividers were not required.

HCC 21.50.030(f)(1)(b)(ii). Parking lots with 24 spaces or more must have a minimum ten foot landscaped buffer adjacent to road rights-of-way;

Analysis: The landscaping requirements are minimums and intended to buffer parking lots from the road way. Based on the spatial separation and slow growth of Alaskan vegetation it will take years for the existing landscaping along Heath Street to mature enough to be considered a buffer. To quicken the visual “buffering” staff recommends that future plantings have minimum trunk diameter of 1 ½” with at least 70% evergreens.

Finding 1: The College has a minimum 10 foot landscaped adjacent to Heath Street.

The CDM Parking section, p33-35 states that parking lots may not visually dominate Homer’s urban setting. The CDM requirements are intended to mitigate the visual impacts of parking by screening parking lots from public rights-of-way. There are eleven (11) components to the parking lot requirements; #2 and #5 discuss parking lot screening from Heath Street.

(#2). Use landscaping to screen parking lots and service areas. Parking lots and other expansive pavement areas shall include a wall, solid hedge or landscape berm at least 3 feet high (conforming to clear vision requirements at driveway entrance) parallel to the right-of-way to soften the visual impact of the lot from the street.

(#5) . Screen or enhance parking lots visible from the Sterling Highway, Lake Street, Heath Street, Main Street, or Pioneer Avenue. Parking lots designed for more than 16 cars and which are visible from these Rights-of-way shall either be partially screened or meet the following landscape standards:

a. Provide tree areas throughout parking lot. Parking lots must include areas for trees.

Analysis: Both #2 and #5 above require the college parking lot be screened from Heath Street with a wall, solid hedge or landscape berm at least 3 feet high, OR, trees throughout the parking lot.

Finding 2: No trees are planted throughout the parking lot.

Finding 3: Trees will need to be added to the landscaping plan submitted, continuing from the existing plantings to provide a continuous border to the north along Heath Street.

Fencing: In the April 27, 2011 letter the applicant indicates that: "2. The fence is a safety concern and will require ongoing maintenance/repair."

Analysis: Often times, fencing is an added benefit for safety. All improvements, fencing, landscaping, parking lots and structures require maintenance. Fencing helps to provide a visual buffer and separation between Heath Street and the parking lot.

Finding 4: Fencing provides a visual buffer while slow growth Alaskan vegetation is established.

The dumpster will be relocated to the south side next to the shed. Staff recommends that the dumpster be enclosed with a 6 ft visual buffer of wood or stone (on three sides).

STAFF RECOMMENDATIONS: *Five yes votes are required to amend this CUP.*
Approve modifications to CUP with consideration to the items below.

1. Remove reference to the dumpster location.
2. Extend the planting timeline to September 30, 2011
3. Clarify type of trees and trunk size at their initial planting.

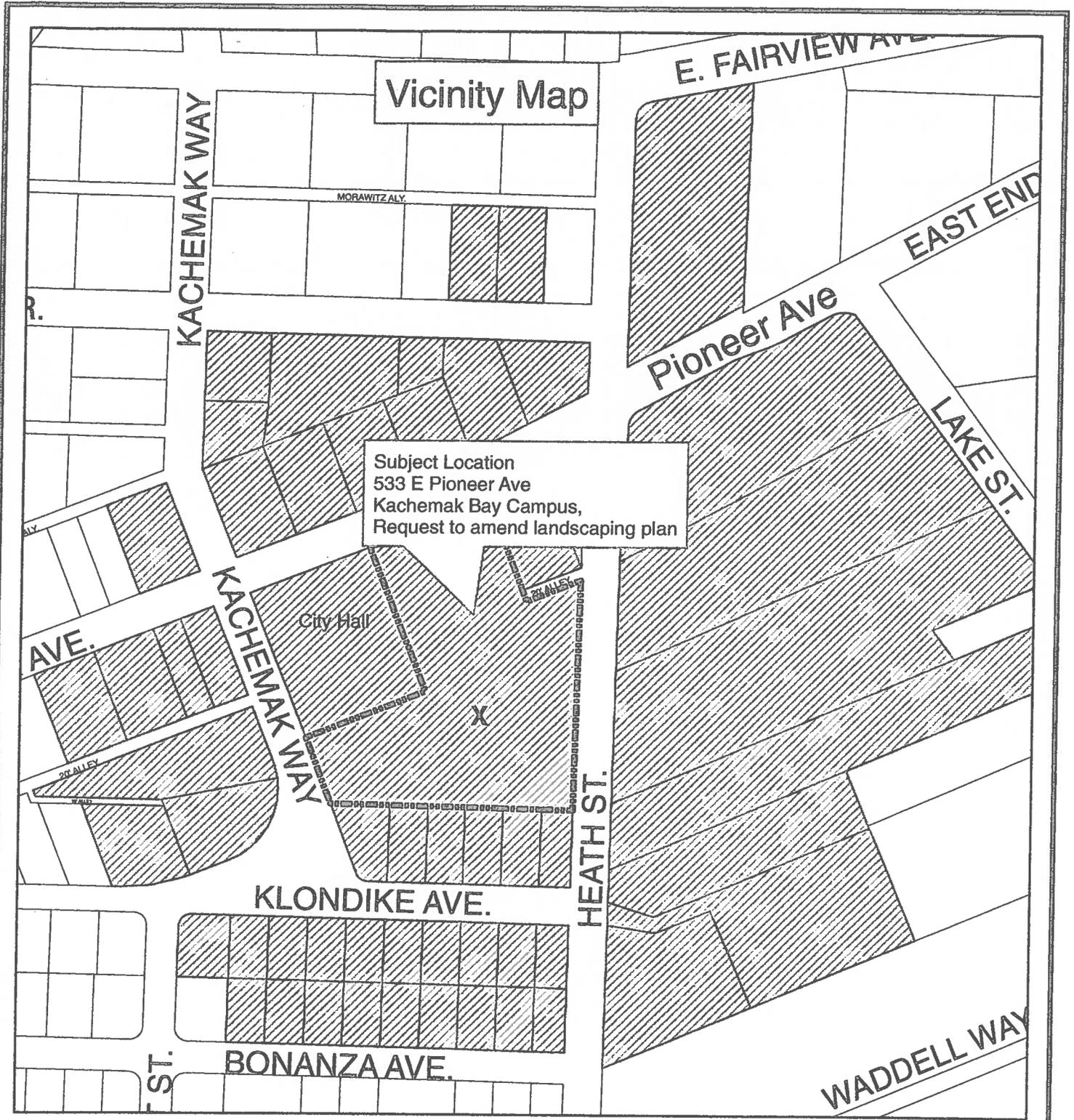
CUP 10-04, Condition #4: "~~Construct a fence and~~ Plant evergreen and deciduous trees from the dumpster enclosure south to the lot line along Heath Street, approximately 200 feet. Future planting to have a minimum trunk diameter of 1 ½ inches and consist of at least 70% evergreens. Complete by August ~~(September)~~ 31, 2011."

4. New Condition #11:

The dumpster to be enclosed with a 6 ft visual buffer of wood or stone (on three sides).

ATTACHMENTS

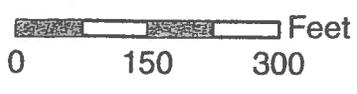
1. Location map
2. Letter from Kachemak Bay Campus stamp dated Apr 27, 2011
3. Recommended Parking and Pedestrian Connection Changes for CUP 10-04
4. Permit Set – Planting Schedule dated April 27, 2011
5. CUP 10-04 Decision and Finding from April 7, 2010 HAPC meeting & minutes



City of Homer
Planning and Zoning Department
May 5, 2011

Request for CUP 11-08

Marked lots are within 300 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.





Kachemak Bay Campus

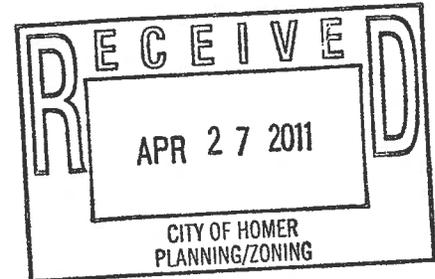
Kenai Peninsula College
UNIVERSITY of ALASKA ANCHORAGE

TO: Homer Planning Commission

FROM: Carol Swartz, Kachemak Bay Campus-KPC

DATE: April 18, 2011

SUBJT: Conditional Use Permit Modification Amendment Request



Kachemak Bay Campus requests the Homer Advisory Planning Commission amend CUP 2010-04, Condition 4, to remove the requirement for a fence.

Condition 4 states: "Construct a fence and plant evergreen and deciduous trees from the dumpster enclosure south to the lot line along Heath Street. Complete by August 31, 2011."

KBC requests that the requirement for a fence be removed for the following reasons:

1 The trees already being required by the Commission to be planted in August alongside it will meet the intent of aesthetics. **Both** trees and the short fence are not necessary to meet the intent of creating a hedge or wall to "soften the visual impact from the street".

2. The fence is a safety concern and will require ongoing maintenance/repair.

3. The dumpster initially envisioned for the lot's east perimeter is to be relocated to the south side next to the shed so as not to be visible from Heath St. Therefore the new trees called for in the current CUP will be planted alongside the southeast area in addition to the required trees alongside the south lot line.

4. KBC also requests an extension of the deadline for the trees to be planted till Sept. 30 in case weather conditions prevent an August planting of the total of 23 trees.

F

C

THE UNIVERSITY OF CHICAGO
DEPARTMENT OF CHEMISTRY



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Handwritten notes and a circular stamp on the left margin.



Table with multiple columns and rows, containing faint text and possibly data or a schedule. The text is mostly illegible due to fading.

Recommended Parking and Pedestrian Connection Changes

Not to scale

driveway

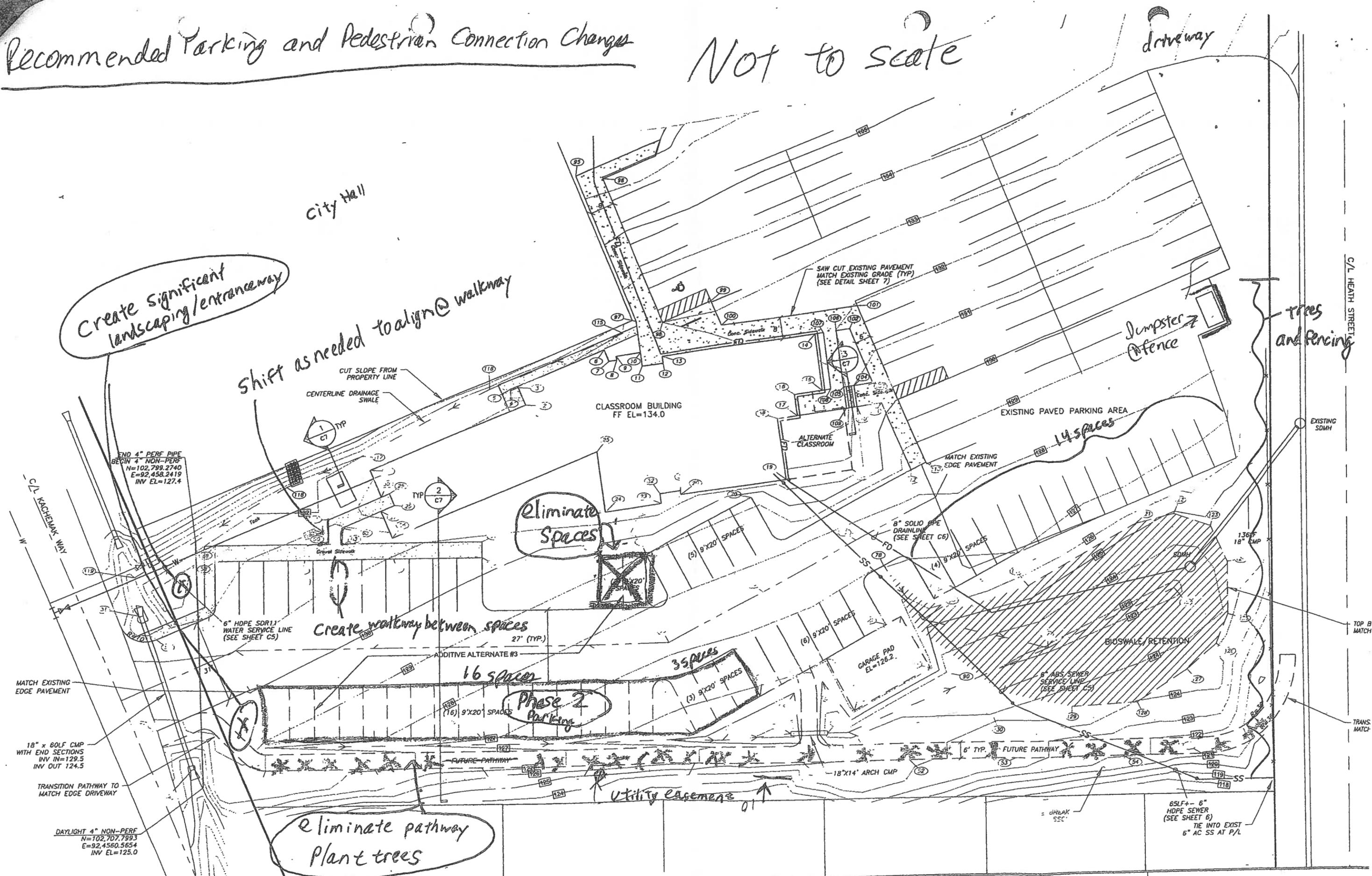
City Hall

Create significant landscaping/entranceway

Shift as needed to align @ walkway

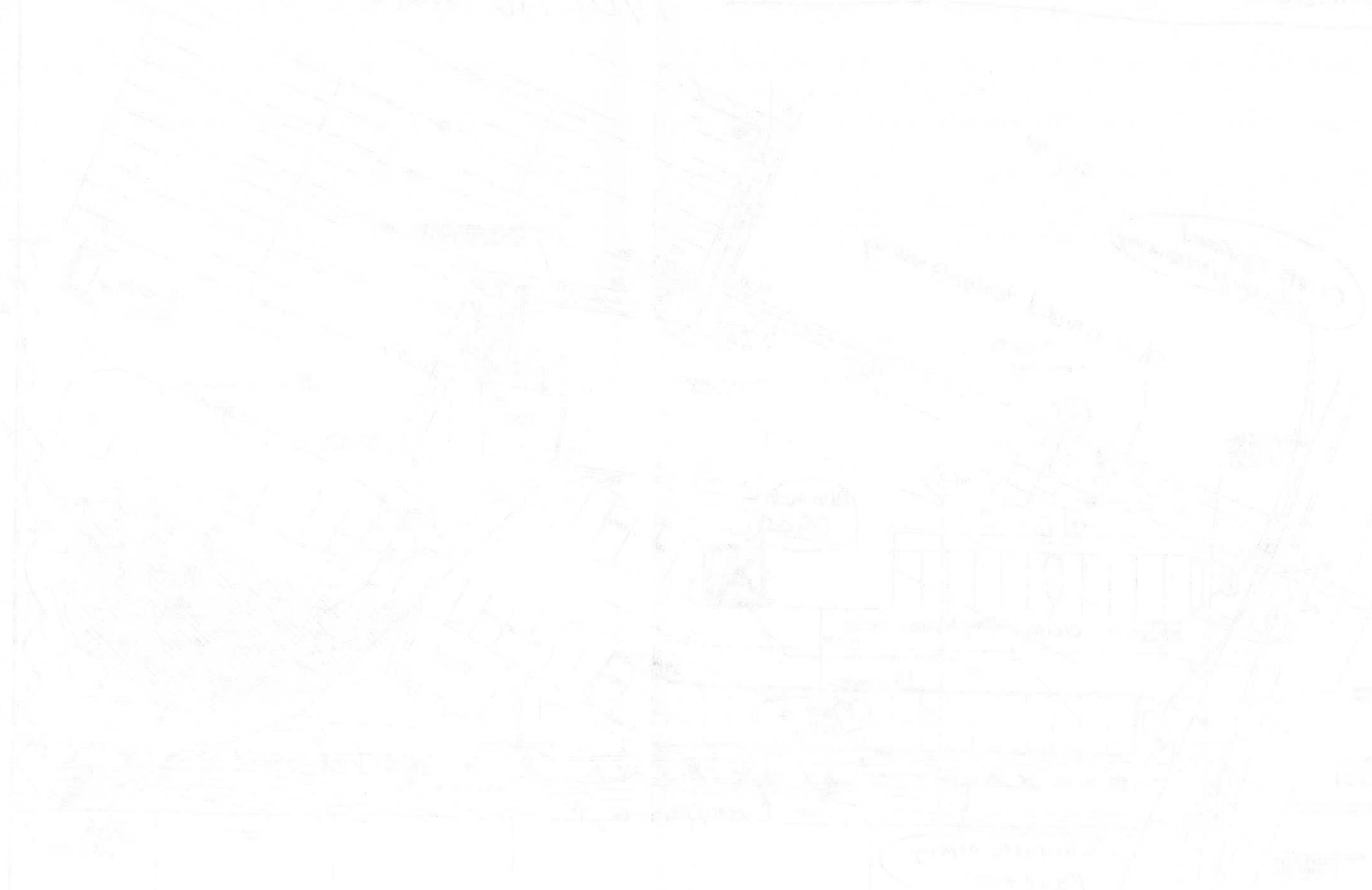
Dumpster @ fence

trees and fencing



Removal of ...

10/10/10





City of Homer Planning & Zoning

491 East Pioneer Avenue
Homer, Alaska 99603-7645

Telephone (907) 235-3106

Fax (907) 235-3118

HOMER ADVISORY PLANNING COMMISSION Meeting of April 7, 2010

RE: Application for Conditional Use Permit
Permit Number CUP 10-04
Glacier View Subdivision Campus Addition Lot 3-A-2

DECISION

Introduction

The University of Alaska applied to the Homer Advisory Planning Commission (the "Commission") under Homer City Code 21.18.030(k) for approval of more than one building containing a permitted principle use on a lot, and HCC 21.18.040(d) for building area over 8,000 square feet, located at 533 E Pioneer Ave. The application seeks approval for a new 8,600 square foot building on the existing campus. The new building will contain classrooms, faculty offices and a resource learning center. The property is zoned Central Business District pursuant to Homer City Code 21.18.

The application was scheduled for a public hearing as required by Homer City Code 21.94 before the Commission on April 7, 2010. Notice of the public hearing was published in the local newspaper and sent to 40 property owners of 57 parcels.

At the April 7, 2010 meeting of the Commission, the Commission voted to approve the request with five Commissioners present, and five Commissioners voted in favor of the conditional use permit.

After due consideration of the evidence presented, the Homer Advisory Planning Commission, hereby makes the following findings of fact and conclusions of law.



City of Houston

Planning & Economic Development
1500 Ross Street, Suite 1000
Houston, Texas 77006



Telephone: (713) 775-1100
Fax: (713) 775-1101

MEMORANDUM FOR THE CITY MANAGER

TO: City Manager
FROM: [Name]
SUBJECT: [Subject]

DISCUSSION

[Text]

The [subject] of this report is [description]. The [subject] is a [description] that [description].

The [subject] was [description] in a [description] in [description]. The [subject] was [description] in a [description] in [description]. The [subject] was [description] in a [description] in [description]. The [subject] was [description] in a [description] in [description].

At the [description] of [description] on [description], the [description] of [description] was [description]. At the [description] of [description] on [description], the [description] of [description] was [description]. At the [description] of [description] on [description], the [description] of [description] was [description].

The [subject] of this report is [description]. The [subject] is a [description] that [description].



EVIDENCE PRESENTED

Gaye Wolfe, neighboring property owner, testified in favor of the project.

James Dougherty of RIM Architects representing the University gave a brief presentation about the design and materials of the new building.

FINDINGS OF FACT

Homer City Code §21.71.030 provides:

Review Criteria. The applicant must produce evidence sufficient to enable meaningful review of the application. Unless exceptions or other criteria are stated elsewhere in this code, the application will be reviewed under these criteria:

A. The applicable code authorizes each proposed use and structure by conditional use permit in that zoning district.

Finding 1: The University of Alaska Kachemak Bay Campus is a public school as defined by HCC 21.03.040. HCC 21.18.020(s) lists public schools as a permitted use in the Central Business District. The use of the new building is permitted outright. The applicable code authorizes the proposed educational use of the building.

Finding 2: The new structure is over 8,000 square feet, and creates a second principle building on the lot. HCC 21.18.040(d) requires a conditional use permit for buildings over 8,000 square feet. HCC 21.18.030(k) lists "More than one building containing a permitted principle use on a lot" as a conditional use. The applicable code authorizes the proposed structure of over 8,000 square feet, and more than on building containing a permitted principle use on the lot.

B. The proposed use(s) and structure(s) are compatible with the purpose of the zoning district in which the lot is located.

Finding 3: One purpose of the Central Business District is to provide a centrally located area within the city for educational institutions. The proposed expansion to include a new building for the Kachemak Bay Campus, and to consolidate the campus, is compatible with the purpose of the district.

2. VIBRATION EVALUATION

The Vibration Evaluation Report (VER) is a key document in the design of a building. It provides a detailed description of the building's response to seismic ground motion. The VER is prepared by a qualified engineer and is used to determine the building's seismic performance. The VER is a key document in the design of a building. It provides a detailed description of the building's response to seismic ground motion. The VER is prepared by a qualified engineer and is used to determine the building's seismic performance.

3. SEISMIC ANALYSIS

The seismic analysis is a key part of the design process. It involves the calculation of the building's response to seismic ground motion. The analysis is performed using a computer program and is based on the building's structural model. The analysis results are used to determine the building's seismic performance. The analysis is a key part of the design process. It involves the calculation of the building's response to seismic ground motion. The analysis is performed using a computer program and is based on the building's structural model. The analysis results are used to determine the building's seismic performance.

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C. The value of the adjoining property will not be negatively affected greater than that anticipated from other permitted or conditionally permitted uses in this district.

Finding 4: The new campus building will not have a negative impact on adjoining property values greater than other permitted or conditionally permitted uses in the district.

D. The proposal is compatible with existing uses of surrounding land.

Finding 5: The existing uses of surrounding land include City Hall, Homer Electric Association maintenance facilities, a radio station, restaurants, other mixed commercial use, and medium density residential development. The residential development is to the south of the campus and oriented away from the campus. The main entrance to the campus will remain Heath Street, and the buildings a majority of the parking are more than 20 feet from the residential lot lines. The proposal is compatible with existing uses of surrounding land.

E. Public services and facilities are or will be, prior to occupancy, adequate to serve the proposed use and structure.

Finding 6: City water, sewer and fire services are available to the campus. Homer Electric Association will reroute an above ground power line to an underground location prior to occupancy. Public services and facilities will be adequate to serve the proposed use and structure.

F. Considering harmony in scale, bulk, coverage and density, generation of traffic, the nature and intensity of the proposed use, and other relevant effects, the proposal will not cause undue harmful effect upon desirable neighborhood character.

Finding 7: The proposed one story building is in harmony with the bulk, scale, coverage and density of the neighborhood. The proposed building will not cause undue harmful effect on the neighborhood. The commercial character of Pioneer Avenue will be complemented by the presence of more college students and potential customers, and the residential character of Klondike Ave and the residential neighborhood to the south will be minimally impacted.

G. The proposal will not be unduly detrimental to the health, safety or welfare of the surrounding area or the city as a whole.

Finding 8: The new building and site plan are subject to State Fire Marshal review and approval. The proposal will not be unduly detrimental to the health, safety or welfare of the surrounding area, or of the city as a whole.

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H. The proposal does or will comply with the applicable regulations and conditions specified in this title for such use.

Finding 9: The proposal will comply with the applicable regulations and conditions.

I. The proposal is not contrary to the applicable land use goals and objectives of the Comprehensive Plan.

Finding 10: The College currently has two campus locations on opposite ends of the Central Business District. Unification of all university activities on one campus and construction of a new building will make the area more attractive, and encourage more pedestrian activity for local businesses, encouraging those businesses to remain and expand. The expansion and centralization of the Kachemak Bay Campus is not contrary to the land use goals and objectives of the Comprehensive Plan, which encourages a centralized business district that creates a focal point for the Community of Homer.

J. The proposal will comply with all applicable provisions of the Community Design Manual. (Ord. 08-60 §2008; Ord. 08-29, 2008).

Finding 11: The proposal will comply with all applicable provisions of the Community Design Manual.

Finding 12: The Commission finds conditions eight through ten are necessary to satisfy the applicable review criteria.

Finding 13: The Commission finds that breaking up the parking spaces for the second phase of parking and the 14 spaces that are existing would create more of a problem for snow removal, than it creates for a visual interest in the parking lot.

CONCLUSION

Based on the foregoing findings of fact and law, Conditional Use Permit 10-04 is hereby approved, subject to the following conditions:

Condition 1: Do not construct the two parking spaces on the north side of the driveway labeled on the recommended Parking and Pedestrian Connection Changes sheet.

Condition 2: Review parking plan and the need for phase two parking after five years of building occupancy, if phase two parking of 19 spaces is not constructed.

Condition 3: Maintain to the extent possible the mature spruce trees south of the new building. Should the trees be removed during construction, become diseased or die, the area shall be replanted, mainly with native spruce trees.

Condition 4: Construct a fence and plant evergreen and deciduous trees from the

dumpster enclosure south to the lot line along Heath Street. Complete by August 31, 2011.

Condition 5: Use landscaping at the Kachemak Way entrance to create an attractive gateway to the campus. Complete by August 31, 2011. No landscaped island will be required in phase two parking.

Condition 6: Do not construct the future pathway shown on the site plan. Instead, use that area to plant evergreen trees to create a visual and sound buffer between the university grounds, and the residences to the south. Complete by August 31, 2011.

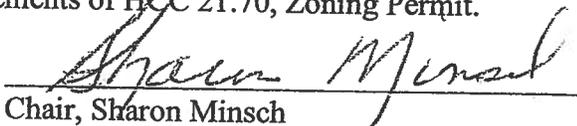
Condition 7: When phase two parking is constructed a walkway shall be constructed to the west entrance from the phase two parking.

Condition 8: Pave the parking lot by August 31, 2011.

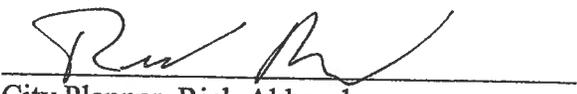
Condition 9: Must have 3 feet of landscaping along all lot lines.

Condition 10: Comply with all requirements of HCC 21.70, Zoning Permit.

Date: 4/27/10


Chair, Sharon Minsch

Date: 4-27-10


City Planner, Rick Abboud

NOTICE OF APPEAL RIGHTS

Pursuant to Homer City Code, Chapter 21.93, any person with interests in land that is affected by this decision may appeal this decision to the Homer Board of Adjustment within thirty (30) days of the date of distribution indicated below. Any decision not appealed within that time shall be final. A notice of appeal shall be in writing, shall contain all the information required by Homer City Code, Section 21.93.080, and shall be filed with the Homer City Clerk, 491 East Pioneer Avenue, Homer, Alaska 99603-7645.

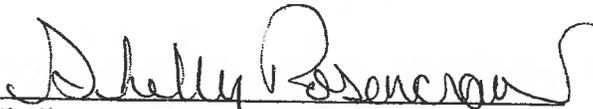
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CERTIFICATION OF DISTRIBUTION

I certify that a copy of this Decision was mailed to the below listed recipients on ^{2/18}4/28/2010. A copy was also delivered to the City of Homer Planning Department and Homer City Clerk on the same date.

Date: 4/28/2010


Shelly Rosencrans, Planning Assistant

Walt Wrede, City Manager
491 E Pioneer Avenue
Homer, AK 99603

Thomas Klinkner
Birch, Horton, Bittner & Cherot
1127 West 7th Ave
Anchorage, AK 99501

RIM Architects
James Daugherty and Steve Kushner
645 G St Ste 400
Anchorage, AK 99501

Carol Schwartz
University of Alaska Anchorage Kachemak Bay Campus
533 E Pioneer Ave
Homer, AK 99603

CONFIDENTIAL - SECURITY INFORMATION



I certify that a copy of this document was made available to the following individuals on 10/10/2010. A copy was also distributed to the following individuals on 10/10/2010.

[Handwritten signature]
Special Agent in Charge

[Handwritten signature]

Special Agent in Charge
401 E. Wilson Ave.
Denver, CO 80202

Special Agent in Charge
1234 West 1st Ave.
Denver, CO 80202

Special Agent in Charge
1234 West 1st Ave.
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1234 West 1st Ave.
Denver, CO 80202



A. Staff Report PL 10-24, Conditional Use Permit (CUP) 10-04, University of Alaska, Kachemak Bay Campus College Expansion

Planning Technician Engebretsen reviewed the staff report.

James Daugherty, architect of record from RIM Architects, gave a brief overview of the design and materials for the college expansion. He said the overall intent is that it will match the existing building. He acknowledged that the information in the packet is pretty straight forward and they will comply with the conditions, but he wants to ensure that he has a clear understanding of them. He explained the process of the phases for completion of the project. He requested clarification of condition 6 and asked for consideration of the following conditions:

Condition 4- They plan to remove the chain link fence that is there now and asked for consideration of keeping the stand of alders and landscaping that is already in place. It would accomplish the intent of screening and visual buffer.

Condition 3- In looking at the group of parking spaces that will be constructed to support the project, they are removing parking spaces that would have benefited from the pedestrian path, and instead of the path will plant in the burm area.

Condition 9- They intend to pave the parking lot as soon as possible but have concerns that it may not fit in this budget cycle and may have to be moved to the next. He noted that the nature of paving in Homer, is that it is more economical to wait for other projects that bring the asphalt plant into town. Mr. Daugherty asked for consideration to extend the schedule to August 2013.

Other than those requests, Mr. Daugherty said they have incorporated the conditions into their plan.

There was brief discussion regarding the driveway out to Kachemak Drive.

Chair Minsch opened the public hearing.

Gaye Wolfe, neighboring property owner, said she is excited that the college is moving forward to develop their property to some degree. She is happy to see the new changes, the deletion of the pathway and consideration for a visual buffer to separate the residential aspect. She noted the alders are the only natural asset to the property and encouraged keeping them alders as she hates to see the trees go away. She questioned signage on the Kachemak Way side as she is concerned about blocking the access to the business on her property. Planning Technician Engebretsen said that there has not been discussion of signage there. The design shows offices at the west end so it may not be necessary to have a sign there.

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

To clarify Condition 6/Finding 13, Planning Technician Engebretsen explained that on the south side of the property there are two expanses of parking that are longer than 11 spaces

and they are going to add a few spaces to the existing parking area near the bioswale. The Commission could either make a condition 6 to eliminate one space somewhere to create a break in the 14 spaces or a finding 13 that a break in the 14 spaces is not necessary.

It was noted that the alders are partially in the right-of-way and it wouldn't be appropriate to require keeping them in a place where the applicant doesn't have any control. Also the intent of buffering and screening is outlined Design Manual and the alders don't fit in with the criteria.

KRANICH/BOS MOVED TO DEFER DELIBERATIONS UNTIL AFTER THE REST OF THE BUSINESS TONIGHT.

It was clarified that they would take up deliberations after commission comments and before adjournment.

There was discussion of previous requirements for paving. Chair Minsch asked if one year is the requirement typically imposed on others. Planning Technician Engebretsen responded that it probably is. The courthouse project is the first one the City required paving on, and the contractor was already paving one of his lots in that timeframe.

VOTE: NON OBJECTION: UNANIMOUS CONSENT

Motion carried.

B. Staff Report PL 10-30, CUP 10-05 Fish Factory to allow two caretakers residences

City Planner Abboud reviewed the staff report.

Mike McCune, part owner and managing member of the Fish Factory, explained that the original lease was established in 1999 to construct and operate a fish processing plant. He said they have enjoyed the relationship and plan to continue it. One requirement of the processing plant is to have onsite personnel for a number of reasons. He noted examples that the nature of their business is not 9-5, there can be trucks coming in at 2 a.m., and boats that need to be outfitted at odd hours. They run about 600 horse power of refrigeration 24 hours a day for many days and the units have to be emptied at odd hours to allow them to compete with other ports productivity. In this case "caretaker" is more than a watchman, it is several employees. In the beginning the Manly Building next door provided a place for onsite people. When it was removed they accommodated it with temporary structures. It was brought to his attention that was illegal so they felt the best way to be in compliance was to apply for the conditional use permit and add the structures. In reference to questions from the Commission, Mr. McCune explained that there will be two bunks per unit and no kitchens.

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

Commissioner Kranich noted that HCC 21.30.030(g) authorizes a caretaker's residence as an accessory use. The application is for residences, plural. He doesn't believe that it is authorized per HCC to have more than one residence.



City of Homer Planning & Zoning

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STAFF REPORT PL 11-63

TO: Homer Advisory Planning Commission
THROUGH: Holly Wells, City Attorney
FROM: Rick Abboud, City Planner
MEETING: May 18, 2011
SUBJECT: Remand of the Homer Advisory Planning Commission's Decision Regarding Variance 10-01 Requested by David Becker

SYNOPSIS:

I. Introduction

The Planning Department submits the following synopsis and recommendations in response to findings by the Homer Board of Adjustment ("Board") at the January 4, 2011 hearing regarding Variance 10-01 requested by David Becker ("Becker"). This synopsis is based upon a review of the record by the City of Homer Planning Department ("Department") and incorporates advice from the City of Homer attorney regarding the proper review process on remand. This Staff Report is intended to compliment the Staff Report previously submitted to the Homer Advisory Planning Commission ("Commission") on this matter and is not intended, except to the extent specified within this report, to replace or negate the Department's recommendations based upon the evidence presented at the time the original Staff Report was drafted.

II. Facts & Background

On July 21, 2010, a hearing was held before the Commission to decide whether to grant Becker's variance request. The Department recommended approval but, after hearing testimony from Becker regarding his use of the property at issue and from neighboring property owners, the Commission denied Becker's application. On September 2, 2010, Becker recorded a public utility easement on the property. This easement granted

Homer Electric Association, Inc.; General Communications, Inc.; Peninsula Communications, Inc.; Turquoise Broadcast Company, LLC; Becker Communications, LLC; Becker Rentals; any other entity providing electricity, water, sewage, and natural gas as a public utility; and any successors in interest to such entities right and access to the property to install, maintain, repair, and remove water and sewer lines, telephone lines, electrical lines, antennas,

repeater/relay/translator stations and the like, as well as structures, storage facilities, and stations to support such systems.

On September 2, 2010, Becker informed the City that he recorded this public utility easement and was withdrawing his variance application as moot.

On September 14, 2010, the Commission issued its decision based upon the evidence presented at the hearing. After the utility easement had been recorded and the Commission issued its decision, Becker appealed that decision to the Board. A hearing was held on this appeal on January 4, 2011. On February 2, 2011, the Board issued a decision, finding that:

- (1) The Commission's September 14, 2010, decision denying Mr. Becker's variance application was not supported by sufficient substantial evidence;
- (2) copies of the written transcript of the hearing are incomplete;
- (3) no evidence opposing the Department's recommending approval of the variance is included in the record;
- (4) the record does not reflect whether the Commission considered the executed and recorded Utility Easement or its relevance to the application; and
- (5) the Commission's decision fails to distinguish whether Mr. Becker's application for a variance is as a public or private utility facility.

The Board remanded the matter back to the Commission in accordance with Homer City Code 21.93.510(a) and HCC 21.93.540(e). The Board remanded the case both to address the lack of sufficient substantial evidence regarding the reasons for denying the variance and consider new evidence regarding the utility easement recorded by Becker on the site at issue. The Board's findings and the Department's recommendations for addressing these findings are discussed below.

III. Analysis

The Incomplete Record

The Board was unable to review a full record of the proceeding before the Commission because parts of the audio recording were lost due to technical difficulties. Therefore, the Board found that the "written transcripts of the hearing are incomplete."

Under Alaska law, it is unclear whether a new evidentiary hearing would be warranted in this case. "The general rule for records which are so incomplete as to preclude meaningful review calls for remand to the factfinder." John v. Baker, 30 P.3d 68, 78 n. 40 (Alaska 2001); see also State Dep't of Revenue v. Merriouns, 894 P.2d 623, 627 n. 4 (Alaska 1995) ("[W]hen the factual record is incomplete or improperly developed, the proper course is a remand to the factfinder, in this case the agency."). However, the Alaska Rules of Appellate Procedure provide the courts several options for curing an incomplete record on appeal, including obtaining a stipulation from

the parties regarding the contents of the missing record. See Alaska Rule of Appellate Procedure 604(a)(2).

Here, only a small portion of the record is missing and thus the complete record could likely be recreated by the parties through stipulation or some other means short of hearing new evidence. Further, the Board's purpose in remanding to the Commission does not make clear whether the Board intended the Commission to hear new evidence on both the variance and the submittal of the utility easement by Becker. However, given the Board's findings that there was not sufficient substantial evidence to support the Commission's denial of Becker's variance request, the Department recommends conducting a new evidentiary hearing on remand with regards to both Becker's variance application and his recordation of a utility easement. This approach ensures compliance with case precedent and the protection of Mr. Becker's rights.

Commission's Denial of Becker's Variance Request

Based upon both the Board's finding that there was not sufficient substantial evidence supporting the Commission's denial of the variance application and the need to re-hear evidence due to the incomplete transcript, the Department encourages the Commission to provide more specific citations to the record in support of its findings on remand. To the extent that the Commission disagrees with the Department's recommendations, these recommendations should be expressly addressed in the Commission's decision with citations to supporting evidence.

The Department reasserts its staff report and the reasoning underlying that report with regard to the variance requirements and, in the interest of brevity, will not revisit its findings in that report. In light of the Board's findings that the Commission failed to include the reasons it deviated from the Department's report, the Commission should enumerate its reasons for and evidence on remand supporting deviation from or agreement with the Department's recommendations.

Consideration of the Public Utility Easement

The Board remands to the Commission in part because "the record does not reflect whether or not the Commission considered the executed and recorded Utility Easement or its relevance to the application." Neither the Department nor the Commission considered the utility easement in reviewing Becker's application as Becker did not record this easement or submit it to the Department until after the Commission hearing.

The utility easement recorded by Becker providing Becker Communications, LLC, and Becker Rentals, among others, the right to use the right-of-way would, if valid, render the Commission's decision regarding the variance application moot or otherwise unnecessary. The easement would bring Becker into compliance with the Homer City Code. However, based solely upon the evidence before the Board, the Department does not have adequate information to determine the validity of the utility easement recorded by Becker.¹

¹ While Becker requested withdrawal of his variance application on September 2, 2010 after the Commission had already held a hearing on the variance, he did not reassert this request before the Board. Thus, it is necessary for the Commission to make its hearing on remand as ordered by the Board,

In its original Staff Report, the Department recognized Becker's tower as a "public utility facility" as that term is defined in HCC 21.03.040.² However, that definition is specific to the conditional use permit process and in no way reflects whether a facility qualifies as a public utility for any other purpose. In order to determine if an enterprise or facility qualifies as a "public utility" for purposes of an easement, the Commission should determine if that enterprise is considered a "public utility" by the State of Alaska. The State governs and regulates public utilities and, to the extent that a City "charter, permit, franchise, ordinance, rule or regulation" contradicts with a State "certificate, order, decision, or regulation" regarding public utilities, the State's certificate, order, decision, or regulation will prevail. See AS 42.05.641.

The State of Alaska heavily regulates and governs public utilities operating in the State. It requires that public utilities obtain a Certificate of Public Convenience and Necessity to operate within the State. See AS 42.05.221. The State defines "public utility" as:

every corporation whether public, cooperative, or otherwise, company, individual, or association of individuals, lessees, trustees, or receivers appointed by a court, that owns, operates, manages, or controls any plant, pipeline, or system for;

- (A) furnishing, by generation, transmission, or distribution, electrical service to the public for compensation;
- (B) furnishing telecommunications service to the public for compensation;
- (C) furnishing water, steam, or sewer service to the public for compensation;
- (D) furnishing by transmission or distribution of natural or manufactured gas to the public for compensation;
- (E) furnishing for distribution or by distribution petroleum or petroleum products to the public for compensation when the consumer has no alternative in the choice of supplier of a comparable product and service at an equal or lesser price;
- (F) furnishing collection and disposal service of garbage, refuse, trash, or other waste material to the public for compensation;
- (G) furnishing the service of natural gas storage to the public for compensation. AS 45.05.990(5).

It defines "telecommunication" as:

the transmission and reception of messages, impressions, pictures, and signals by means of electricity, electromagnetic waves, and any other kind of energy, force

which includes hearing new evidence and making a determination regarding the validity of the utility easement.

² The Board noted that the Commission failed to identify whether it also considered Becker's variance application to be for a public utility facility. Thus, the Commission should expressly address this issue in its written decision on remand.

variations, or impulses whether conveyed by cable, wire, radiated through space, or transmitted through other media within a specified area or between designated points. AS 45.05.990(10).

Although it appears that Becker's facility and the nature of his businesses would require registration with the State of Alaska and regulation by it under these definitions, the Department could not find any evidence that Becker or any of the Becker enterprises listed in the public utility easement were registered with the Regulatory Commission of Alaska, the body regulating public utilities. The State does provide for certain public utilities to obtain exemption from the statutes and regulations governing public utilities but there is no evidence presented that Becker has obtained exempt status. Finally, it is possible that Becker's companies and his facility fall outside the scope of regulated facilities but again, no evidence has been presented by Becker supporting this.

The Department cannot recommend a finding that a variance is unnecessary due to the public utility easement without evidence that Becker's enterprises qualify as a public utility. Thus, the Department recommends that the Commission hear evidence regarding whether Becker Communications, LLC and Becker Rentals qualify as "public utilities" and, if the Commission finds that they do, it may also find the variance issue moot. In the event that Becker requests additional time to present evidence to the Commission regarding the "public utility" nature of his enterprises, the Department recommends a thirty (30) day stay to permit Becker to submit evidence to the Commission regarding the status of his companies as "public utilities" as that term is defined by the State of Alaska. In the event that such evidence is not presented or the evidence is inadequate, the Department cannot support the use of the public utility easement to use the property in violation of City law.

IV. Staff Recommendation

For all of the reasons discussed above, the Department recommends the following:

1. Commission should reconsider and hear new evidence regarding Becker's variance application and should issue a new decision and provide detailed reasons for its findings on each of the variance requirements;
2. Commission should solicit evidence from Becker regarding the public utility easement recorded by him on September 2, 2010, and whether the Becker companies granted use under the easement constitute "public utilities" under State law and for purposes of a public utility easement;
3. Provide a thirty (30) day stay to Becker to gather evidence regarding the status of his companies as "public utilities" under State law unless Becker presents sufficient evidence at the hearing regarding this issue or concedes that his companies named in the easement do not qualify as a "public utility" under State law or otherwise rejects the stay; and
4. Directly address any deviations from the Department's recommendations within this Staff Report or the Department's original Staff Report regarding Becker's variance request.

Alaska Statutes

Title 42. Public Utilities and Carriers and Energy Programs

Chapter 05. Alaska Public Utilities Regulatory Act

Article 1. Powers and Duties of the Commission

§ 42.05.145. Telecommunications regulation policy

A utility that provides local exchange or interexchange telecommunications service in the state affects the public interest. Regulation of these utilities shall, consistent with this chapter, seek to maintain and further the efficiency, availability, and affordability of universal basic telecommunications service.

