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

JULY 20, 2011
WEDNESDAY AT 7:00 P.M.
COWLES COUNCIL CHAMBERS

REGULAR MEETING
AGENDA

1. Call to Order

2. Approval of Agenda

3. Public Comment

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

4. Reconsideration

5. Adoption of Consent Agenda

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

1. Approval of Minutes of June 15, 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
5. Draft Decision and Findings for the 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 13***

6. Presentations

7. Reports

A. Staff Report PL 11-80, City Planner's Report ***Page 21***

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 11-75, A Request for a partial vacation of a public right of way adjacent to Spruce Lane at Cooper Subdivision No. 4, Lots 1-5 ***Page 23***

9. Plat Consideration

A. Staff Report PL 11-74, Cooper Subdivision 2011 Addition Preliminary Plat ***Page 29***

10. Pending Business

A. Staff Report PL 11-77, Draft Ordinance 11-XX, East End Mixed Use District ***Page 37***
B. Staff Report PL 11-78, Draft Ordinance 11-XX, Sign Ordinance ***Page 45***
C. Staff Report PL 11-76, Draft Resolution 11-XX, Draft Resolution Amending the Homer Advisory Planning Commission Bylaws to change the regular meeting time ***Page 47***

11. New Business

A. Staff Report PL 11-79, Hostels Permitted as a "Permitted" and "Conditional" Housing Use ***Page 51***

12. Informational Materials

A. City Manager's Report dated June 27, 2011 ***Page 55***

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. Notice of the next regular or special meeting or work session will appear on the agenda following "adjournment."

HOMER ADVISORY PLANNING COMMISSION
REGULAR MEETING MINUTES
JUNE 15, 2011

UNAPPROVED

Session 11-11, a Regular Meeting of the Homer Advisory Planning Commission was called to order by Chair Minsch at 7:01 p.m. on June 15, 2011 at the City Hall Cowles Council Chambers located at 491 E. Pioneer Avenue, Homer, Alaska.

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

STAFF: CITY PLANNER ABBOUD
DEPUTY CITY CLERK JACOBSEN
CITY ATTORNEY WELLS (Telephonic)

APPROVAL OF AGENDA

The agenda was approved by consensus of the Commission.

PUBLIC COMMENT

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

There were no public comments.

RECONSIDERATION

There were no items 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 June 1, 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
5. Draft Decision and Findings for CUP 11-10. Lot 5A1 Northern Enterprises No. 1 Sub. At 5155 Kachemak Drive, Northern Enterprises Boatyard

The Consent Agenda was approved by consensus of the Commission.

PRESENTATIONS

There were no presentations scheduled.

REPORTS

A. Staff Report PL11-70, City Planner's Report

City Planner Abboud reviewed his 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 11-056, A Public Hearing in the Remand of from the Board of Adjustment to the Homer Advisory Planning Commission to consider new conditions regarding 1033 Skyline Drive.

City Attorney Wells summarized that the purpose of the supplement was to address the argument raised by Becker in the memorandum, and to address the issue of whether or not he is able to use a public utility easement recorded after the Commission's initial decision for purposes of avoiding the variance process. She feels it is questionable because in remand the board did not question whether or not a variance process was necessary, just if there was sufficient evidence that a variance was warranted.

City Attorney Wells explained the first issue is whether or not Becker or one of his referenced enterprises in the public utility easement constitutes a public utility for purposes of an easement. She said it is staff's position that they do not. The main reason is that there is not a definition in code for public utility for purposes of an easement. With an easement we are bound by the wording and governance of the State of Alaska, which has established a Commission to regulate public utilities. There are exhaustive statutes on what is necessary in order to be a public utility and the processes to be properly regulated as a public utility. The process is very important in order to gain public utility status, especially to use the easement, and to allow it to exist outside the zoning and land use laws of a municipality. In his memorandum Mr. Becker concedes that he is not registered with the RCA, and so he is therefore not a public utility granted by the State of Alaska. There is not a way to get to the land use being subject to a public utility easement. She feels the Commission needs to set aside any argument that the variance is not necessary.

The next question as far as the City is concerned is whether or not the variance is warranted. Staff stands by the initial staff report stating that the variance is warranted, especially due to the slope of the land.

Lastly, many of the arguments Becker has put forth are based on definitions in Homer City Code regarding a building and whether the building in question would be exempt from the code. The points are addressed in the supplemental staff report, but she thinks the most important point is just because something constitutes a public utility facility, does not mean that it's not also a building or meets some other definition under code that would subject it to further regulation. In this case it clearly falls within the definition of a building and so she doesn't think that is an argument that is warranted or has merit. There are policy implications of saying that it is a public utility facility, which is defined in code, so it doesn't matter what kind of structure is there. There are a lot of types of uses defined in code and they are all subject to code provisions. It is the staff's position that we can't embark on that type of analysis. City Attorney Wells said while there is some discretion as to deciding placement of something like a small pole in an easement falls outside the definition of a building, she doesn't think that occurred.

Dan Westerberg, attorney for Mr. Becker, first referenced the diagram of placement of structures on the property and explained the other telecommunication items in the setback were installed pre annexation so there was no need for any variance to setback requirements or conditional use permits. This one was done post annexation, thus the need for the current application. The structures are there because it's an ideal location for telecommunications and not an ideal location for anything else. Obviously the farther up the hill you are the better the telecommunications use is, the more accessible the equipment is for maintenance and repair, and the slope is more stable.