Title 42. Public Utilities and Carriers and Energy Programs

Chapter 05. Alaska Public Utilities Regulatory Act

Article 2. Certificate of Public Convenience and Necessity

§ 42.05.221. Certificates required

(a) A public utility may not operate and receive compensation for providing a commodity or service without first having obtained from the commission under this chapter a certificate declaring that public convenience and necessity require or will require the service. Where a public utility provides more than one type of utility service, a separate certificate of convenience and necessity is required for each type. A certificate must describe the nature and extent of the authority granted in it, including, as appropriate for the services involved, a description of the authorized area and scope of operations of the public utility.

(b) All certificates of convenience and necessity issued to a public utility before July 1, 1970, remain in effect but they are subject to modification where there are areas of conflict with public utilities that have not previously been required to have a certificate or where there is a substantial change in circumstances.

(c) A certificate shall be issued to a public utility that was not required to have one before July 1, 1970, and that is required to have one after that date, if it appears to the commission that the utility was actually operating in good faith on that date. Such a certificate is subject to modification where there are areas of conflict with other public utilities or where there has been a substantial change in circumstances.

(d) In an area where the commission determines that two or more public utilities are competing to furnish identical utility service and that this competition is not in the public interest, the commission shall take appropriate action to eliminate the competition and any undesirable duplication of facilities. This appropriate action may include, but is not limited to, ordering the competing utilities to enter into a contract that, among other things, would:

- (1) delineate the service area boundaries of each in those areas of competition;
- (2) eliminate existing duplication and paralleling to the fullest reasonable extent;

(3) preclude future duplication and paralleling;

(4) provide for the exchange of customers and facilities for the purposes of providing better public service and of eliminating duplication and paralleling; and

(5) provide such other mutually equitable arrangements as would be in the public interest.

(e) If the commission employs professional consultants to assist it in administering this section, it may apportion the expenses relating to their employment among the competing utilities.

(f) Repealed.

Title 42. Public Utilities and Carriers and Energy Programs

Chapter 05. Alaska Public Utilities Regulatory Act

Article 8. Miscellaneous Provisions

§ 42.05.631. Eminent domain

A public utility may exercise the power of eminent domain for public utility uses. This section does not authorize the use of a declaration of taking.

Title 42. Public Utilities and Carriers and Energy Programs

Chapter 05. Alaska Public Utilities Regulatory Act

Article 8. Miscellaneous Provisions

§ 42.05.641. Regulation by municipality

The commission's jurisdiction and authority extend to public utilities operating within a municipality, whether home rule or otherwise. In the event of a conflict between a certificate, order, decision, or regulation of the commission and a charter, permit, franchise, ordinance, rule, or regulation of such a local governmental entity, the certificate, order, decision, or regulation of the commission shall prevail.

Title 42. Public Utilities and Carriers and Energy Programs
Chapter 05. Alaska Public Utilities Regulatory Act
Article 8. Miscellaneous Provisions
§ 42.05.711. Exemptions

(e) Notwithstanding any other provisions of this chapter, any electric or telephone utility that does not gross \$50,000 annually is exempt from regulation under this chapter unless the subscribers petition the commission for regulation under AS 42.05.712(h).

(g) A utility, other than a telephone or electric utility, that does not gross \$150,000 annually may elect to be exempt from the provisions of this chapter other than AS 42.05.221-42.05.281 under the procedure described in AS 42.05.712.

(k) A utility that furnishes cable television service is exempt from the provisions of this chapter other than AS 42.05.221-42.05.281 unless the subscribers petition the commission for regulation under the procedure described in AS 42.05.712.

(l) A person, utility, joint action agency established under AS 42.45. 310, or cooperative that is exempt from regulation under (a), (d)--(k), (o), or (r) of this section is not subject to regulation by a municipality under AS 29.35.060 and 29.35.070.

Title 42. Public Utilities and Carriers and Energy Programs
Chapter 05. Alaska Public Utilities Regulatory Act
Article 10. General Provisions
§ 42.05.990. Definitions

In this chapter,

(5) "public utility" or "utility" includes every corporation whether public, cooperative, or otherwise, company, individual, or association of individuals, their lessees, trustees, or receivers appointed by a court, that owns, operates, manages, or controls any plant, pipeline, or system for;

(A) furnishing, by generation, transmission, or distribution, electrical service to the public for compensation;

(B) furnishing telecommunications service to the public for compensation;

(C) furnishing water, steam, or sewer service to the public for compensation;

(D) furnishing by transmission or distribution of natural or manufactured gas to the public for compensation;

(E) furnishing for distribution or by distribution petroleum or petroleum products to the public for compensation when the consumer has no alternative in the choice of supplier of a comparable product and service at an equal or lesser price;

(F) furnishing collection and disposal service of garbage, refuse, trash, or other waste material to the public for compensation;

(G) furnishing the service of natural gas storage to the public for compensation;

(10) "telecommunications" means the transmission and reception of messages, impressions, pictures, and signals by means of electricity, electromagnetic waves, and any other kind of energy, force variations, or impulses whether conveyed by cable, wire, radiated through space, or transmitted through other media within a specified area or between designated points.

Title 29. Municipal Government

Chapter 35. Municipal Powers and Duties

Article 1. General Powers

§ 29.35.141. Regulation of radio antennas

(a) A municipality that regulates the placement, screening, or height of radio antennas must reasonably accommodate amateur radio antennas. A municipality may require reasonable and customary engineering practices to be followed in the erection of amateur radio antennas. A municipality may impose only the minimum requirements relating to amateur radio antennas that are necessary to accomplish the legitimate purposes intended to be served by the requirements.

(b) A municipality may not restrict the number of support structures for an amateur radio antenna. Based on the most recently published United States census, a municipal restriction on amateur radio antenna height may not be lower than

(1) 200 feet above ground level as permitted by the Federal Communications Commission in an area with a population density of 120 or less per square mile;

(2) 75 feet above ground level in an area with a population density of more than 120 per square mile for an antenna on a lot that is smaller than one acre; or

(3) 140 feet above ground level in an area with a population density of more than 120 per square mile for an antenna on a lot that is one acre or larger.

(c) Subject to (a) and (b) of this section, a municipality may, by ordinance, impose requirements to meet clearly defined objectives relating to screening, placement, aesthetic, and health and safety factors with respect to the erection, maintenance, and operation of amateur radio antennas.

(d) An ordinance regulating or restricting radio antennas adopted under this section may not apply to a radio antenna that was erected before July 26, 2001.

(e) This section applies to home rule and general law municipalities.

City of Homer, City Code

Title 21 Zoning and Planning

Chapter 21.03 Definitions and Rules of Construction

21.03.040 Definitions used in zoning code

“Public utility facility or structure,” for the purpose of requiring a conditional use permit, means (i) any facility or structure owned and operated by a public or private utility, or (ii) a telecommunications tower or antenna, but it excludes water distribution mains, pressure stations and hydrants, sewage collection lines, manholes and lift stations, underground and overhead electrical, cable and telephone lines and poles, street lights and small wind energy systems.

Chapter 21.72 Variances

21.72.010 General.

A variance may be granted by the Planning Commission to provide relief when a literal enforcement of the Homer Zoning Code would deprive a property owner of the reasonable use of a lot.

21.72.020 Conditions precedent to granting variance.

a. All of the following conditions shall exist before a variance may be granted:

1. A literal interpretation of the provisions of the Homer Zoning Code would deprive the applicant of rights commonly enjoyed by other properties in the same district.

2. Special conditions and circumstances exist that are peculiar to the land or structures involved and are not applicable to other lands and structures in the same district.

3. The special conditions and circumstances that require the variance have not been caused by the applicant.

b. Financial hardship or inconvenience shall not be the sole reason for granting a variance.

c. Other nonconforming land use or structures within the district shall not be considered grounds for granting a variance.

d. If approved, a variance shall be the minimum variance necessary to permit the reasonable use of the land or structure.

e. A variance shall not be granted that will permit a land use in a district in which that use is otherwise prohibited. (Ord. 08-29, 2008).

Chapter 21.93 Administrative Appeals

Subchapter 2

Planning Commission Appeal Procedures

21.93.300 Appeals to the Planning Commission.

a. Within 30 days after receipt of a timely notice of appeal to the Planning Commission, the City Planner will prepare an appeal record consisting of all relevant documents submitted to or used by the Planning Department in making the decision under appeal, including any staff reports, correspondence,

applications, or other documents. The appeal record shall be paginated. The appellant shall be notified by mail when the appeal record is complete. Any person may obtain a copy of the appeal record from the Planning Department upon payment of the costs of reproduction.

b. An appeal hearing shall be scheduled within the time specified in HCC § 21.93.100. The hearing will be open to the public.

c. The Commission may prescribe rules of procedure for additional public notification in cases where the Commission determines its decision would have a substantial effect on the surrounding neighborhood.

d. The Commission may accept new testimony and other evidence, including public testimony, and hear oral arguments as necessary to develop a full record upon which to decide an appeal from an act or determination of the City Planner. Any person may file a written brief or testimony in an appeal before the Commission.

e. The Commission may undertake deliberations immediately upon the conclusion of the hearing on appeal or may take the matter under advisement and meet at such other time as is convenient for deliberations until a decision is rendered. Deliberations need not be public and may be in consultation with an attorney acting as legal counsel to the Commission.

f. The Commission may affirm or reverse the decision of the City Planner in whole or in part. A majority vote of the fully constituted Commission is required to reverse or modify the action or determination appealed from. For the purpose of this section the fully constituted Commission shall not include those members who do not participate in the proceedings due to a conflict of interest or disqualifying ex parte contacts, disqualifying partiality, or other disqualification for cause. A decision affirming, reversing, or modifying the decision appealed from shall be in a form that finally disposes of the case on appeal, except where the case is remanded for further proceedings.

g. The Commission may seek the assistance of legal counsel, city staff, or parties in the preparation of a decision or proposed findings of fact. (Ord 10-41(A)§3, 2010; Ord. 08-29, 2008).

21.93.310 Other procedures.

If no specific procedure is prescribed by the code, the Planning Commission may proceed in an administrative appeal in any lawful manner not inconsistent with this title, statutes, and the constitution. (Ord. 08-29, 2008).

Subchapter 3

Board of Adjustment Appeal Procedures

21.93.510 New evidence or changed circumstances.

a. Except as provided in subsections (b) and (c) of this section, the Board of Adjustment shall not consider allegations of new evidence or changed circumstances and shall make its decision based solely on the record. If new evidence or changed circumstances are alleged, the Board may, in its discretion, either hear the appeal without considering the allegations or may remand the matter to the appropriate

lower administrative body or official to rehear the matter, if necessary.

b. When the standing of a person is in issue, the Board of Adjustment may take additional evidence for the limited purpose of making findings on the question of the person's standing. No evidence received under this subsection shall be considered for purposes other than determining standing.

c. When the disqualification of a member of the Board of Adjustment for conflict of interest, ex parte contact, partiality or other cause is in issue, the Board of Adjustment may take additional evidence for the limited purpose of making findings on the question of disqualification. No evidence received under this subsection shall be considered for purposes other than determining disqualification. (Ord. 10-41(A)§5, 2010; Ord. 08-29, 2008).

21.93.540 Appeal hearing.

a. The meeting at which the Board of Adjustment hears an appeal shall be open to the public. The City Attorney or another attorney acting as legal counsel to the Board shall be present.

b. Each party (each appellant, cross-appellant, and respondent) may present oral argument at the appeal hearing, subject to the order of presentation and time limitations that the chair adopts at the commencement of the hearing. The taking of testimony or other evidence is limited by HCC § 21.93.510.

c. The Board of Adjustment may undertake deliberations immediately upon the conclusion of the hearing on appeal or may take the matter under advisement and meet at such other time as is convenient for deliberations until a decision is rendered. Deliberations need not be public and may be in consultation with the legal counsel to the Board.

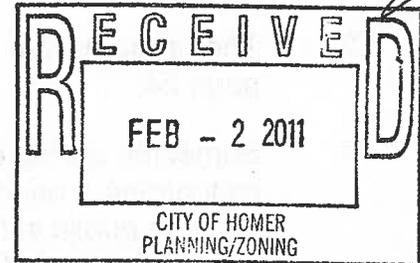
d. The Board of Adjustment may exercise its independent judgment on legal issues raised by the parties. "Legal issues" as used in this section are those matters that relate to the interpretation or construction of the zoning code, ordinances or other provisions of law.

e. The Board of Adjustment shall defer to the findings of the lower administrative body regarding disputed issues of fact. Findings of fact adopted expressly or by necessary implication by the lower body shall be considered as true if they are supported by substantial evidence. But findings of fact adopted by less than a majority of the lower administrative body shall not be given deference, and when reviewing such findings of fact the Board of Adjustment shall exercise independent judgment and may make its own findings of fact. If the lower administrative body fails to make a necessary finding of fact and substantial evidence exists in the record to enable the Board to make the finding of fact, the Board may do so in the exercise of its independent judgment, or, in the alternative, the Board may remand the matter for further proceedings. "Substantial evidence", as used in this section, means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion. (Ord. 10-41(A) §8, 2010; Ord. 08-29, 2008).

HOMER BOARD OF ADJUSTMENT

**CITY OF HOMER
491 EAST PIONEER AVENUE
HOMER, ALASKA 99603-7645**

**APPEAL OF HOMER
ADVISORY PLANNING
COMMISSION DECISION
DATED SEPTEMBER 14, 2010**



DECISION ON APPEAL

David Becker ("Mr. Becker") appeals, through his attorney Daniel Westerburg, the Homer Advisory Planning Commission's ("Commission") Decision and Findings: Variance 10-01, 1033 Skyline Drive. In its Decision dated September 14, 2010, the Commission determined that Mr. Becker ". . . has not met all the requirements for granting a variance and the application is denied." An appeal hearing was scheduled to be held before the City of Homer Board of Adjustment ("Board") on December 14, 2010 and rescheduled for January 4, 2011, at which time the Board heard oral argument from the parties. After deliberation, the Board issues this Decision on Appeal.

I. EVIDENCE AND PRELIMINARY ISSUES.

The Chairman of the Board reviewed preliminary issues prior to hearing oral argument from the parties. Potential conflicts of interest regarding Board Chairman James Hornaday and Board Members David Lewis, Kevin Hogan and Barbara Howard were disclosed and reviewed by the Board. After review, it was determined that no conflicts of interest existed. Board Chairman Hornaday also revealed ex-parte contact with Mr. Becker; however, no discussion regarding the merits of the issue at hand were discussed.

The evidence before the Board consisted of both the Record of Appeal (53 pages); a Supplemental Record of Appeal (3 pages, including a copy of a Utility Easement); and a Brief submitted by attorney Westerburg on behalf of Mr. Becker (10 pages with a 4 page Appendix).

Public Comments were presented by Mr. William J. Glynn, Jr., owner of an adjacent parcel of Lot 5, located across the street from Mr. Becker's property. Mr. Glynn, who participated at both the Commission and Board level, spoke in favor of Mr. Becker's development as long as Mr. Becker was held to the same standards as everyone else. Mr. Glynn argued that Mr. Becker was in violation of the Homer City Code ("HCC") regarding both the setback and the driveway and should be compelled to comply. Mr. Glynn shared his personal compliance experience and argued that a two-way radio was not a public utility.

II. FINDINGS OF FACT.

1. This appeal involves a parcel of property located at 1033 Skyline Drive, Homer, Alaska, owned by Mr. Becker and Eileen Becker. The legal description for the property is Skyline View Sub Lot 5 Lying S of Diamond Ridge Road. Record of Appeal ("R.") at p. 6.
2. The property was annexed into the City of Homer sometime during 2003. R. at page 24.
3. Sometime during early 2010, Mr. Becker spoke with Homer Police Chief Robl concerning a need for a repeater to provide better coverage for the police and improve public safety. A sense of urgency existed to install the repeater prior to the 4th of July, 2010. R. at page 24.
4. According to Mr. Becker, "[i]t was not explained to him initially which permits were necessary to proceed, so he is now applying for a conditional use permit [and a variance] to be in compliance with current city code." R. at page 24.
5. According to Homer City Manager Walt Wrede, he concurred that ". . . this was the best place for the repeater, timing was important due to the necessity to increase public safety. He clarified that when he gave Mr. Becker the go ahead, he was clear that the developer is responsible for obtaining all necessary permits." R. at page 25.
6. The actual site construction and installation of the repeater was in process on or about June 3, 2010. R. at page 1.
7. William J. Glynn, Jr., ("Mr. Glynn") owner of an adjacent parcel of property wrote a letter to the Homer City Planning Department on June 3, 2010, lodging a formal complaint. R. at page 1.
8. According to Mr. Glynn, the lot across the street from him was ". . . being developed commercially[,] without a conditional use permit, without a driveway, and in violation of setback requirements etc. R. at page 1.
9. Mr. Glynn further explained that he was required to comply with all planning and zoning ordinances and that Mr. Becker should be as well. R. at pages 1-2.
10. In response to the complaint, Mr. Becker submitted applications with the City Planning Department for a Variance and for a Conditional Use Permit ("CUP") on June 30, 2010. R. at page 6 and 15-18.
11. Upon review, the City Planning Department submitted Staff Reports recommending that the Commission approve both the Variance and the CUP. R. at pages 3-5 and 11-14.

12. According to the City Planning Department both the Variance and the CUP would require five (5) Commission votes to be approved. R. at page 3 and 11.
13. Both applications were set for hearing during the Commission's Regular Meeting of July 21, 2010. R. at pages 24-25.
14. Only four (4) Commission members were present during the July 21, 2010, Commission meeting. Therefore, the Commission voted to continue deliberations pertaining to both applications until five (5) Commission members were present. R. at pages 24-25.
15. Both applications were continued until the Commission's Regular Meeting of August 18, 2010. R. at pages 26-27.
16. The written transcripts from the meetings do not appear to be complete. A review of the Record on Appeal reveals that no evidence was presented in opposition of the City Planning Department Recommendation to approve the Variance.
17. The Commission issued two (2) Decisions, both dated September 14, 2010 and distributed on September 15, 2010. R. at pages 34-37 and 40-44.
18. Regarding the CUP application, the Commission voted to approve the request. R. at page 40.
19. Regarding the application for a Variance, the Commission voted to deny the request. R. at page 34.
20. This appeal followed; Mr. Becker challenges only the Commission's decision that a variance is required. R. at page 39.
21. The Supplemental Record ("S.R.") of Appeal includes a copy of a Utility Easement dated and recorded on September 2, 2010. S.R. at page 2.
22. The Utility Easement grants an easement directly to Becker Communications, LLC and Becker Rentals, as well as to other utility companies. S.R. at page 2.
23. There is no evidence in the Commission's Decision Denying the Variance that it considered the Utility Easement.
24. The property at issue ". . . has been developed since 1986 (24 years) as a 'communications' site for FM radio, Cable TV and Wireless Internet (Wi-Fi)[.]" R. at page 16.

III. ISSUE CURRENTLY BEFORE THE BOARD.

The issue before the Board is whether or not the Commission erred in denying Mr. Becker's application for a Variance.

IV. PLANNING AND ZONING CODE

HHC 21.12.030 authorizes conditional uses and structures including "Public utility facilities and structures" in the rural residential district. HCC 21.12.030 (g).

HHC 21.03.040 defines "Public utility facility or structures" for conditional use permit purposes as (i) any facility or structure owned and operated by a public or private utility, or (ii) a telecommunications tower or antenna, but it excludes water distribution mains, pressure stations and hydrants, sewage collection lines, manholes and lift stations, underground and overhead electrical, cable and telephone lines and poles, street lights and small wind energy systems."

V. BOARD OF ADJUSTMENT APPEAL PROCEDURES

1. HHC 21.93.510 titled 'New evidence or changed circumstances' provides in part:
 - a. Except as provided in subsection (b) of this section, the Board of Adjustment shall not consider allegations of new evidence or changed circumstances and shall make its decision based solely on the record. If new evidence or changed circumstances are alleged, the Board may, in its discretion, either hear the appeal without considering the allegations or may remand the matter to the appropriate lower administrative body or official to rehear the matter, if necessary.
2. HHC 21.93.540 titled 'Appeal hearing' provides in part:
 - e. The Board of Adjustment shall defer to the findings of the lower administrative body regarding disputed issues of fact. Findings of fact adopted expressly or by necessary implication by the lower body shall be considered as true if they are supported by substantial evidence. But findings of fact adopted by less than a majority of the lower administrative body shall not be given deference, and when reviewing such findings of fact the Board of Adjustment shall exercise independent judgment and may make its own findings of fact. If the lower administrative body fails to make a necessary finding of fact and substantial evidence exists in the record to enable the Board to make the finding of fact, the Board may do so in the exercise of its independent judgment, or, in the alternative, the Board may remand the matter for further proceedings "Substantial evidence", as used in this section, means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.

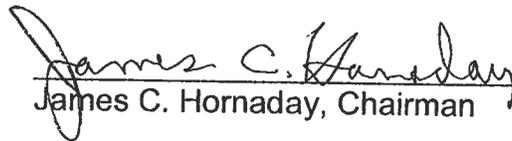
ORDER

Therefore, having reviewed the materials provided by the parties, testimony from the parties and the public, and upon deliberation, the Board finds that:

- 1) The Commission's September 14, 2010 Decision denying Mr. Becker's application for a Variance is not supported by sufficient substantial evidence.
- 2) The copies of the written transcript of the hearing are incomplete.
- 3) No evidence opposing the Planning Department's recommendation is included in the record.
- 4) The record does not reflect whether or not the Commission considered the executed and recorded Utility Easement or its relevance to the application.
- 5) The Commission's decision fails to distinguish whether Mr. Becker's application for a Variance is as a public or private utility facility.

Pursuant to HCC 21.93.510 (a) and HCC 21.93.540 (e), the Board remands the matter for further proceedings.

Adopted by the Board of Adjustment on February 2, 2011.



 James C. Hornaday, Chairman

NOTICE OF APPEAL RIGHTS

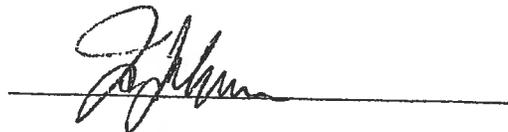
Pursuant to Homer City Code §21.91.130 titled Appeals to Superior Court:

- (a) An appeal from a final decision of the Board of Adjustment may be taken directly to the Superior Court by a party who actively and substantively participated in the proceedings before the Board of Adjustment or by the City Manager, City Planner or any governmental official, agency, or unit.
- (b) 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 Board of Adjustment.
- (c) An appeal from a final decision of the Board of Adjustment to the Superior Court is governed by court rules.

CERTIFICATION OF DISTRIBUTION

I certify that a copy of this Decision was mailed to Daniel Westerborg, attorney for Mr. Becker, and William J. Glynn, Jr., on February 2, 2011. A copy was also delivered to the City of Homer Planning Department, Homer City Clerk and the City Attorney on the same date.

Dated: 2/02/11





- 1) The Commission is a permanent body, established by the Council of Ministers, and its members are appointed by the Council of Ministers for a period of five years.
- 2) The Commission is composed of a President and seven members, one of whom is the President of the Council of Ministers.
- 3) The Commission is the executive organ of the Council of Ministers and is responsible for the implementation of the Council's decisions.
- 4) The Commission is the guardian of the Treaties and ensures their correct interpretation and application.
- 5) The Commission is the initiator of legislative proposals and proposes the Council's decisions.

[Faint signature or text]



- 6) The Commission is the guardian of the Treaties and ensures their correct interpretation and application.
- 7) The Commission is the initiator of legislative proposals and proposes the Council's decisions.
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LETTRE DE LA COMMISSION

The Commission is the executive organ of the Council of Ministers and is responsible for the implementation of the Council's decisions. It is composed of a President and seven members, one of whom is the President of the Council of Ministers. The Commission is the guardian of the Treaties and ensures their correct interpretation and application. It is the initiator of legislative proposals and proposes the Council's decisions.



Daniel Westerburg
Attorney at Law

4164 Pennock Street, Suite A
Homer, Alaska 99603
(907) 235-2717-Phone
(907) 235-2715-Fax

December 7, 2010

HAND DELIVERED

Jo Johnson, City Clerk
City of Homer
491 E. Pioneer Avenue
Homer, AK 99603

RE: In RE the Application of David Becker for Conditional Use Permit No. 10-04
and Variance No. 10-01

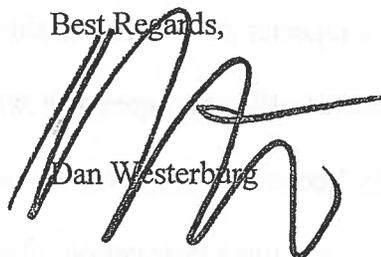
Dear Ms. Johnson:

Enclosed please find the appellant's brief in the above-referenced matter. Per our conversation earlier this week, I am requesting a five (5) day extension of time for the filing of this brief. As you know, it was my understanding that in light of the deficiencies with your November 12, 2010, notification, a new notification would be issued and that the time for filing the appellant's opening brief would be calculated from the date of the corrected notice. Although mistaken, I believe my assumption was reasonable under the circumstances and that a five (5) day extension for filing the brief is justified.

Moreover, it does not appear that any other party has filed a brief and, with the hearing now scheduled for January 4, 2011, no one should be prejudiced by the five (5) day delay. I believe you have already granted the extension verbally but I thought it best to submit something in writing.

Let me know if you have any questions.

Best Regards,



Dan Westerburg

DW:ac

Enclosures

cc: David Becker (w/ enclosures)

Thomas Klinkner (w/ enclosures)

William J. Glynn, Jr. (w/ enclosures)

BEFORE THE CITY OF HOMER BOARD OF ADJUSTMENT

In RE the application of David Becker)
)
for Variance #10-01 and CUP #10-04)
)

Daniel Westerborg • 4164 Pennock St., Ste. A • Homer, AK 99603 • T: (907)235-2717 • F: (907)235-2715

APPELLANT'S OPENING BRIEF

Introduction

This appeal concerns application of the 20 foot setback requirement to public utility structures erected within a dedicated public utility easement.

Factual and Procedural Background

The property in question is that portion of Lot 5, Skyline View Subdivision, lying south of Skyline Drive, owed by David and Eileen Becker. Its location atop a steep bluff overlooking Homer makes it a perfect site for telecommunications and over the past 25 years the site has housed various towers, antennae, satellite dishes and associated sheltered electronic equipment serving local FM radio, Wireless Internet and Cable TV industries. (R. 16.) Due to the steepness of the slope, the property is not conducive to residential use.

Mr. Becker was approached earlier this year by Homer Police Chief Mark Robl about installing a repeater station on the site as a means of improving the quality of local fire and police radio traffic. An agreement was ultimately reached between Mr. Becker and the City that Mr. Becker would install the station at his expense and would then lease it back to the City over a three year period. The station would consist of two fifty foot towers with antennae and a small (180 square feet) wood frame shelter designed to protect the

associated electronics from the elements. The agreement would be reduced to writing upon completion of construction. Chief Robl was anxious to have the station in place by the 4th of July weekend and Mr. Becker immediately retained a contractor to perform the work which was completed in June. The station has been on-line and serving the City since that time. (R. 24-25.)

As the result of a miscommunication between Mr. Becker and Chief Robl during negotiations, Mr. Becker was under the mistaken impression that no special permits were needed from the City before starting construction. Accordingly, he did not apply or receive any permits from Planning and Zoning prior to project completion. (R. 24-25.) Upon learning of the construction, William J. Glynn, who owns property on the opposite side of Skyline Drive, objected to Mr. Becker's failure to obtain a conditional use permit. (R. 1-2.) After looking into the complaint, Planning & Zoning staff informed Mr. Becker that he would need to apply for an after-the-fact conditional use permit as well as for a variance to the 20 foot setback requirement.

The CUP was required because the property is zoned "Rural Residential" and "public utilities and structures" is a conditional use in that zoning classification. HCC 21.12.030(g). The variance was required because the towers and equipment shelter were erected within the 20 foot setback because of the steep slope and the need to optimize placement of the towers. HCC 21.12.040(b)(1).

Thereafter, Mr. Becker, as requested, filed applications for both a CUP and a variance. (R. 6-8; 15-18; 20-21.) Recognizing the unique character of the lot, its history as a communications site long before its annexation in 2003 and the goals of the Comprehensive

Plan to encourage access to wireless communication, Planning & Zoning recommended in Staff Report PL 10-64 that the CUP be granted. (R. 11-14.)

In Staff Report PL 10-65, Planning & Zoning also recommended that the variance application be granted. (R. 3-5.) The report recognized that a number of similar utility structures had been constructed in the setback pre-annexation and had already been granted nonconforming use status. No variance was required for those structures even though located squarely within the setback. The new structure under consideration, however, was erected post-annexation and therefore required a variance. (R. 3.)

Emphasizing the unique properties of the site for telecommunications and the impracticality of requiring construction farther down the slope, the report found that the application met all of the requirements for a variance set forth in HCC 21.72.020. Specifically, a literal interpretation and application of the setback requirement in this context would force “the new structure onto slopes greater than 40%” depriving the applicant of “the right to use the small portion of the property that abuts Skyline Drive which has slopes of approximately 20%.” (R. 4.) It also found the following special conditions and circumstances peculiar to the property favored granting a setback variance:

- The structure supports and advances technological capabilities within the City of Homer by enhancing wireless communication thus forwarding the goals of the comprehensive plan. (R. 4.)
- Locations for communication equipment providing optimal coverage for the entire City of Homer are very limited. (R. 4.)
- The parcel has steep slopes of 38% to 42%. Parcels this steep are often considered “unfeasible” for typical residential development, Homer Comprehensive Plan, page 4-3. Disturbance of native vegetation for the creation of site development on steep slopes presents on site and off site hazards. (R. 4.)

- The structure provides a beneficial service to the city which has specific site requirements for maximum effectiveness. (R. 4.)
- The benefit to all the Citizens of Homer combined with the potential hazard of creating an unstable bluff justifies an exception to the setback requirement. (R. 4.)
- Building outside the setback would require leveling the site to match the height of the setback or cutting and filling on a steep slope. Neither is conducive to slope stabilization and each presents a preventable hazard. (R. 5.)

The report also found that the need for the variance was the result of a natural phenomenon and not circumstances created by the applicant; that hardship and inconvenience were not the reasons for seeking the variance; and that the presence of other nonconforming structures within the setback was immaterial to the application. (R. 4-5.)

The two applications were considered by the Homer Advisory Planning Commission at a public hearing conducted on July 21, 2010. The staff reports and recommendations were reviewed by the City Planner and Mr. Becker offered supporting testimony. Mr. Glynn, the neighbor, explained that he had no objection to Mr. Becker developing the property as he saw fit "as long as the same rules apply to everyone." City Manger Wrede confirmed the City's position that the selected site was "the best place for the repeater" and that the accelerated timing of the project was "due to the necessity to increase public safety." Consideration of the two applications was then tabled due to the lack of a quorum of commissioners. (R. 24-25.)

The applications were again taken up by the Commission at its meeting of August 18, 2010. With no substantive discussion on the record, the CUP application was granted and the variance application denied. (R. 26-27.) In its written decision on the CUP application issued several weeks later (R. 45-49), the Commission confirmed that despite

the CUP it had granted Mr. Becker, the construction within the setback required an approved variance – the CUP alone would be insufficient. (R. 46.)

In its written decision denying the variance application (R. 50-53), the Commission rejected the findings set forth in staff Report PL 10-65 and concluded instead that “structures on pilings can be built on slopes of 40%,” no special conditions existed warranting variance of the setback requirement; Mr. Becker had placed the structure within the setback through his own actions; the application was made in order to alleviate hardship and inconvenience (an impermissible rationale); and that “locating the structure in the setback is not necessary to permit reasonable use of the land.” (R. 51-52.)

Upon learning of the Commission’s actions taken at its August 18th, meeting, Mr. Becker contacted counsel and on September 2, 2010, a few weeks before the written decisions were issued, he and wife recorded a 20 foot utility easement along the north border of the subject property to “Homer Electric Association, Inc.; General Communications, Inc.; Peninsula Communications, Inc.; Turquoise Broadcast Company, LLC; Becker Communications, LLC; Becker Rentals; any other entity providing electricity, water, sewage and natural gas as a public utility; and any successors in interest to such entities.” (Supp.R. 2-3.)

The easement gives the identified grantees the right “to install, maintain, repair and remove water and sewer lines, telephone lines, electrical lines, antennas, repeater/relay/translator stations and the like, as well as structures, storage facilities and stations to support such systems.” (R. 2.)

Following recordation of the easement, counsel forwarded a conformed copy to City

Planner Aboud, together with a cover letter explaining that with the 20 foot utility easement now in place, the Beckers considered their application for a variance to the 20 foot setback moot and wished to withdraw it. Nonetheless, the Commission's written decision denying the variance was issued a few weeks later. (Supp.R. 1-3; R. 45-53.)

This appeal follows.

Analysis

I. THIS MATTER SHOULD BE REMANDED TO THE PLANNING COMMISSION TO CONSIDER THE EFFECT OF THE NEW UTILITY EASEMENT ON THE NEED FOR THE VARIANCE.

As explained above, a utility easement now encompasses the same 20 foot corridor covered by the setback. (Supp.R. 2-3.) The easement was created after the Commission voted to deny the setback variance. (R. 26-27.) Accordingly, in the context of this appeal, it constitutes a changed circumstance. Ordinarily where the city council sits as a Board of Adjustment, it will not consider new evidence or changed circumstances and will instead make its decision on the basis of the existing record alone. HCC 21.93.510. However, when such evidence or circumstances surface, the Board may, in its discretion, remand the matter to the Commission for a rehearing to consider the new development. HCC 21.93.510(a). Mr. Becker urges the Board to do so here.

As explained above, Mr. Becker believes that the erection of a utility structure within a dedicated utility easement obviates the need for a setback variance. The setback requirement of HCC 21.12.040(b)(1) provides that "buildings" be set back twenty feet from all dedicated rights of way. However, the analysis does not end there. The term "building" is defined by HCC 21.03.040 as "any *structure* used or intended for supporting or sheltering

any use or occupancy." (Emphasis added.) The term "structure," in turn, is defined in the same ordinance as "*anything* constructed or erected that requires location on the ground or that is attached to something having location on the ground." (Emphasis added.)

Applying the wording of these ordinances literally to the erection of utility structures within utility easements would become quickly problematic. If a "building" subject to the setback requirement is *any* "structure" supporting or sheltering *any* use and a "structure" is *anything* erected on the ground or attached to something else on the ground, then any utility apparatus, including utility poles; overhead power and telephone lines supported by such poles; underground cables and conduit sheltering them; junction and transformer boxes sheltering telephone and electric utility electronics; water and sewer lines; lift stations; fire hydrants and the like – commonly found within utility easements – would be subject to the setback requirement.

In order to avoid such a nonsensical result, an exception to the setback requirement for utility-related structures located within a utility easement, including devices designed to shelter utility electronics from the weather, must be implied. Otherwise, every such structure located within twenty feet of every right-of-way in the City would constitute a separate violation of the setback ordinance. Presumably, that was not the Council's intent in adopting the ordinance nor would such an interpretation be one the City would likely wish to enforce or establish as precedent. For if the ordinance is to be applied consistently, every utility company would need to apply for a waiver to the setback requirement for every utility structure erected within a utility easement located along a right-of way.

Moreover, given that many utilities are installed within rights-of-way themselves

through a permitting process, following such an interpretation would accomplish nothing constructive. If a telephone pole can be lawfully placed within a public right-of-way with the appropriate permit, why would the City want to require a variance to permit the erection of that same pole in a dedicated utility easement running parallel to that right-of way? Indeed, the whole point of a utility easement is to simplify and facilitate the erection of utilities within its confines. Imposing setback requirements and corresponding requests for variance to the process will only defeat that purpose.

Inasmuch as the Commission did not have the opportunity to consider the new utility easement and how it might relate to the setback and variance requirements at issue, Mr. Becker submits that a remand to the Commission is appropriate. A remand would not only give the Commission first opportunity to address the issue, it may moot the appeal altogether if the Commission agrees with Mr. Becker's analysis. Moreover, other local utility companies will likely wish to weigh in on the issue and a fuller record therefore would be available for review by the Board in the event of any further appeal.

II. IF THE APPEAL IS NOT REMANDED, THE BOARD SHOULD REVERSE THE COMMISSION'S DECISION DENYING THE VARIANCE ON THE MERITS.

The Commission's decision denying Mr. Becker's request for a variance to the 20 foot setback requirement is not supported by "substantial evidence," defined in the Homer zoning ordinances as "relevant evidence as a reasonable mind might accept as adequate to support a conclusion." HCC 21.93.540. As explained above, following an investigation, Planning & Zoning staff submitted a detailed report explaining the unusual topographical features of the Becker lot necessitating the variance. Appended to this brief is a series of

photos depicting the structure's current perch atop the bluff overlooking town. (Appendix A, pp.1-4.) The photos corroborate the report's conclusions that dismantling the existing structure and re-erecting it farther down the bluff would be impractical and hazardous. They also confirm that Mr. Becker erected the structure as far away from the Skyline Drive right of way as reasonably possible. Moreover, since setback distances are measured on a horizontal plane (and not along the topography), the distance from the edge of the right of way to any new construction site would actually exceed 20 feet (as measured along the grade), given the steepness of the slope. HCC 21.05.020.

Finally, given the purpose of the structure (a repeater station designed to service police and fire radio communications), it is imperative to set its location at the highest possible elevation so as to maximize its efficiency; allow ready access for maintenance; and protect its integrity in the event of a natural disaster. A drop in elevation would either reduce the efficiency of the device or require the erection of significantly higher towers in order to make up the lost height.

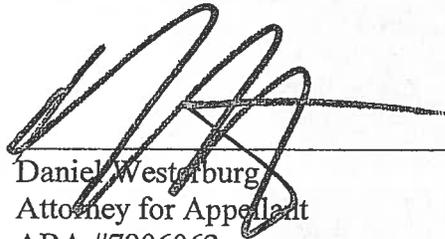
At neither hearing where the variance was considered by the Commission, was any evidence offered suggesting that the findings made in the Planning and Zoning report were incorrect. No one testified that construction farther down the slope was feasible; that another location would provide the same quality of reception; or that access and slope stability would not be problems. The report findings on these issues and the supporting testimony of Messrs. Becker and Wrede went completely un rebutted. Accordingly, there is no evidentiary basis in the record supporting the Commission's decision to deny the variance and it should be reversed on that basis.

Daniel Westorburg • 4164 Pennock St., Ste. A • Homer, AK 99603 • T: (907)235-2717 • F: (907)235-2715

Conclusion

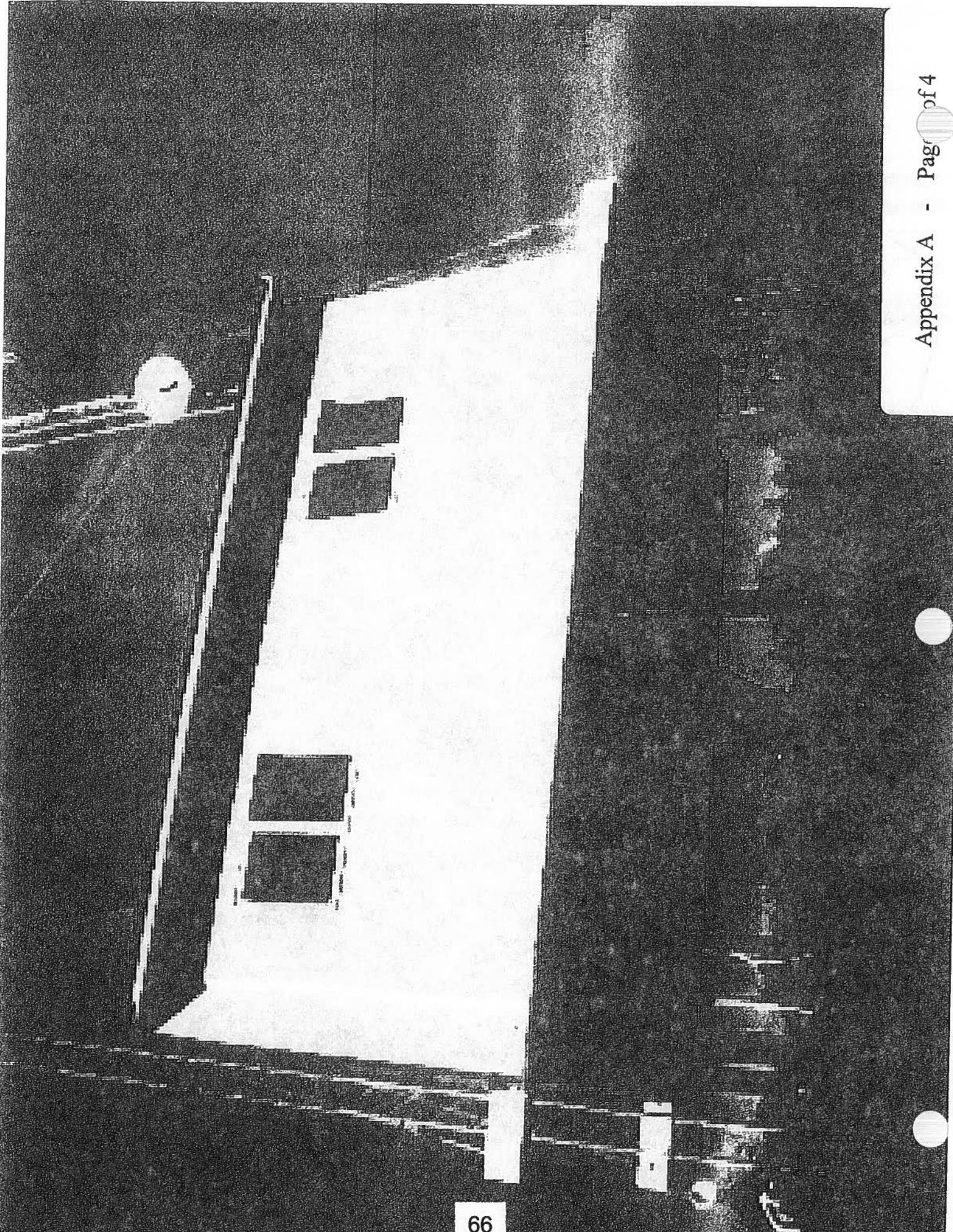
For all of these reasons, Mr. Becker respectfully requests that the decision of the Commission denying his application for a variance be remanded to the Commission for consideration of the impact of the new utility easement on the application or, in the alternative, that the decision be reversed on the merits.

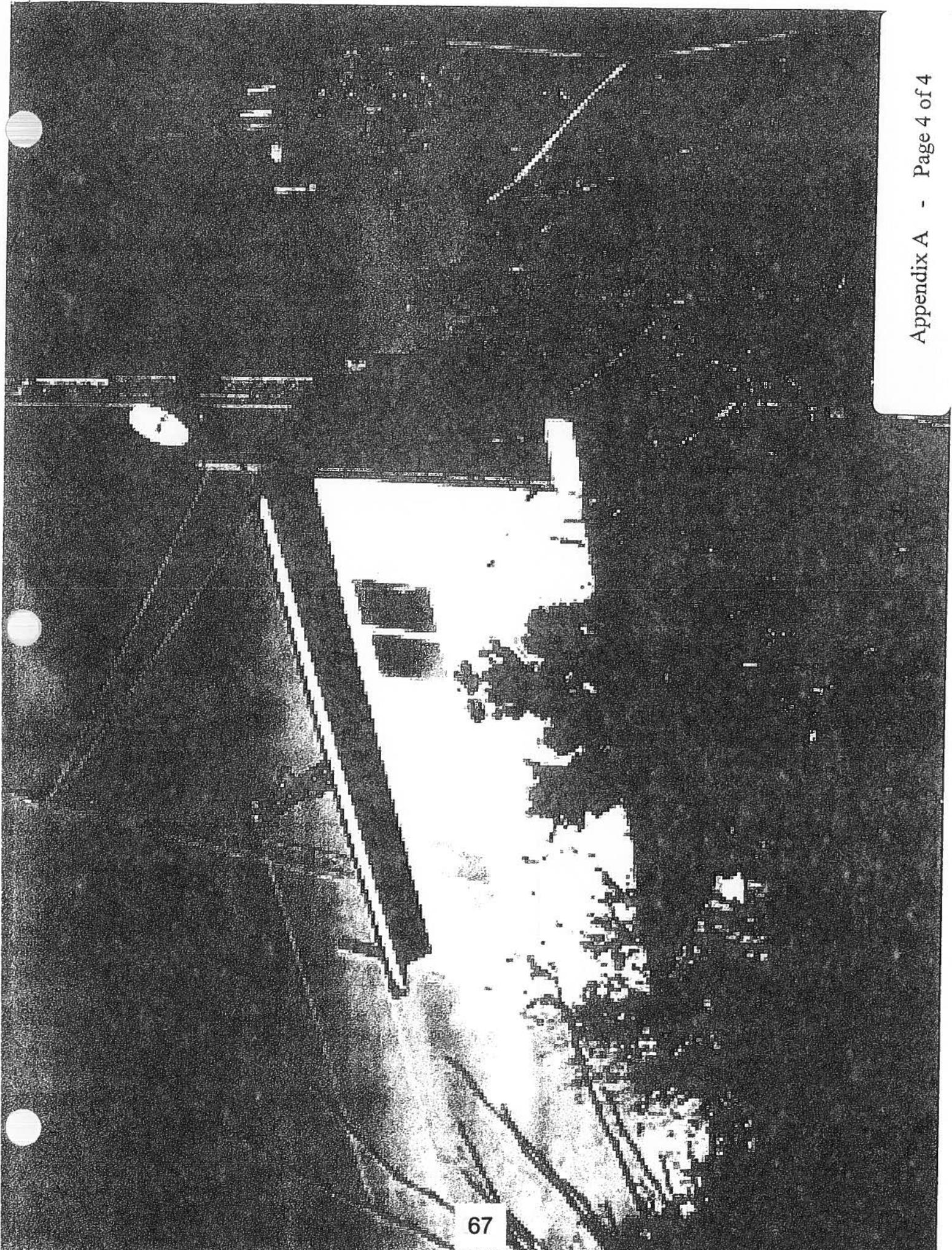
DATED this 7th day of December, 2010.


Daniel Westorburg
Attorney for Appellant
ABA #7906062

The undersigned hereby certifies that on the 7th day of December, 2010, a true and correct copy of the foregoing was served by mail on the following attorneys of record: Thomas Klinkner and William J. Glynan, Jr.

By: gac
April Chesebro







RECORD OF APPEAL

DAVID BECKER VS. CITY OF HOMER

APPEAL OF PLANNING
COMMISSION DECISION OF
SEPTEMBER 14, 2010

Special Meeting

December 14, 2010

6:00 p.m.

City Hall Cowles Council Chambers
491 E. Pioneer Ave.
Homer, AK 99603

APPEAL

to the

BOARD OF ADJUSTMENT

OF THE PLANNING COMMISSION DECISION

OF SEPTEMBER 14, 2010

DAVID BECKER

CONDITIONAL USE PERMIT 10-04

VARIANCE 10-01

RECORD OF APPEAL

Index

**David Becker vs. City of Homer
Decision of the Planning Commission September 14, 2010**

VOLUME I

Formal Complaint Letter from William J. Glynn, Jr. dated June 3, 2010	Page 1
Staff Report PL 10-65, re: Variance 10-01 at 1033 Skyline Drive with attachments:	Page 3
Zoning Variance Application	Page 6
Topo Map	Page 7
Survey dated June 29, 2010	Page 8
Public Notice of July 21, 2010 public hearing	Page 9
Vicinity Map	Page 10
Staff Report PL 10-64, re: Conditional Use Permit 10-04, 1033 Skyline Drive with attachments:	Page 11
Conditional Use Permit Application	Page 15
Vicinity Map	Page 19
Survey dated June 29, 2010 w/note from Roger Imhoff	Page 20
Public Notice of July 21, 2010 public hearing	Page 22
KPB (Kenai Peninsula Borough) Parcel Viewer of subject location	Page 23
Homer Advisory Planning Commission Minutes of July 21, 2010 (excerpt)	Page 24
Homer Advisory Planning Commission Minutes of August 18, 2010 (excerpt)	Page 26
Notice of Appeal from City Clerk Jo Johnson dated October 21, 2010	Page 28
Entry of Appearance from Attorney Daniel Westerburg filed October 15, 2010 re: Conditional Use Permit 10-04	Page 29
Entry of Appearance from Attorney Daniel Westerburg filed October 15, 2010 re: Variance 10-01	Page 30
Corrected (caption only) Notice of Appeal filed October 21, 2010 by Attorney Daniel Westerburg	Page 31
Notice of Appeal for Variance 10-01 filed October 15, 2010 by Attorney Daniel Westerburg w/Exhibit A	Page 32
Notice of Appeal for Conditional Use Permit 10-04 filed October 15, 2010 by Attorney Daniel Westerburg w/Exhibit A	Page 38

Decision of Conditional Use Permit 10-04 by the Homer Advisory Planning
Commission dated September 14, 2010

Page 45

Decision of Variance 10-01 by the Homer Advisory Planning Commission dated
September 14, 2010

Page 50



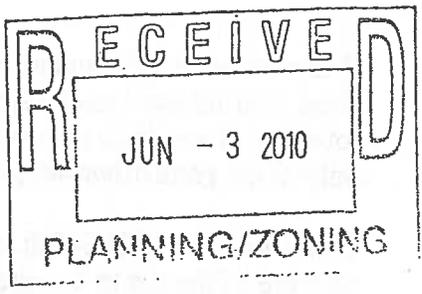
Dave Becker 399-7-83

420-7345221
260-7702 radio

William J. Glynn, Jr.
P.O. Box 79
Kasilof, Ak 99610

City of Homer
Planning Dept
Homer, AK 99603

6-3-10



To Whom It may Concern:

This letter is a formal complaint against the City of Homer for failing to provide equal protection of the laws.

I own the lot at 1028 Skyline West. An area that was outside of the City of Homer prior to annexation. Alaska Digital was installing updated hardware at the property where they had been tenants since 2002 and a neighbor who operates a commercial trucking company from his house across the street filed a complaint with the City in 2009 saying we were using the property commercially. This led to a public hearing for a conditional use permit to allow AK Digital (now GCI) to replace their existing outdated antenna system with a new antenna.

After the public hearing the City of Homer Planning Commission approved the conditional use permit allowing AK Digital's new antenna with the written stipulation that the 90 foot tower owned by me had to be removed from the property. The tower had four rent paying tenants that have since found other locations for their antennas leaving me with no income from those former tenants. One of the tenants, Kasilof Public Broadcasting, had to take their radio two stations off the air. One, for a month and the other for almost a year.

I also was required to modify another tower on the property because the guy wires were encroaching on another lot not owned by me, meet all lot line setback requirements for the new construction, and install a State of Alaska mandated driveway with a paved apron for the new AK Digital antenna.

The lot across the road from me, owned by Dave Becker, is being developed commercially. No conditional use permit public hearing has been held. No driveway has been constructed. The new construction does not comply with setback requirements (too close to the front lot line). Additionally, the lot across the street being developed has a preexisting zoning non compliance condition. One of the buildings partially encroaches on the road right of way.

I had to correct the encroachments on my lot. So does the neighbor if the law is equally applied.

The cost of complying has run into the thousands of dollars. We have lost rent income from four former tenants and we cannot get those former tenants back as we now have no tower to mount their antennas. We also lost the KMJG driveway as the State of Alaska only allows one driveway per lot.

Since we are within 300 ft. of the new non complying construction we expect to be notified of the yet to be scheduled public hearing for the conditional use permit that Dave Becker must request under the law.

Your attention to this matter will be appreciated.

Bill Glynn
Bill Glynn

6/28/00 Dave B. will call Roger T



City of Homer Planning & Zoning

491 East Pioneer Avenue
Homer, Alaska 99603-7645

Telephone (907) 235-8121
Fax (907) 235-3140
E-mail Finance@ci.homer.ak.us
Web Site www.ci.homer.ak.us

STAFF REPORT PL 10-65

TO: Homer Advisory Planning Commission
THROUGH: Rick Abboud, City Planner
FROM: Dotti Harness-Foster, Planning Technician
MEETING: July 21, 2010
SUBJECT: Variance 10-01 at 1033 Skyline Drive

SYNOPSIS: If approved, this variance will allow the newly constructed communication building to remain 4.9 feet from the property line. The northern part of the property that abuts Skyline Drive is the flattest portion of the property. The remaining property has slopes in the 40-42% range. **Approval of a zoning variance requires five yes votes.**

ANALYSIS: Due to the steep slopes, all the buildings on the parcel have been built within the 20 foot setback, including the newest, a 9 foot by 20 foot communication building. Only the newest, most westerly building is in need of a variance. It was built not knowing that a variance was required. The other buildings were built in the 1990's. These buildings existed prior to annexation and zoning and were granted nonconforming status in July 2010.

Applicant:	Dave Becker, P. O. Box 109, Homer, AK 99603
Legal:	SKYLINE VIEW SUB LOT 5 LYING S OF DIAMOND RIDGE RD
Parcel ID #	17402404
Size of Lot:	1.85 acres
Zoning Designation:	Rural Residential
Existing Land Use:	Communication site
Water – Wastewater:	Public water and sewer are not needed.
Surrounding Land Use:	North: Communication site South: Residential East: Residential West: Residential

Comprehensive Plan: "The City should strive to provide public services and facilities that meet current needs while planning for the future. The City wishes to develop strategies to work with community partners that provide beneficial community services outside of the scope of City government." Homer Comprehensive Plan, page 6-1.

"Target high tech industries or professional/web-based activities in these new commercial zones by public provision of access to wireless communication." Homer Comprehensive Plan, pg 4-17.

Wetlands: No designated wetlands.

Public Notice:

Notice was sent to property 14 owners of 15 parcels as shown on the KPB tax assessor rolls.

FINDINGS OF FACT

Pursuant to HCC 21.72.010, a variance may be granted to provide relief when a literal enforcement of Homer Zoning Code would deprive a property owner of the reasonable use of his real property.

Variance Code Requirements: HCC 21.72.020 Conditions precedent to granting variance.

a. All of the following conditions shall exist before a variance may be granted:

1. **A literal interpretation of the provisions of the Homer Zoning Code would deprive the applicant of rights commonly enjoyed by other properties in the same district.**

Applicant: Requiring a 20 ft building setback on a steep bluff would simply not work.

Finding 1: Requiring a 20 foot building setback forces the new structure onto slopes greater than 40%. This would deprive the applicant the right to use the small portion of the property that abuts Skyline Drive which has slopes of approximately 20%.

2. **Special conditions and circumstances exist which are peculiar to the land or structures involved and which are not applicable to other lands and structures in the same district.**

Finding 2: The structure supports and advances technological capabilities within the City of Homer by enhancing wireless communication thus forwarding goals of the comprehensive plan.

Finding 3: Locations for communication equipment providing optimal coverage for the entire City of Homer are very limited.

Finding 4: The parcel has steep slopes of 38% to 42%. Parcels this steep are often consider "unfeasible" for typical residential development, Homer Comprehensive Plan, page 4-3. Disturbance of native vegetation for the creation of site development on steep slope presents on site and off site hazards.

Finding 5: The structure provides a beneficial service to the city which has specific site requirement for maximum effectiveness.

Finding 6: The benefit to all the Citizens of Homer combined with the potential hazard of creating an unstable bluff justifies an exception to the setback requirement.

3. **The special conditions and circumstances have not been caused by the actions of the applicant.**

Finding 7: The steep slope is a natural phenomenon, not cause by the applicant.

Finding 8: The applicant has not created the circumstances which demand this service.

B. Financial hardship or inconvenience sha 76 be reason for granting a variance.

Applicant: The existing structures are on pilings. Without a variance pilings would elevate the structures to the grade of the road.

Finding 9: Granting this variance allows the use of the most northern and flatter portion of the property. Hardship and inconvenience is not the reason for granting this variance.

Finding 10: Building out of the setback would require leveling the site to the height of the setback or cut and fill on the steep slopes. Neither is conducive to slope stabilization and presents a preventable hazard.

C. Other nonconforming land use or structures within the district shall not be considered grounds for granting a variance.

Finding 11: The applicant is seeking a variance due to the steep slopes on the lot. Though the other structures were built prior to City annexation and zoning, this is not seeking a variance due of other nonconforming land use or structures within the district.

D. A variance shall be the minimum variance necessary to permit the reasonable use of the land or structure.

Applicant: Based on the survey dated 6/29/10 I am requesting a building setback variance allowing the most westerly structure to be 4.9 feet from the right-of-way. The most westerly structure is 9 feet x 20 feet on steel pilings.

Finding 12: The minimum variance necessary is 4.9 feet between the most westerly structure and the right-of-way.

E. A variance shall not be granted which will permit a land use in a district in which that use is otherwise prohibited.

Finding 13: A communication site is allowed with a Conditional Use Permit in the Rural Residential District per HCC 21.12.030(g).

STAFF RECOMMENDATION:

The Planning Commission holds a public hearing and move to executive session.

Recommendation: The Planning Commission approves this variance to allow the most westerly structure to be 4.9 feet from the right-of-way.

ATTACHMENTS

1. Zoning Variance Application
2. Survey dated 6/29/10
3. Topo map

Date: June 30, 2010

Property address: 1033 Skyline Drive Owner: David or Eileen Becker, POBox 109, Homer, AK 99603

Legal Description: SKYLINE VIEW SUB LOT 5 LYING S OF DIAMOND RIDGE RD

Variance Code Requirements: HCC 21.62.020 Conditions precedent to granting variance.

A. All of the following conditions shall exist before a variance may be granted:

1. A literal interpretation of the provisions of chapters 21.28 through 21.70 would deprive the applicant of rights commonly enjoyed by other properties in the same district.

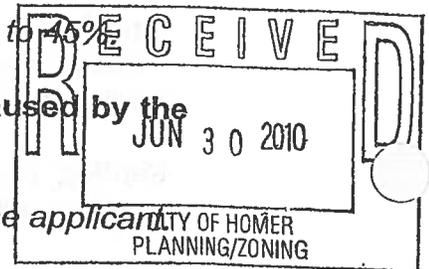
Applicant: Requiring a 20 ft building setback on a steep bluff would simply not work.

2. Special conditions and circumstances exist which are peculiar to the land or structures involved and which are not applicable to other lands and structures in the same district.

Applicant: The entire 1.85 acre parcel has slopes ranging from 40% to 45%

3. The special conditions and circumstances have not been caused by the actions of the applicant.

Applicant: The steep slope is a natural phenomenon, not cause by the applicant.



B. Financial hardship or inconvenience shall not be reason for granting a variance.

Applicant: The existing structures are on pilings. Without a variance pilling would have to elevate the structures to the grade of the road.

C. Other nonconforming land use or structures within the district shall not be considered grounds for granting a variance.

D. A variance shall be the minimum variance necessary to permit the reasonable use of the land or structure.

Applicant: Based on the survey dated 6/29/10 I am requesting a building setback variance allowing the most westerly structure to be 4.9 feet from the right-of-way. The most westerly structure is 9 feet x 20 feet on steel pilings.

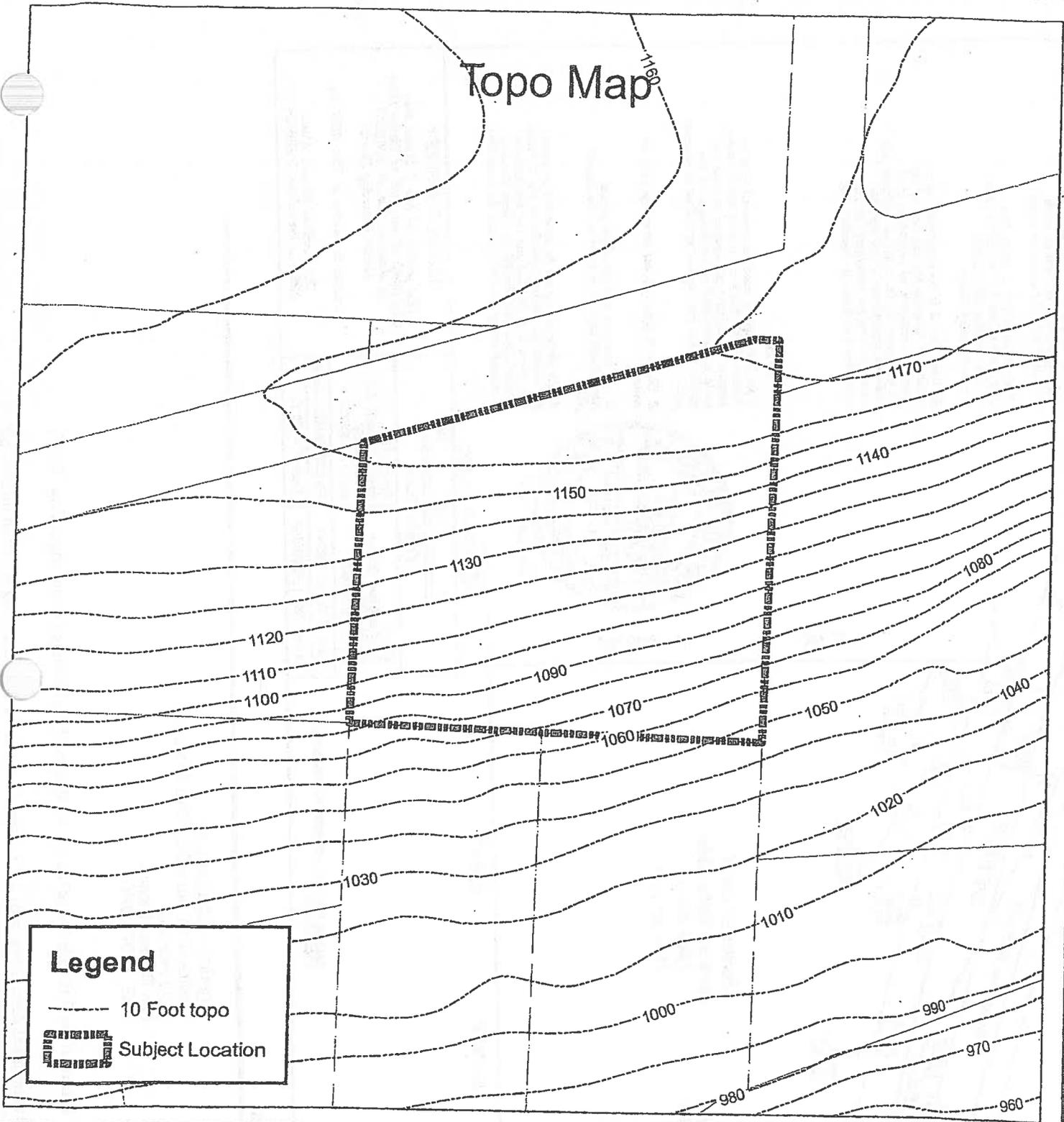
E. A variance shall not be granted which will permit a land use in a district in which that use is otherwise prohibited.

Applicant: A communication site is allowed with a Conditional Use Permit in the Rural Residential District per HCC 21.12.030(g) Site has been used continuously for a communications facility since approximately 1984 (19 years before City annexation).

Applicant's signature and date: David Becker 6/30/10

13-1306

Topo Map



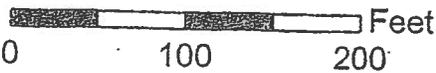
Legend

- 10 Foot topo
- Subject Location



City of Homer
Planning and Zoning Department

July 13, 2010



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.

PUBLIC NOTICE

Public notice is hereby given that the City of Homer will hold a public hearing by the Homer Advisory Planning Commission on Wednesday, July 21, 2010 at 7:00 p.m. at Homer City Hall, 491 East Pioneer Avenue, Homer, Alaska on the following matters:

A Request for a Conditional Use Permit (CUP) for "Public Utility Facilities and Structures" for a communication site at 1033 Skyline Drive, Lot 5 Skyline View Subdivision Lying South of Skyline Drive. If approved, this CUP will allow the fourth building to remain, which houses repeaters and support antennas.

 **A Request for a Variance to allow the newly constructed communication building at 1033 Skyline Drive, Lot 5 Skyline View Subdivision Lying South of Skyline Drive, to remain 4.9 feet from the property line.**

Anyone wishing to present testimony concerning these matters 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.

For additional information, please contact Dotti Harness in the City Planning and Zoning Office at 235-8121, ext. 2239.

NOTICE TO BE SENT TO PROPERTY OWNERS WITHIN 300 FEET OF PROPERTY.

Vicinity Map

1033 Skyline Drive
Skyline View Subdivision Lot 5
South of Skyline Drive

MEADOWWOOD ST.

SKYLINE DR.

EAST HILL RD.

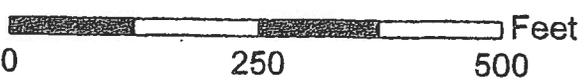
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-  Subject Location
-  Lots w/in 300 ft

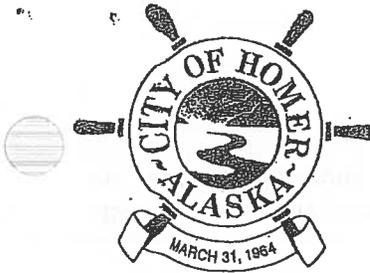


City of Homer
Planning and Zoning Department

July 1, 2010



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.



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 Planning & Zoning
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 Web Site www.ci.homer.ak.us

STAFF REPORT PL 10-64

TO: Homer Advisory Planning Commission
 THROUGH: Rick Abboud, City Planner
 FROM: Dotti Harness-Foster, Planning Technician
 MEETING: July 21, 2010

SUBJECT: Conditional Use Permit (CUP) 10-04, 1033 Skyline Drive for Public Utility Facilities and Structures per HCC 21.12.030(g).

SYNOPSIS: This CUP will allow the addition of one building that has two attached 50 foot metal towers. **This is a quasi-judicial decision and requires five yes votes to be approved.**

Owner: Dave Becker, PO.Box 109, Homer, AK 99603
 Location: 1033 Skyline Drive
 Legal: Lot 5 Skyline View Sub lying south of Diamond Ridge Road
 Parcel ID: 17402404
 Lot Size: 1.85 acres
 Zoning Designation: Rural Residential
 Existing Land Use: Communications site
 Surrounding Land Use:
 North: Communication site
 South: Residential
 East: Residential
 West: Residential
 Wetland Status: No wetlands.
 Floodplain Status: Not in a mapped flood hazard area.
 BCWPD: Not in the Bridge Creek Watershed Protection District.
 Utilities: No public water or sewer.
 Public Notice: Notice was sent to property 14 owners of 15 parcels as shown on the KPB tax assessor rolls.

Introduction

This property is located in the Rural Residential District. The City Planner has accepted the nonconforming status of three (3) buildings, and four (4) wooden towers. If approved, this conditional use permit will allow the addition of one 9 foot by 20 foot building that has two attached 50 foot metal towers.

21.03.040 Definitions used in zoning code.

"Public utility facility or structure," for the purpose of requiring a conditional use permit, means (i) any facility or structure owned and operated by a public or private utility, or (ii) a telecommunications tower or antenna, but it excludes water distribution mains, pressure stations and hydrants, sewage collection lines, manholes and lift stations, underground and overhead electrical, cable and telephone lines and poles and street lights.

Parking: City code does not have parking requirements for a communication site. The applicant has one parking space on site. Due to the very low traffic volume for this site, the city planner has determined under 21.55.090(b) that only one parking space is required.

Encroachments: The as-built survey dated June 29, 2010, shows a 2.6 feet building encroachment into the Skyline Drive a state right-of-way. The approval of this CUP does not indicate acceptance of any encroachments into the right-of-way.

21.71.030 Review criteria.

- a. **The applicable code authorizes each proposed use and structure by conditional use permit in that district.**

Finding 1: Public utility facilities and structures are authorized by HCC 21.12.030 (g).

- b. **The proposed use(s) and structure(s) are compatible with the purpose of the district in which the lot is located.**

21.12.010 Purpose. The purpose of the rural residential district is primarily to provide an area in the City for low-density, primarily residential, development; allow for limited agricultural pursuits; and allow for other uses as provided in this chapter.

Applicant: KPB classified the structures as "Accessory Building"

Finding 2: The 1.85 acres parcel has a total of five (5) structures. The combined square footage of all the structures is less than 1500 square feet and fronts Skyline Drive. The structures and uses are consistent with low density development.

Finding 3: With a Conditional Use Permit, public utility facilities and structures are allowed per HCC 21.12.30(g).

- c. **The value of the adjoining property will not be negatively affected greater than that anticipated from other permitted or conditionally permitted uses in this district.**

Applicant: Adjoining property was developed after this site was developed, with the only exception being the home owned by Mary Ann Brosnan down Skyline Drive west, on the north side. Peter Arno built his home adjacent to property after this communication site had already been developed.

Finding 4: The value of adjoining property will not be negatively impacted more than from other uses in this district. Other uses permitted or conditionally permitted include multifamily dwellings which would create more traffic than the proposed use, kennels, which would create more noise, and storage of heavy equipment per HCC 21.12.030.

- d. **The proposal is compatible with existing uses of surrounding land.**

Applicant: There are two other developed communication sites in the area: a cell tower, FM radio tower and wireless internet towers are directly across the street and another cell phone site/tower is directly east of this site.

Finding 5: The proposal is compatible with the existing surrounding land uses. The land to the north is also a telecommunications site. The land to the south, east and west are low density residential.

e. Public services and facilities are or will be, prior to occupancy, adequate to serve the proposed use and structure.

Finding 6: Public services and facilities are adequate to serve the proposed use. Public water and sewer are not needed. The property is accessed via Skyline Drive, which is a paved, state maintained public road.

f Considering harmony in scale, bulk, coverage and density, generation of traffic, the nature and intensity of the proposed use, and other relevant effects, the proposal will not cause undue harmful effect upon desirable neighborhood character.

Applicant: This site was developed before the rest of the neighborhood. Minimal traffic, with an average of 12 site visits annually per lease.

Finding 7: The newly constructed single story structure is 9 feet by 20 feet with two attached metal towers approximately 50 ft in height. The placement and operation of the tower will not generate significant traffic, nor create density or coverage that will harm the neighborhood. Traffic to and from the site is for maintenance purposes only. The tower will not cause undue harmful effect on the desirable neighborhood character.

g. The proposal will not be unduly detrimental to the health, safety or welfare of the surrounding area or the city as a whole.

Finding 8: The communication site is not detrimental to the health, safety or welfare of the surrounding area or the city as a whole. The towers are part of a telecommunications system that serves the wider area and is an important and necessary service.

h. The proposal does or will comply with the applicable regulations and conditions specified in this title for such use.

Applicant: The site was located in the Kenai Peninsula Borough and developed long before the City annexed the property in 2003.

Finding 9: Title 21 requires a conditional use permit under 21.12.030(g) for "Public utility facilities and structures."

i. The proposal is not contrary to the applicable land use goals and objectives of the Comprehensive Plan.

"The City should strive to provide public services and facilities that meet current needs while planning for the future. The City wishes to develop strategies to work with community partners that provide beneficial community services outside of the scope of City government." Homer Comprehensive Plan, page 6-1.

"Target high tech industries or professional/web-based activities in these new commercial zones by public provision of access to wireless communication." Homer Comprehensive Plan, pg 4-17.

Finding 10: The facility is located in a rural, low density area. The property to the north is also a telecommunications site, and the continuation of the subject property as a communications site is a compatible use type and density, with a residential zone. The proposal is not contrary to the applicable land use goals and objectives of the Comprehensive Plan.

j. The proposal will comply with all applicable provisions of the Community Design Manual.

Finding 11: All lighting must be down lit per the Community Design Manual.

21.71.040 Approval of conditional use. a. The Planning Commission will review and may approve, approve with conditions, or deny an application for conditional use permit. The application shall not be approved unless it is established that the proposal, with conditions if necessary, satisfies the applicable review criteria.

b. In approving a conditional use, the Commission may impose such conditions on the use as may be deemed necessary to ensure the proposal does and will continue to satisfy the applicable review criteria. Such conditions may include, but are not limited to, one or more of the following:

1. **Special yards and spaces.**
2. **Fences, walls and screening.**
3. **Surfacing of vehicular ways and parking areas.**
4. **Street and road dedications and improvements (or bonds).**
5. **Control of points of vehicular ingress and egress.**
6. **Special restrictions on signs.**
7. **Landscaping.**
8. **Maintenance of the grounds, buildings, or structures.**
9. **Control of noise, vibration, odors, lighting or other similar nuisances.**
10. **Limitation of time for certain activities.**
11. **A time period within which the proposed use shall be developed and commence operation.**
12. **A limit on total duration of use or on the term of the permit, or both.**
13. **More stringent dimensional requirements, such as lot area or dimensions, setbacks, and building height limitations. Dimensional requirements may be made more lenient by conditional use permit only when such relaxation is authorized by other provisions of the zoning code. The applicant has applied for a variance for building setback due to the steep slopes.**
14. **Other conditions necessary to protect the interests of the community and surrounding area, or to protect the health, safety, or welfare of persons residing or working in the vicinity of the subject lot. (Ord. 08-29, 2008).**

Finding 12: No special conditions are imposed.

STAFF COMMENTS/RECOMMENDATIONS:

Planning Commission approve this Conditional Use Permit as a public utility facility and structure to allow the use of the 9 foot by 20 foot communication building that has two attached metal towers at 1033 Skyline Drive.

Attachments

1. Application
2. Location map
3. Survey dated 6/29/10



City of Homer Planning & Zoning

491 East Pioneer Avenue Telephone (907) 235-3106
 Homer, Alaska 99603-7645 Fax (907) 235-3118
 E-mail Planning@ci.homer.ak.us
 Web Site www.ci.homer.ak.us

CUP
10-06

Applicant

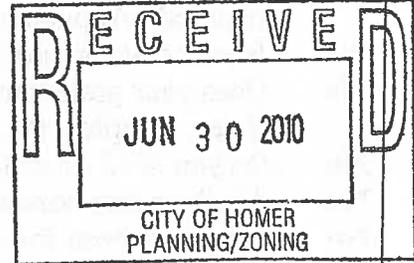
Name: David Becker Telephone No.: 399-3283 or 235-7526

Address: POBox 109 Email: kwavefm@xyz.net

Property Owner (if different than the applicant):

Name: _____ Telephone No.: _____

Address: _____ Email: _____



PROPERTY INFORMATION:

Address: 1033 Skyline Lot Size: 1.85 acres KPB Tax ID # 17402404

Legal Description of Property: SKYLINE VIEW SUB LOT 5 LYING S OF Skyline Drive

For staff use: Date: 6/30/2010 Fee submittal: Amount 500⁰⁰ 13-1306
 Received by: [Signature] Date application accepted as complete _____
 Planning Commission Public Hearing Date: 7/21/2010

Conditional Use Permit Application Requirements:

1. A Site Plan
2. Right of Way Access Plan
3. Parking Plan
4. A map showing neighboring lots and a narrative description of the existing uses of all neighboring lots. (Planning can provide a blank map for you to fill in).
5. Completed Application Form
6. Payment of application fee (nonrefundable)
7. Any other information required by code or staff, to review your project

Circle Your Zoning District

	RR	UR	RO	CBD	TCD	GBD	GC1	GC2	MC	MI	OSR	BCWPD
Level 1 ROW Access Plan	X	X							X		X	
Level 1 Lighting				X	X	X	X	X	X	X		
Level 2 ROW Access Plan			X	X	X		X	X		X		
Level 3 ROW Access Plan						X						

Circle applicable permits. Planning staff will be glad to assist with these questions.

- No Are you building or remodeling a commercial structure, or multifamily building with more than 3 apartments? If yes, Fire Marshal Certification is required. Status: _____
- No Will your development trigger a Development Activity Plan?
Application Status: _____
- No Will your development trigger a Storm water Plan?
Application Status: _____
- No Does your site contain wetlands? If yes, Army Corps of Engineers Wetlands Permit is required. Application Status: _____
- No Is your development in a floodplain? If yes, a Flood Development Permit is required.
- No Does your project trigger a Community Design Manual review?
If yes, complete the design review application form.
- No Do you need a traffic impact analysis?
- No Are there any nonconforming uses or structures on the property?
- No Have they been formally accepted by the Homer Advisory Planning Commission?
- No Do you have a state or city driveway permit? Status: _____
- No Do you have active City water and sewer permits? Status: _____

1. Currently, how is the property used? Are there buildings on the property? How many square feet? Uses within the building(s)?

The property is a communications site established prior to City annexation in about 1984. GCI Cablevision has a building housing the "head end" of the Homer Cable TV system. Building size is shown on the Roger Imhoff "As Built" 6/29/10 survey. There are currently 4 small equipment shelters also located on the property. Two shelters were built prior to 2003 and 2 were added after 2003. All building structures are used for communication purposes.

2. What is the proposed use of the property? How do you intend to develop the property? (Attach additional sheet if needed. Provide as much information as possible).

Property has been developed since 1986 (24 years) as a "communications" site for FM radio, Cable TV and Wireless Internet (Wi Fi) and as such, has been in use long before the site was annexed by the City in 2003. Future use includes a 3 year communications lease with the City of Homer for Police and Fire Radio Repeaters and antennas. A brief history of the site development since 1986 is attached.

CONDITIONAL USE INFORMATION: (Please use additional sheet(s), if necessary)

- a. What code citation authorizes each proposed use and structure by conditional use permit?
HCC 21.12.030 Public utility facilities and structures.

- b. Describe how the proposed uses(s) and structures(s) are compatible with the purpose of the zoning district. Lot 5 Skyline Subdivision is already classified as "Accessory Building" on the KP Borough Parcel Viewer website.
- c. How will your proposed project affect adjoining property values? Adjoining property was developed after this site was developed, with the only exception being the home owned by Mary Ann Brosnan down Skyline Dr. west, on the north side. Peter Arno built his home adjacent to property after this communication site had already been developed.
- d. How is your proposal compatible with existing uses of the surrounding land? There are two other developed communication sites in the area: A Cell tower, FM radio tower and wireless internet towers are directly across the street and another Cell phone site/tower is directly east of this site.
- e. Are/will public services adequate to serve the proposed uses and structures? Yes.
- f. How will the development affect the harmony in scale, bulk, coverage and density upon the desirable neighborhood character, and will the generation of traffic and the capacity of surrounding streets and roads be negatively affected? This site was developed before the rest of the neighborhood. Minimal traffic, averaging 12 site visits annually per leasee.
- g. Will your proposal be detrimental to the health, safety or welfare of the surrounding area or the city as a whole? No.
- h. How does your project relate to the goals of the Comprehensive Plan? There was no "Comprehensive Plan" in effect as this site was located in the KP Borough and developed long before the City annexed the property in 2003.
- i. The Planning Commission may require you to make some special improvements. Are you planning on doing any of the following, or do you have suggestions on special improvements you would be willing to make? (circle each answer)

- 1. No Special yards and spaces.
- 2. No Fences, walls and screening.
- 3. No Surfacing of parking areas.
- 4. No Street and road dedications and improvements (or bonds).
- 5. No Control of points of vehicular ingress & egress.
- 6. No Special provisions on signs.
- 7. No Landscaping.
- 8. Yes Maintenance of the grounds, buildings, or structures.
- 9. Yes Control of smoke, odors, gases, particulate matters, noise, vibration, heat, glare, water and solid waste pollution, dangerous materials, material and equipment storage, or other similar nuisances.
- 10. No Time for certain activities.
- 11. No A time period within which the proposed use shall be developed.
- 12. No A limit on total duration of use.
- 13. No Special dimensional requirements such as lot area, setbacks, building height.
- 14. No Other conditions deemed necessary to protect the interest of the community.
- 15. No Control of smoke, odors, gases, particulate matters, noise, vibration, heat, glare, water and solid waste pollution, dangerous materials, material and equipment storage, or other similar nuisances.
- 16. No Time for certain activities.
- 17. No A time period within which the proposed use shall be developed.
- 18. No A limit on total duration of use.
- 19. No Special dimensional requirements such as lot area, setbacks, building height.
- 20. No Other conditions deemed necessary to protect the interest of the community.

PARKING

1. How many parking spaces are required for your development? Two work vans
2. How many spaces are shown on your parking plan? Two
3. Are you requesting any reductions? No

Include a site plan, drawn to a scale of not less than 1" = 20' which shows allow existing and proposed structures, clearing, fill, vegetation and drainage.

An "as built" survey performed 6/29/2010 by Roger Imhoff has been provided. See attached.

I hereby certify that the above statements and other information submitted are true and accurate to the best of my knowledge, and that I, as applicant, have the following legal interest in the property:

CIRCLE ONE: Owner of record Lessee Contract purchaser

Applicant signature: David Becker Date: 6/30/10

Property Owner's signature: _____ Date: _____

Vicinity Map

MEADOWWOOD ST.

1033 Skyline Drive
Skyline View Subdivision Lot 5
South of Skyline Drive

SKYLINE DR.

EAST HILL RD.

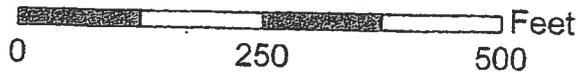
Legend

-  Subject Location
-  Lots w/in 300 ft



City of Homer
Planning and Zoning Department

July 1, 2010



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.

I hereby certify that I have surveyed the following property and that no other encroachments exist except as shown.

That portion of Lot 5 Skyline Vista lying South of the ROW of Skyline Drive as shown on Plat HM 0002273 Hauser Recording District

Excavation Note: It is the responsibility of the Owner(s) to determine the existence of any easements, encumbrances, or restrictions which do not appear on the recorded subdivision plat. Under no circumstances should any data hereon be used for construction or for the establishment of fences or boundary lines.

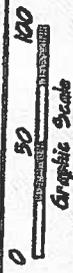
Notes

1. Subject Property could be referred to as an "Autosave Farm". There are several existing utility easements of various types mounted on poles and marks and associated control buildings. All the existing dishes have support structures on concrete pads.
2. This lot is apparently not served by either or sewer.
3. This survey is valid for above ground improvements only and is based on the record plat.
4. This document may not be recorded or copies sold without the written permission of the Surveyor. This Survey is to be used only for the purposes intended and is valid for 90 days from the date of original survey after which it must be reconfirmed.



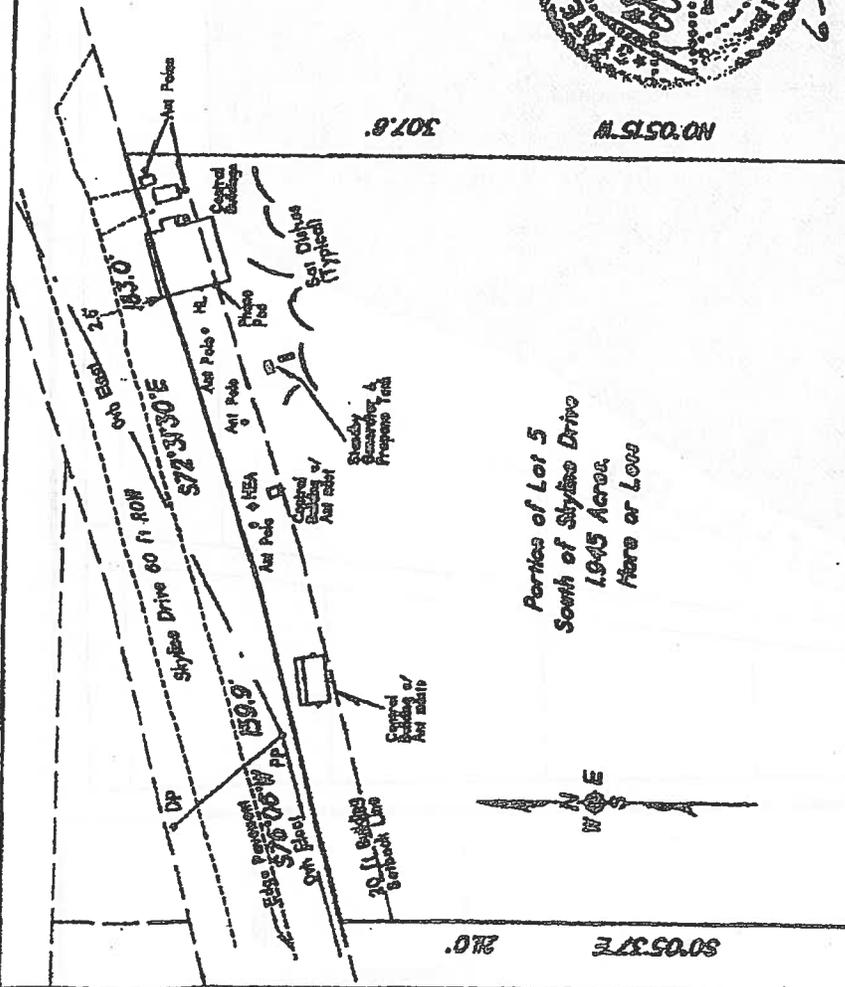
6-29-10

Reduced Scale



Client:	Donald & Estelle Becker PO Box 109 Hauser AK 99803
Surveyed By:	Roger Hoff, RLS PO Box 2588 Hauser AK 99803
Date of Survey:	6-20-10
Drawn R/W:	FB2010-2
Scale:	1" = 50 ft

ASBUILT SURVEY
That portion of Lot 5 Skyline Vista lying South of the ROW of Skyline Drive as shown on Plat HM 0002273 Hauser Recording District
Located in Section 9, T6S, R13W, S4M
Third Judicial District, Alaska
K98 Tax Parcel No. 17-402-10-4



CALL ALASKA DIG LINE PRIOR TO EXCAVATION
1-800-478-3001

Skyline, Inc.
rrol FB 2008-1

Dotti Harness

From: rogerimhoff@alaska.net
Sent: Wednesday, June 30, 2010 11:09 AM
To: Dotti Harness
Subject: Re: Becker-Skyline
Attachments: IMG_9507A.JPG

4.9 ft from the NW corner of the 3 ft wide "deck" on the north side of the building (to the edge of the ROW) building is 9x20 ft nominal dimensions with the 3 ft deck towards the ... Building is placed on steel piling.

Roger W. Imhoff, KLS
PO Box 2588 * Homer Ak 99603
(907) 235-7279 fax (907)235-5254
rogerimhoff@alaska.net

6-29-2010

Dottie - Planning Dept COH

re Lot 5 skyline view antenna farm

Dave Becker asked me to fax this asbuilt survey to you

Thanks, Roger



1 page follows

PUBLIC NOTICE

Public notice is hereby given that the City of Homer will hold a public hearing by the Homer Advisory Planning Commission on Wednesday, July 21, 2010 at 7:00 p.m. at Homer City Hall, 491 East Pioneer Avenue, Homer, Alaska on the following matters:

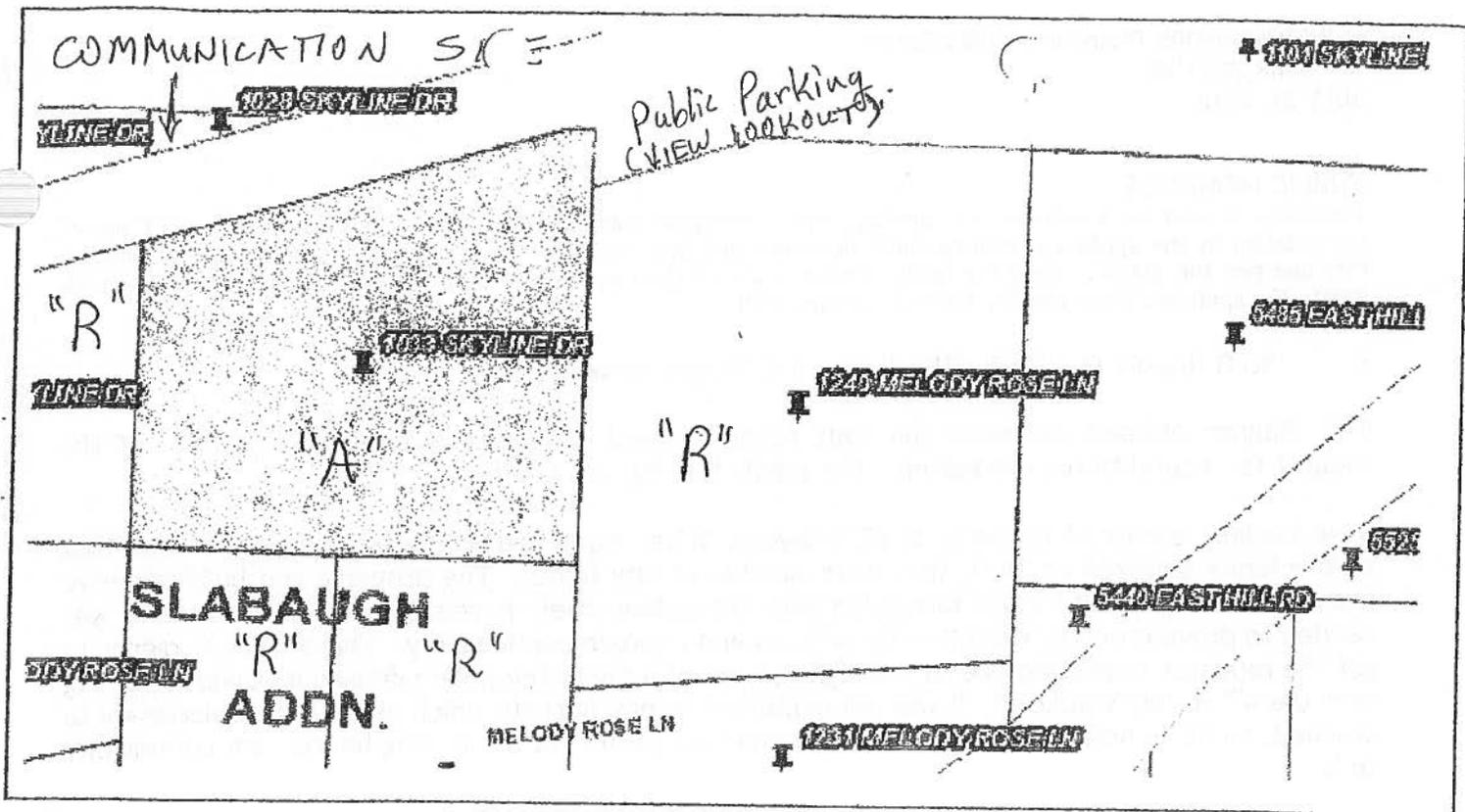
A Request for a Conditional Use Permit (CUP) for "Public Utility Facilities and Structures" for a communication site at 1033 Skyline Drive, Lot 5 Skyline View Subdivision Lying South of Skyline Drive. If approved, this CUP will allow the fourth building to remain, which houses repeaters and support antennas.

A Request for a Variance to allow the newly constructed communication building at 1033 Skyline Drive, Lot 5 Skyline View Subdivision Lying South of Skyline Drive, to remain 4.9 feet from the property line.

Anyone wishing to present testimony concerning these matters 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.

For additional information, please contact Dotti Harness in the City Planning and Zoning Office at 235-8121, ext. 2239.

NOTICE TO BE SENT TO PROPERTY OWNERS WITHIN 300 FEET OF PROPERTY.



KPB Parcel Viewer



Printed: Jun 30, 2010

EXISTING LANDUSE: 1033 SKLINE DR,
 "A" = "Accessory Building"
 "R" = Residential

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 10-64, CUP 10-06, 1033 Skyline Drive/Becker

City Planner Abboud reviewed the staff report; stated staff is recommending approval of the request for a conditional use permit. The public hearing was opened.

Dave Becker, owner of property at 1033 Skyline Drive, explained to the planning commission that before being annexed in 2003, they were outside of city limits. The property and buildings were not out of compliance. After discussion with the police chief, it was agreed that a repeater was needed to provide better reception for officers and improve public safety. There was an urgency to get the repeater operating due to the high volume of activity the police department was expecting over the 4th of July weekend. It was not explained to him initially which permits were necessary to proceed, so he is now applying for a conditional use permit to be in compliance with current city code.

Bill Glynn, neighboring property owner, stated he had no objection to Mr. Becker developing his property as he wished as long as same rules apply for everyone. He stated he has adhered to city code in terms of setback requirements, driveway and encroachment requirements. He said in doing so, he had to move a tower, thus losing customers. Mr. Glynn also expressed the same rules should apply to parking as people have parked in his space when there isn't enough room across the street.

Mr. Becker replied Chief Robl would like to see minimal parking, to avoid liability and the attraction for some to park, climb towers, etc. He responded that no one he knows is parking in Mr. Glynn's space anymore; it was temporary, and only when his contractor was working on site.

With only four commissioners present there was a lack of a quorum, the public hearing was closed. Discussion followed.

SINN/BOS-MOVED TO CONTINUE DELIBERATIONS ON STAFF REPORT PL 10-64, CUP 10-04 WHEN THERE ARE FIVE COMMISSIONERS PRESENT.

Motion carried.

B. Staff Report PL 10-65, Variance at 1033 Skyline Drive/Becker

City Planner Abboud reviewed the staff report; stated staff is recommending approval of the request for a variance. The public hearing was opened.

Dave Becker, owner of property at 1033 Skyline Drive, explained the property was surveyed and the plat was done in 1954, so there were no set back requirements at the time. When the property was annexed in 2003, it was recognized the building in question was not in compliance. To move the building would put it in a dangerous spot and access would be difficult.

Bill Glynn mentioned that his property is steep as well, and he had to use many yards of fill on his property in order to comply, and access it.

Public hearing closed.



Staff
Report
PL 10-
64,
CUP10
06,
1033
Skyline
Drive/
Becker



Staff
Report
PL 10-
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Variance,
1033
Skyline
Drive/
Becker



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Commissioner Bos asked Mr. Becker if he would consider this to be the last building opportunity on the lot, and where he would choose to put another structure. Mr. Becker stated he would consider other development on the property, and if he were aware of the rules up front he would have considered moving the building further down the slope. The site was chosen because it was the best place for the tower.

:ker
it.

City Manager Wrede addressed the issue and concurred this was the best place for the repeater, timing was important due to the necessity to increase public safety. He clarified that when he gave Mr. Becker the go ahead, he was clear that the developer is responsible for obtaining all necessary permits. The miscommunication was that the permits weren't specified up front. Public hearing closed.

SINN/BOS-MOVED TO CONTINUE DELIBERATIONS ON STAFF REPORT PL 10-6, Variance 10-01, WHEN THERE ARE FIVE COMMISSIONERS PRESENT.

Motion carried.

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PLAT CONSIDERATION

- A. Staff Report PL 10-60, Stream Hill Park Unit 2, Resubdivision of Lots 35 & 45 Preliminary Plat

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10-60

City Planner Abboud reviewed the staff report; stated staff is recommending approval of the plat.

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10-60

SINN/BOS-MOVE TO APPROVE STAFF REPORT PL10-60 WITH STAFF RECOMMENDATIONS.

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10-60

Motion carried.

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PENDING BUSINESS

- A. Staff Report PL 10-57, Draft Steep Slope Ordinance

The commission continued their discussion from the work session.

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10-57,

Consensus of 50% slope, discussion of 40% versus 50, and what is the right number, 32-40.

ff
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10-57,

HIGHLAND/SINN-MOVE TO FORWARD STAFF REPORT PL 10-57 FORWARD TO PUBLIC HEARING.

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10-57,

Discussion followed regarding percentage of slope.

HIGHLAND/SINN-MOVE TO AMEND STAFF REPORT PL 10-57 TO CHANGE SLOPE TO NO MORE THAN 45%.

Motion carried.

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ort PL
57
np
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- B. Staff Report PL 10-58, Draft Spit Comprehensive Plan

HIGHLAND/BOS-MOVED TO CONTINUE DISCUSSION OF STAFF REPORT SR PL 10-58 AT THE NEXT WORK SESSION.

VOTE: (amendment): NON OBJECTION: UNANIMOUS CONSENT.

Motion carried.

KRANICH/BOS - MOVE TO AMEND FINDING TWO TO CHANGE WORDING TO 'WITH A CONDITIONAL USE PERMIT' AFTER PUBLIC FACILITIES.

VOTE: (amendment): NON OBJECTION: UNANIMOUS CONSENT.

Motion carried.

KRANICH/BOS - MOVE TO AMEND FINDING 9 TO DELETE THE LAST SENTENCE.

VOTE: (amendment): NON OBJECTION: UNANIMOUS CONSENT.

Motion carried.

KRANICH/BOS - MOVE TO AMEND FINDING 11 TO INSERT THE WORD 'IN' AFTER THE WORD 'WITH' AFTER COMPATIBLE USE WITH RESIDENTIAL ZONING.

VOTE: (amendment): NON OBJECTION: UNANIMOUS CONSENT.

Motion carried.

KRANICH/BOS - MOVE TO DELETE SENTENCE WITH 'OUTDOOR PATIO.'

VOTE: (amendment): NON OBJECTION: UNANIMOUS CONSENT.

Motion carried.

Motion approved as amended, and added two special conditions:

- Code compliant parking shall be provided on the property.
- Property owner to obtain a valid DOT driveway permit.

VOTE: (main motion as amended): NON OBJECTION: UNANIMOUS CONSENT.

Motion carried.

B. Draft Decision and Findings for Variance 10-01, 1033 Skyline Drive

KRANICH/BOS - MOVE TO ADOPT DECISION AND FINDINGS FOR VARIANCE 10-01, 1033 SKYLINE DRIVE.

KRANICH/BOS - MOVE TO PLACE PERIOD AFTER THE WORD SLOPE ON PAGE place period after the word slope at the end of find slope to replace 40%

VOTE: (amendment): NON OBJECTION: UNANIMOUS CONSENT.

Motion carried.

Public Works Director Meyer explained the process and option of obtaining the section line easement. He stated the city has acquired land west of the water treatment plant and is proposing to vacate Carter Drive around the water treatment plant from Skyline Drive to the north of the treatment plant.

Nancy Hillstrand addressed the Commission but her comments were not audible on the recording.

Discussion followed regarding access to Hillstrand property and extending Carter Drive.
KLANICH/BOS - MOVE TO ADOPT STAFF REPORT PL 10-67 AS AMENDED TO INCLUDE STAFF RECOMMENDATIONS AND TO BE CONTINGENT ON NEW RIGHT OF WAY EXTENDING CARTER DRIVE.

VOTE: NON OBJECTION: UNANIMOUS CONSENT.

PLAT CONSIDERATION

A. Staff Report PL 10-66, Hillstrand's Homestead Preliminary Plat

Planning Technician Engebretsen summarized the staff report.

Nancy Hillstrand addressed the Commission but her comments were not audible on the recording.

Discussion followed regarding preventing development next to the ravine, protecting the watershed, and drainage.

KLANICH/BOS - MOVE TO ADOPT STAFF REPORT PL 10-66 WITH STAFF COMMENTS AND RECOMMENDATIONS.

KLANICH/BOS - MOVE TO AMEND MAIN MOTION TO ADD CONTOUR INFORMATION AS REQUIRED IN ITEM #12.

VOTE: (amendment): NON OBJECTION: UNANIMOUS CONSENT.

Motion carried.

VOTE: (main motion as amended) NON OBJECTION: UNANIMOUS CONSENT.

Motion carried.

PENDING BUSINESS

A. Draft Decision and Findings for Conditional Use Permit 10-04, 1033 Skyline Drive

Chair Minsch excused Commissioner Venuti from the table and for deliberations for pending business items A, B, and C. Deliberations were continued for 10 minutes.

KLANICH/BOS - MOVE TO ACCEPT THE DECISION AND FINDINGS FOR CONDITION USE PERMIT 10-04, 1033 SKYLINE DRIVE.

KLANICH/BOS - MOVE TO DELETE FINDING 4.

Office of the City Clerk

Jo Johnson, CMC, City Clerk
Melissa Jacobsen, CMC, Deputy City Clerk II
Renee Krause, CMC, Deputy City Clerk I



491 E. Pioneer Avenue
Homer, Alaska 99603
(907) 235-3130
(907) 235-8121
ext: 2224, 2226, or 2227
Fax: (907) 235-3143
Email: clerk@ci.homer.ak.us

October 21, 2010

Parties of Record

Notice of Appeal to the Board of Adjustment Re: Planning Commission Decisions - David Becker Variance 10-01 Structure Within the Building Setback from Rights of Way and Conditional Use Permit 10-04 Public Utility Facilities and Structures in the Rural Residential District

Attached is a copy of that appeal.

Homer City Code Section § 21.93.500 states that a. Only persons who actively and substantively participated in the matter before the Commission and who would be qualified to appeal under HCC § 21.93.060 may participate as parties in an appeal from the Commission to the Board of Adjustment; and b. Any person so qualified who desires to participate in the appeal as a party, other than the appellant, the applicant for the action or determination that is the subject of the appeal and the owner of the property that is the subject of the action or determination, must, not less than 14 days before the date set for the appeal hearing, file with the City Clerk a written and signed notice of appearance containing that party's name and address, and proof that the person would be qualified under HCC § 21.93.060 to have filed an appeal.

Please contact the City Clerk's Office at 235-3130 if you have any questions regarding this matter.

Thank you,


Jo Johnson, CMC
City Clerk

Cc: Attorney Daniel Westerburg
Mayor and City Council
City Manager Wrede
City Attorney Klinkner
City Planner Abboud

BEFORE THE HOMER BOARD OF ADJUSTMENT

In RE the application of David Becker)
)
for Conditional Use Permit #10-04)
_____)

ENTRY OF APPEARANCE

COMES NOW Daniel Westerburg, and hereby enters his appearance on behalf of
the appellant, David Becker.

DATED this 15th day of October, 2010.



DANIEL WESTERBURG
Attorney for Plaintiff
ABA #7906062

Daniel Westerburg • 4164 Pennock St., Site. A • Homer, AK 99603 • T: (907)235-2717 • F: (907)235-2715

BEFORE THE CITY OF HOMER BOARD OF ADJUSTMENT

In RE the application of David Becker)
)
for Variance #10-01)
_____)

Daniel Westerburg • 4164 Pennock St., Ste. A • Homer, AK 99603 • T: (907)235-2717 • F: (907)235-2715

ENTRY OF APPEARANCE

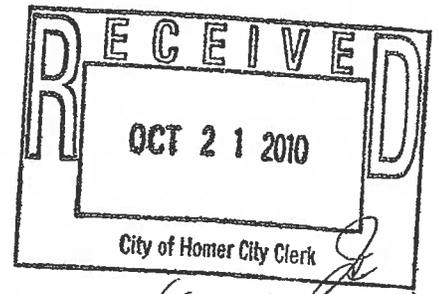
COMES NOW Daniel Westerburg, and hereby enters his appearance on behalf of
the appellant, David Becker.

DATED this 15th day of October, 2010.



DANIEL WESTERBURG
Attorney for Appellant
ABA #7906062

Daniel Westerburg • 4164 Pennock St., Ste. A • Homer, AK 99603 • T: (907)235-2717 • F: (907)235-2715



BEFORE THE CITY OF HOMER BOARD OF ADJUSTMENT *(Amended Caption)*

In RE the application of David Becker)
for Variance #10-01)

NOTICE OF APPEAL

1.) Name and Address of Appellant.

David Becker
P.O. Box 109
Homer, AK 99603

Appellant is appearing in this matter through undersigned counsel.

2.) Description and Date of Determination.

This appeal is from a DECISION by the Homer Advisory Planning Commission ("HAPC") distributed on September 15, 2010, and attached hereto as Exhibit A. The DECISION will become final on October 16, 2010.

3.) Description of Subject Property.

The subject property is located at 1033 Skyline Drive, Homer, Alaska 99603, and bears the following legal description:

That portion of Lot Five (5), SKYLINE VIEW SUBDIVISION, according to Plat No. 54-2273, in the Homer Recording District, Third Judicial District, State of Alaska, lying South of the Southerly right-of-way of Skyline Drive.

The owners of record are David F. Becker and Eileen L. Becker, P.O. Box 109, Homer, Alaska 99603-0901.

BEFORE THE CITY OF HOMER BOARD OF ADJUSTMENT

In RE the application of David Becker)
)
for Conditional Use Permit #10-04)
)

Daniel Westerburg • 4164 Pennock St., Ste. A • Homer, AK 99603 • T: (907)235-2717 • F: (907)235-2715

NOTICE OF APPEAL

1.) Name and Address of Appellant.

David Becker
P.O. Box 109
Homer, AK 99603

Appellant is appearing in this matter through undersigned counsel.

2.) Description and Date of Determination.

This appeal is from a DECISION by the Homer Advisory Planning Commission ("HAPC") distributed on September 15, 2010, and attached hereto as Exhibit A. The DECISION will become final on October 16, 2010.

3.) Description of Subject Property.

The subject property is located at 1033 Skyline Drive, Homer, Alaska 99603, and bears the following legal description:

That portion of Lot Five (5), SKYLINE VIEW SUBDIVISION, according to Plat No. 54-2273, in the Homer Recording District, Third Judicial District, State of Alaska, lying South of the Southerly right-of-way of Skyline Drive.

The owners of record are David F. Becker and Eileen L. Becker, P.O. Box 109, Homer, Alaska 99603-0901.

Daniel Westerborg • 4164 Pennock St., Ste. A • Homer, AK 99603 • T: (907)235-2717 • F: (907)235-2715

4.) Allegations of Error.

The HAPC committed reversible error in denying Appellant's application for a variance to install structures within the subject property's setback. In making its determination, the HAPC acted arbitrarily, capriciously and contrary to law and misinterpreted the following City ordinances: HCC 21.12.030(g); HCC 21.71.030-040; HCC 21.72.010-040; and definitions set forth in HCC 21.03.040. In addition, Findings 1-4 and 6, set forth in the HAPC's DECISION, are clearly erroneous. Moreover, the HAPC's DECISION has been rendered moot by changed circumstances, namely, the recording of a utility easement, twenty (20) feet in width along the north border of the subject property. Appellant should not be required to secure a setback variance in order to install utility structures within a dedicated utility easement.

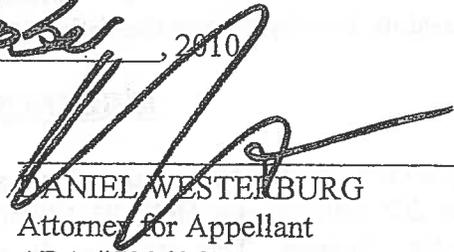
5.) Requested Result.

The DECISION of the HAPC should be reversed or, in the alternative, remanded to the HAPC for further proceedings in light of changed circumstances.

6.) Proof of Standing.

Appellant was the applicant for the conditional use permit in question and therefore has standing to file this appeal under HCC 21.93.060.

DATED this 13th day of October, 2010



DANIEL WESTERBURG
Attorney for Appellant
ABA #7906062



City of Homer Planning & Zoning

491 East Pioneer Avenue Telephone (907) 235-3106
Homer, Alaska 99603-7645 Fax (907) 235-3118
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Web Site: www.ci.homer.ak.us

HOMER ADVISORY PLANNING COMMISSION Meeting of July 21, 2010

Decision and Findings: Variance 10-01, 1033 Skyline Drive

DECISION

Introduction

Dave Becker ("Applicant") applied to the Homer Advisory Planning Commission, (the "Commission") under Homer City Code (HCC) 21.72.010 for approval of a structure within the twenty foot building setback from rights of way. The existing 9' x 20' building with two 50' metal towers attached is located at 1033 Skyline Drive, Skyline View Subdivision Lot 5, lying south of Diamond Ridge Road. The structure is 15.1' feet into the required 20' setback, or 4.9' from the Skyline Drive right-of-way).

The application was scheduled for a public hearing as required by Homer City Code 21.94 before the Commission on July 21, 2010. Notice of the public hearing was published in the local newspaper and sent to 14 property owners of sixteen 15 parcels.

Testimony from the Applicant, one member of the public and the City Manager was received at the public hearing. After deliberations, at the August 18, 2010 meeting of the commission, the commission voted to deny the request with 6 Commissioners present, and 6 Commissioners voted to deny variance. As he was new to the planning commission, Commissioner Venuti was excused from deliberations.

After due consideration of the evidence presented, the Homer Advisory Planning Commission, hereby makes the following findings of fact and conclusions of law.

EVIDENCE PRESENTED

The Applicant sought approval to have a 9' x 20' structure located 15.1 feet into the required 20' setback per HCC 21.12.040 (b) (1) at 1033 Skyline Drive in the Rural Residential District. The structure is currently located on the property and was constructed without acquiring a zoning permit from the City of Homer. The structure is located within the 20' setback from the Skyline Drive Right-of-Way. Pre-existing structures, also located on the lot, were accepted as legal non-conforming structures.

The as-built survey dated June 29, 2010, shows a 2.6 foot encroachment of an existing building, built prior to City annexation, into the Skyline Drive state right-of-way. The approval or denial of this Variance does not indicate acceptance of any encroachments into the right-of-way.

FINDINGS OF FACT

Pursuant to HCC 21.72.010, a variance may be granted to provide relief when a literal enforcement of Homer Zoning Code would deprive a property owner of the reasonable use of his real property.

Variance Code Requirements: HCC 21.72.020 Conditions precedent to granting variance:

a. All of the following conditions shall exist before a variance may be granted:

1. **A literal interpretation of the provisions of the Homer Zoning Code would deprive the applicant of rights commonly enjoyed by other properties in the same district.**

Finding 1: Requiring a 20 foot building setback would not deprive the applicant of rights commonly enjoyed by other properties in the district. Structures on pilings can be built on slopes of 40%.

2. **Special conditions and circumstances exist which are peculiar to the land or structures involved and which are not applicable to other lands and structures in the same district.**

Finding 2: Special conditions and circumstances do not exist on this parcel, any structures in addition to accepted nonconformities must not be located in designated setbacks.

3. **The special conditions and circumstances have not been caused by the actions of the applicant.**

Finding 3: There is no special condition/circumstance, the placement of the structure was caused by the actions of the Applicant.

B. Financial hardship or inconvenience shall not be reason for granting a variance.

Finding 4: Hardship and inconvenience is the reason for this variance request. A variance may not be granted to ease financial hardship or inconvenience.

C. Other nonconforming land use or structures within the district shall not be considered grounds for granting a variance.

Finding 5: The applicant is seeking a variance due to the steep slopes on the lot. Though the other structures were built prior to City annexation and zoning, the Applicant is not seeking a variance due of other nonconforming land use or structures within the district.

D. A variance shall be the minimum variance necessary to permit the reasonable use of the land or structure.

Finding 6: Locating a structure in the setback is not necessary to permit reasonable use of the land.

E. A variance shall not be granted which will permit a land use in a district in which that use is otherwise prohibited.

Finding 7: A communication site is allowed with a Conditional Use Permit in the Rural Residential District per HCC 21.12.030(g).

DECISION

THE APPLICANT HAS NOT MET ALL THE REQUIREMENTS FOR GRANTING A VARIANCE AND THE APPLICATION IS DENIED.

Date: 9/14/10

Sharon Minsch
Chair, Sharon Minsch

Date: 9/13/10

Rick Abboud
City Planner, Rick Abboud

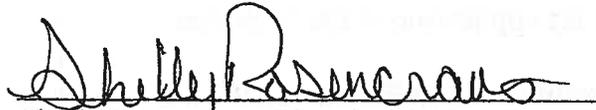
NOTICE OF APPEAL RIGHTS

Pursuant to Homer City Code, Chapter 21.93, any person with interests in land that is affected by this decision may appeal this decision to the Homer Board of Adjustment within thirty (30) days of the date of distribution indicated below. Any decision not appealed within that time shall be final. A notice of appeal shall be in writing, shall contain all the information required by Homer City Code, Section 21.93.080, and shall be filed with the Homer City Clerk, 491 East Pioneer Avenue, Homer, Alaska 99603-7645.

CERTIFICATION OF DISTRIBUTION

I certify that a copy of this Decision was mailed to the below listed recipients on Sept 15, 2010. A copy was also delivered to the City of Homer Planning Department and Homer City Clerk on the same date.

Date: 9/15/10


Shelly Rosencrans, Planning Assistant

Walt Wrede, City Manager
491 E Pioneer Avenue
Homer, AK 99603

Thomas Klinkner
Birch, Horton, Bittner & Cherot
1127 West 7th Ave
Anchorage, AK 99501

Dave Becker
P.O. Box 109
Homer AK 99603

BEFORE THE CITY OF HOMER BOARD OF ADJUSTMENT

In RE the application of David Becker)
)
for Conditional Use Permit #10-04)
)

Daniel Westerborg • 4164 Pennock St., Ste. A • Homer, AK 99603 • T: (907)235-2717 • F: (907)235-2715

NOTICE OF APPEAL

1.) Name and Address of Appellant.

David Becker
P.O. Box 109
Homer, AK 99603

Appellant is appearing in this matter through undersigned counsel.

2.) Description and Date of Determination.

This appeal is from a DECISION by the Homer Advisory Planning Commission ("HAPC") distributed on September 15, 2010, and attached hereto as Exhibit A. The DECISION will become final on October 16, 2010.

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The owners of record are David F. Becker and Eileen L. Becker, P.O. Box 109, Homer, Alaska 99603-0901.

Daniel Westerborg • 4164 Pennock St., Ste. A • Homer, AK 99603 • T: (907)235-2717 • F: (907)235-2715

4.) Allegations of Error.

The HAPC committed reversible error in determining that a variance is required before appellant may locate utility structures within the subject property's setback. The balance of the HAPC's DECISION is not being challenged. In making its determination, the HAPC acted arbitrarily, capriciously and contrary to law and misinterpreted the following City ordinances: HCC 21.12.030(g); HCC 21.71.030-040; HCC 21.72.010-040; and definitions set forth in HCC 21.03.040. In addition, the DECISION should be reversed in pertinent part due to changed circumstances, namely, the recording of a utility easement, twenty (20) feet in width, along the north boundary of the subject property. Appellant should not be required to secure a setback variance in order to install utility structures within a dedicated utility easement.

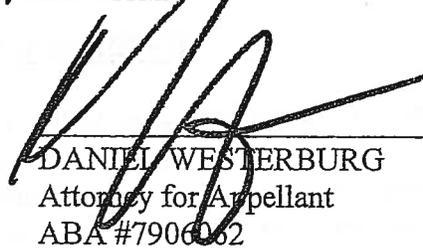
5.) Requested Result.

The DECISION of the HAPC should be reversed in pertinent part or, in the alternative, remanded to the HAPC for further proceedings in light of changed circumstances.

6.) Proof of Standing.

Appellant was the applicant for the conditional use permit in question and therefore has standing to file this appeal under HCC 21.93.060.

DATED this 15th day of October, 2010.



DANIEL WESTERBURG
Attorney for Appellant
ABA #7906062



City of Homer Planning & Zoning

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HOMER ADVISORY PLANNING COMMISSION Meeting of July 21, 2010

Decision and Findings: Conditional Use Permit (CUP) 10-04, 1033 Skyline Drive

DECISION

Introduction

Dave Becker ("Applicant") applied to the Homer Advisory Planning Commission, (the "Commission") under Homer City Code (HCC) 21.12.030(g) for approval of a CUP for a Public Utility Facilities and Structures located in the Rural Residential District at 1033 Skyline Drive per HCC 21.12.030(g). The structure for consideration was a 9' x 20' building with two 50' metal towers attached.

The application was scheduled for a public hearing as required by Homer City Code 21.94 before the Commission on July 21, 2010. Notice of the public hearing was published in the local newspaper and sent to 14 property owners of 15 parcels.

Testimony from the applicant, one member of the public and the City Manager was received at the public hearing. After deliberations, at the August 18, 2010 meeting of the commission, the commission voted to approve the request with 6 Commissioners present, and 6 Commissioners voted in favor of the conditional use permit, allowing lawful placement of a 9' x 20' public utility structure on the property. As he was new to the planning commission, Commissioner Venuti was excused from deliberations.

After due consideration of the evidence presented, the Homer Advisory Planning Commission hereby makes the following findings of fact and conclusions of law.

EVIDENCE PRESENTED

The Applicant sought approval to utilize a 9' x 20' structure at 1033 Skyline Drive, Skyline View Subdivision Lot 5 in the Rural Residential District for the support of communication equipment. The structure currently located on the property was constructed without gaining a zoning permit from the City of Homer and is located in the 20' setback from the Skyline Drive Right-of-Way. Pre-existing structures, also located on the lot, were accepted as legal non-conforming structures. The as-built

built prior to City annexation, into the Skyline Drive state right-of-way. The approval of this CUP does not indicate acceptance of any encroachments into the right-of-way. An approved variance is required to locate a structure within the setback.

FINDINGS OF FACT

Parking: City code does not have parking requirements for a communication site. The applicant has one parking space on site. Due to the very low traffic volume for this site, the city planner has determined under 21.55.090(b) that one parking space is required.

Finding 1: One parking space shall be provided on the lot.

The review criteria for a Conditional Use Permit are outlined in 21.71.030.

a. The applicable code authorizes each proposed use and structure by conditional use permit in that zoning district.

Finding 2: Public utility facilities and structures are authorized with a Conditional Use Permit by HCC 21.12.030 (g).

b. The proposed use(s) and structure(s) are compatible with the purpose of the zoning district in which the lot is located.

Finding 3: The 1.85 acres parcel has a total of five (5) structures. The combined square footage of all the structures is less than 1500 square feet and fronts Skyline Drive. The structures and uses are consistent with low density development.

c. The value of the adjoining property will not be negatively affected greater than that anticipated from other permitted or conditionally permitted uses in this district.

Finding 4: The value of adjoining property will not be negatively impacted more than from other uses in this district. Other uses permitted or conditionally permitted include multifamily dwellings which would create more traffic than the proposed use, kennels, which would create more noise, and storage of heavy equipment per HCC 21.12.030.

d. The proposal is compatible with existing uses of surrounding land.

Finding 5: The proposal is compatible with the existing surrounding land uses. The land to the north is also a telecommunications site. The land to the south, east and west are low density residential.

e. Public services and facilities are or will be, prior to occupancy, adequate to serve the proposed use and structure.

Finding 6: Public services and facilities are adequate to serve the proposed use. Public water and sewer are not needed. The property is accessed via Skyline Drive, which is a paved, state maintained public road.

f. Considering harmony in scale, bulk, coverage and density, generation of traffic, the nature and intensity of the proposed use, and other relevant effects, the proposal will not cause undue harmful effect upon desirable neighborhood character.

Finding 7: The newly constructed single story structure is 9 feet by 20 feet with two attached metal towers approximately 50 ft in height. The placement and operation of the tower will not generate significant traffic, nor create density or coverage that will harm the neighborhood. Traffic to and from the site is for maintenance purposes only. The tower will not cause undue harmful effect on the desirable neighborhood character.

g. The proposal will not be unduly detrimental to the health, safety or welfare of the surrounding area or the city as a whole.

Finding 8: The communication site is not detrimental to the health, safety or welfare of the surrounding area or the city as a whole. The towers are part of a telecommunications system that serves the wider area and is an important and necessary service.

h. The proposal does or will comply with the applicable regulations and conditions specified in this title for such use.

Finding 9: HCC Title 21, Rural Residential District requires a conditional use permit under 21.12.030(g) for "Public utility facilities and structures."

i. The proposal is not contrary to the applicable land use goals and objectives of the Comprehensive Plan.

Finding 10: The facility is located in a rural, low density area. The property to the north is also a telecommunications site, and the continuation of the subject property as a communications site is a compatible use type and density, in a residential zone. The proposal is not contrary to the applicable land use goals and objectives of the Comprehensive Plan.

j. The proposal will comply with all applicable provisions of the Community Design Manual.

Finding 11: All lighting must be down lit per the Community Design Manual.

HCC 21.71.040(b). In approving a conditional use, the Commission may impose such conditions on the use as may be deemed necessary to ensure the proposal does and will continue to satisfy the applicable review criteria. Such conditions may include, but are not limited to, one or more of the following:

1. Special yards and spaces: No conditions deemed necessary.
2. Fences, walls and screening. No conditions deemed necessary.
3. Surfacing of vehicular ways and parking areas. One parking space must be provided on property, including DOT approved driveway permit.

4. Street and road dedications and improvements (or bonds). **No conditions deemed necessary.**
5. Control of points of vehicular ingress and egress. **A driveway permit is necessary.**
6. Special restrictions on signs. **No conditions deemed necessary.**
7. Landscaping. **No conditions deemed necessary.**
8. Maintenance of the grounds, buildings, or structures. **No conditions deemed necessary.**
9. Control of noise, vibration, odors, lighting or other similar nuisances. **No conditions deemed necessary.**
10. Limitation of time for certain activities. **No conditions deemed necessary.**
11. A time period within which the proposed use shall be developed and commence operation. **No special conditions deemed necessary.**
12. A limit on total duration of use or on the term of the permit, or both. **No conditions deemed necessary.**
13. More stringent dimensional requirements, such as lot area or dimensions, setbacks, and building height limitations. Dimensional requirements may be made more lenient by conditional use permit only when such relaxation is authorized by other provisions of the zoning code. Dimensional requirements may not be altered by conditional use permit when and to the extent other provisions of the zoning code expressly prohibit such alterations by conditional use permit. **No conditions deemed necessary.**
14. Other conditions necessary to protect the interests of the community and surrounding area, or to protect the health, safety, or welfare of persons residing or working in the vicinity of the subject lot. **No conditions deemed necessary.**

Condition 1: One parking space must be provided on property.

Condition 2: Obtain AKDOT Driveway Permit.

CONCLUSION

The Commission approved CUP 10-04 for a 9' x 20' public utility structure with conditions of providing an on-site parking space and AKDOT driveway permit.

Date: 9/14/10

Sharon Minsch
Chair, Sharon Minsch

Date: 9/08/10

Rick Abboud
City Planner, Rick Abboud

NOTICE OF APPEAL RIGHTS

Pursuant to Homer City Code, Chapter 21.93, any person with interests in land that is affected by this decision may appeal this decision to the Homer Board of Adjustment within thirty (30) days of the date of distribution indicated below. Any decision not appealed within that time shall be final. A notice of appeal shall be in writing, shall contain all the information required by Homer City Code, Section 21.93.080, and shall be filed with the Homer City Clerk, 491 East Pioneer Avenue, Homer, Alaska 99603-7645.

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Date: 9/15/10

Shelly Rosencrans
Shelly Rosencrans, Planning Assistant

Walt Wrede, City Manager
491 E Pioneer Avenue
Homer, AK 99603

Thomas Klinkner
Birch, Horton, Bittner & Cherot
1127 West 7th Ave
Anchorage, AK 99501

Dave Becker
P.O. Box 109
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HOMER ADVISORY PLANNING COMMISSION

Meeting of July 21, 2010

Decision and Findings: Conditional Use Permit (CUP) 10-04, 1033 Skyline Drive

DECISION

Introduction

Dave Becker ("Applicant") applied to the Homer Advisory Planning Commission, (the "Commission") under Homer City Code (HCC) 21.12.030(g) for approval of a CUP for a Public Utility Facilities and Structures located in the Rural Residential District at 1033 Skyline Drive per HCC 21.12.030(g). The structure for consideration was a 9' x 20' building with two 50' metal towers attached.

The application was scheduled for a public hearing as required by Homer City Code 21.94 before the Commission on July 21, 2010. Notice of the public hearing was published in the local newspaper and sent to 14 property owners of 15 parcels.

Testimony from the applicant, one member of the public and the City Manager was received at the public hearing. After deliberations, at the August 18, 2010 meeting of the commission, the commission voted to approve the request with 6 Commissioners present, and 6 Commissioners voted in favor of the conditional use permit, allowing lawful placement of a 9' x 20' public utility structure on the property. As he was new to the planning commission, Commissioner Venuti was excused from deliberations.

After due consideration of the evidence presented, the Homer Advisory Planning Commission hereby makes the following findings of fact and conclusions of law.

EVIDENCE PRESENTED

The Applicant sought approval to utilize a 9' x 20' structure at 1033 Skyline Drive, Skyline View Subdivision Lot 5 in the Rural Residential District for the support of communication equipment. The structure currently located on the property was constructed without gaining a zoning permit from the City of Homer and is located in the 20' setback from the Skyline Drive Right-of-Way. Pre-existing structures, also located on the lot, were accepted as legal non-conforming structures. The as-built

built prior to City annexation, into the Skyline Drive state right-of-way. The approval of this CUP does not indicate acceptance of any encroachments into the right-of-way. An approved variance is required to locate a structure within the setback.

FINDINGS OF FACT

Parking: City code does not have parking requirements for a communication site. The applicant has one parking space on site. Due to the very low traffic volume for this site, the city planner has determined under 21.55.090(b) that one parking space is required.

Finding 1: One parking space shall be provided on the lot.

The review criteria for a Conditional Use Permit are outlined in 21.71.030.

a. The applicable code authorizes each proposed use and structure by conditional use permit in that zoning district.

Finding 2: Public utility facilities and structures are authorized with a Conditional Use Permit by HCC 21.12.030 (g).

b. The proposed use(s) and structure(s) are compatible with the purpose of the zoning district in which the lot is located.

Finding 3: The 1.85 acres parcel has a total of five (5) structures. The combined square footage of all the structures is less than 1500 square feet and fronts Skyline Drive. The structures and uses are consistent with low density development.

c. The value of the adjoining property will not be negatively affected greater than that anticipated from other permitted or conditionally permitted uses in this district.

Finding 4: The value of adjoining property will not be negatively impacted more than from other uses in this district. Other uses permitted or conditionally permitted include multifamily dwellings which would create more traffic than the proposed use, kennels, which would create more noise, and storage of heavy equipment per HCC 21.12.030.

d. The proposal is compatible with existing uses of surrounding land.

Finding 5: The proposal is compatible with the existing surrounding land uses. The land to the north is also a telecommunications site. The land to the south, east and west are low density residential.

e. Public services and facilities are or will be, prior to occupancy, adequate to serve the proposed use and structure.

Finding 6: Public services and facilities are adequate to serve the proposed use. Public water and sewer are not needed. The property is accessed via Skyline Drive, which is a paved, state maintained public road.

f. Considering harmony in scale, bulk, coverage and density, generation of traffic, the nature and intensity of the proposed use, and other relevant effects, the proposal will not cause undue harmful effect upon desirable neighborhood character.

Finding 7: The newly constructed single story structure is 9 feet by 20 feet with two attached metal towers approximately 50 ft in height. The placement and operation of the tower will not generate significant traffic, nor create density or coverage that will harm the neighborhood. Traffic to and from the site is for maintenance purposes only. The tower will not cause undue harmful effect on the desirable neighborhood character.

g. The proposal will not be unduly detrimental to the health, safety or welfare of the surrounding area or the city as a whole.

Finding 8: The communication site is not detrimental to the health, safety or welfare of the surrounding area or the city as a whole. The towers are part of a telecommunications system that serves the wider area and is an important and necessary service.

h. The proposal does or will comply with the applicable regulations and conditions specified in this title for such use.

Finding 9: HCC Title 21, Rural Residential District requires a conditional use permit under 21.12.030(g) for "Public utility facilities and structures."

i. The proposal is not contrary to the applicable land use goals and objectives of the Comprehensive Plan.

Finding 10: The facility is located in a rural, low density area. The property to the north is also a telecommunications site, and the continuation of the subject property as a communications site is a compatible use type and density, in a residential zone. The proposal is not contrary to the applicable land use goals and objectives of the Comprehensive Plan.

j. The proposal will comply with all applicable provisions of the Community Design Manual.

Finding 11: All lighting must be down lit per the Community Design Manual.

HCC 21.71.040(b). In approving a conditional use, the Commission may impose such conditions on the use as may be deemed necessary to ensure the proposal does and will continue to satisfy the applicable review criteria. Such conditions may include, but are not limited to, one or more of the following:

1. Special yards and spaces: No conditions deemed necessary.
2. Fences, walls and screening. No conditions deemed necessary.
3. Surfacing of vehicular ways and parking areas. One parking space must be provided on property, including DOT approved driveway permit.

4. Street and road dedications and improvements (or bonds). **No conditions deemed necessary.**
5. Control of points of vehicular ingress and egress. **A driveway permit is necessary.**
6. Special restrictions on signs. **No conditions deemed necessary.**
7. Landscaping. **No conditions deemed necessary.**
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11. A time period within which the proposed use shall be developed and commence operation. **No special conditions deemed necessary.**
12. A limit on total duration of use or on the term of the permit, or both. **No conditions deemed necessary.**
13. More stringent dimensional requirements, such as lot area or dimensions, setbacks, and building height limitations. Dimensional requirements may be made more lenient by conditional use permit only when such relaxation is authorized by other provisions of the zoning code. Dimensional requirements may not be altered by conditional use permit when and to the extent other provisions of the zoning code expressly prohibit such alterations by conditional use permit. **No conditions deemed necessary.**
14. Other conditions necessary to protect the interests of the community and surrounding area, or to protect the health, safety, or welfare of persons residing or working in the vicinity of the subject lot. **No conditions deemed necessary.**

Condition 1: One parking space must be provided on property.

Condition 2: Obtain AKDOT Driveway Permit.

CONCLUSION

The Commission approved CUP 10-04 for a 9' x 20' public utility structure with conditions of providing an on-site parking space and AKDOT driveway permit.

Date: 9/14/10

Sharon Minsch
Chair, Sharon Minsch

Date: 9/08/10

Rick Abboud
City Planner, Rick Abboud

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Homer, AK 99603



City of Homer Planning & Zoning

491 East Pioneer Avenue

Homer, Alaska 99603-7645

E-mail: Planning@ci.homer.ak.us

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HOMER ADVISORY PLANNING COMMISSION Meeting of July 21, 2010

Decision and Findings: Variance 10-01, 1033 Skyline Drive

DECISION

Introduction

Dave Becker ("Applicant") applied to the Homer Advisory Planning Commission, (the "Commission") under Homer City Code (HCC) 21.72.010 for approval of a structure within the twenty foot building setback from rights of way. The existing 9' x 20' building with two 50' metal towers attached is located at 1033 Skyline Drive, Skyline View Subdivision Lot 5, lying south of Diamond Ridge Road. The structure is 15.1' feet into the required 20' setback, or 4.9' from the Skyline Drive right-of-way).

The application was scheduled for a public hearing as required by Homer City Code 21.94 before the Commission on July 21, 2010. Notice of the public hearing was published in the local newspaper and sent to 14 property owners of sixteen 15 parcels.

Testimony from the Applicant, one member of the public and the City Manager was received at the public hearing. After deliberations, at the August 18, 2010 meeting of the commission, the commission voted to deny the request with 6 Commissioners present, and 6 Commissioners voted to deny variance. As he was new to the planning commission, Commissioner Venuti was excused from deliberations.

After due consideration of the evidence presented, the Homer Advisory Planning Commission, hereby makes the following findings of fact and conclusions of law.

EVIDENCE PRESENTED

The Applicant sought approval to have a 9' x 20' structure located 15.1 feet into the required 20' setback per HCC 21.12.040 (b) (1) at 1033 Skyline Drive in the Rural Residential District. The structure is currently located on the property and was constructed without acquiring a zoning permit from the City of Homer. The structure is located within the 20' setback from the Skyline Drive Right-of-Way. Pre-existing structures, also located on the lot, were accepted as legal non-conforming structures.

The as-built survey dated June 29, 2010, shows a 2.6 feet encroachment of an existing building, built prior to City annexation, into the Skyline Drive state right-of-way. The approval or denial of this Variance does not indicate acceptance of any encroachments into the right-of-way.

FINDINGS OF FACT

Pursuant to HCC 21.72.010, a variance may be granted to provide relief when a literal enforcement of Homer Zoning Code would deprive a property owner of the reasonable use of his real property.

Variance Code Requirements: HCC 21.72.020 Conditions precedent to granting variance:

a. All of the following conditions shall exist before a variance may be granted:

1. **A literal interpretation of the provisions of the Homer Zoning Code would deprive the applicant of rights commonly enjoyed by other properties in the same district.**

Finding 1: Requiring a 20 foot building setback would not deprive the applicant of rights commonly enjoyed by other properties in the district. Structures on pilings can be built on slopes of 40%.

2. **Special conditions and circumstances exist which are peculiar to the land or structures involved and which are not applicable to other lands and structures in the same district.**

Finding 2: Special conditions and circumstances do not exist on this parcel, any structures in addition to accepted nonconformities must not be located in designated setbacks.

3. **The special conditions and circumstances have not been caused by the actions of the applicant.**

Finding 3: There is no special condition/circumstance, the placement of the structure was caused by the actions of the Applicant.

B. Financial hardship or inconvenience shall not be reason for granting a variance.

Finding 4: Hardship and inconvenience is the reason for this variance request. A variance may not be granted to ease financial hardship or inconvenience.

C. Other nonconforming land use or structures within the district shall not be considered grounds for granting a variance.

Finding 5: The applicant is seeking a variance due to the steep slopes on the lot. Though the other structures were built prior to City annexation and zoning, the Applicant is not seeking a variance due of other nonconforming land use or structures within the district.

D. A variance shall be the minimum variance necessary to permit the reasonable use of the land or structure.

Finding 6: Locating a structure in the setback is not necessary to permit reasonable use of the land.

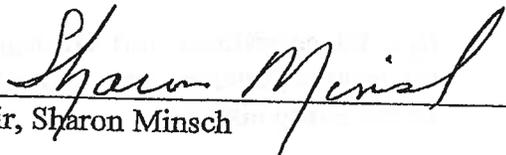
E. A variance shall not be granted which will permit a land use in a district in which that use is otherwise prohibited.

Finding 7: A communication site is allowed with a Conditional Use Permit in the Rural Residential District per HCC 21.12.030(g).

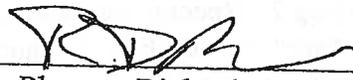
DECISION

THE APPLICANT HAS NOT MET ALL THE REQUIREMENTS FOR GRANTING A VARIANCE AND THE APPLICATION IS DENIED.

Date: 9/14/10


Chair, Sharon Minsch

Date: 9/13/10


City Planner, Rick Abboud

NOTICE OF APPEAL RIGHTS

Pursuant to Homer City Code, Chapter 21.93, any person with interests in land that is affected by this decision may appeal this decision to the Homer Board of Adjustment within thirty (30) days of the date of distribution indicated below. Any decision not appealed within that time shall be final. A notice of appeal shall be in writing, shall contain all the information required by Homer City Code, Section 21.93.080, and shall be filed with the Homer City Clerk, 491 East Pioneer Avenue, Homer, Alaska 99603-7645.

CERTIFICATION OF DISTRIBUTION

I certify that a copy of this Decision was mailed to the below listed recipients on Sept 15, 2010. A copy was also delivered to the City of Homer Planning Department and Homer City Clerk on the same date.

Date: 9/15/10


Shelly Rosenclans, Planning Assistant

Walt Wrede, City Manager
491 E Pioneer Avenue
Homer, AK 99603

Thomas Klinkner
Birch, Horton, Bittner & Cherot
1127 West 7th Ave
Anchorage, AK 99501

Dave Becker
P.O. Box 109
Homer AK 99603

COMPACT 2010/11
I believe that the...
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**SUPPLEMENTAL
RECORD OF APPEAL
Index**

**David Becker vs. City of Homer
Decision of the Planning Commission September 14, 2010**

VOLUME I

Letter from Attorney Dan Westerburg to Mr. Abboud, re: David & Eileen Becker/Application
for Variance #10-01, 1033 Skyline Drive, with utility easement Page 1

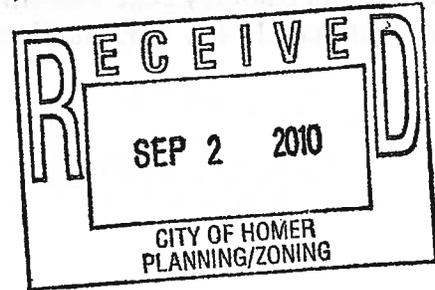
Daniel Westerburg
Attorney at Law

4164 Pennock Street, Suite A
Homer, Alaska 99603
(907) 235-2717-Phone
(907) 235-2715-Fax

September 2, 2010

HAND DELIVERED

Rick Abboud, City Planner
City of Homer
491 East Pioneer Avenue
Homer, AK 99603-7645



RE: David & Eileen Becker/Application for Variance #10-01, 1033 Skyline Drive

Dear Mr. Abboud:

I have been asked to represent David and Eileen Becker, owners of 1033 Skyline Drive, with respect to their application for the variance referenced above.

Enclosed please find a conformed copy of a utility easement for the subject property recorded earlier today. As you can see, the instrument provides for a 20' utility easement along the property's northern boundary.

The corresponding Conditional Use Permit #10-04 for a 9' by 20' building and two 50' metal towers is permitted per HCC §21.12.30. (See Finding #4 of the DRAFT CUP Decision and Findings.) The structures in questions are now located entirely within the 20' utility easement.

The Beckers view their application for the variance moot and now withdraw it. In light of the unusual circumstances surrounding the application (specifically, the City Manager's mistaken assurance to Mr. Becker that no permit applications would be required for the project), the Beckers asked me to request a refund of the \$250 filing fee.

Let me know if you have any questions.

Sincerely,

Dan Westerburg

DW:ac
Enclosures
cc: David and Eileen Becker



UTILITY EASEMENT

FOR AND IN CONSIDERATION of the sum of TEN AND NO/100 DOLLARS (\$10.00), and other good and valuable consideration in hand paid, the receipt and sufficiency of which is hereby acknowledged, David F. Becker and Eileen L. Becker, husband and wife, whose address is P.O. Box 109, Homer, Alaska 99603-0109, Grantors, hereby grant Homer Electric Association, Inc.; General Communications, Inc.; Peninsula Communications, Inc.; Turquoise Broadcast Company, LLC; Becker Communications, LLC; Becker Rentals; any other entity providing electricity, water, sewage and natural gas as a public utility; and any successors in interest to such entities (hereinafter collectively referred to as "Grantees"), an easement twenty feet (20') in width, along the north boundary of the following described real property:

That portion of Lot Five (5), SKYLINE VIEW SUBDIVISION, according to Plat No. 54-2273, in the Homer Recording District, Third Judicial District, State of Alaska, lying south of the southerly right-of-way of Skyline Drive.

This easement grants Grantees the right to install, maintain, repair and remove water and sewer lines, telephone lines, electrical lines, antennas, repeater/relay/translator stations and the like, as well as structures, storage facilities and stations to support such systems.

DATED this 2 day of September, 2010.

Return to:
David F. Becker
Box 109
Homer, AK 99603
Homer Recording District

David F. Becker
David F. Becker, Grantor

Eileen L. Becker
Eileen L. Becker, Grantor

Daniel Westenburg • 4164 Pennock St., Ste. A • Homer, AK 99603 • T: (907)235-2717 • F: (907)235-2715

Daniel Westerborg • 4164 Pennock St., Ste. A • Homer, AK 99603 • T: (907)235-2717 • F: (907)235-2715

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this 2nd day of September, 2010 before me, the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn as such, personally appeared David F. Becker, known to me to be the individual who executed the foregoing instrument and acknowledged to me that said person signed and sealed the same freely and voluntarily for the uses and purposes therein described.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on the date first above written.



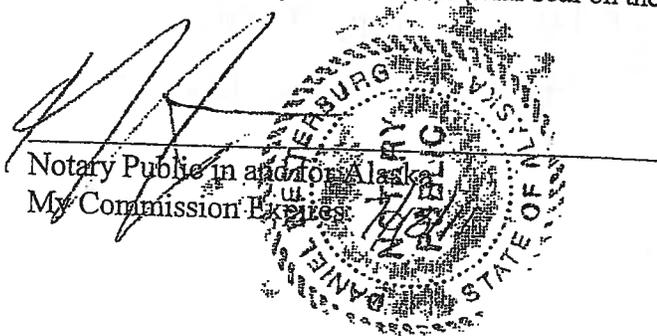
[Handwritten Signature]

Notary Public in and for Alaska
My Commission Expires: 09/2013

STATE OF ALASKA)
) ss.
THIRD JUDICIAL DISTRICT)

THIS IS TO CERTIFY that on this 2nd day of September, 2010 before me, the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn as such, personally appeared Eileen L. Becker, known to me to be the individual who executed the foregoing instrument and acknowledged to me that said person signed and sealed the same freely and voluntarily for the uses and purposes therein described.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal on the date first above written.



Notary Public in and for Alaska
My Commission Expires: 12/31/13

UTILITY EASEMENT





City of Homer
Planning & Zoning
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Homer, Alaska 99603-7645

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STAFF REPORT PL 11-54

TO: Homer Advisory Planning Commission
FROM: Rick Abboud, City Planner
MEETING: May 18, 2011
SUBJECT: CUP 11-10, 3406 Main Street (Cabins)

This is a quasi-judicial decision and requires 5 yes votes.

SYNOPSIS: The applicant wishes to rebuild two existing cabins in the Central Business District with an expanded footprint. A CUP is necessary for more than one building (HCC 21.18.030 (k)) and an exception to the setback (HCC 21.18.040 (b) (4)). The site, as now configured, qualifies for nonconforming lot and structures due to the fact that the 5000 sf. lot was platted as amended in 1967 and the structures were, according to the KPB Assessor, built in 1960.

Applicants: Jennifer Sonneborn
Property Owners: David & Alexandria Sonneborn
Location: 3406 Main Street
Parcel ID: 17716301
Lot Size: 0.11 acres equals 5,000 s.f.
Zoning Designation: Central Business District
Existing Land Use: Two small residences
Surrounding Land Use: North: Retail, office, apartments
South: Residential
East: Apartment/shop
West: RV Park

Comprehensive Plan: 2008 Homer Comprehensive Plan Goal 1: increase supply and diversity of housing, protect community character, encourage infill... encourage residential uses in commercial districts; Objective B, Promote a pattern of growth characterized by a concentrated mixed use center...encourage concentrated residential and business growth in the central area of the city. Goal 4, Objective A, 6: Locate high quality mixed-use, high density and affordable housing in the central business district to diversify housing stock and create demand for downtown services.

Flood Plain Status: Zone X, Outside the 500 year flood
Utilities: Public water and sewer
Public Notice: Notice was sent to 48 property owners of 64 properties as shown on the KPB tax assessor rolls.

Nonconforming lots: This lot is 5,000 sf., last platted in 1967. According to HCC 21.18.040 (a) (1), Lawful nonconforming lots may be newly developed and used if off-site parking is provided. HCC 21.55.060 (a), Off-site parking, states that off-street parking is only required to the extent that space for required off-street parking is not available on the same lot as the use for which the off-street parking is required (really, I am not making this up!). So, the required parking is found on-site and off-site parking shall not be a requirement for this CUP.

Parking: Four parking spaces are provided on private property. HCC 21.55.090(1) prescribes 2 spaces per dwelling unit.

Nonconforming structures: The two structures found to exist on this lot are nonconforming for two reasons: (1) two buildings contain a principle use and (2) exceptions to setback requirements of 20' from all dedicated rights-of-way requires the approval of a CUP. An approved CUP will remedy both conditions. If for some reason the CUP is not approved, the structures are eligible for application to gain lawful nonconforming status.

Building Area: The proposed combined building area is 1,328 sf. This amount of building on a 5,000 sf. lot is approximately 27% of lot coverage, which does not require review in a CUP in the Central Business District.

The criteria for granting a Conditional Use Permit is set forth in HCC 21.71.030 and 21.71.040.

a. The applicable code authorizes each proposed use and structure by conditional use permit in that zoning district.

Finding 1: HCC 21.18.030 (k) allows more than one building containing a principle permitted use and HCC 21.18.040 (b) (1) allows exceptions from the 20' setback required from a dedicated right-of-way with an approved conditional use permit.

b. The proposed use(s) and structure(s) are compatible with the purpose of the zoning district in which the lot is located.

Analysis: The purpose of the CBD is to provide a centrally located area for uses listed per HCC 21.18 and to accommodate a mixture of residential and non-residential uses with conflicts being resolved in favor of non-residential uses. Pedestrian-friendly designs and amenities are encouraged per HCC 21.28.010.

This proposal promotes residential uses and structures mixing with other nearby non-residential and residential uses. Many properties in the Central Business district have more than one structure on a lot and have little or no setback from the right-of-way.

Finding 2: This project is compatible with the purpose of the Central Business District.

c. The value of the adjoining property will not be negatively affected greater than that anticipated from other permitted or conditionally permitted uses in this district.

Analysis: Residential use, in general, does not negatively affect the value of adjoining property. The value of the adjoining property should not be negatively affected greater than that of other permitted or conditionally permitted uses in the district such as drinking establishments, light or custom manufacturing and shelter for the homeless.

Finding 3: No evidence has been found that the project will have a negative impact greater than that anticipated from other permitted or conditionally permitted use permitted in the district.

d. The proposal is compatible with existing uses of surrounding land.

Analysis: The adjoining properties include a bevy of permitted uses ranging from residential to commercial including stores, offices, restaurants and apartments. Two small residential units do not introduce impacts that would negatively affect the surrounding uses that are more intensive in nature.

Finding 4: The improvement of the existing residential development is compatible with existing uses of surrounding land.

e. Public services and facilities are or will be, prior to occupancy, adequate to serve the proposed use and structure.

Analysis: The site is served with electricity, city water and sewer, along a paved right-of-way.

Finding 5: Public services and facilities are adequate to serve the project.

f. Considering harmony in scale, bulk, coverage and density, generation of traffic, the nature and intensity of the proposed use, and other relevant effects, the proposal will not cause undue harmful effect upon desirable neighborhood character.

Analysis: The proposed improvements do not harm the character of the neighborhood and will not introduce additional generation of traffic or other undue harmful effects. The improvements proposed on the lot do not increase the amount of structures 20' from the right-of-way. Currently, approximately 700 sf. of structure is within 20' of rights-of-way, as proposed, 560 sf. will be within. Again, many properties in the Central Business district have more than one structure on a lot, have little or no setback from the right-of-way and are greater in percent of building coverage. Bringing structures closer to the rights-of-way in the Old Town neighborhood adds to the recognized complimentary ambiance of the area.

Finding 6: This project is in harmony with the scale, bulk, coverage, density, and traffic generation of the surrounding Central Business District.

Finding 7: This project will not have an undue harmful effect upon the character of the Central Business District.

g. The proposal will not be unduly detrimental to the health, safety or welfare of the surrounding area or the city as a whole.

Analysis: The proposed project is a slight modification of an existing use and will provide additional measures of health, safety and welfare of the tenants by reducing the amount of structures within 20' of the right-of-way and providing improved structures.

Finding 8: The proposed project will not be detrimental to the health, safety or welfare of the surrounding area or city as a whole.

h. The proposal does or will comply with the applicable regulations and conditions specified in this title for such use.

Analysis: An approved CUP and zoning permit is required.

Finding 9: The proposed project will comply with the applicable regulations.

i. The proposal is not contrary to the applicable land use goals and objectives of the Comprehensive Plan.

Analysis: The project is aligned with the goals of the 2008 Homer Comprehensive Plan as stated above, providing affordable, diversified housing in the Central Business District.

Finding 10: The project meets goals and objectives of the 2008 Homer Comprehensive Plan.

j. The proposal will comply with all applicable provisions of the Community Design Manual (CDM).

Analysis: The Community Design Manual section on Outdoor Lighting is the only standard applicable for this project.

Finding 11: All outdoor lighting shall conform to the Outdoor Lighting section of the Community Design Manual.

In approving a conditional use, the Commission may impose such conditions on the use as may be deemed necessary to ensure the proposal does and will continue to satisfy the applicable review criteria. Such conditions may include, but are not limited to, one or more of the following:

- 1. Special yards and spaces.** No conditions deemed necessary.
- 2. Fences, walls and screening.** Screening is provided between the individual overnight units.
- 3. Surfacing of vehicular ways and parking areas.** No conditions deemed necessary.

4. **Street and road dedications and improvements (or bonds).** No conditions deemed necessary.
5. **Control of points of vehicular ingress and egress.** No conditions deemed necessary.
6. **Special restrictions on signs.** No conditions deemed necessary.
7. **Landscaping.** No conditions deemed necessary.
8. **Maintenance of the grounds, buildings, or structures.** No conditions deemed necessary.
9. **Control of noise, vibration, odors, lighting or other similar nuisances.** Outdoor lighting shall conform to the standards set forth in the Community Design Manual.
10. **Limitation of time for certain activities.** No conditions deemed necessary.
11. **A time period within which the proposed use shall be developed and commence operation.** No conditions deemed necessary.
12. **A limit on total duration of use or on the term of the permit, or both.** No conditions deemed necessary.
13. **More stringent dimensional requirements, such as lot area or dimensions, setbacks, and building height limitations.** Dimensional requirements may be made more lenient by conditional use permit only when such relaxation is authorized by other provisions of the zoning code. Dimensional requirements may not be altered by conditional use permit when and to the extent other provisions of the zoning code expressly prohibit such alterations by conditional use permit.

Analysis: HCC 21.18.040, "If approved by a conditional use permit, the setback from a dedicated right-of-way, except from the Sterling Highway or Lake Street, may be reduced." Reduced setbacks are common in the Old Town area of the Central Business District.

The structure to the west (28' frontage) is proposed to be moved approximately 4' further away from the current distance toward Bunnell Avenue, maintaining the same 28'. The same structure will also lessen the current encroachment towards Main Street by only entering the setback with an 8' x 10' arctic entry as opposed to the current 28' averaging 8' into the 20' setback.

The structure to the east is proposed to be placed approximately 2½' closer to Bunnell Avenue than what is existing.

	<u>Current SF into 20' ROW setback</u>	<u>Proposed</u>
<u>West Structure</u>	560sf	320sf
<u>East Structure</u>	140sf	240sf
<u>Total</u>	700sf	560sf

Finding 12: The development, as proposed, will decrease the total amount of structures in the 20' rights-of-way setback.

Finding 13: The structures may not be located any closer to the rights-of-way than depicted in the "3406 Main Street, Site Plan, Proposed Structures" document submitted and presented to the HAPC.

14. Other conditions necessary to protect the interests of the community and surrounding area, or to protect the health, safety, or welfare of persons residing or working in the vicinity of the subject lot. No conditions deemed necessary.

PUBLIC WORKS COMMENTS: No comment.

FIRE DEPARTMENT COMMENTS: Fire Chief Painter – No comment.

STAFF COMMENTS/RECOMMENDATIONS: Planning commission approve CUP 11-54.

ATTACHMENTS

1. Application
2. Vicinity map
3. KPB Assessment showing year built



City of Homer Planning & Zoning

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 Homer, Alaska 99603-7645 Fax (907) 235-3118
 E-mail Planning@ci.homer.ak.us
 Web Site www.ci.homer.ak.us

Applicant
 Name: Jennifer Sonneborn Telephone No.: 399-8213
 Address: 38550 Tranquility Rd. Homer Email: darkpond@yahoo.com

Property Owner (if different than the applicant):
 Name: David + Alexandria Sonneborn Telephone No.: 907 243-0412
 Address: 2548 Discovery Ct Anchorage Email: _____

PROPERTY INFORMATION:
 Address: 3406 Main St. Lot Size: _____ acres KPB Tax ID # _____
 Legal Description of Property: Lot 6 W.R. Benson (Amended)

For staff use:
 Date: 4/26/11 Fee submittal: Amount \$200.00
 Received by: [Signature] Date application accepted as complete 4/26/11
 Planning Commission Public Hearing Date: 5/18/11

Conditional Use Permit Application Requirements:

1. A Site Plan
2. Right of Way Access Plan
3. Parking Plan
4. A map showing neighboring lots and a narrative description of the existing uses of all neighboring lots. (Planning can provide a blank map for you to fill in)
5. Completed Application Form
6. Payment of application fee (nonrefundable)
7. Any other information required by code or staff, to review your project



Circle Your Zoning District

	RR	UR	RO	CBD	TCD	GBD	GC1	GC2	MC	MI	OSR	BCWPD
Level 1 Site Plan	x	x	x			x			x		x	x
Level 1 ROW Access Plan	x	x							x		x	
Level 1 Site Development Requirements	x	x										
Level 1 Lighting			x	x	x	x	x	x	x	x		
Level 2 Site Plan			x	x	x		x	x		x		
Level 2 ROW Access Plan			x	x	x		x	x		x		
Level 2 Site Development Requirements			x*	x	x	x	x	x	x	x		
Level 3 ROW Access Plan						x						
DAP/SWP questionnaire				x	x	x	x	x	x	x		

Circle applicable permits. Planning staff will be glad to assist with these questions.

- Y N Are you building or remodeling a commercial structure, or multifamily building with more than 3 apartments? If yes, Fire Marshal Certification is required. Status: _____
- Y N Will your development trigger a Development Activity Plan?
Application Status: _____
- Y N Will your development trigger a Storm water Plan?
Application Status: _____
- Y N Does your site contain wetlands? If yes, Army Corps of Engineers Wetlands Permit is required. Application Status: _____
- Y N Is your development in a floodplain? If yes, a Flood Development Permit is required.
- Y N Does your project trigger a Community Design Manual review?
If yes, complete the design review application form. The Community Design Manual is online at: <http://www.ci.homer.ak.us/documentsandforms>
- Y N Do you need a traffic impact analysis?
- Y N Are there any nonconforming uses or structures on the property?
- Y N ? Have they been formally accepted by the Homer Advisory Planning Commission?
- Y N Do you have a state or city driveway permit? Status: _____
- Y N Do you have active City water and sewer permits? Status: _____

1. Currently, how is the property used? Are there buildings on the property? How many square feet? Uses within the building(s)?

The property has two small residential cabins (each approximately 600 square feet)

2. What is the proposed use of the property? How do you intend to develop the property?
(Attach additional sheet if needed. Provide as much information as possible).

We propose to rebuild the existing cabins on nearly the same foot prints. We would like to enlarge the corner unit slightly adding an arctic entry and a second half story. The new footprint (see attached)

CONDITIONAL USE INFORMATION: (Please use additional sheet(s), if necessary)

- a. What code citation authorizes each proposed use and structure by conditional use permit?
21.18.030 K, More than one building containing a permitted (see attached)
- b. Describe how the proposed uses(s) and structures(s) are compatible with the purpose of the zoning district. These two houses will continue to provide (see attached)
- c. How will your proposed project affect adjoining property values? Rebuilding these two shabby cabins on a very visible corner will enhance the value of the surrounding properties.

- d. How is your proposal compatible with existing uses of the surrounding land? Our proposal will help maintain the pleasant mixture of building functions in the neighborhood.
- e. Are/will public services adequate to serve the proposed uses and structures?

Yes.

- f. How will the development affect the harmony in scale, bulk, coverage and density upon the desirable neighborhood character, and will the generation of traffic and the capacity of surrounding streets and roads be negatively affected?

We plan to maintain the size and type of buildings but make them sturdier and more appealing.

- g. Will your proposal be detrimental to the health, safety or welfare of the surrounding area or the city as a whole?

No. In fact will be improving public health by rebuilding these as very energy efficient homes.

- h. How does your project relate to the goals of the Comprehensive Plan?

The 2006 Town Center Plan and the 2008 Comprehensive Plan are online at:
<http://www.ci.homer.ak.us/documents/planning>

By improving the appearance and quality of the buildings on this lot while keeping their modest size and availability for low-cost highly satisfying housing we are trying to do our

- i. The Planning Commission may require you to make some special improvements. Are you planning on doing any of the following, or do you have suggestions on special improvements you would be willing to make? (circle each answer)

1. Y N Special yards and spaces.
2. Y N Fences, walls and screening.
3. Y N Surfacing of parking areas.
4. Y N Street and road dedications and improvements (or bonds).
5. Y N Control of points of vehicular ingress & egress.
6. Y N Special provisions on signs.
7. Y N Landscaping.
8. Y N Maintenance of the grounds, buildings, or structures.
9. Y N Control of smoke, odors, gases, particulate matters, noise, vibration, heat, glare, water and solid waste pollution, dangerous materials, material and equipment storage, or other similar nuisances.
10. Y N Time for certain activities.
11. Y N A time period within which the proposed use shall be developed.
12. Y N A limit on total duration of use.
13. Y N Special dimensional requirements such as lot area, setbacks, building height.
14. Y N Other conditions deemed necessary to protect the interest of the community.
15. Y N Control of smoke, odors, gases, particulate matters, noise, vibration, heat, glare, water and solid waste pollution, dangerous materials, material and equipment storage, or other similar nuisances.

We request a five year window to finish this development

PARKING

1. How many parking spaces are required for your development? 4
If more than 24 spaces are required see HCC 21.50.030(f)(1)(b). _____
2. How many spaces are shown on your parking plan? 4
3. Are you requesting any reductions? No

Include a site plan, drawn to a scale of not less than 1" = 20' which shows all existing and proposed structures, clearing, fill, vegetation and drainage.

I hereby certify that the above statements and other information submitted are true and accurate to the best of my knowledge, and that I, as applicant, have the following legal interest in the property:

CIRCLE ONE: Owner of record Lessee Contract purchaser

Applicant signature: Alexandra Honselborn Date: 4/20/11

Property Owner's signature: Alexandra Honselborn Date: 4/20/11

Applicant signature: Jennifer Samulson 4/23/11

Conditional Use Permit (continued)

2. would be 24 x 28 with an additional 8 x 10 arctic entry on the Main Street side.
The other unit is currently 24 x 28 and would be slightly reduced in size to 24 x 24.

Conditional Use Information

- a. principal use on lot; 21.18.040 ~~b.~~ b. 4. If approved by CUP, the setback from a dedicated right-of-way, except from the Sterling Highway or Lake Street, may be reduced.
- b. desirable residential space in the Central Business District.
- h. part to keep Homer beautiful, interesting, and (we hope) just a little bit weird.

Identification of the ...

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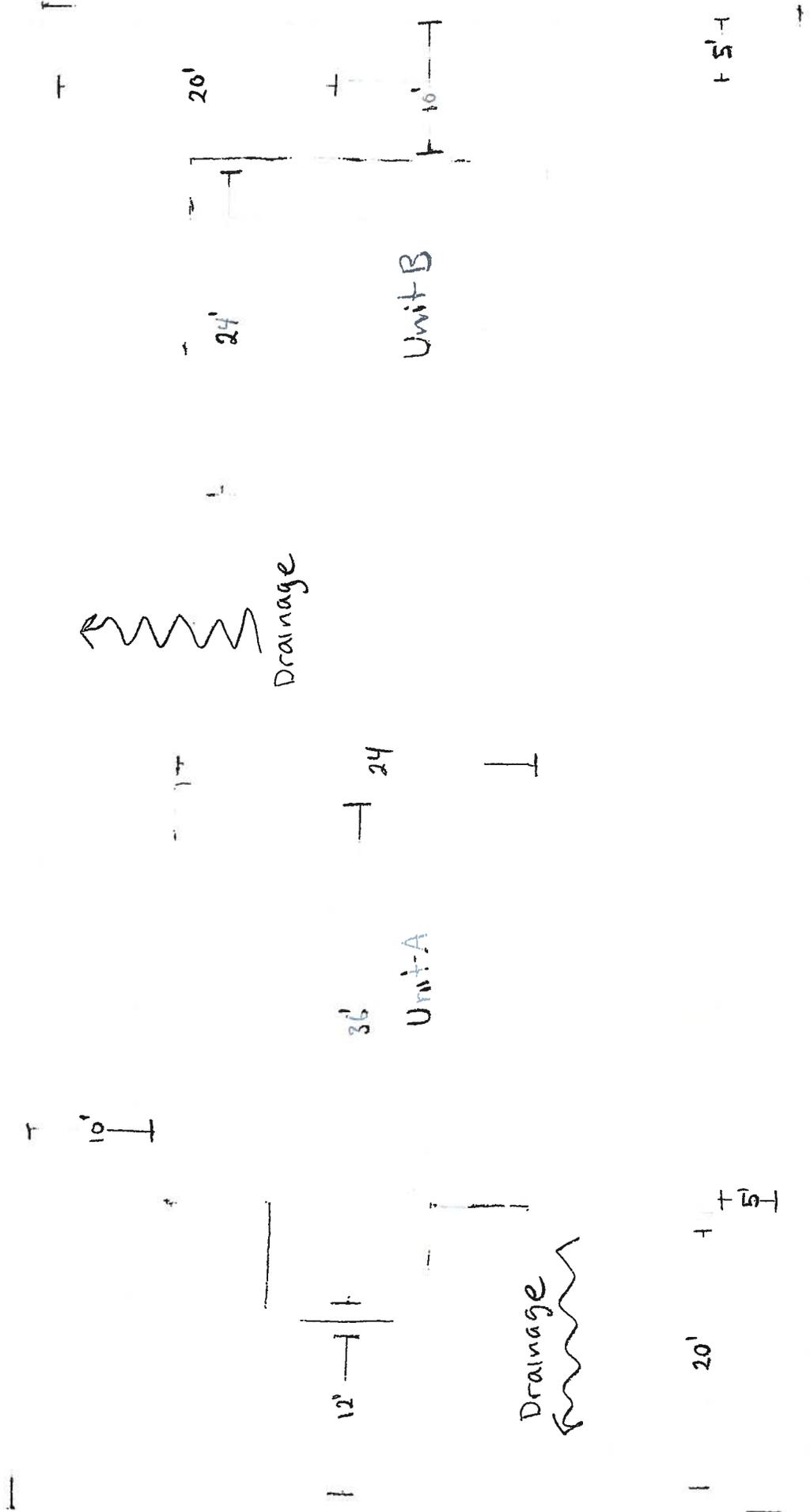
5

4

Narrative Description of Surrounding Lots

1. A bar.
2. Gallery, B+B, and restaurant
3. Stores, offices, and apartments
4. Bed and breakfast.
5. Apartment and shop space
6. Residential
7. RV Park

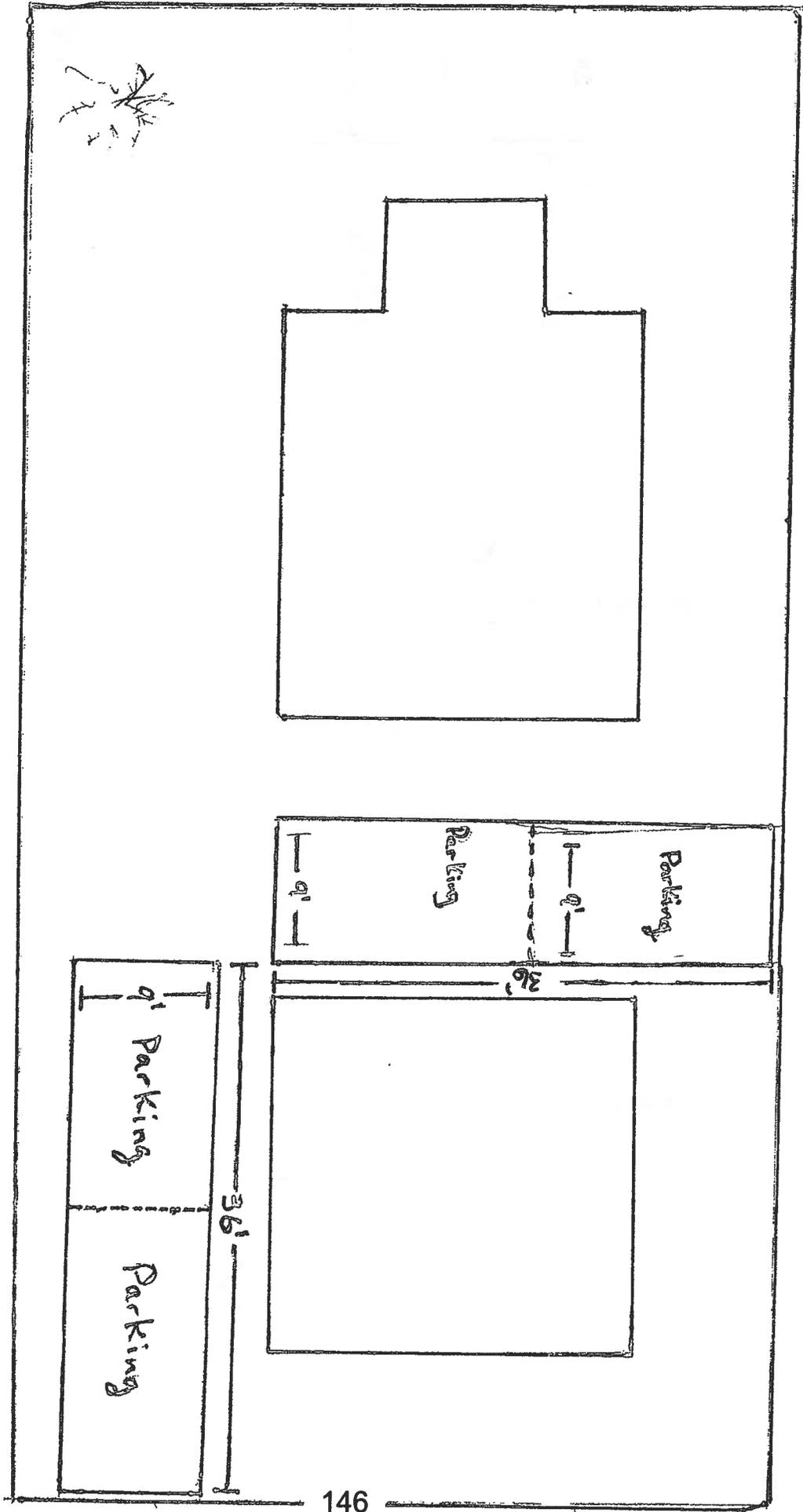
Bunell



3406 Main Street
 Site Plan
 Proposed Structures

Main Street

Bunnell Street



3406 Main Street
Parking Plan

146

Scale



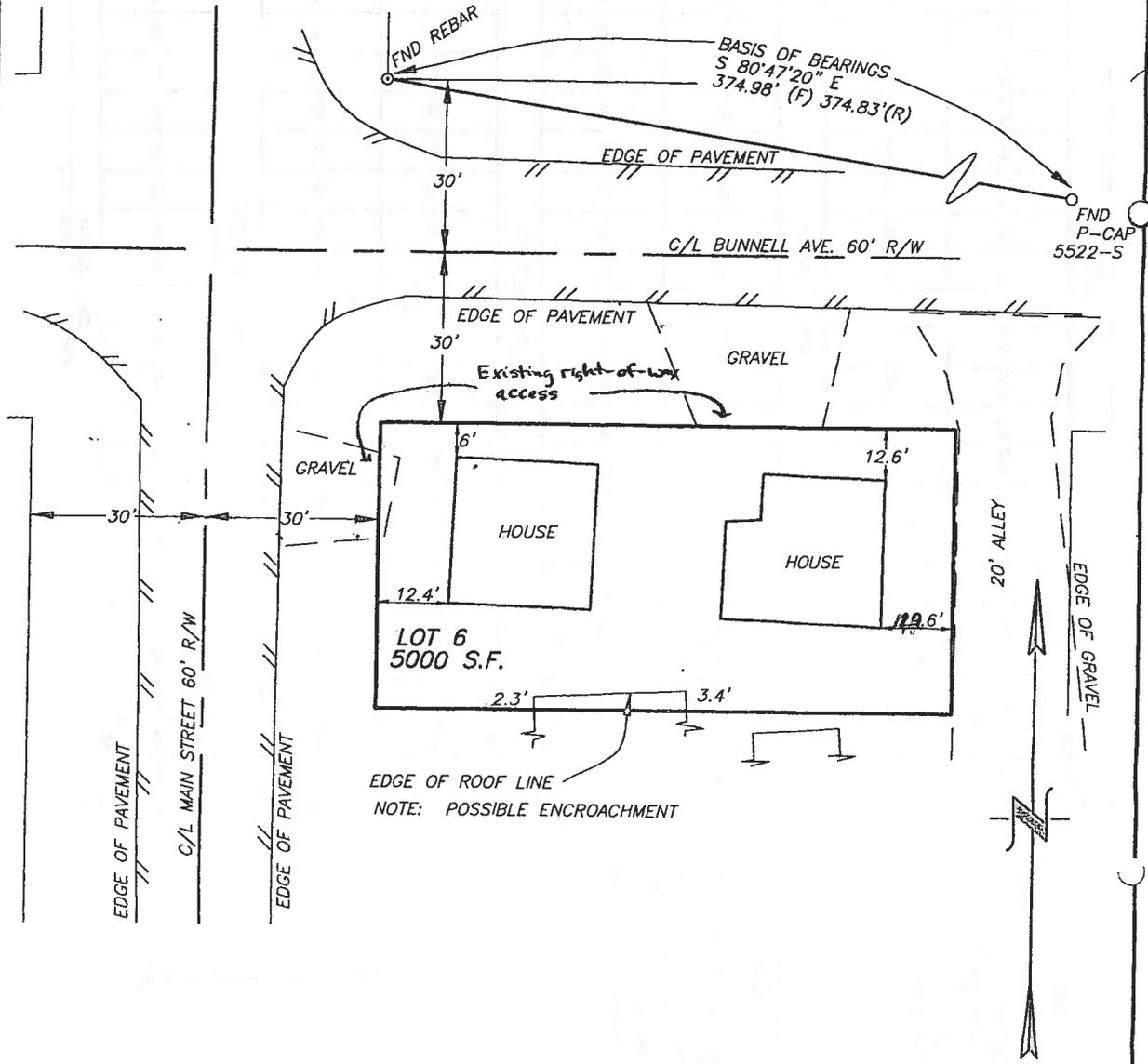
JOB# 05-36
PREPARED FOR:

JENNIFER & SCOTT SONNENBYN

HOMER, ALASKA 99603

NOTES:

1. BASIS OF BEARINGS FOR THIS ASBUILT SURVEY IS S. 80° 47' 20" E. BETWEEN THE SW CORNER OF LOT 7 AND THE NE COR OF LOT 141, WR BENSON'S SUBD. (PLAT#877) H.R.D., STATE OF ALASKA.
2. THIS ASBUILT SHALL NOT BE USED FOR ANY PURPOSE OTHER THAN THAT WHICH WOULD GIVE A GRAPHIC REPRESENTATION OF THE LOCATION OF IMPROVEMENTS ON THIS LOT. UNDER NO CIRCUMSTANCE SHOULD THE LOCATION OF FUTURE IMPROVEMENTS BE BASED ON THIS DRAWING.
3. IT IS THE RESPONSIBILITY OF THE OWNER TO DETERMINE THE EXISTENCE OF ANY EASEMENTS, RESERVATIONS OR RESTRICTIONS WHICH DO NOT APPEAR ON THE RECORDED SUBDIVISION PLAT.
4. THERE IS A 20' BUILDING SETBACK DEDICATED ALONG ALL RIGHTS OF WAY
5. THIS LOT IS SERVED BY CITY OF HOMER SEWER AND WATER SERVICES.



I HEREBY CERTIFY THAT I HAVE SURVEYED OR HAD SURVEYED UNDER MY DIRECT SUPERVISION THE FOLLOWING REAL PROPERTY:
LOT 6, WR BENSON'S SUBDIVISION (PLAT#877 H.R.D.) LOCATED WITHIN THE NW 1/4 SW 1/4 SEC. 20, T.6 S., R.13 W, SEWARD MERIDIAN, HOMER RECORDING DISTRICT, HOMER, ALASKA AND THAT THE IMPROVEMENTS SITUATED THEREON ARE LOCATED AS SHOWN ON THIS PLAT AND THAT THERE ARE NO ROADWAYS, TRANSMISSION LINES OR OTHER VISIBLE EASEMENTS OR ENCROACHMENTS ON SAID PROPERTY EXCEPT AS SHOWN HEREON.

DATED AT HOMER, ALASKA THIS 11TH DAY OF JULY, 2005.

Kent Bloom
SEABRIGHT SURVEYING
1044 EAST END RD, SUITE A
HOMER, ALASKA 99603
(907) 235-4247



Vicinity Map

BENSON

Sterling Highway

Islands and Ocean

HANSEN AVE

MAIN ST.

Subject Location
3406 Main Street
Remove two old cabins and
construct two new cabins

W. BUNNELL AVE.

E. BUNNELL AVE.

BELUGA PL.

CHARLES WAY

Bishop's Beach Park

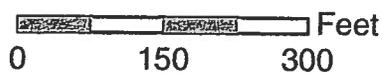


City of Homer
Planning and Zoning Department

May 5, 2011

Request for CUP 11-09

Marked lots are within 300 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.



Improvements

Improvements
1 of 1

Property Info

- Parcel
- Tax Record NEW! →
- Improvements
- Print View
- Assessment History

2011 NOTICE VALUES ARE NOT CERTIFIED AND ARE SUBJECT TO APPEAL.
CERTIFIED VALUES FOR 2011 WILL NOT BE AVAILABLE UNTIL JUNE 1, 2011

Searches

- Parcel Number
- Owner
- Address

Parcel Number	Tax Account	Parcel Address	2011 Total Value	Data as of	Assess Year
17716301		3406 MAIN ST, HOMER	\$88,000	2/28/2011	2010

Functions

- Welcome Page
- Property Search
- Contact Us
- Help
- Return to KPB Home
- Login / Logout

Improvements

View	Use Code	Building #	ID #	Constructed Yr.	Grade	Square Ft.	2011 Value
	DRIVE	R01	01	3000	Avg	1	\$1,500
View Details / Print View	DWELL	R01	D	1960	F	480	\$22,600
View Details / Print View	DWELL	R02	D	1960	F	552	\$24,400

Improvement Abbreviations & Descriptions

[Disclaimer](#) / [Privacy](#)





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 11-49

TO: Homer Advisory Planning Commission
FROM: Rick Abboud, City Planner
MEETING: May 4, 2011, 11:00 AM, ZC 11
SUBJECT: CUP 11-07 at 1295 Mission road for "more than one building containing a permitted principal use on a lot" per HCC 21.12.030(n).

SYNOPSIS: The Alaskan Bible Institute has established a college with staff and housing on two lots with at total area of 14.56 acres. There are two dwellings on the subject lot, a 7.18 acre site; a 7,032 sq. ft. classroom building and a 2,400 sq. ft. shop and the adjoining lot is 6.38 acres containing a 7,918 sq. ft. dormitory, a 1,176 sf. equipment building and 6 dwelling that range from 1,500 to 700 sf. All of the existing structures are eligible for legal nonconforming status. The applicant wishes to build three 42' x 25' (1050 sq. ft.) triplex units to be used for housing of married students. A Conditional Use Permit (CUP) is needed for "more than one building containing a permitted principal use on a lot" per HCC 21.12.030(n). ABI applied to build 3 triplexes on 1 lot. This CUP only addresses the lot of the proposed development.

This is a quasi-judicial action requiring 5 affirmative vote for approval.

Applicants:	Alaska Village Missions/Lance Prouse
Location:	1295 Mission Road
Parcel ID:	17403029
Lot Size(s):	7.18 acres
Zoning Designation:	Rural Residential
Existing Land Use:	School/housing
Surrounding Land Use:	North: Residential South: Vacant East: Residential West: School
Comprehensive Plan:	Land Use, Goal 3: Encourage high quality buildings and site design that complements Homer's beautiful natural setting. p 4-14 Land use, Goal 5: Maintain high quality residential neighborhoods; promote housing choice by supporting a variety of dwelling options. p 4-18 Land Use, Goal 5, Obj. A: Diversify housing stock to meet demand by people earning a broad range of incomes. p 4-18
Wetland Status:	No designated wetlands.
BCWPD:	Not within the Bridge Creek Watershed Protection District
Utilities:	Well and Septic, DEC approved Public Water and in process of documenting Community Wastewater adequate for proposed development

Public Notice: Notice was sent to 8 property owners of 10 parcels as shown on the KPB tax assessor rolls.

Introduction: The applicant wishes to provide housing to married students and their children on the southern portion of their eastern lot. They propose constructing three 1050 sf. triplex dwellings that would be built over the course of several years.

Parking: The Planner shall determine the number of off-street parking required for a use not identified HCC 21.55.090(b). While the structures are dwellings, they are specially associated with the particular use of the school. In this case, I find that traditional dwelling standards are not the best fit. The housing is dormitory in theory, but in practice it serves a group not usually associated with dorms, specifically married students. Each triplex will provide 7 beds to house students and possibly children of the students. I propose, **Condition 1: provide 5 parking spaces per triplex unit.** This is a reduction of 1 space per triplex from current code.

Density: The standards for rural residential density need special considerations for this development. Our standards are based upon a formula which relates lot size to the category of water and sewer service per HCC 21.12.040. These standards usually lead to quite a bit of debate when the proposed development does not resemble the standard single family residence, which I believe they are intended to address. Even breaking down the formula for single family residences can be problematic. Minimum lot sizes are related to dwelling units. Dwelling units have great variations in stature. A one bedroom cabin might be less than 500 square feet and serve only one person. A bed and breakfast might be 3500 square feet and serve a dozen people, yet both, according to code, are one dwelling and thus deserve the same consideration when measuring density. I believe that the code was written to maintain public health, safety and welfare which are best measured by the ability of the development to meet DEC standards for water and sewer systems.

Staff has determined that this particular development, as currently configured, was in operation prior to annexation and now we need to consider an expansion. Currently, everything in the development is permissible with a conditional use permit and I have granted it legal nonconforming status, therefore I see this CUP as a type of modification to an existing acceptable use. While we may need to consider the impact of site as a whole, I believe that our focus should be on the newly proposed facilities and how they might be developed in relation to safety, health and welfare. There are many measures of how we might measure this. The foremost is the sites ability to provide water and sewer service. The water system is classified by AKDEC as a Public Water System, specifically a treated Small Water System with a registered operator. The wastewater system is classified as a Community or Alternate Soil Absorption System. Plans for this type of system must be submitted and reviewed by AKDEC. The system must receive Final Approval to Operate, which the applicant is in the process of obtaining. This type of system qualifies for the greatest density allowable by code. Unfortunately, this type of development does not fit well with our dwelling unit density rating. **Condition 2: Prior to development, DEC certification for a Public Water System and the Final Approval to Operate be presented** indicating approval of the water/wastewater systems as a requirement of obtaining a zoning permit.

Another measure of impact is the physical size of the site. The site is 14.56 acres or 634,233.6 square feet, with a total existing and proposed structure area of 28,415 square feet. This equates to 4.5% of the total site, which does not seem to impose an undue density to the Rural Residential District. According to my estimation the site is on an average slope of somewhere near 16%. This limits development without an engineer's stamped plan to 25% of the site. My measurement shows that the existing and proposed development will be under this amount.

Yet another measurement of density is population. Currently there is approximately 30 faculty that live on the site year round and 35 students that attend classes for 6 months from October to March. The proposed expansion might increase the campus population another 20 or so. The campus population will be capped by the ability to provide approved water and wastewater service. Even so, I believe that maximum campus capacity should be tempered in consideration of Rural Residential District. The population is atypical in the fact that most will only be onsite for 6 months during a 'slow' time for Homer when the neighboring bed and breakfast operations are at a lull and seasonal residents and tourists may not be present. Additionally, the population found on site is not typical of class-session commute that is usually associated with institutes of higher learning. So, on one hand this is a great economic opportunity to shore up activity in the 'down' season and fulfills goals of economic development, on the other, there is an expectation that high population density be tempered for the district. I propose, **Condition 3: Campus population capped at 100 or less dependent upon DEC criteria regarding water and wastewater service.** This provides a reasonable population density of 6.9 persons per acre. A number for comparison could be that according to the 10,000 square foot per dwelling unit figure, approximately 4 units could occupy one acre. The average size of a household for Homer is about 2.5 person's times the four units equals a density of 10 people per acre.

The criteria for granting a Conditional Use Permit is set forth in HCC 21.61.020.

a. The applicable code authorizes each proposed use and structure by conditional use permit in that zoning district.

Finding 1: Adding three multifamily dwellings on one lot requires a CUP for "More than one building containing a permitted principal use on a lot" per HCC 21.12.030(m).

b. The proposed use(s) and structure(s) are compatible with the purpose of the zoning district in which the lot is located.

Finding 2: The use is consistent with the purpose of HCC 21.12.010 which states in part, "Provide an area in the City for low-density, primarily residential, development;...."

Finding 3: Adding three triplex dwellings to this development constitutes a structure density of less than 5% which constitutes a density compatible with the zoning district.

c. The value of the adjoining property will not be negatively affected greater than that anticipated from other permitted or conditionally permitted uses in this district.

Applicant: It would increase the value of the surrounding area.

Finding 4: The value of adjoining properties will not be negatively affected greater than other permitted uses such as multi-family units and mobile homes or conditionally permitted uses such as kennels, group care homes and recreational facilities.

d. The proposal is compatible with existing uses of surrounding land.

Applicant: We are in an area of several B and B's and rental properties. It is also on the lower end of an existing campus.

Finding 5: This proposal is compatible with existing uses of surrounding land as its peak population is the inverse of neighborhood activities.

e. Public services and facilities are or will be, prior to occupancy, adequate to serve the proposed use and structure.

Applicant: Yes

Finding 6: The well and septic shall meet State Department of Environmental Conservation (AkDEC) standards per HCC 21.12.040 Rural Residential Dimensional Requirements prior to construction.

Finding 7: The site is served with a paved road.

f. Considering harmony in scale, bulk, coverage and density, generation of traffic, the nature and intensity of the proposed use, and other relevant effects, the proposal will not cause undue harmful effect upon desirable neighborhood character.

Applicant: This will fit nicely in our neighborhood without an excessive impact on the road or neighbors.

Finding 8: A campus population of 100 will not cause and undue harmful effect on the neighborhood.

Finding 9: The development is in harmony with the scale, bulk, coverage and density and will not have a harmful effect of the neighborhood character.

g. The proposal will not be unduly detrimental to the health, safety or welfare of the surrounding area or the city as a whole.

Finding 10: Certification of the water/wastewater service by DEC helps to ensure the health, safety and welfare of the surrounding area and city as a whole.

Finding 11: This proposal is not detrimental to the health, safety or welfare of the surrounding area or the City of the Homer.

h. The proposal does or will comply with the applicable regulations and conditions specified in this title for such use.

Finding 12: This proposal shall comply with local, state and federal regulations.

i. The proposal is not contrary to the applicable land use goals and objectives of the Comprehensive Plan.

Finding 13: This proposal meets the intent of the Homer Comprehensive Plan in that it provides diversified housing stock.

j. The proposal will comply with all applicable provisions of the Community Design Manual.

Finding 14: Down lit lighting is required per HCC 21.59.020.

In approving a conditional use, the Commission may impose such conditions on the use as may be deemed necessary to ensure the proposal does and will continue to satisfy the applicable review criteria. Such conditions may include, but are not limited to, one or more of the following:

- 1. Special yards and spaces.** No specific conditions deemed necessary.
- 2. Fences, walls and screening.** No specific conditions deemed necessary.
- 3. Surfacing of vehicular ways and parking areas.** No specific conditions deemed necessary.
- 4. Street dedications and improvements (or bonds).** No specific conditions deemed necessary.
- 5. Control of points of vehicular ingress and egress.** No specific conditions deemed necessary.
- 6. Special restrictions on signs.** No specific conditions deemed necessary.
- 7. Landscaping.** No specific conditions deemed necessary.
- 8. Maintenance of the grounds, and buildings.** No specific conditions deemed necessary.
- 9. Control of noise, vibration, odors, lighting or other similar nuisances.** No specific conditions deemed necessary.
- 10. Limitation of time for certain activities.** No specific conditions deemed necessary.
- 11. A time period within which the proposed use shall be developed and commence operation.** No specific conditions deemed necessary.
- 12. A limit on total duration of use or on the term of the permit, or both.** No specific conditions deemed necessary.
- 13. More stringent dimensional requirements, such as lot area or dimensions, setbacks, and building height limitations.** Dimensional requirements may be made more lenient by conditional use permit only when such relaxation is authorized by other provisions of the zoning code. Dimensional requirements may not be altered by conditional use permit when and to the extent other provisions of the zoning code expressly prohibit such alterations by conditional use permit. No specific conditions deemed necessary.
- 14. Other conditions necessary to protect the interests of the community and surrounding area, or to protect the health, safety, or welfare of persons residing or working in the vicinity of the subject lot.** No specific conditions deemed necessary.

PUBLIC WORKS COMMENTS: No comment.

FIRE DEPARTMENT COMMENTS: No comment.

STAFF COMMENTS/RECOMMENDATIONS:

Planning Commission approve CUP 11-07 for the construction of 3 triplexes with findings 1-14 and the following conditions.

Conditions

1. **Provide 5 parking spaces per triplex unit.**
2. **Development to comply with city, state and federal requirements per HCC 21.70 Zoning Permit, including Prior to development, DEC certification for a Public Water System and the Final Approval to Operate be presented.**
3. **Campus population capped at 100 or less dependent upon DEC criteria regarding water and wastewater service.**

ATTACHMENTS

1. Location map
2. Site plan
3. AKDEC records
4. Application
5. KPB Assessors records

PA

Vicinity Map

EAST HILL RD.

Race road

MISSION RD.

Subject Lot

Willow Drive

HIGHLAND CT.



City of Homer
Planning and Zoning Department

4.20.11

CUP 11-07
1295 Mission Rd.

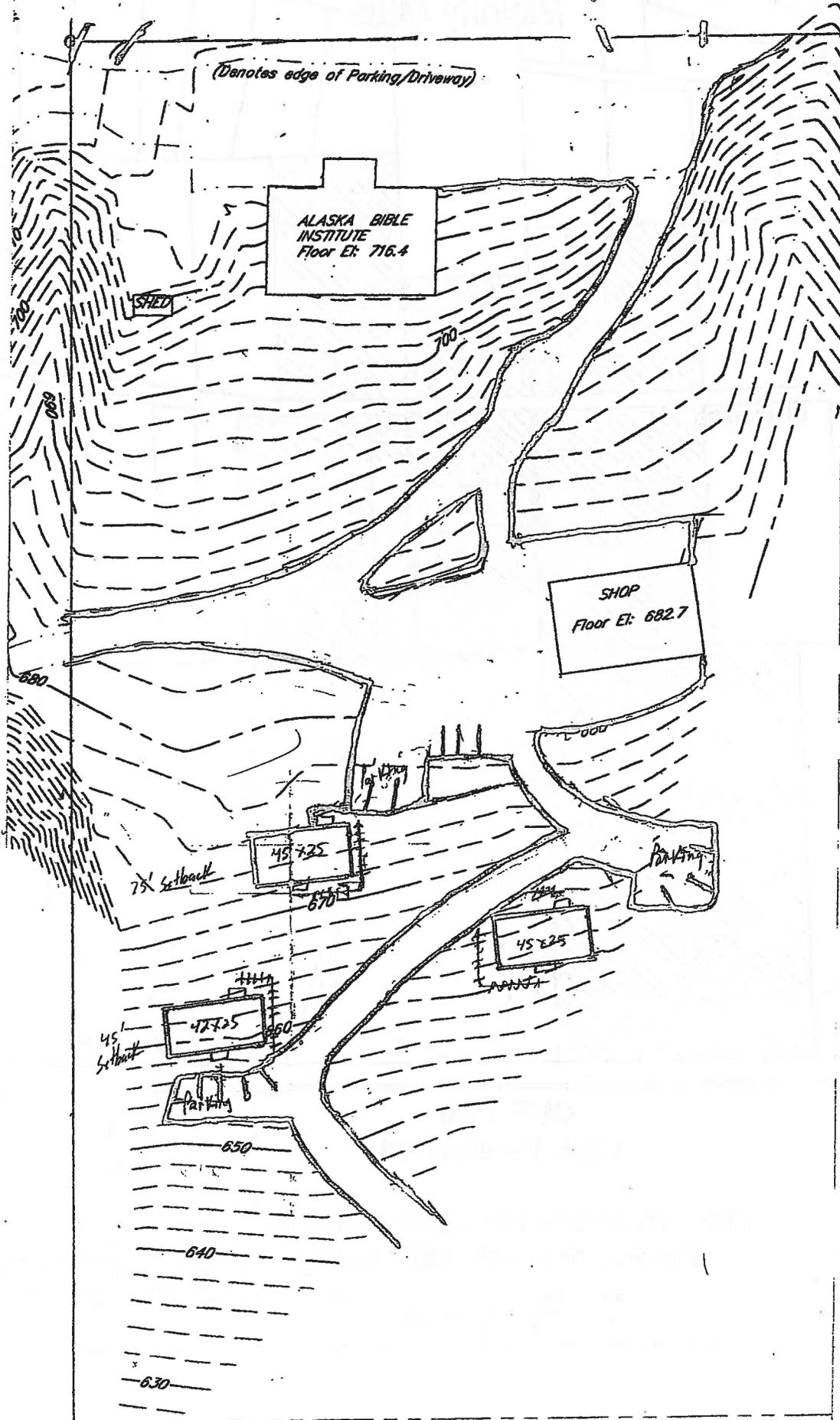
More than one principle structure
Shaded area w/ 300ft notice

300 150 0 300 Feet



Disclaimer:
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Mission Road



Division of Water

Alaska Certified Water/Wastewater Operator Database

State of Alaska > DEC > Division of Water > Operator Training & Certification > Alaska Certified Water/Wastewater Operator Database

- Home
- Exam/Application Status
- New Certificate Report
- Operator Search
- > System Search
- Library
- View My List/Library Checkout

Regulated System Record

The current classification scoring system for the selected facility is shown below. You may also return to search results.

Facility Name: Alaska Village Mission Water System
Community: Homer
Owner/Employer: Alaska Village Mission
Type of Facility: Small Water System
Classification Level: Treated

A small water system is a community or non-transient non-community (Class A) water system that serves less than 500 people and less than 100 service connections. Water systems that serve more than 500 people, but less than 15 service connections, are also considered small water systems.

The "treated" designation means that one treatment chemical is added to the water. Passive forms of treatment may be used to treat water at a small treated system. Examples of passive treatment include the use of cartridge filters, UV disinfection, or water softeners. Membrane filtration is not considered passive treated. Small systems treating with membrane filtration, chemically aided filtration, or multiple chemicals are classified as water treatment systems.

Exception: Transient non-community (Class B) water systems using surface water as a source are classified as small Treated regardless of treatment complexity.

Operators

Name	Role	Cert. Level	Expiration Date	CEU Req. Met
Daniel Kropf	Primary	Small-Treated	12/31/2012	No

For more information, please review the Water and Wastewater Operator Certification and Training Regulation (18 AAC 74).

Section 1: Introduction to the System

The purpose of this document is to provide a comprehensive overview of the system's architecture and components.

System Architecture

The system is designed to be modular and scalable, allowing for easy integration of new features and components.

The architecture is based on a layered approach, with each layer responsible for a specific set of functions.

The layers are as follows:

1. Presentation Layer: This layer handles the user interface and data entry.

2. Business Logic Layer: This layer contains the core logic and business rules.

3. Data Access Layer: This layer manages the interaction with the database and other data sources.

4. Infrastructure Layer: This layer provides the underlying services and infrastructure for the system.

The system is designed to be highly available and secure, with built-in mechanisms for fault tolerance and data protection.

The system is implemented using modern technologies and follows industry best practices for software development.

The system is designed to be easy to use and maintain, with clear documentation and user guides.

Drinking Water Program

State of Alaska > DEC > EH > Drinking Water >> Program Overview

Program Overview

Program Manager: James Weise

Phone (907) 269-7647

Fax (907) 269-7655



Of Interest



- Program Overview
- Drinking Water
- Drinking Water Protection
- Training Opportunities
- Security
- Related Links
- Publications
- Mission and Services

Alaska Department of Environmental Conservation, Division of Environmental Health, Drinking Water Program requires Public Water Systems (PWS) be in compliance with the state drinking water regulations, in accordance with the Federal Safe Drinking Water Act and Amendments, for the public health protection of the residents and visitors to the State of Alaska.

1. What is a Public Water System?

A Public Water System (PWS) supplies water to consumers and is NOT a private water system. There are different categories of PWS that supply water to consumers. Each category of systems have their own set of requirements they must meet.

Community water system (CWS)

- o expects to serve, year round, at least 25 individuals
- o is expected to serve, year round, at least 15 residential service connections

Non-Transient Non Community Water System (NTNCWS)

- o regularly serves the same 25 or more individuals for at least 6 months of the year

Transient Non Community Water System (TNCWS)

- o is not a CWS or NTNCWS
- o regularly serves at least 25 individuals each day for at least 60 days of the year

Class C public water system

- o Is not a CWS, NTNCWS or TNCWS system and is not a private well or a duplex

2. What do the drinking water regulations do?

The drinking water regulations set the standards for safe drinking water, and they identify the regulated drinking water contaminants and the level of those contaminants allowed in the water. These contaminants could be harmful for those who drink the water, especially the elderly, children, or individuals with developing or compromised immune systems or that have immune deficiencies.

What types of contaminants do we regulate?

- o Bacteria, Viruses (from septic systems, etc) and parasitic protozoans
- o Lead and Copper
- o Nitrate and Nitrite (commonly from septic systems and manure piles)
- o Heavy Metals like Arsenic and Cadmium
- o Volatile Organic Contaminants (VOC) like Benzene and gasoline
- o Synthetic Organic Contaminants (SOC) like pesticides and herbicides
- o Other Organic Contaminants (OOC) like Dioxin and PCBs

3. How do these contaminants affect us?

Consuming water containing contaminants above the established Maximum Contaminant Level (MCL) set by the regulations over a period of time could cause chronic (long term) or acute (short term) health problems.

Who can you contact at DEC about Drinking Water issues and questions, and where can you find your information?

- Anchorage: (907) 269-7656
- Fairbanks: (907) 451-2108
- Juneau: (907) 465-5350
- Soldotna: (907) 262-5210
- Wasilla: (907) 376-5038

[State of Alaska](#) [myAlaska](#) [DEC Staff Directory](#) [Webmaster](#) [DEC Home](#) [EH Home](#) [Division Info](#) [EH Contacts](#)

System Type or Facility Served by System	PLAN APPROVAL STEPS	Checklists, Forms and Submittal Requirements
<p>Community or Alternate Soil Absorption System</p> <p><u>Community soil absorption system</u> means a soil absorption system serving : one or more multi-family dwellings (3-plex or larger); a mobile home park, a trailer park or a recreational vehicle park; two or more single-family homes, duplexes, commercial establishments, or institutions; or a combination of two or more of the structures listed above.</p> <p><u>Alternate soil absorption system</u> means a method of soil absorption treatment and disposal other than a conventional system (i.e., a mound system). Does not include nonwater-carried disposal methods such as composting, incineration, or privies.</p>	<p>1. Plans must be submitted to DEC and approved prior to construction.</p> <p>2. Approval to Construct issued.(valid for two years)</p> <p>3. Record drawings and confirmation all conditions met.</p> <p>4. Final Approval to Operate issued.</p> <p>Refer to Fee Schedule (Appendix A) for associated fee.</p> <p>18 AAC 72.260; 18 AAC 72.990</p>	<p>Data Sheet/General Checklist</p> <p>Community and Alternate Soil Absorption System Checklist</p> <p>Soils Analysis and Report</p> <p>Owner's Statement</p> <p>Plans must be signed and sealed by a Professional Engineer.</p> <p>Record drawings must be signed and sealed by a Professional Engineer.</p>
<p>Package Treatment Plants (less than 1,500 GPD)</p>	<p>1. Plans must be submitted to DEC and approved prior to construction.</p> <p>2. Approval to Construct issued.(valid for two years)</p> <p>3. Record drawings and confirmation all conditions met.</p> <p>4. Final Approval to Operate issued.</p> <p>Refer to Fee Schedule (Appendix A) for associated fee.</p> <p>18 AAC 72.263</p>	<p>Data Sheet/General Checklist</p> <p>Package Plant Checklist</p> <p>Soils Analysis and Report</p> <p>Owner's Statement</p> <p>Plans must be signed and sealed by a Professional Engineer.</p> <p>Record drawings must be signed and sealed by a Professional Engineer.</p>

1. Primary structure
 The linear sequence of amino acids in a polypeptide chain, determined by the order of nucleotides in the gene.

2. Secondary structure
 Local folding motifs such as α -helices and β -sheets, stabilized by hydrogen bonds between backbone atoms.

3. Tertiary structure
 The overall 3D shape of a single polypeptide chain, determined by interactions between side chains.

4. Quaternary structure
 The assembly of multiple polypeptide chains into a functional protein complex.

5. Protein denaturation
 The loss of a protein's native structure due to external stressors like heat, pH, or chemicals.

6. Protein synthesis
 The process of building a protein from amino acids, involving transcription and translation.

7. Protein degradation
 The breakdown of proteins into smaller peptides and amino acids by enzymes.

8. Protein stability
 The ability of a protein to maintain its structure and function over time and under various conditions.

9. Protein-protein interactions
 The physical contacts between different proteins, crucial for cellular signaling and function.

10. Protein-ligand interactions
 The binding of a small molecule (ligand) to a protein, often at a specific active site.

11. Protein-membrane interactions
 The association of proteins with cell membranes, often through hydrophobic interactions.

12. Protein dynamics
 The study of the movement and flexibility of proteins over time.

City of Homer Planning & Zoning
 491 East Pioneer Avenue Telephone (907) 235-3106
 Homer, Alaska 99603-7645 Fax (907) 235-3118
 E-mail Planning@ci.homer.ak.us
 Web Site www.ci.homer.ak.us

Applicant

Name: Lance Prouse Telephone No.: 435-1235
 Address: 1295 Mission Rd. Email: lanceprouse@mac.com
 Property Owner (if different than the applicant):
 Name: Arctic Village Missions Telephone No.: 235-1245
 Address: 1295 Mission Rd. Email:

PROPERTY INFORMATION:

Address: 1295 Mission Rd. Lot Size: _____ acres KPB Tax ID #
 Legal Description of Property:

For staff use:

Date: _____ Fee submittal: Amount
 Received by: _____ Date application accepted as complete
 Planning Commission Public Hearing Date:

Conditional Use Permit Application Requirements:

- A Site Plan
- Right of Way Access Plan
- Parking Plan
- A map showing neighboring lots and a narrative description of the existing uses of all neighboring lots. (Planning can provide a blank map for you to fill in).
- Completed Application Form
- Payment of application fee (nonrefundable)
- Any other information required by code or staff, to review your project

Circle Your Zoning District

	RR	UR	RO	CBD	TCD	GBD	GC1	GC2	MC	MI	OSR	BCW PD
Level 1 Site Plan	X	X	X			X			X		X	X
Level 1 ROW Access Plan	X	X							X		X	

Level 1 Site Development Requirements	X	X							
Level 1 Lighting		X	X	X	X	X	X	X	X
Level 2 Site Plan		X	X	X		X	X		X
Level 2 ROW Access Plan		X	X	X		X	X		X
Level 2 Site Development Requirements		X*	X	X	X	X	X	X	X
Level 3 ROW Access Plan					X				
DAP/SWP questionnaire			X	X	X	X	X	X	X

Circle applicable permits. Planning staff will be glad to assist with these questions.

Y/N Are you building or remodeling a commercial structure, or multifamily building with more than 3 apartments? If yes, Fire Marshal Certification is required. Status: _____

Y/N Will your development trigger a Development Activity Plan? Application Status: _____

Y/N Will your development trigger a Storm water Plan? Application Status: _____

Y/N Does your site contain wetlands? If yes, Army Corps of Engineers Wetlands Permit is required. Application Status: _____

Y/N Is your development in a floodplain? If yes, a Flood Development Permit is required.

Y/N Does your project trigger a Community Design Manual review? If yes, complete the design review application form. The Community Design Manual is online at: <http://www.ci.homer.ak.us/documentsandforms>

Y/N Do you need a traffic impact analysis?

Y/N Are there any nonconforming uses or structures on the property?

Y/N Have they been formally accepted by the Homer Advisory Planning Commission? *NA*

Y/N Do you have a state or city driveway permit? *NA*

Status: _____

Y/N Do you have active City water and sewer permits? Status: *NA*

• Currently, how is the property used? Are there buildings on the property? How many square feet? Uses within the building(s)? *4 bedroom building on a 2.01 acre lot for sale*

• What is the proposed use of the property? How do you intend to develop the property? (Attach additional sheet if needed. Provide as much information as possible).

to sell the property, which is currently vacant. Planning and zoning review has been completed.

CONDITIONAL USE INFORMATION: (Please use additional sheet(s), if necessary)

a. What code citation authorizes each proposed use and structure by conditional use permit?

b. Describe how the proposed uses(s) and structures(s) are compatible with the purpose of the zoning district.

c. How will your proposed project affect adjoining property values? *it will increase the value of surrounding properties*

d. How is your proposal compatible with existing uses of the surrounding land?

are in the area of houses B and B' and other properties. It is also in the area of an existing campsite.

• Are/will public services adequate to serve the proposed uses and structures? *yes*

- How will the development affect the harmony in scale, bulk, coverage and density upon the desirable neighborhood character, and will the generation of traffic and the capacity of surrounding streets and roads be negatively affected? *This will fit in our neighborhood without an excessive impact on the road or neighbors*
- Will your proposal be detrimental to the health, safety or welfare of the surrounding area or the city as a whole? *No. It will actually be a great asset to our area. These units will bring married couples with children to our area. Most of which are here to be a valuable part of the community.*
- How does your project relate to the goals of the Comprehensive Plan? The 2006 Town Center Plan and the 2008 Comprehensive Plan are online at: <http://www.ci.homer.ak.us/documents/planning>

i. The Planning Commission may require you to make some special improvements. Are you planning on doing any of the following, or do you have suggestions on special improvements you would be willing to make? (circle each answer)

- Y N Special yards and spaces.
- Y N Fences, walls and screening.
- Y N Surfacing of parking areas.
- Y N Street and road dedications and improvements (or bonds).
- Y N Control of points of vehicular ingress & egress.
- Y N Special provisions on signs.
- Y N Landscaping.
- Y N Maintenance of the grounds, buildings, or structures.
- Y N Control of smoke, odors, gases, particulate matters, noise, vibration, heat, glare, water and solid waste pollution, dangerous materials, material and equipment storage, or other similar nuisances.
- Y N Time for certain activities.
- Y N A time period within which the proposed use shall be developed.
- Y N A limit on total duration of use.
- Y N Special dimensional requirements such as lot area, setbacks, building height.
- Y N Other conditions deemed necessary to protect the interest of the community.
- Y N Control of smoke, odors, gases, particulate matters, noise, vibration, heat, glare, water and solid waste pollution, dangerous materials, material and equipment storage, or other

similar nuisances.

PARKING

- How many parking spaces are required for your development? *15 to 20*
- If more than 24 spaces are required see HCC 21.50.030(f)(1)(b).
- How many spaces are shown on your parking plan? *11 #*
- Are you requesting any reductions? *no #*

Include a site plan, drawn to a scale of not less than 1" = 20' which shows all existing and proposed structures, clearing, fill, vegetation and drainage.

I hereby certify that the above statements and other information submitted are true and accurate to the best of my knowledge, and that I, as applicant, have the following legal interest in the property:

CIRCLE ONE: Owner of record Lessee Contract purchaser

Applicant signature: *Laura J. Furse* Date: *4/13/11*
Pastor / Project Coordinator

Property Owner's signature: _____ Date: *4/13/11*

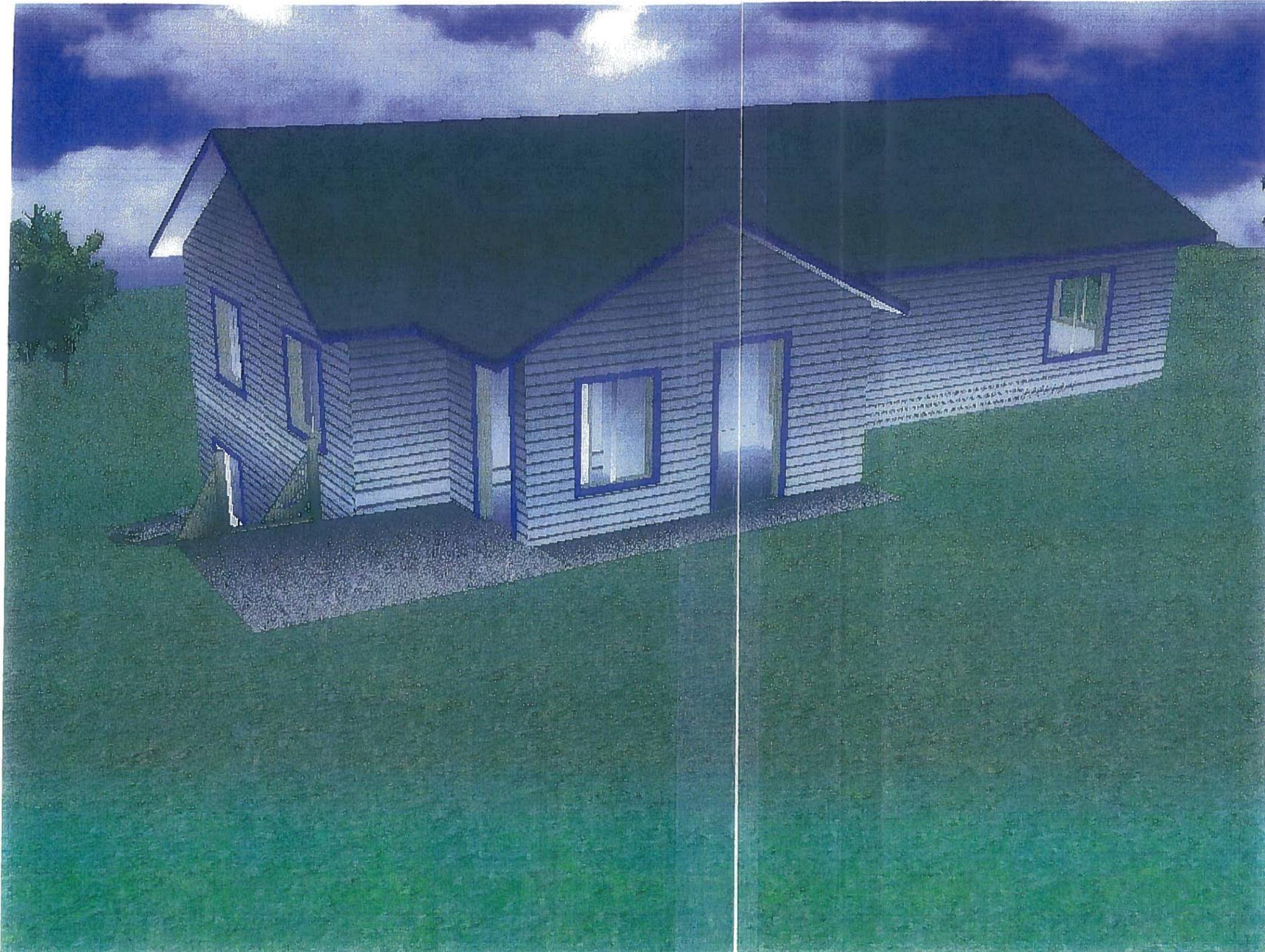
TABLE

1. The number of pages in each of the following books is given in the table below. Find the total number of pages in all the books together.

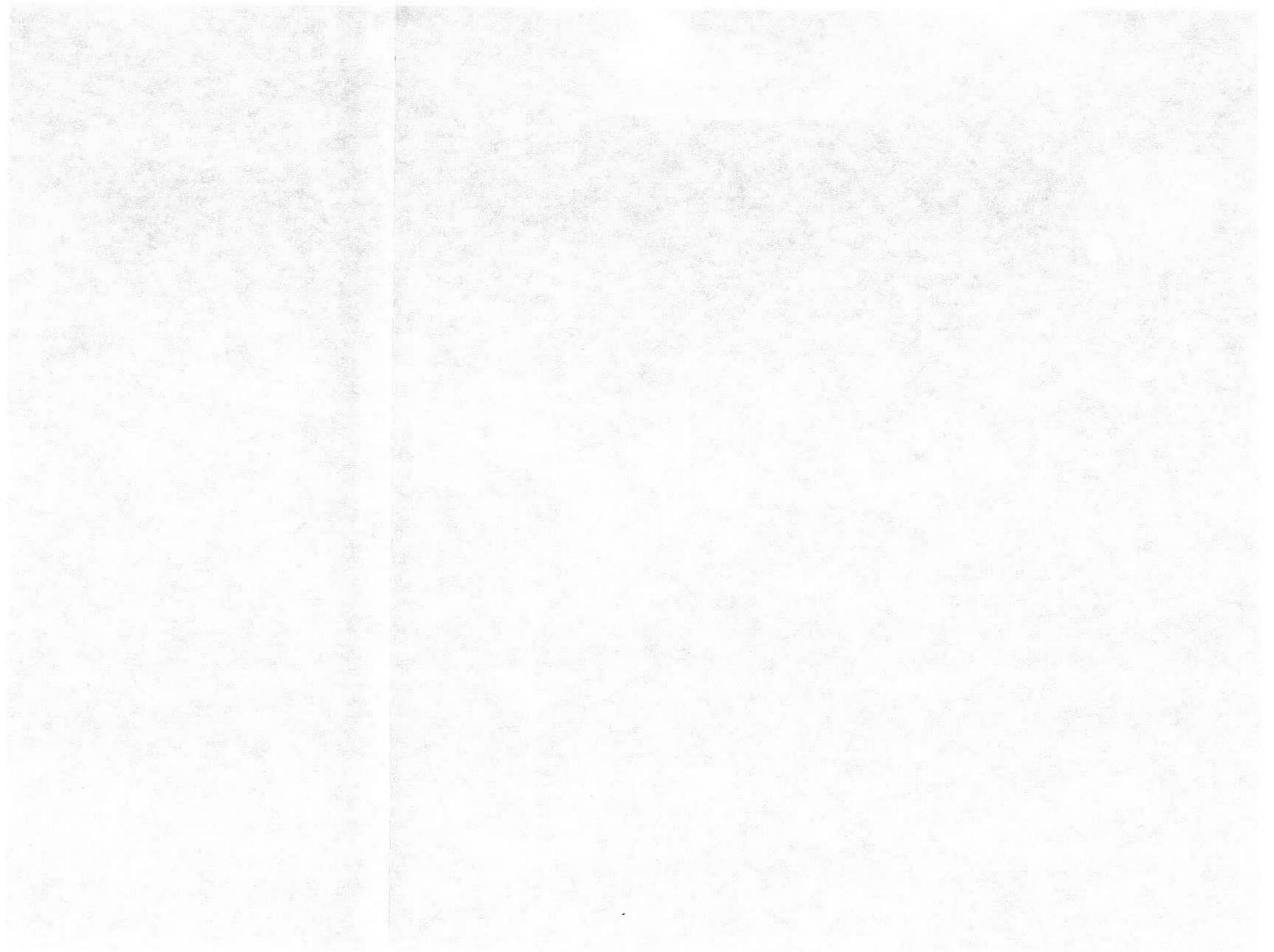
Book	Number of pages
Book A	120
Book B	150
Book C	180
Book D	200
Book E	220

2. The number of pages in each of the following books is given in the table below. Find the total number of pages in all the books together.

Book	Number of pages
Book F	100
Book G	130
Book H	160
Book I	190
Book J	210



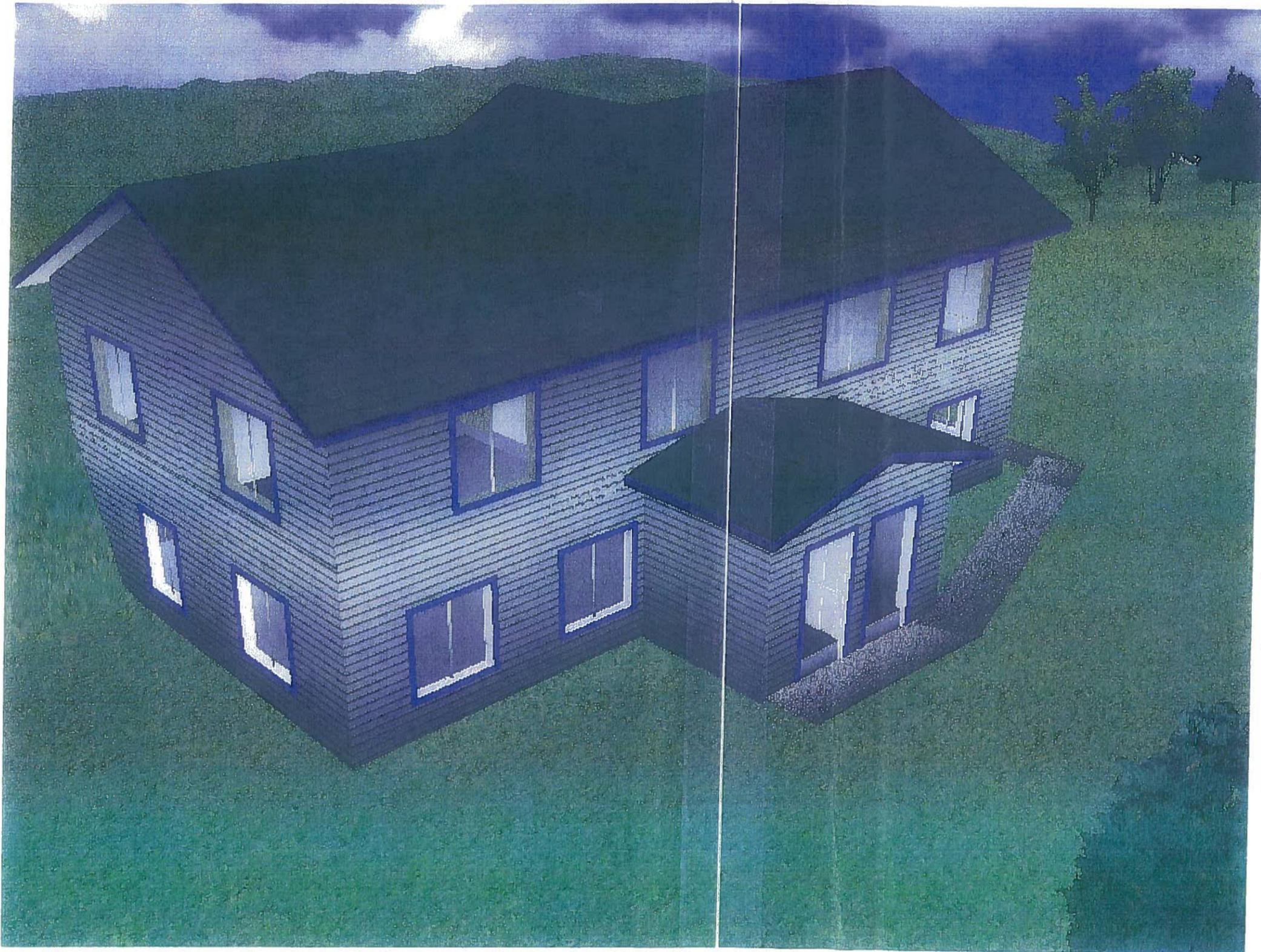
View
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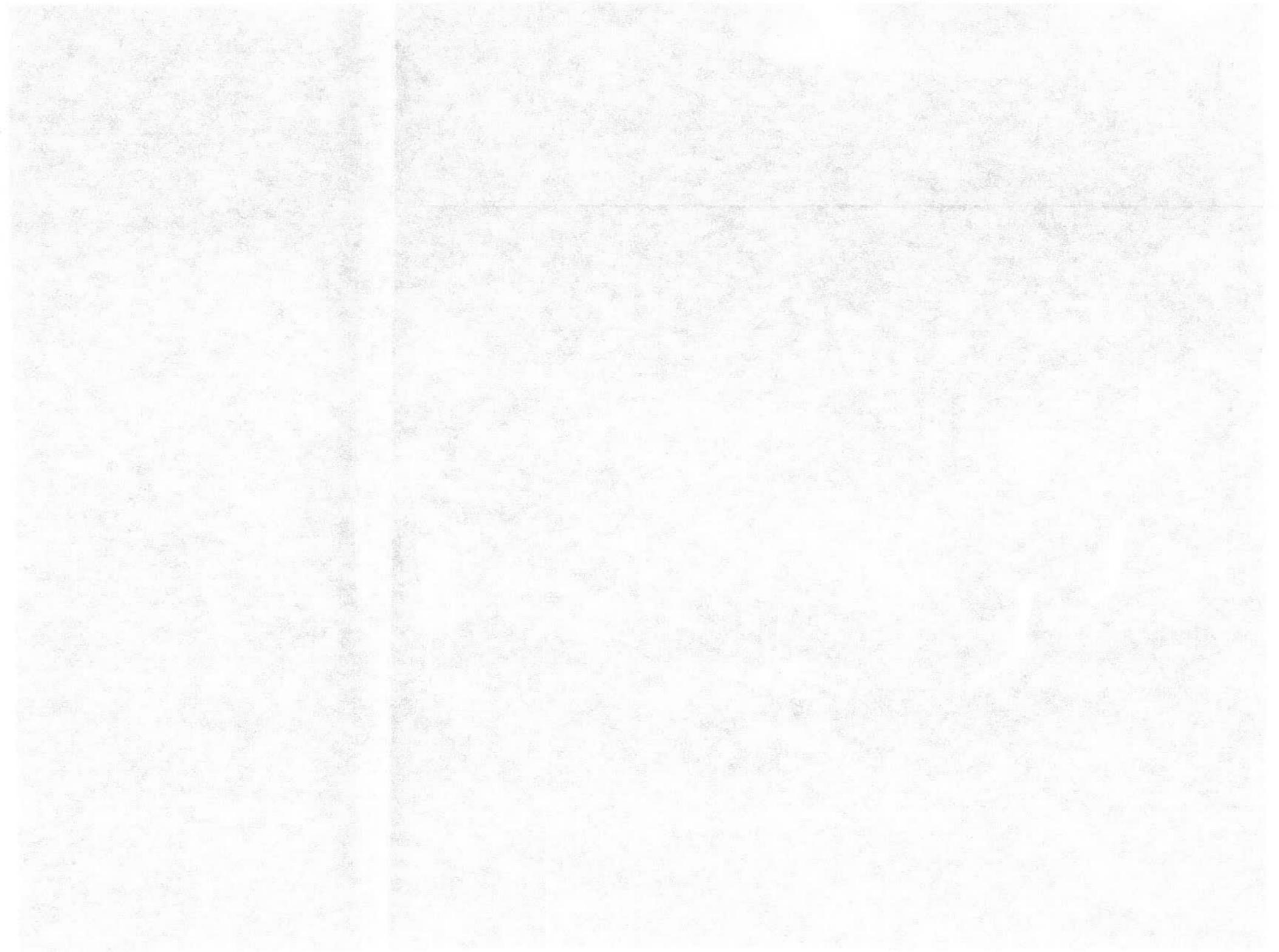


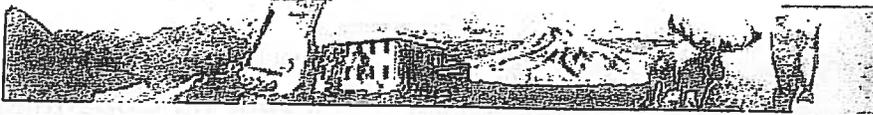
View from
No. 35





View from
the SW





Improvements

Improvements
1 of

Property Info

- Parcel
- Tax Record NEW! ⇒
- Improvements
- Print View
- Assessment History

2011 NOTICE VALUES ARE NOT CERTIFIED AND ARE SUBJECT TO APPEAL.
 CERTIFIED VALUES FOR 2011 WILL NOT BE AVAILABLE UNTIL JUNE 1, 2011

Searches

- Parcel Number
- Owner
- Address

Parcel Number	Tax Account	Parcel Address	2011 Total Value	Data as of	Assess Year
17403029		1295 MISSION RD, HOMER	\$598,700	2/28/2011	2010

Functions

- Welcome Page
- Property Search
- Contact Us
- Help
- Return to KPB Home
- Login / Logout

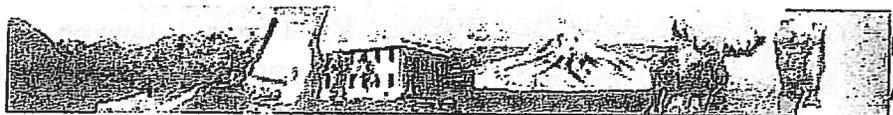
Improvements

View	Use Code	Building #	ID #	Constructed Yr.	Grade	Square Ft.	2 Va
	SWL	C01	01	3000	Avg	1	\$18,5
	SHEDGP	C01	02	2002	Avg	224	\$1,6
View Details / Print View	CLASSC	C01	C	1982	Low+	7,032	\$424,9
View Details / Print View	EQUIPBLD	C02	C	1995	Avg	2,400	\$47,8

Improvement Abbreviations & Descriptions

[Disclaimer / Privacy](#)

Powered by
MANATRON



Improvements

Improvements
1 of

- Property Info**
- Parcel
- Tax Record **NEW!** ⇒
- Improvements
- Print View
- Assessment History

2011 NOTICE VALUES ARE NOT CERTIFIED AND ARE SUBJECT TO APPEAL. CERTIFIED VALUES FOR 2011 WILL NOT BE AVAILABLE UNTIL JUNE 1, 2011

Searches

- Parcel Number
- Owner
- Address

Parcel Number	Tax Account	Parcel Address	2011 Total Data as Value of	Assess Year
17402104		1231 MISSION RD, HOMER	\$1,101,9002/28/2011	2010

Improvements

Functions

- Welcome Page
- Property Search**
- Contact Us
- Help
- Return to KPB
- Home
- Login / Logout

View	Use Code	Building #	ID #	Constructed Yr.	Grade	Square Ft.	Value
	SWL	C01	01	3000	Avg	3	\$38,1
View Details / Print View	SCHDORM	C01	C	1975	Low	7,918	\$471,:
View Details / Print View	APARTRES	C02	C	1976	Avg	1,107	\$47,1
View Details / Print View	APARTRES	C03	C	1978	Avg	1,568	\$120,:
View Details / Print View	APARTRES	C04	C	1976	Avg	704	\$39,1
View Details / Print View	APARTRES	C05	C	1976	Avg	832	\$30,:
View Details / Print View	APARTRES	C06	C	1976	Avg	864	\$4,:
View Details / Print View	APARTRES	C07	C	1990	Avg-	1,440	\$159,:
View Details / Print View	EQUIPBLD	C08	C	1985	Avg	1,176	\$23,1

Improvement Abbreviations & Descriptions

Disclaimer / Privacy





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 11-60

TO: Homer Advisory Planning Commission
FROM: Rick Abboud, City Planner
MEETING: May 18, 2011
SUBJECT: Draft Ordinance amending Chapter 21.34 Conservation District

GENERAL INFORMATION:

Staff has incorporated changes and had the attorney review and amend the draft ordinance. Changes include a different positioning relating to public land and private lands with consent of owner, the elimination of the reference of public utilities in the purpose statement and the dimension limits found in the conditional use of public utility facility and structures that cannot be reasonably located in another district.

STAFF COMMENTS/RECOMMENDATIONS:

Planning Commission discuss the draft ordinance, review the amendments and recommend public hearing on June 1st.

ATTACHMENTS

1. 5.10.11 Attorney Review Draft Ordinance

City of Houston Planning & Zoning



1997-2000
1995-1997
1993-1995
1991-1993
1989-1991

11111 Main Street
Houston, Texas 77002

713-861-1111

11111 Main Street
Houston, Texas 77002
713-861-1111
11111 Main Street
Houston, Texas 77002

11111 Main Street

The City of Houston is a large, diverse, and vibrant city. It is a major center of commerce, industry, and culture. The city is home to many world-class institutions, including the Houston Museum of Natural Science, the Houston Zoo, and the Houston Symphony. The city is also a major center of education, with many universities and colleges. The city is a diverse and inclusive community, and it is proud to be a leader in social justice and equity.

11111 Main Street

The City of Houston is a large, diverse, and vibrant city. It is a major center of commerce, industry, and culture. The city is home to many world-class institutions, including the Houston Museum of Natural Science, the Houston Zoo, and the Houston Symphony. The city is also a major center of education, with many universities and colleges. The city is a diverse and inclusive community, and it is proud to be a leader in social justice and equity.

11111 Main Street

11111 Main Street

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**CITY OF HOMER
HOMER, ALASKA**

Planning

ORDINANCE 11-

AN ORDINANCE OF THE CITY COUNCIL OF HOMER, ALASKA, AMENDING HOMER CITY CODE 21.34.010, PURPOSE; HOMER CITY CODE 21.24.020, PERMITTED USES; AND HOMER CITY CODE 21.34.030, CONDITIONAL USES; REGARDING THE PURPOSE AND USES PERMITTED IN THE CONSERVATION ZONING DISTRICT.

THE CITY OF HOMER ORDAINS:

Section 1. Homer City Code 21.34.010, Purpose, is amended to read as follows:

21.34.010 Purpose. ~~The purposes of the conservation district~~ **is applied to sensitive** ~~are primarily to identify, protect and enhance those public lands that are have been identified by state or federal agencies or the City of Homer as habitat critical to the maintenance of fish and wildlife resources,~~ **protect important watershed areas, or serve other key environmental functions. Private lands meeting the same criteria also may be included in the district with the consent of the owner. These lands are to be maintained in an undisturbed and natural state, except for and secondarily including parks with passive** ~~whose recreation activities and facilities are passive in nature, (e.g., those activities that include wildlife viewing, nature walks, educational and interpretive uses) and other uses that do not change the character of the land or disrupt fish and wildlife.~~ **Passive recreation activities are secondary to habitat protection and enhancement.**

Section 2. Homer City Code 21.34.020, Permitted uses, is amended to read as follows:

21.34.020 Permitted uses. The following uses are permitted outright in the conservation district:

- a. Fish and wildlife habitat protection and enhancement;~~;~~~~and~~
- b. Marine-life and wildlife sanctuary or preserve.

Section 3. Homer City Code 21.34.030, Conditional uses, is amended to read as follows:

21.34.030 Conditional uses. The following uses are conditionally permitted in the conservation district when authorized by conditional use permit issued in accordance with HCC Chapter 21.71:

- a. Pedestrian trails, including boardwalks and viewing platforms;~~;~~~~and~~
- b. Educational and interpretive displays and signs;~~;~~~~and~~

[**Bold and underlined added.** Deleted language stricken through.]

P:\PACKETS\PCPacket 2011\Ordinance\Conservation\CONS ordinance att edit 5.10.11.DOCX

43 **c. Public utility facilities and structures that cannot be reasonably located in another**
44 **district.**

45 **d.** Parking lots incidental to a permitted or conditionally permitted use; ~~and~~
46 **ed.** Other conservation uses that will enhance the conservation district, approved by the
47 Planning Commission, provided, however, a finding of no adverse impact to the integrity of the
48 fish and wildlife resources and habitat must be found.

49
50 **Section 4.** This Ordinance is of a permanent and general character and shall be included
51 in the City Code.

52
53 ENACTED BY THE CITY COUNCIL OF HOMER, ALASKA, this _____ day of
54 _____ 2011.

55
56 CITY OF HOMER

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58
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60 _____
61 JAMES C. HORNADAY, MAYOR

62 ATTEST:

63
64
65 _____
66 JO JOHNSON, CMC, CITY CLERK

67
68 YES:
69 NO:
70 ABSTAIN:
71 ABSENT:

72
73 First Reading:
74 Public Hearing:
75 Second Reading:
76 Effective Date:

77
78 Reviewed and approved as to form:

79
80
81 _____
82 Walt E. Wrede, City Manager
83 Date: _____

81 _____
82 Thomas F. Klinkner, City Attorney
83 Date: _____

[Bold and underlined added. Deleted language stricken through.]



City of Homer Planning & Zoning

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Web Site www.ci.homer.ak.us

STAFF REPORT PL 11-59

TO: Homer Advisory Planning Commission
FROM: Rick Abboud, City Planner
MEETING: May 18, 2011
SUBJECT: Draft East End Mixed Use Ordinance

GENERAL INFORMATION

The Commission reviewed the ordinance at the May 4th work session and then postponed the item at the regular meeting. The Commission identified three areas for further work: uses to revisit, residential uses, and district boundaries for the May 4th meeting. The rest of the staff report is the one that was visited at the work session. The Commission should review and make motions on the record of their decisions.

ANALYSIS:

Uses to Revisit:

Permitted uses:

- Production, processing, assembly and packaging of fish, shellfish and seafood products: The Commission wanted to revisit this use due to concerns over odors and waste that might be generated by a cannery or similar operation. Examples of these uses are canneries, smaller custom packing like a Fisherman's Resort, smoking operations, or the packaging and shipping of oysters or preprocessed fish. **Staff comment:** the city dock and fish grinder facilities are on the Spit; hopefully they would attract a large processor. Smaller facilities that do not need direct access to salt water or to unload commercial fishing vessels could be located anywhere (with proper DEC approvals). This can clearly be seen in Anchor Point, Ninilchik, Kasilof and other coastal communities. It is staff's opinion, that processing should be allowed in other locations than the Spit, possibly as a conditional use, and possibly with a square footage limit. **Staff Recommendation:** Allow this use, and decide whether it should be permitted outright, or conditional.
- Public stables and private stables; The Commission eliminated stables, but the ordinance still allows for the raising of livestock (line 37). Horses are livestock according to staff's research. Stables simply regulate the occupancy type of the horse – are horses boarded or for sale in the facility, or not. The elimination of stables means someone can raise horses in a field, but cannot have a building to keep the horses. Horses for sale in a building are defined as a public stable; horses not for sale or boarding in a barn are a private stable. Please refer to zoning code definitions of "agricultural activity," "stable public" and "stable private." **Staff Recommends** allowing public and private stables.

Conditional Uses:

- **Bulk petroleum product storage above ground; and Underground bulk petroleum storage.** Staff research: a new gas station might have bulk petroleum storage of 20,000 gallons in the Homer market. A tank farm and home delivery fuel company would have more on the order of 40,000 gallons or more. Only two districts in Homer allow for bulk petroleum storage: GC2, and Marine Commercial. Staff received public comment that the Spit is a poor location for a bulk fuel facility (flood zone/earthquake/tsunami hazards); it would be a good idea to allow this activity in another part of the City. Staff also comments that if the 2008 Comprehensive Plan land use map is followed, there will be relatively little GC2 property available for this use. East End Mixed Use will be the main mixed use/industrial zone. IE, if only GC2 land is really viable for a new tank farm, that may not be a large enough area or suitable for this type of facility. **Staff Recommends** that bulk petroleum storage (above or below ground) be a conditional use in the EEMU.
- **Impound yards;** This activity is allowed only in GC2 under current code. **Staff recommends** it be allowed as a conditional use, as are junk yards, in the EEMU district.
- **Day care facilities;** provided, however, that outdoor play areas must be fenced. Staff comment: day care facilities (not in home daycare, but a standalone business) are allowed pretty much city wide as a conditional use (from rural residential to GC2). Staff does not have an opinion on if they should be included in the EEMU district.

Residential Uses

Previous discussion: Do not want to see expansion of single family housing as a primary use in this district. This is a mixed use and industrial area.

Question: (NEW CONSTRUCTION) Is a detached structure/home acceptable if there is a primary business activity on the lot? Example: A storage unit, automotive business, or contractor establishment, with a detached home. The home could be employee housing, owner housing or a rental. Staff does not want to regulate who is living in the structure at any given time; it could not be realistically enforced, and nowhere else in code do we regulate occupancy in this way.

- **At Minimum, Staff recommends** allowing the rebuilding of existing lawful non-conforming homes within 1 year of damage. Staff contends the existing housing is not going to 'go away' very quickly. IE people are not tearing them down to build businesses very often. Homes along Kachemak Drive and those associated with commercial businesses have been in place for many years and will continue indefinitely.
- **Staff further recommends** allowing detached dwelling units as an accessory use on a lot with a primary commercial use. Staff and the Commission can further work on defining exactly what 'accessory use' would look like, if the Commission agrees with this idea.

Conditional residential uses, up for discussion (Staff note: generally describes the structure)

- a. Multiple-family dwelling, only if the structure conforms to HCC § 21.14.040(a)(2)

- b. Single family and duplex dwellings, including mobile homes (not including mobile home parks)
- c. Townhouses; (these are an architectural and ownership arrangement; if multifamily is allowed, then keep townhouses).
- d. Shelter for the homeless, provided any lot used for such shelter does not abut an urban, rural or office residential zoning district;
- e. Group care homes and assisted living homes.

Staff Recommends allowing all these uses and structures.

Permitted outright (Staff note: these are generally USES – this does not describe the STRUCTURE that the activity occurs in)

Items 1 and 2 below mean, IF a CUP was granted for the new residential structure, then the occupants could use the home for these business uses, generally without more permitting.

1. Day care homes; all outdoor play areas must be fenced and provided that a conditional use permit was obtained for the dwelling, if required by HCC § 21.27.030
2. Rooming house and bed and breakfast, provided that a conditional use permit was obtained for the dwelling, if required by HCC § 21.27.030
3. Dormitory
4. Caretaker or dormitory residence (GC2 permitted accessory use, allows for a standalone housing structure)

Staff Recommends allowing all these uses.

District Boundaries

Discussion: The triangle area that was annexed is already fairly densely developed. One of the reasons the boundaries of the EEMU is so large in the comp plan is to better use the area available for a future commercial/mixed use hub for the community, particularly for those businesses that don't need high visibility locations like Ocean Drive. If the new district only encompasses the existing annexed area, that will only address the current zoning issues. We need forward thinking about future growth and development over the next 20 years as outlined in the comp plan. **Staff Recommends** using the district boundaries as shown in the 2008 Comprehensive Plan.

Next steps for staff:

- Send ordinance to attorney for review; then
- Post to city website and mail notice to property owners
- Public outreach over the summer
- Plan for fall neighborhood meetings

STAFF COMMENTS/RECOMMENDATIONS:

Planning Commission

1. Determine if "Production, processing, assembly and packaging of fish, shellfish and seafood products" should be allowed outright, or conditionally;
2. Allow Bulk petroleum storage (above or below ground) as a conditional use;
3. Allow Impound yards as a conditional use;
4. Allow public and private stables as a permitted use;
5. Allow detached dwelling units as an accessory use on a lot with a primary commercial use. Staff and the Commission can further work on defining exactly what 'accessory use' would look like, if the Commission agrees with this idea.
6. Allow all the permitted and conditional uses and structures in the draft ordinance.
7. Use the district boundaries as shown in the 2008 Comprehensive Plan.

ATTACHMENTS

1. May 4, 2011 Draft Ordinance

May 4, 2011 DRAFT

Chapter 21.27

EEMU East End Mixed Use District

21.27.010 Purpose

21.27.020 Permitted uses and Structures

21.27.030 Conditional Uses and Structures

21.27.040 Dimensional requirements

21.27.050 Site and Access Plans

21.27.060 Traffic Requirements.

21.27.070 Site Development Requirements.

21.27.080 Nuisance standards.

21.27.090 Lighting Standards.

21.27.010 Purpose. The East End Mixed Use (EEMU) District is primarily intended to provide sites for businesses that require direct motor vehicle access and may require larger land area. The district is meant to accommodate a mixture of residential and non-residential uses with conflicts being resolved in favor of non-residential uses.

21.27.020 Permitted uses and structures. The following uses are permitted outright in the East End Mixed Use District, except when such use requires a conditional use permit by reason of size, traffic volumes, or other reasons set forth in this chapter.

- a. Auto, trailer, truck, recreational vehicle and heavy equipment sales, rentals, service and repair,
- b. Auto fueling stations and drive-in car washes;
- c. Building supply and equipment sales and rentals;
- d. Lumberyards;
- e. Garden supplies and greenhouses;
- f. Boat and marine equipment sales, rentals, manufacturing, storage yard, service and repair;
- g. Welding and mechanical repair;
- h. Restaurants, including drive-in restaurants, clubs and drinking establishments;
- i. Religious, cultural, and fraternal assembly;
- j. Studios
- k. Personal services
- l. Agricultural activities, including general farming, truck farming, livestock farming, nurseries, tree farms and greenhouses provided that:
 - Other than normal household pets, no poultry or livestock may be housed and no fenced runs may be located within one hundred feet of any residence other than the dwelling on the same lot,
- m. Storage of heavy equipment, vehicles or boats
- n. Plumbing, heating and appliance service shops,
- o. Home occupations, provided they conform to the requirements of HCC § 21.51.010

- 45 p. Mortuaries and Crematoriums;
 46 q. Open air businesses;
 47 r. Parking lots and parking garages, in accordance with HCC Chapter 7.12.
 48 s. Manufacturing, fabrication and assembly
 49 t. Retail businesses;
 50 u. Trade, skilled or industrial schools;
 51 v. Wholesale businesses, including storage and distribution services incidental to the
 52 products to be sold;
 53 w. Parks and open space;
 54 x. Warehousing, commercial storage and mini-storage;
 55 y. Recreational vehicles, subject to the standards set out in HCC § 21.54.320.(a),(b),(c)
 56 (allows storage of an RV as accessory to a dwelling, and for a guest to stay on site up to
 57 90 days a year)
 58 z. Dry cleaning, laundry, and self-service laundries;
 59 aa. Mobile food services;
 60 bb. As an accessory use, one small wind energy system per lot
 61 cc. Production, processing, assembly and packaging of fish, shellfish and seafood products;
 62 **(REVISIT)**
 63 dd. Construction, assembly and storage of boats and boat equipment;
 64 ee. Research and development laboratories;
 65 ff. Storage and distribution services and facilities, including truck terminals, warehouses and
 66 storage buildings and yards, contractors' establishments, lumberyards and sales, or
 67 similar uses;
 68 gg. Cold storage facilities;
 69 hh. Mobile commercial structures;
 70 ii. Dwelling units located in buildings primarily devoted to business uses; (Commission
 71 already agreed to this, during discussion of SR 11-22, February)
 72 *jj. Update HERE for final district uses...this is a placeholder for now! Customary*
 73 *accessory uses...(Include residential uses like too!)Accessory uses to the uses permitted*
 74 *in the EEMU district that are clearly subordinate to the main use of the lot or building,*
 75 *such as wharves, docks, restaurant or cafeteria facilities for employees; or caretaker or*
 76 *dormitory residence if situated on a portion of the principal lot: provided that separate*
 77 *permits shall not be issued for the construction of any type of accessory building prior to*
 78 *that of the main building.(other code examples: k. Customary accessory uses to any of the*
 79 *permitted uses listed in the X district, provided that no separate permit shall be issued for the*
 80 *construction of any detached accessory building prior to that of the main building. Needs*
 81 *tweaking for open air land uses..ie a tool or storage shed on a lot used for equipment storage)*
 82 kk. Taxi operation;
 83 ll. Itinerant merchants, provided all activities shall be limited to uses permitted outright
 84 under this zoning district;
 85 ~~mm. Public and private stables;~~
 86 nn. More than one building containing a permitted principal use on a lot.
 87 oo. The outdoor harboring or keeping of dogs, small animals and fowl as an accessory to a
 88 residential use in a manner consistent with the requirements of all other provisions of the
 89 Homer City Code and as long as such animals are pets of the residents of the dwelling
 90 and their numbers are such as not to unreasonably annoy or disturb occupants of
 91 neighboring property;

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Residential uses, permitted outright, up for discussion

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Conditional residential uses, up for discussion

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1. Day care homes; all outdoor play areas must be fenced and provided that a conditional use permit was obtained for the dwelling, if required by HCC § 21.27.030
2. Rooming house and bed and breakfast, provided that a conditional use permit was obtained for the dwelling, if required by HCC § 21.27.030
3. Dormitory
4. Caretaker or dormitory residence (GC2 permitted accessory use)

Conditional residential uses, up for discussion

- a. Multiple-family dwelling, only if the structure conforms to HCC § 21.14.040(a)(2)
- b. Single family and duplex dwellings, including mobile homes (not including mobile home parks)
- c. Townhouses;
- d. Shelter for the homeless, provided any lot used for such shelter does not abut an urban, rural or office residential zoning district;
- e. Group care homes and assisted living homes.

21.27.030 Conditional uses and structures. The following uses may be permitted in the East End Mixed Use District when authorized by conditional use permit issued in accordance with HCC Chapter 21.71:

- f. Construction camps;
- g. Extractive enterprises, including crushing of gravel, sand and other earth products and batch plants for asphalt or concrete; *(should better spell out noxious uses such as batch plants from more benign uses like sand pile storage for contractors who provide sanding services) (stockpile OK)(screen/landscape for new structures on EERoad)*
- h. Bulk petroleum product storage above ground; Underground bulk petroleum storage; **(Revisit; should a gas station trigger a CUP due to bulk storage, or only a larger facility/tank farm?)**
- i. Planned unit developments,
- j. Junk yard;
- k. Kennels;
- l. Public utility facilities and structures;
- m. Impound yards; (if the stuff is there more than 6 months its junk under code) **(REVISIT)**
- n. More than one building containing a permitted principal use on a lot.
- o. Day care facilities; provided, however, that outdoor play areas must be fenced **(REVISIT)**
- p. Indoor recreational facilities;
- q. Outdoor recreational facilities.
- r. Other uses approved pursuant to HCC § 21.04.020.

135

136 21.27.040 Dimensional requirements. The following dimensional requirements shall apply to all
137 structures and uses in the East End Mixed Use District:

138 a. Lot Size.

139 1. The minimum lot area shall be 40,000 square feet in areas not served by public sewer
140 and water.

141 2. Each lot shall contain a minimum of 20,000 square feet if one of the following
142 conditions exists:

143 i. The lot is served by public water supply approved by the State Department of
144 Environmental conservation; or

145 ii. The lot is served by public or community sewer approved by the State
146 Department of Environmental Conservation.

147 3. Each lot shall contain a minimum of 10,000 square feet if the lot is served by both
148 public water and sewer that satisfies both conditions of subsection (a)(2).

149 b. Building Setbacks.

150 1. Buildings shall be set back 20 feet from all dedicated rights-of-way, except as allowed
151 by subsection (b)(3);

152 2. Buildings shall be set back from all other lot boundary lines according to the number
153 of stories as follows:

154 b. Building Setbacks.

155 1. All buildings shall be set back 20 feet from all dedicated rights-of-way. Alleys
156 are not subject to a 20 foot setback requirement. The setback requirements from any lot line
157 abutting an alley will be determined by the dimensional requirements of subparagraphs (2) and
158 (3) below;

159 2. Buildings shall be set back five feet from all other lot boundary lot lines unless
160 adequate firewalls are provided and adequate access to the rear of the building is otherwise
161 provided (e.g., alleyways) as defined by the State Fire Code and enforced by the State Fire
162 Marshal;

163 3. Any attached or detached accessory building shall maintain the same yards and
164 setbacks as the main building.

165 4. Adjacent to those rights-of-way that lead to Kachemak Bay and have been determined
166 to be unsuitable for road construction by Resolution of the City Council, all buildings shall be set back
167 from the boundary of the right-of-way according to the number of stories as provided in subsection (b)(2).

168 c. **Building Height.** The maximum building height shall be 35 feet.

169 d. No lot shall contain more than 8,000 square feet of building area (all buildings combined), nor
170 shall any lot contain building area in excess of 30 percent of the lot area without an approved
171 conditional use permit.

172 e. **Building Area and Dimensions - Retail and Wholesale.**

173 1. The total square feet of floor area of retail and wholesale business uses within a
174 single building shall not shall not exceed 75,000 square feet.

175 2. No conditional use permit, Planned Unit Development, or variance may be
176 granted that would allow a building to exceed the limits of these subparagraphs (e)(1), and (2)
177 and no nonconforming use or structure may be expanded in any manner that would increase its
178 nonconformance with the limits of subparagraphs (e)(1), and (2).

179 f. **Screening.** When one or more side or rear lot lines abut land within an RO, RR, or UR district
180 or when a side or rear yard area is to be used for parking, loading, unloading or servicing, then
181 those side and rear yard areas shall be effectively screened by a wall, fence, or other sight-
182 obscuring screening. Such screening shall be of a height adequate to screen activity on the lot
183 from outside view by a person of average height standing at street level.

184 21.27.050 Site and Access Plans. a. A zoning permit for any use or structure within the East
185 End Mixed Use District shall not be issued by the City without a level one site plan approved by
186 the City under HCC Chapter 21.73.

187 b. No zoning permit may be granted for any use or structure without a level two right-of-way
188 access plan approved by the City under HCC § 21.73.100.

189 21.27.060 Traffic Requirements. A conditional use permit is required for every use that is
190 estimated or expected to generate traffic in excess of the criteria contained in HCC § 21.18.060.

191 21.27.070 Site Development Requirements. All development on lands in this district shall
192 conform to the level two site development standards set forth in HCC § 21.50.030

193 21.27.080 Nuisance standards. The nuisance standards of HCC § 21.59.010(a)through (g)(1)
194 apply to all development, uses, and structures in this zoning district. Open storage of materials
195 and equipment is permitted, subject to these exceptions and conditions:

196
197 (a) If a lot abuts a residential zoning district any outdoor storage of materials and equipment on
198 the lot must be screened from the residential district by a wall, fence, or other sight-obscuring
199 material. The screen must be a minimum of eight feet in height.
200

201 21.27.090 Lighting Standards. The level one lighting standards of HCC § 21.59.030 apply to all
202 development, uses, and structures in this zoning district.

203 **Section 2.** The official zoning map as drafted of the East End Mixed Use Zoning
204 District dated _____ (attached exhibit A) shall consist of the originally proposed
205 properties and adjoining properties which may by request be included. The City Clerk is
206 authorized to sign the map and adhere to the requirements set forth in the Homer City Code,
207 Section 21.10.030 (b).



City of Homer Planning & Zoning

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STAFF REPORT PL 11-61

TO: Homer Advisory Planning Commission
 THROUGH: Rick Abboud, City Planner
 FROM: Dotti Harness-Foster, Planning Technician
 MEETING: May 18, 2011
 SUBJECT: Internally illuminated signs

At the May 4, 2011 HAPC work session the Commission reviewed research regarding internally illuminated signs and how other communities set sign standards. Based on the conversation, the main issues were 1) Opaque backgrounds; 2) Changeable copy; 3) Nonconforming signs. First, signs with opaque backgrounds:

1) Signs with opaque (dark) backgrounds emit less light than a similar sign with a light background. In other words, an internally lit sign with a dark background and white letters emits less light than a sign with a light background with dark lettering.

Research indicates that a sign with a black lettering on a white background has better legibility and recognition¹.

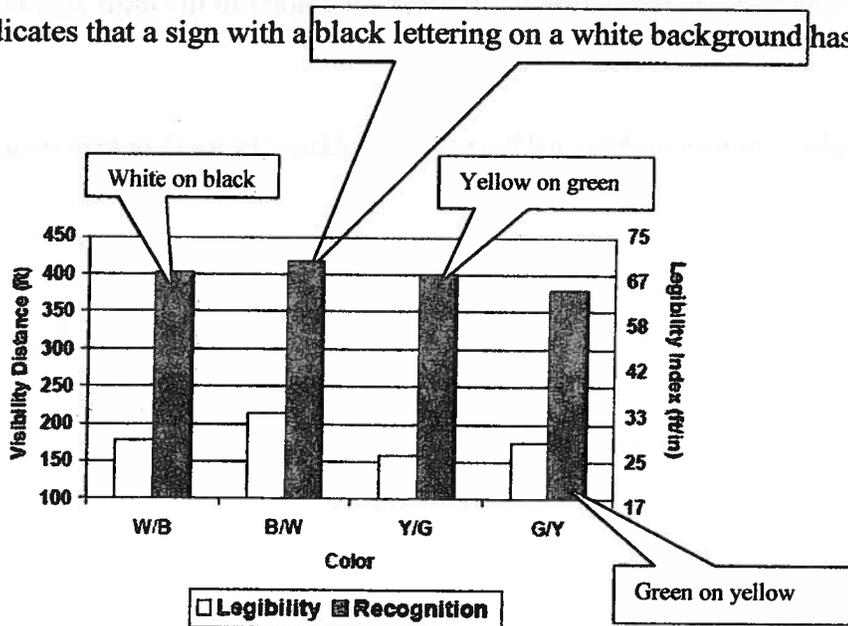


Figure 5. Mean legibility and recognition distance for the four color combinations.

Smart Growth suggests eliminating internally lit signs, “Because internally lit signs can be intrusive, consider prohibiting them or strictly limiting their size and *brightness*. Any lighting for signs should be shielded and focused to ensure that glare doesn’t impact surrounding roads and properties.”

Enforcement: Brightness as in wattage, type and number of bulbs is difficult to enforce because bulbs can easily be changed. Far easier to enforce is sign background color. Professional sign manufacturers are prudent about getting pre-authorization and a sign permit prior to installation.

- 2) Changeable copy signs should be exempt from any standards that require an opaque background.
- 3) New standards would apply to new signs only. HCC 21.60.150 provides nonconforming signs to remain.

STAFF COMMENTS: If the goal of the Commission is to reduce the brightness of signs, the most enforceable options are to:

Prohibit internally illuminated signs cabinets that allow the entire face to be illuminate, except for changeable copy signs.

and/or:

The sign background to be opaque and of a non-reflective material, except for changeable copy signs.

Since the "Spit" sign code amendments blossomed to include other parts of town, if the internally illuminated amendments are simple in nature, they too maybe included in the draft sign code ordinance. Staff is working with the city attorney on that ordinance.

ⁱ *Internally Illuminated Sign Light: Effects on Visibility and Traffic Safety* published by the United States Sign Council, 2009



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STAFF REPORT PL 11-49

TO: Homer Advisory Planning Commission
 THROUGH: Rick Abboud, City Planner
 FROM: Dotti Harness-Foster, Planning *DH*
 MEETING: May 4, 2011
 SUBJECT: CUP 11-06 Central Charters Boardwalk

This is a quasi-judicial decision and requires 5 yes votes.

SYNOPSIS: The existing Central Charters Boardwalk has five buildings: Central Charters, Captains Patties, Sea Lion Gallery, Alpaca and new this year, The Crab Shack. The boardwalk owner requests an expansion for five units to be used for overnight accommodations and an addition to Captains Patties restaurant. The applicant is also requesting a setback exception along the west lot line to allow a corner of one building (26 s.f.) to encroach into the side setback.

This CUP includes existing and proposed uses and structures in the Marine Commercial District.

- HCC 21.28.030 (a) Restaurants and drinking establishments (existing)
- HCC 21.28.030(h) Hotel and motels (existing and proposed)
- HCC 21.28.030(i) More than one permitted principal use on a lot (existing)
- HCC 21.28.030(j) Planned unit development (for setback exception)
- HCC 21.28.040(d) More than 8,000 s.f. of building area (existing) or a building area in excess of 30% of the lot area.

Applicants: Seabright Survey + Design
 Property Owners: William and Catrin Lovett
 Location: 4241 Homer Spit Road
 Parcel ID: 18103307
 Lot Size: 0.88 acres equals 38,333 s.f.
 Zoning Designation: Marine Commercial
 Existing Land Use: Boardwalk with five existing buildings
 Surrounding Land Use: North: Retail, restaurant
 South: Kachemak Bay
 East: Retail, restaurant
 West: Open recreation space
 Comprehensive Plan: 1999 Homer Spit Comprehensive Plan pg 4.
 Flood Plain Status: Flood Dev. Permit for boardwalk expansion issued 4/28/2010
 Utilities: Public water and sewer
 Public Notice: Notice was sent to 34 property owners of 41 properties as shown on the KPB tax assessor rolls.

The Central Charters Boardwalk has five (5) existing buildings with a combined square footage of 8,042 sf. The existing buildings are used for retail, restaurant and a booking office.

Boardwalk addition: Permitted and under construction is a boardwalk expansion that is elevated 45 inches above the existing boardwalk. The increased deck elevation was engineered to meet FEMA requirements per Homer's Flood Prone Areas code HCC 21.41. The new boardwalk extends the existing boardwalk to the northwest and wraps around to the southern bay side. A handicap accessible ramp will connect the existing and new boardwalk. As proposed, the additional boardwalk will house five (5) units for overnight accommodations, a laundry/mechanical room and a southern bay side additional for Captains Patties Restaurant.

FEMA regulations require that when the boardwalk is complete, the applicant is to submit an engineer certified Flood Elevation Certificate which verifies that the boardwalk was constructed to meet Homer's Flood Prone Areas HCC 21.41. **Staff recommends that the final Elevation Certificate for the boardwalk be submitted prior to issuance of a Zoning Permit for the buildings.**

A setback variance was granted on May 4, 1989 which allowed the extension of the deck up to the north property line along Homer Spit Road. The pilings for the existing and proposed deck are setback five feet (5') from the property lines and the deck planks cantilever five feet (5') to the property lines. This proposal asks for a zero (0) building setback on the west corner of one of the buildings. If approved, this request would allow approximately 26 sf of building area to be in the side setback.

Parking: Eight (8) parking spaces are provided on private property. HCC 21.55.100(d) requires five (5) parking spaces for year-round permanent employees. All of the businesses on the Central Charters Boardwalk are seasonal, with no year-round permanent employees. In an effort to be consistent with other CUPs, this site meets the need for five (5) parking spaces per HCC 21.55.100(d).

Staff note: In the past, AkDOT issued parking permits but those permits have expired and AkDOT will not be reissuing those permits.

The combined building area is more than 8,000 sf of building area which requires a CUP per HCC 21.28.040(d).

8,042 sf = The existing building area
3,824 sf = The proposed new building area
11,866 sf = Total combined building area

The combined building area is 31% of the lot area which requires a CUP per HCC 21.28.040(d).

Hotel and motels in the Marine Commercial district require a CUP per HCC 21.28.030(h). Homer City Code defines a hotel or motel as "...any building or group of buildings containing six or more guest rooms that are used, rented or hired out to be occupied for sleeping purposes by guests..." There are five existing "guest units", three upstairs in the Central Charters building, and two upstairs in the Sea Lion Gallery building. When complete this parcel will have a total of ten (10) overnight accommodation units.

Fire Marshal: The buildings on the Central Charters Boardwalk have several Fire Marshal certifications dating back to 1990's. The uses and floor plans may or may not be as permitted. In addition to the Fire Marshal review for the new buildings, staff recommends that the applicant provide verification that all the buildings (existing and proposed) meet State of Alaska Fire Marshal standards based on their current use.

The criteria for granting a Conditional Use Permit is set forth in HCC 21.71.030 and 21.71.040.a. The applicable code authorizes each proposed use and structure by conditional use permit in that zoning district.

Finding 1: HCC 21.28.030 (a) Restaurants and drinking establishments
HCC 21.28.030(h) Hotel and motels (existing and proposed)
HCC 21.28.030(i) More than one permitted principal use on a lot.
HCC 21.28.030(j) Planned unit development
HCC 21.28.040(d) More than 8,000 sf of building area

b. The proposed use(s) and structure(s) are compatible with the purpose of the zoning district in which the lot is located.

Analysis: The "purpose of the Marine Commercial District is primarily for water-related and water-dependent uses and the business and commercial uses that serve and support them, including but not limited to fishing, marine transportation, off-shore energy development, recreation and tourism. It is recognized that unique natural features of Homer's marine environment contribute significantly to the economic and social environments, therefore performance standards are required to minimize the impact of development on the natural features on which they depend" per 21.28.010.

The project supports tourism with retail, recreational fishing booking office, overnight accommodations and a restaurant. The raised boardwalk minimizes the impact of development on the natural features.

Finding 2: This project is compatible with the purpose of the Marine Commercial district.

c. The value of the adjoining property will not be negatively affected greater than that anticipated from other permitted or conditionally permitted uses in this district.

Analysis: The adjoining property to the west is owned by the City of Homer and is zoned Open Space Recreational. The applicant is requesting a setback exception along the west lot line to allow a corner of one building (26 sf) to encroach into the side setback.

The adjoining property to the SE is privately owned and is developed as a boardwalk with retail, charter offices and restaurants.

The value of the adjoining property should not be negatively affected greater than that of other permitted or conditionally permitted uses in the district such as cold-storage facilities and wholesale outlets for marine products.

Finding 3: No evidence has been found that the project will have a negative impact on the adjoining properties.

d. The proposal is compatible with existing uses of surrounding land.

Analysis: The surrounding land uses include fish processing, retail, charters office and restaurants which is compatible with the proposed project.

Finding 4: The proposed boardwalk expansion is compatible with of the surrounding land.

e. Public services and facilities are or will be, prior to occupancy, adequate to serve the proposed use and structure.

Analysis: The site is served with city water and sewer along a paved State of Alaska highway.

Finding 5: Public services and facilities are adequate to serve the project.

f. Considering harmony in scale, bulk, coverage and density, generation of traffic, the nature and intensity of the proposed use, and other relevant effects, the proposal will not cause undue harmful effect upon desirable neighborhood character.

Analysis: The existing Captain Patties Restaurant is a two-story, 1,815 sf structure. The proposed addition to Captain Patties is single-story, on the bay side and not visible from Homer Spit Road.

Also proposed, is one building with five overnight accommodations units with an attached laundry/mechanical room. This single-story, 1,776 sf building with a maximum building height of twelve feet (12') and views to the south, bay side. According to the North Elevation approximately half of this 5-unit building sits behind the Alpaca store and the Crab Shack with a roofline lower than the existing buildings.

The addition of 2,048 sf to Captain Patties Restaurant plus five (5) overnight accommodation units, to an already mixed used site is difficult to isolate the traffic impacts. The *Trip Generation, 7th Edition* published by the Institute of Transportation Engineers estimates 58 peak vehicle trips for a retail center which does not require a Traffic Impact Analysis per HCC 21.76.060.

Finding 6: This project is in harmony with the scale, bulk, coverage, density, and traffic generation of the surrounding Marine Commercial district.

Finding 7: This project will not have an undue harmful effect on the character of the Marine Commercial Spit activity.

g. The proposal will not be unduly detrimental to the health, safety or welfare of the surrounding area or the city as a whole.

Analysis: The proposed project is designed to meet all current health and safety requirements. There is a variety of Fire Marshal certificates from the 1990's for a variety of buildings and uses. **Staff recommends that applicant provide verification that all the buildings meet State of Alaska Fire Marshal standards based on their current use. This verification to be provided prior to issuance of a Zoning Permit.**

Finding 8: The proposed project will not be detrimental to the health, safety or welfare of the surrounding area or city as a whole.

h. The proposal does or will comply with the applicable regulations and conditions specified in this title for such use.

Analysis: An approved CUP and zoning permit is required.

Finding 9: The proposed project will comply with the applicable regulations.

i. The proposal is not contrary to the applicable land use goals and objectives of the Comprehensive Plan.

Analysis: 1999 Homer Comprehensive Plan Update is the adopted plan that identifies the future vision of the Homer Spit. On page 4 it states, "Manage the land and other resources of the Spit to accommodate its natural processes, while allowing fishing, tourism, and other marine related development, and open space/recreational uses." Action items encourage the mix and cluster of charter offices, boat and gear suppliers and other tourist related activities, construction of walkways and weather-protected picnic areas.

A raised boardwalk accommodates the natural processes and provides walkways. The businesses on the boardwalk promote fishing and tourism and are cluster with other near-by charter office and tourist related activities.

Finding 10: The site meets the goals and objectives of the 1999 Comprehensive Plan.

j. The proposal will comply with all applicable provisions of the Community Design Manual (CDM).

Analysis: Only the Outdoor Furnishing section of the CDM applies. The proposal includes outdoor seating, seasonal planters and hanging baskets.

Finding 11: The proposal provides outdoor furnishings on the boardwalk.

In approving a conditional use, the Commission may impose such conditions on the use as may be deemed necessary to ensure the proposal does and will continue to satisfy the applicable review criteria. Such conditions may include, but are not limited to, one or more of the following:

1. **Special yards and spaces.** No conditions deems necessary.
2. **Fences, walls and screening.** Screening is provided between the individual overnight units.
3. **Surfacing of vehicular ways and parking areas.** Gravel
4. **Street and road dedications and improvements (or bonds).** No conditions deems necessary.
5. **Control of points of vehicular ingress and egress.** No conditions deems necessary.
6. **Special restrictions on signs.** No conditions deems necessary.
7. **Landscaping.** Seasonal planters and hanging baskets will be placed around the boardwalk.
8. **Maintenance of the grounds, buildings, or structures.** No conditions deems necessary.
9. **Control of noise, vibration, odors, lighting or other similar nuisances.** No conditions deems necessary.
10. **Limitation of time for certain activities.** No conditions deems necessary.
11. **A time period within which the proposed use shall be developed and commence operation.** No conditions deems necessary.
12. **A limit on total duration of use or on the term of the permit, or both.** No conditions deems necessary.
13. **More stringent dimensional requirements, such as lot area or dimensions, setbacks, and building height limitations.** Dimensional requirements may be made more lenient by conditional use permit only when such relaxation is authorized by other provisions of the zoning code. Dimensional requirements may not be altered by conditional use permit when and to the extent other provisions of the zoning code expressly prohibit such alterations by conditional use permit.

Analysis: A setback variance was granted on May 4, 1989 which allowed the extension of the deck up to the property line. By today's standards a Commercial PUD provides for flexibility for building setbacks, per HCC 21.52.060(d). A Planned Unit Development (PUD) provides flexibility of Dimensional Requirements.

14. **Other conditions necessary to protect the interests of the community and surrounding area, or to protect the health, safety, or welfare of persons residing or working in the vicinity of the subject lot.** No conditions deems necessary.

21.52.060(b)A planned unit development that includes commercial, noncommercial or industrial uses shall comply with the following requirements and conditions:

1. **The PUD site shall have direct access to an arterial or collector street.**

Finding 12: The project has direct access to Homer Spit Road, a State of Alaska Highway.

2. **Utilities, roads and other essential services must be constructed, installed and available for the immediate use of occupants of the PUD.**

Finding 13: Utilities and roads exist and are available for use by the occupants.

3. **The PUD shall be developed with a unified architectural treatment.**

Analysis: The Central Charters Boardwalk will be development in a cohesive marine-nautical theme to blend the natural environment.

Finding 14: The PUD will be developed with a unified architectural treatment.

c. If topographical or other barriers do not provide adequate privacy for uses adjacent to the PUD, the Commission may impose conditions to provide adequate privacy, including without limitation one or both of following requirements:

1. Structures located on the perimeter of the planned development must be set back a distance sufficient to protect the privacy of adjacent uses;

Analysis: All the structures meet the five (5) foot building setback except one building corner, 26 sf of along the west property line. Privacy fences will be built for all five (5) overnight units. The applicant requests an exception to this setback requirement. The adjacent property to the west is zoned Open Space Recreation and the parcel is owned by the City of Homer.

Finding 15: The project does not interfere with the privacy of the adjacent uses which is Open Space Recreational land owned by the City of Homer.

2. Structures on the perimeter must be permanently screened by a fence, wall or planting or other measures sufficient to protect the privacy of adjacent uses.

Analysis: The overnight accommodation building includes a privacy fence along a portion of the west property line.

Finding 16: The structure on the west perimeter provides a permanent fence to protect the privacy of adjacent uses, Open Space Recreation.

d. Dimensional Requirements. Setbacks and distances between buildings within the development shall be at least equivalent to that required by the zoning district in which the PUD is located unless the applicant demonstrates that:

1. A better or more appropriate design can be achieved by not applying the provisions of the zoning district; and

Finding 17: The five (5) unit building could be moved out of the setback area.

2. Adherence to the dimensional requirements of the zoning district is not required in order to protect health, safety and welfare of the occupants of the development and the surrounding area.

Finding 18: Exception to the dimensional requirements does not affect the health safety and welfare of occupants of the development and the surrounding area.

SR 11-49
Homer Advisory Planning Commission
May 4, 2011
Page 8 of 9

PUBLIC WORKS COMMENTS: No comment.

FIRE DEPARTMENT COMMENTS: Fire Chief Painter – Fire Marshal approval required.

STAFF COMMENTS/RECOMMENDATIONS: *Approval of a Conditional Use Permit requires five yes votes.*

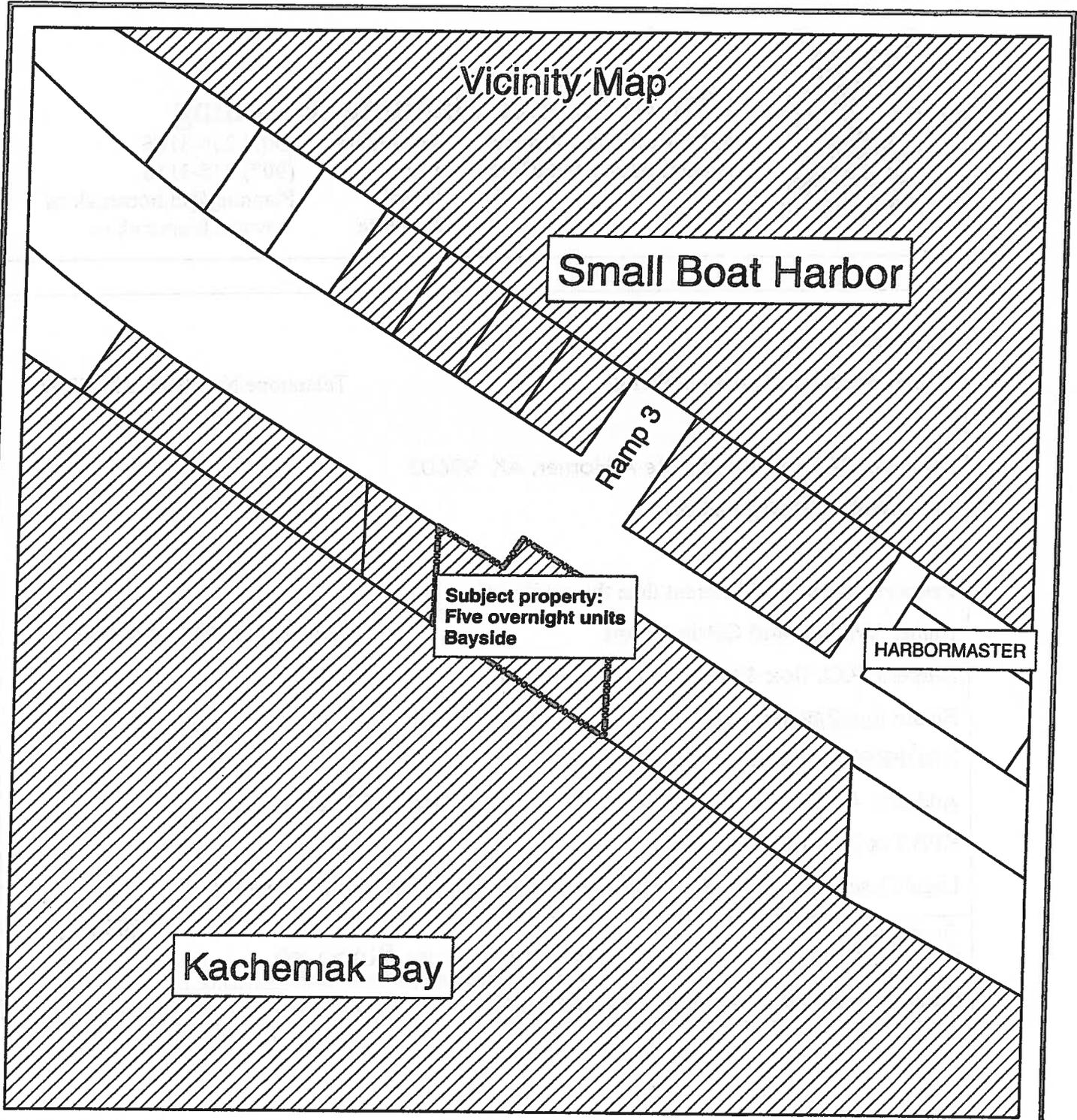
The Planning Commission to approve CUP 11-06 by adopting SR 11-49 with Findings 1–18 which denies the five foot (5') building setback along the west property. The following conditions apply:

1. Prior to issuance of a Zoning Permit for the structures, the applicant to submit an engineer certified Flood Elevation Certificate proving the boardwalk meets Homer's Flood Prone Area code HCC 21.41.
2. Prior to issuance of a Zoning Permit, the applicant to provide verification that all the buildings (existing and proposed) meet State of Alaska Fire Marshal standards based on their current use.

IF the Planning Commission chooses to approve CUP 11-06 and allow for a zero (0) building setback, to allow for 26 sf of building area along the west property line, the HAPC needs to replace Findings 17.

ATTACHMENTS

1. Location map
2. Application
3. Site Plan page 1 of 3
4. North Elevation page 2 of 3
5. South Elevation page 3 of 3

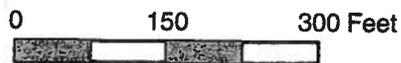


City of Homer
Planning and Zoning Department

4.20.11

CUP 11-06
4241 Homer Spit Road

Shaded area is w/i 300ft notice



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.



City of Homer Planning & Zoning

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Applicant

Name: Seabright Survey + Design

Telephone No.: 907-235-4247

Address: 1044 East Road Suite A Homer, AK 99603

Email: seabrightz@gmail.com

Property Owner (if different than the applicant):

Name: William and Catrin Lovett

Telephone No.: 907-299-0901

Address: P.O. Box 4243 Homer, AK 99603

Email: inua2@alaska.net

PROPERTY INFORMATION:

Address: 4241 Homer Spit Road

Lot Size: 0.88 acres

KPB Tax ID # 181-033-07

Legal Description of Property: Lot 22 Homer Spit Subdivision Amended

For staff use:

Date: 4/12/11

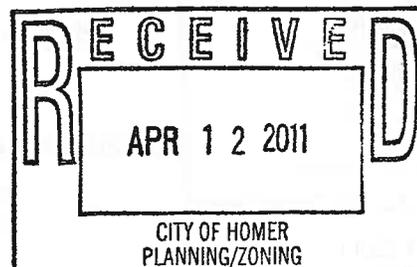
Fee submittal: Amount \$1000.00

21-2106

Received by: _____

Date application accepted as complete 4/12/11

Planning Commission Public Hearing Date: May 4, 2011



Conditional Use Permit Application Requirements:

1. A Site Plan
2. Right of Way Access Plan
3. Parking Plan
4. A map showing neighboring lots and a narrative description of the existing uses of all neighboring lots. (Planning can provide a blank map for you to fill in).
5. Completed Application Form
6. Payment of application fee (nonrefundable)
7. Any other information required by code or staff, to review your project

Circle Your Zoning District

	RR	UR	RO	CBD	TCD	GBD	GC1	GC2	MC	MI	OSR	BCWPD
Level 1 Site Plan	x	x	x			x			x		x	x
Level 1 ROW Access Plan	x	x							x		x	
Level 1 Site Development Requirements	x	x										
Level 1 Lighting			x	x	x	x	x	x	x	x		
Level 2 Site Plan			x	x	x		x	x		x		
Level 2 ROW Access Plan			x	x	x		x	x		x		
Level 2 Site Development Requirements			x*	x	x	x	x	x	x	x		
Level 3 ROW Access Plan						x						
DAP/SWP questionnaire				x	x	x	x	x	x	x		

Circle applicable permits. Planning staff will be glad to assist with these questions.

- Yes Are you building or remodeling a commercial structure or multifamily building with more than 3 apartments? If yes, Fire Marshal Certification is required. Status: Formal Fire Marshal approval is pending approval of the CUP/PUD.
- No Will your development trigger a Development Activity Plan?
Application Status: Not Applicable
- No Will your development trigger a Storm water Plan?
Application Status: Not Applicable
- No Does your site contain wetlands? If yes, Army Corps of Engineers Wetlands Permit is required. Application Status: Not Applicable
- Yes Is your development in a floodplain? If yes, a Flood Development Permit is required. Existing Permit is in place
- Yes Does your project trigger a Community Design Manual review? We are providing details on the location of outdoor furnishings and planters on the site plan
- No Do you need a traffic impact analysis?
- No Are there any nonconforming uses or structures on the property?
- N/A Have they been formally accepted by the Homer Advisory Planning Commission?
- Yes Do you have a state or city driveway permit? Status: Existing
- Yes Do you have active City water and sewer permits? Status: Existing

1. Currently, how is the property used? Are there buildings on the property? How many square feet? Uses within the building(s)? There are currently five buildings on the existing boardwalk. The existing uses are all seasonal, tourist related retail shops. These include retail shops, a restaurant, charter office and overnight lodging.

Existing Building Square Footages:

Captain Patties 1815 s.f.

Sea Lion Gallery 1248 s.f.

Alpaca Sweaters 320 s.f.

Central Charters 4219 s.f.

The Crab Shack 440 s.f.

Total existing built square footage: 8042 s.f.

2. What is the proposed use of the property? How do you intend to develop the property? The proposed development of the property is primarily the addition of five fully equipped cabins for overnight accommodations and an addition to the existing Captain Patties restaurant.

Proposed New building Square Footages:

Addition to Captain Patties 2048 s.f.

New overnight lodging (5 cabins) 1776 s.f.

Total proposed new building square footage: 3824 s.f.

Total combined building square footage: 11,866 s.f.

Both of these improvements will be constructed on new boardwalk approved in March, 2010 and currently under construction. This new boardwalk is engineered and designed to meet the most current flood zone requirements. The elevation of the new boardwalk will be approximately 45" above the existing boardwalk. There will be steps and a universally accessible ramp to provide access between the two boardwalks.

Care has been taken to create a design for the proposed new development that is harmonious with the existing buildings on this boardwalk and the overall flavor of the Spit boardwalk developments in general. Along with the proposed new construction, there will be a variety of upgrades and enhancements of the existing buildings. The intention is to continue develop the boardwalk into a cohesive and attractive setting that provides a variety of products and services to visitors and locals alike.

Attention has been given to the street side view and the design keeps the new roofline lower than the existing buildings. The views from the proposed new buildings look out over the ocean and outer bay. This creates a unique dining experience for guests at the restaurant, especially in the long evenings of summer. The cabins are also oriented towards the outer bay. They have privacy fences between each cabin as well adjacent to the public spaces. Access to the cabins and the restaurant addition is by a 5' wide walkway. There is also a 5' wide deck in front of the cabins. There is also a mechanical room on the northwesterly end of the deck that will include a boiler system for the cabins, laundry and washing facilities and an universally accessible bathroom.

The proposed buildings will be sided in a wooden board and batten style, similar to the existing Central Charters building. The color palette will include muted grays and blues. This will help the buildings blend nicely together and with the surrounding landscape.

CONDITIONAL USE INFORMATION: (Please use additional sheet(s), if necessary)

- a. What code citation authorizes each proposed use and structure by conditional use permit?
HCC 21.28.030(a) Restaurants and drinking establishments
HCC 21.28.030(b) Hotels and motels (six or more units)
HCC 21.28.030(i) More than one building containing a permitted principal use on a lot.
HCC 21.28.030(j) Planned Unit Development

- b. Describe how the proposed uses(s) and structures(s) are compatible with the purpose of the zoning district. The proposed development is an upgrade of an existing boardwalk development. The new buildings are examples of long term investment in Homer Spit tourism. The specific uses are compatible with existing uses on this boardwalk and in the zoning district in general. The expansion of

- Captain Patties Restaurant provides more tables with dramatic views of Kachemak Bay. The new cabins will provide overnight lodging that is of a high quality and with the same great views. These improvements exemplify the best case scenario in meeting the goals of this zoning district.
- c. How will your proposed project affect adjoining property values? The adjacent property values will likely experience positive effects from this improvement. "A rising tide raises all boats."
 - d. How is your proposal compatible with existing uses of the surrounding land? The proposed development is an improvement of the long established Central Charters Boardwalk development. The expansion of the restaurant and availability of additional lodging creates more activity and interest in the immediate area of retail shops and tourist oriented services.
 - e. Are/will public services adequate to serve the proposed uses and structures? Yes. City of Homer sewer and water mains front the property.
 - f. How will the development affect the harmony in scale, bulk, coverage and density upon the desirable neighborhood character, and will the generation of traffic and the capacity of surrounding streets and roads be negatively affected? The existing Central Charters Boardwalk is a landmark on the Homer Spit. The scale and orientation of the proposed improvements are both in harmony with this boardwalk and the surrounding character of this area of the Spit. The improvements are intended to meet the existing demand for services during the short summer tourist season.
 - g. Will your proposal be detrimental to the health, safety or welfare of the surrounding area or the city as a whole? This development is designed to meet all current requirements in health and safety. The raised boardwalk is a good example. The additional height establishes the revised FEMA requirement for elevation of boardwalks on the Spit. All future improvements or new development of boardwalks will have to meet this standard. The tsunami evacuation plan for the Homer Spit will be posted prominently in all of the businesses and in each of the overnight cabins.
 - h. How does your project relate to the goals of the Comprehensive Plan? The 2006 Town Center Plan and the 2008 Comprehensive Plan are online at: <http://www.ci.homer.ak.us/documents/planning>. We are advised that the Comprehensive Plan is not yet online and to leave this section blank.
 - i. The Planning Commission may require you to make some special improvements. Are you planning on doing any of the following, or do you have suggestions on special improvements you would be willing to make? (circle each answer)

1. Yes Special yards and spaces. The boardwalk is a special space and is designed to provide viewing areas and outdoor seating.
2. Yes Fences, walls and screening. Fencing and screening for privacy are being planned for this project.
3. No Surfacing of parking areas. The project scope proposes increasing the amount of parking within the R/W adjacent to the property by 4 spaces.
4. N/A Street and road dedications and improvements (or bonds).
5. N/A Control of points of vehicular ingress & egress.
6. Yes Special provisions on signs. We are participating in ongoing discussions and workshops regarding signage on the Homer Spit.
7. Yes Landscaping. There will be areas of seasonal planters and hanging baskets placed around the boardwalk.
8. Yes Maintenance of the grounds, buildings, or structures. Maintenance of the existing buildings and boardwalk will be ongoing.
9. N/A Control of smoke, odors, gases, particulate matters, noise, vibration, heat, glare, water and solid waste pollution, dangerous materials, material and equipment storage, or other similar nuisances.
10. N/A Time for certain activities.
11. Yes A time period within which the proposed use shall be developed.
12. No A limit on total duration of use.
13. Yes Special dimensional requirements such as lot area, setbacks, building height. The proposed buildings are designed to minimize visual impact and there only a minor area of setback affected by this improvement.
14. Yes Other conditions deemed necessary to protect the interest of the community.

PARKING

1. How many parking spaces are required for your development? 5
If more than 24 spaces are required see HCC 21.50.030(f)(1)(b).
2. How many spaces are shown on your parking plan? 8 spaces are shown on the property and 16 are located in the R/W
3. Are you requesting any reductions? No

PUD HCC 21.52.060(b)

b. A planned unit development that includes commercial, noncommercial or industrial uses shall comply with the following requirements and conditions:

1. The PUD site shall have direct access to an arterial or a collector street. The site is directly accessed by the Homer Spit Road, a State maintained highway.
2. Utilities, roads and other essential services must be constructed, installed and available for the immediate use of occupants of the P.U.D. Public sewer and water is installed. Fire protection is available.

3. The P.U.D. shall be developed with a unified architectural treatment. The marine environment is the theme of the boardwalk and the proposed development will serve to enhance the existing buildings. Upgrades and improvements of the existing buildings will also increase the overall cohesiveness on the Central Charters boardwalk.
- c. If topographical or other barriers do not provide adequate privacy for uses adjacent to the P.U.D., the Commission may impose conditions to provide adequate privacy, including without limitation one or both of the following requirements:
 1. Structures located on the perimeter of the planned unit development must be setback a distance sufficient to protect the privacy of adjacent uses. The Central Charters boardwalk was previously granted a setback variance on May 4, 1989. This same variance has also been applied in the Floodplain Development Permit granted on March 1, 2010. Due consideration has been given to privacy concerns, especially with the overnight lodging proposed for this project. We have designed these cabins with privacy fences and without windows on the side walls. The one cabin that falls partially within the setback does not have any impact on the privacy of the adjacent vacant ocean frontage owned by the City of Homer.
 2. Structures on the perimeter must be permanently screened by a fence, wall or planting or other measures sufficient to protect the privacy of adjacent uses. The side wall of buildings adjacent to the vacant ocean frontage is privatized by walls and seasonal plantings. There is no privacy issue with the property to the southeast.
 - d. Dimensional Requirements. Setbacks and distances between buildings within the development shall be at least equivalent to that required by the zoning district in which the P.U.D. is located unless the applicant demonstrates that:
 1. A better or more appropriate design can be achieved by not applying the provisions of the zoning district. The existing building setbacks to the R/W are approved by variance granted May 4, 1989. These dimensions are noted on the site plan. The request for a variance for setback on the northwest side affects a corner of one cabin.

2. Adherence to the dimensional requirements of the zoning district is not required in order to protect health, safety and welfare of the occupants of the development and the surrounding area. We have provided for accessibility and open areas on the new boardwalk. This allows movement throughout the entire area. The walkways are a minimum of 5' wide and the ramp meets the standards for universal accessibility.
- e. The site development standards of HCC 21.50.030 shall be met. We believe these requirements are fully met. The beachfront location is well drained. The existing site is developed. New site work will be limited to improving additional parking in the R?W for public use.

Include a site plan, drawn to a scale of not less than 1" = 20' which shows allow existing and proposed structures, clearing, fill, vegetation and drainage. We have included various graphic renderings of the project including:

- * A site plan detailing the existing and proposed structures as well as the parking plan and existing ingress/egress to the Homer Spit Road. This plan also details the adjacent property and uses.
- * Profile views of the proposed project from both the roadway side and the ocean side of the property.
- * An overview of the larger surrounding area that shows the neighborhood in which the Central Charters Boardwalk is an integral part.

I hereby certify that the above statements and other information submitted are true and accurate to the best of my knowledge, and that I, as applicant, have the following legal interest in the property:

CIRCLE ONE: Owner of record Lessee Contract purchaser

Applicant signature: Kenton Bloom Date: 4/11/11

Property Owner's signature: Cahin J. Lovett Date: 4-11-11

1. The first step in the development of a new product is the identification of the market opportunity. This involves a thorough analysis of the market, including the size, growth rate, and competitive landscape. The next step is to develop a business plan that outlines the company's strategy, financial projections, and marketing strategy. This plan is then used to secure financing and launch the product.

2. The second step in the development of a new product is the design and development phase. This involves creating a prototype of the product and testing it to ensure it meets the requirements of the market. The design team also works on refining the product's features and functionality. Once the design is finalized, the development team begins the manufacturing process.

3. The third step in the development of a new product is the distribution and sales phase. This involves identifying the target market and developing a distribution strategy. The sales team then works on promoting the product and generating sales. This phase is critical for the success of the product, as it determines how well the product reaches its intended audience.

4. The fourth step in the development of a new product is the evaluation and feedback phase. This involves monitoring the product's performance in the market and gathering feedback from customers. The company then uses this information to make improvements to the product and its marketing strategy. This phase is an ongoing process that helps the company stay competitive in the market.

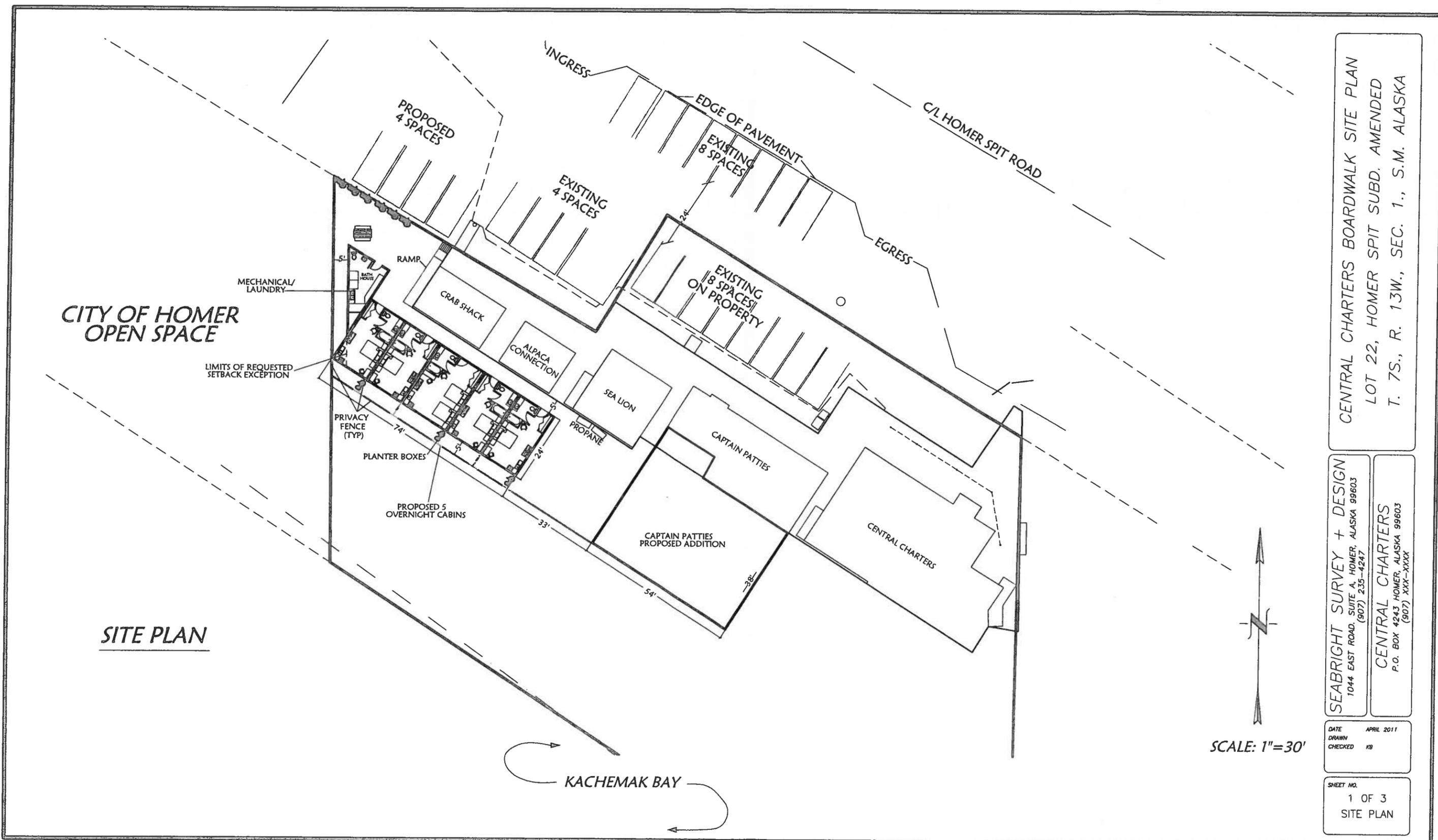
5. The fifth step in the development of a new product is the exit strategy phase. This involves planning for the future of the product and the company. The exit strategy may include options such as selling the product, licensing it, or continuing to develop it. This phase is important for ensuring the company's long-term success and sustainability.

6. The sixth step in the development of a new product is the final review and launch phase. This involves a final review of the product and its marketing strategy, followed by the official launch of the product. The company then monitors the product's performance and makes any necessary adjustments. This phase marks the beginning of the product's life cycle in the market.

7. The seventh step in the development of a new product is the post-launch support phase. This involves providing ongoing support to customers and addressing any issues that arise. The company also continues to monitor the product's performance and makes improvements as needed. This phase is essential for maintaining customer loyalty and ensuring the product's long-term success.

8. The eighth step in the development of a new product is the final evaluation phase. This involves a final evaluation of the product's performance and the company's overall success. The company then uses this information to inform future product development and marketing strategies. This phase is the final step in the product development process.





CITY OF HOMER
OPEN SPACE

SITE PLAN



SCALE: 1"=30'

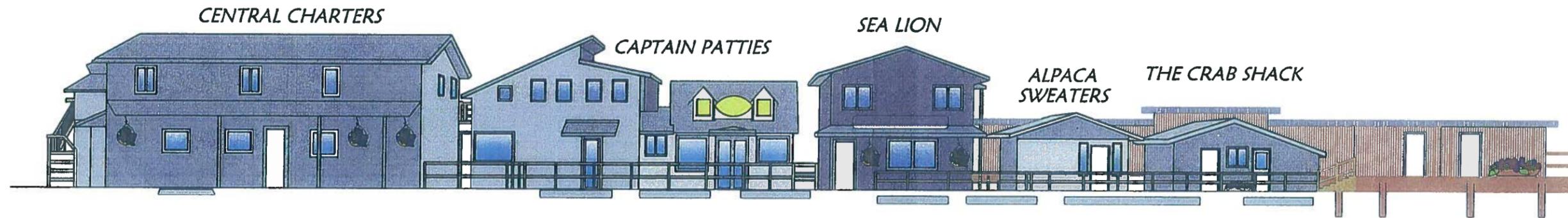
CENTRAL CHARTERS BOARDWALK SITE PLAN
 LOT 22, HOMER SPIT SUBD. AMENDED
 T. 7S., R. 13W., SEC. 1., S.M. ALASKA

SEABRIGHT SURVEY + DESIGN
 1044 EAST ROAD, SUITE A, HOMER, ALASKA 99603
 (907) 235-4247
 CENTRAL CHARTERS
 P.O. BOX 4243 HOMER, ALASKA 99603
 (907) XXX-XXXX

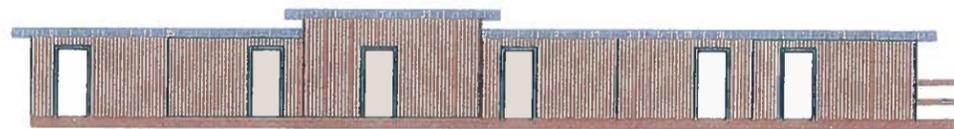
DATE APRIL 2011
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SHEET NO.
 1 OF 3
 SITE PLAN





PERSPECTIVE VIEW



NORTH ELEVATION
FIVE OVERNIGHT CABINS AND WASHROOM



SCALE: NOT TO SCALE

CENTRAL CHARTERS CONCEPTUAL PERSPECTIVE
LOT 22, HOMER SPIT SUBD. AMENDED
T. 7S., R. 13W., SEC. 1., S.M. ALASKA

SEABRIGHT SURVEY + DESIGN
1044 EAST ROAD, SUITE A, HOMER, ALASKA 99603
(907) 235-4247

CENTRAL CHARTERS
P.O. BOX 4243 HOMER, ALASKA 99603
(907) XXX-XXXX

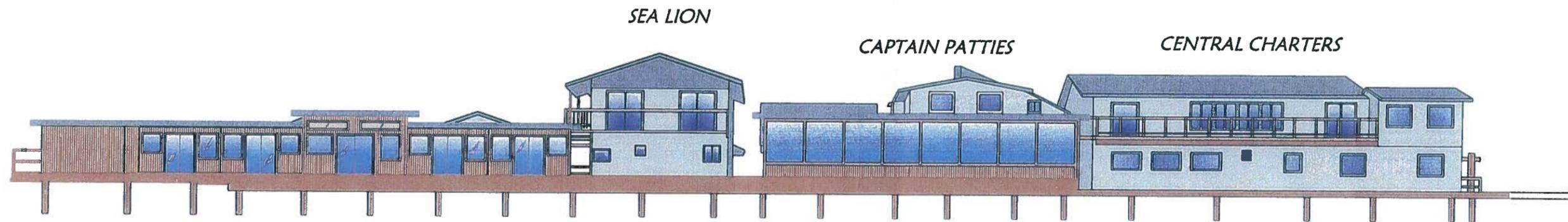
DATE APRIL 2011
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SHEET NO.
2 OF 3
NORTH ELEV.

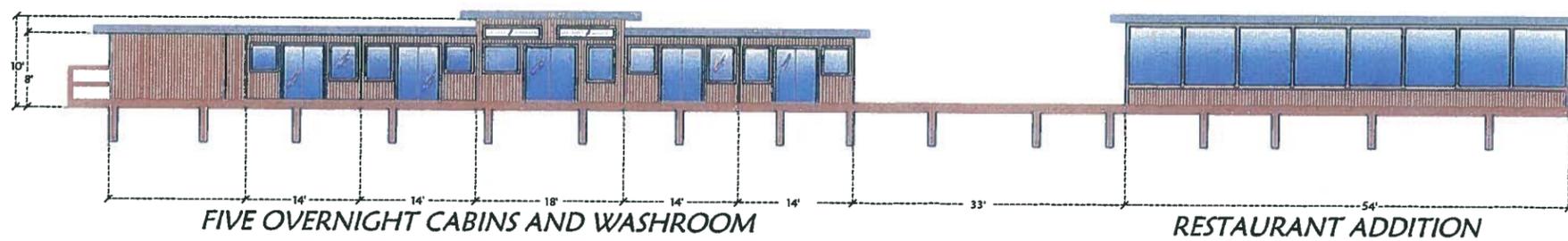


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PERSPECTIVE VIEW



SOUTH ELEVATION



SCALE: NOT TO SCALE

CENTRAL CHARTERS CONCEPTUAL PERSPECTIVE
 LOT 22, HOMER SPIT SUBD. AMENDED
 T. 7S., R. 13W., SEC. 1., S.M. ALASKA

SEABRIGHT SURVEY + DESIGN
 1044 EAST ROAD, SUITE A, HOMER, ALASKA 99603
 (907) 235-4247

CENTRAL CHARTERS
 P.O. BOX 4243 HOMER, ALASKA 99603
 (907) XXX-XXXX

DATE APRIL 2011
 DRAWN
 CHECKED KB

SHEET NO.
 3 OF 3
 SOUTH ELEV.



SECTION THROUGH THE BUILDING

SCALE: 1/4" = 1'-0"

DATE: 10/10/00

BY: [Name]

SECTION THROUGH THE BUILDING

SCALE: 1/4" = 1'-0"

DATE: 10/10/00

BY: [Name]

MANAGERS REPORT

May 9, 2011

TO: MAYOR HORNADAY / HOMER CITY COUNCIL

FROM: WALT WREDE

UPDATES / FOLLOW-UP

1. Dredge Materials: We got off to a rocky start with the dredging projects this year. We were scheduled to have the harbor entrance and parts of the main fairway dredged this spring. The contractor arrived late which placed us under a time constraint since all work had to be completed by April 30. Last Wednesday, the contractor overfilled the dewatering pond on Lot 49 and flooded the end of the Spit with silt and seawater. The businesses out there were not impressed and it was a pretty bad week overall in terms of PR. The contractor paid to clean-up the mess on private property and the Corps of Engineers closed the project down. So, the end result is that the rest of the dredging will have to take place in the fall. Also, we agreed to allow the remaining materials on Lot49 to stay there until the fall dredging and then all of the materials can be transported at once to the storage site. This will save the Corps a great deal of money but it will also mean that the materials is there all summer; pretty unsightly from a tourism perspective. The pipeline and the big mound on the road will be removed. There is another special project in July that will remove about 10,000 yards of material from under the Pioneer Dock. This is an experiment to see if creating a sink to capture materials before they are transported to the Hickory berth will lower the cost of operations for maintaining that berth. This dredging can be done from the beach at a much lower cost. An excavator will load this material directly on to trucks for transport away from the sight. But again, while necessary, the timing is not the best from a tourism perspective. All of this reminds us again about the need for a long term dredging plan.
2. Old Water Treatment Plant: This demolition project is basically complete. The next step for us is to bring the Council a proposal for establishing a satellite fire station there.
3. Parks News: The City staff is working with volunteer groups to find ways to get them involved and take advantage of their energy and desire to improve the parks. As you know, at the last meeting the Council accepted a donation for playground equipment at Bayview Park. This week, the staff had a meeting on-site at the Karen Hornaday playground with parents who wish to help design the playground and raise money for improvements. We are presently working on an MOU with Jack Gist Park advocates and have had discussions with others about volunteer opportunities in all of the parks. This week the staff drafted a resolution and some policies and procedures to implement an Adopt-A-Park Program. This will be reviewed by the Parks and Recreation Commission at its next meeting and presented to the Council for approval on May 23. The main driver behind this effort is the Rotary Club's desire to adopt Ben Walters Park and invest in

- improvements there. I believe all of these efforts should be encouraged and could not come at a better time.
4. **New Personnel:** I would like to formally introduce the newest members of the management team. At the last meeting, many of you met Andrea Petersen for the first time. Andrea is the new Personnel Director and will be assuming the duties formerly handled by Sheri Hobbs. Andrea spent the past three years working in the HR Department for South Peninsula Hospital. Her experience, training, and certifications make her uniquely qualified for the job. Andrea began work on April 4th and benefitted from almost an entire month of orientation while Sheri was still here. Sheri also served as the Airport Terminal Manager and supervised the Community Recreation Program. I have moved those duties elsewhere so that Andrea can focus her full attention on HR duties. The Library Director position has been accepted by Ann Dixon. Anne spent three days orienting with Helen Hill before she left and will officially start work at the end of May. Ann has a wide variety of library experience and the desired education and certifications. She comes to us from Willow Alaska where she has lived for many years. She has been director of the Willow Public Library and is presently the librarian for the Willow Public School. Anne is also a well known author of children's books. Please welcome these new employees when you get the chance.
 5. **Redistricting:** The Mayor and I attended the public hearing held by the Redistricting Board in Homer on May 3. Copies of the proposed House and Senate districts will be available at the meeting. Written testimony and comments will be accepted until early June, at which time the Board must adopt its final plan. There are two options put forward by the Board and several by other organizations. Both Board options have Homer in an identical House District. Basically the House District no longer includes Seward and it goes up along Cook Inlet toward Kenai. At least one of the proposals put forward by other entities has Homer and Seward in the same House District. There are two options regarding the Senate district put forward by the Board. One has Homer grouped with Kodiak and Seward, much as we are now. The other has Homer in a Senate district with the Kenai area.
 6. **Bridge Creek Fire Mitigation Project:** The Fire Mitigation Project has basically wrapped up for the season because of the rapidly diminishing snow and warm temperatures. I think the contractor did a very job with the mechanical work. He may have to come back next winter to finish his work and clean-up a few things. There will likely be some hand crews at work this summer cutting dead trees in sensitive and buffer areas. A tree stock assessment will also be conducted to see if replanting would be beneficial. The head of the Borough Spruce Bark Beetle Program, Duane Bannock, will be here to give you a report at the next meeting.
 7. **Request for Proposals / Leased Land on Spit:** An RFP has been prepared and is about to be publicized. The RFP invites proposals to lease City land on all lots approved for lease by the Council in the Land Allocation Plan. The Lease Committee will be reviewing the proposals and making recommendations to Council in early June.
 8. **Proposal Deadline / Old Middle School:** The deadline for proposals is Friday, May 6. By meeting time, I should be able to tell you if we received any. At the

time this report was written, there were only two parties on the plan holders list. The Lease Committee has scheduled a special meeting for May 17 to review the proposals. The Lease Committee will be supplemented by available members of the Economic Development Commission since it is likely that body will not have a quorum.

9. Land Sales: Appraisals have been commissioned for the lots designated for sale in the Land Allocation Plan. As soon as we have the appraisals, we will take the steps necessary to put those parcels up for sale.
10. TORA Agreement: We are back on track with the proposed Transfer of Responsibility Agreement (TORA) with ADOT/PF. You will recall that this is the agreement that transfers responsibility for parking, pedestrian amenities, and seasonal speed limits to the City. We have one or two additional things to work out and we expect to bring you a resolution at the next meeting.

ATTACHMENTS

1. May Employee Anniversaries
2. March Department Statistical Reports
3. Memorandum from Port and Harbor Director, Re: Change Order to the Fish Dock Crane Card Access System Upgrade Project

Office of the City Clerk

Jo Johnson, CMC, City Clerk
Melissa Jacobsen, CMC, Deputy City Clerk II
Renee Krause, CMC, Deputy City Clerk I



491 E. Pioneer Avenue
Homer, Alaska 99603
(907) 235-3130
(907) 235-8121
ext: 2224, 2226, or 2227
Fax: (907) 235-3143
Email: clerk@ci.homer.ak.us

TO: Homer Advisory Planning Commission
FROM: Melissa Jacobsen, CMC, Deputy City Clerk
DATE: May 9, 2011
RE: Renewal of a Motion

At the May 4, 2011 regular meeting a motion was introduced that Commissioner Venuti had a conflict of interest regarding CUP 11-07 for the Alaska Bible Institute. Although Commissioner Venuti expressed a potential financial interest that would likely result in compensation for a transaction exceeding the limit outlined in HCC 1.18.020(p), the motion failed for lack of four affirmative votes. Some Commissioner's expressed concern regarding the issue of the conflict and there was no notice of reconsideration given in the timeframe allowed in the HAPC Policy and Procedures Manual. As a result I reviewed Robert's Rules of Order 10th edition and found in Chapter 5 Section 38, Renewal of Motions, that you can introduce the motion again at any future session. I have included a paraphrased version from <http://www.robertsrules.org/rror-06.htm#38> below:

38. Renewal of a Motion. When an original main motion or an amendment has been adopted, or rejected, or a main motion has been postponed indefinitely, or an objection to its consideration has been sustained, it, or practically the same motion, cannot be again brought before the assembly at the same session, except by a motion to reconsider or to rescind the vote. But it may be introduced again at any future session.

Therefore I believe that it would be appropriate for a Commissioner to introduce a motion that Commissioner Venuti has a conflict of interest in the consideration of CUP 11-07 for Alaska Bible Institute, if they are so inclined.

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Office of the City Clerk
100 North Dearborn Street, Suite 1000
Chicago, Illinois 60610
Phone: (312) 321-1000
Fax: (312) 321-1001
www.cityofchicago.org

TO: [Name]
FROM: [Name]
SUBJECT: [Subject]

At the City of Chicago meeting on [Date], the following was discussed: [Text]

The following information was provided: [Text]

For more information, please contact [Name] at [Phone Number].



City of Homer Planning & Zoning

491 East Pioneer Avenue
Homer, Alaska 99603-7645

Telephone (907) 235-3106
Fax (907) 235-3118
E-mail Planning@ci.homer.ak.us
Web Site www.ci.homer.ak.us

May 11, 2011

RE: Temporary and sandwich board signage along roadways

To property or business owners:

54 letters sent.

This letter is being sent to all businesses along the Sterling Highway, Ocean Drive and Homer Spit Road. In recent years, sandwich board and other temporary signs have become more common along and in the roadway. While some signs are legal and meet City sign regulations, many do not. They are a source of complaint calls to our office, and can be a hazard to the public when they are placed illegally in a right of way. The City would like to work with property owners and businesses to address this problem. Here are a few guidelines for proper placement and size of temporary signs:

1. One temporary sign per parcel.
2. All signs must be set back five (5) feet from the property line. If your sign is on the shoulder of the road, there is a good chance it is not legal.
3. Maximum size of a temporary sign on your property is 16 square feet.
4. Sandwich signs must be included on your sign permit.

Signs in the rights-of-way are a violation of Homer City Code and are subject to fines of \$75.00 per day. Signs in a public right-of-way are subject to seizure and may be reclaimed upon payment of any fines. The attached aerial image shows the approximate location of the property lines.

Business owners often get 'stuck' with junk cars. In an effort to help with clean-up efforts, Homer's Junk Car Program covers the expense of removing fluids from passenger vehicles, vans, or pick-ups. The application is on line at: <http://www.cityofhomer-ak.gov/planning/junk-car-removal-program>.

Sincerely,

Dotti Harness-Foster

Dotti Harness-Foster
Planning Technician/Code Enforcement
435-3118