Their first argument is that a variance is not required. The question is whether or not this particular structure, the equipment shelter and two towers, is a building. Under the code buildings shall be setback 20 feet from all dedicated rights-of-way. Attorney Westerberg referenced the zoning code definitions where building is defined as "any structure used or intended for supporting or sheltering any use or occupancy", which is extraordinarily broad. The definition of a structure is "anything constructed or erected that requires location on the ground or attached to something having location on the ground". That includes power poles, fire plugs, underground power lines, and all that stuff. So the question is does everyone that installs any sort of utility structure have to get a variance to the setback since it is a structure, therefore a building, within the setback, and submits the answer is no. First, in the beginning of the definitions at 21.03.040 the code instructs "as used in this title the words and phrases defined in this section shall have the meaning stated except where 1, the context clearly indicates a different meaning, or 2, a special definition is given for particular chapters or sections of the zoning code". Attorney Westerburg thinks both apply here. In context he doubts the drafters of the code intended that installers of telephone poles, fire plugs, underground power lines, and any sort of utility structure like that was to be a building subject to a setback, because a setback typically is right where the utility easement is going to be. Second, code has a special definition of public utility facility or structure and he submits that their objects are public utility facilities or structures, and not buildings. Therefore, they are not encompassed by the setback requirement, and do not need a variance. It does not mean that Mr. Becker can put up a tower anywhere, because with respect to towers in particular you still have to get a conditional use permit. In that CUP process the Commission can impose placement restrictions, including specific setback requirements as to particular pieces of equipment. But that is different than requiring that each utility structure comply with a mandatory 20 foot setback requirement unless a variance is obtained; rather the Commission is given the discretion to impose particular setback requirements on towers such as Mr. Becker's. Attorney Westerburg explained that Mr. Becker went through the CUP process got a permit, and as part of the permit, the Commission instructed that he also had to get a variance to the setback requirement. They are arguing the Commission made a mistake in that it isn't necessary or appropriate because what he was putting up was not a building. It was a utility facility or structure, therefore not covered by the setback requirement.

Regarding the public utility versus private utility issue, he agrees with City Attorney Wells, that neither Mr. Becker's businesses nor the two tenants of the facility, the City of Homer and Horizon Satellite, is a telecommunication public utility facility. What they contend is that these structures are public utility facilities or structures under the City of Homer Zoning Code. Since those structures are public utility facilities or structures and located within a dedicated utility easement there should be an implied exception to the setback requirement.

The third point, assuming we do have to get a variance based on the merits of the situation; it is perched on pilings on the edge of the bluff. He referenced the photos provided and explained that there has to be a deck and ramp as it is now to access the facility, and moving this down the hill to accommodate the 20 foot setback will impact a number of different things. It will impact the quality of the telecommunications equipment and as a result either the pilings will have to be raised, the tower will have to be raised, or something else will have to be done to accommodate for quite a bit of height lost by going down the hill. Second is the problem with maintenance and repair, as access to the facility will be difficult, even in the summer. Because of the fact the facility generates the equipment that is going to be handling not only a lot of the wireless technology for Horizon Satellite, but also the City of Homer fire, and police communications equipment, it is a facility the City is going to want to have place for ease of maintenance and repair. Attorney Westerburg added that you don't want this facility on an embankment any steeper than it already is, in the event of some sort of natural disaster. You don't want an earthquake and landslide to take out the telecommunications system for police and fire in one fail swoop. For those types of reasons this particular facility is in a perfect location as it is, and it is why the

other facilities are there as well. Moving it farther down the hill will impact efficiency, the cost will be greatly enhanced, and there is a certain amount of danger involved in having the facility on a potentially unstable environment in the event of some sort of natural disaster.

Attorney Westerburg noted that City Planner Abboud provided a very detailed report on each of the variance requirements a year ago, issued a number of different findings, and did a very good job of determining the merits present a classic case of a variance. If a variance isn't used in a situation like this where there is a topography that almost cries out for a telecommunications facility at the top, not half way down the hill, and is not really conducive to anything else, when will a variance be applicable? He noted a reference that that one requirement of the code is that financial hardship or inconvenience shall not be a reason for granting a variance, but actually code says it will not be the sole reason for granting a variance. So the Commission can take into account that it may be terribly expensive to comply with a setback requirement in a particular circumstance. In this instance it will be very inconvenient, very expensive, and also impact the efficiency and operability of the system. With respect to implied exception to the setback requirement for these sorts of utility structures, they included photos from other structures housing electronic equipment. The sole purpose of this building is to house the electronic equipment that services the antennae at the top of the towers. For these reasons they feel the Commission doesn't need to get to the question of a variance, because this isn't a building, so setback is not an issue. There should be an implied exemption for utility facilities such as this one located within a utility easement, and if a variance is required, the necessity has been established on the merits.

The Commission asked questions of Attorney Westerburg and Mr. Becker and the responses are summarized as follows.

Attorney Westerburg responded that the structures and buildings shown in the photos are in utility easements and the sizes vary. He explained there have been no engineering studies done on this project to show what effects a natural disaster could have on the structure in its present location versus moving it down from the setback. It is mainly a common sense thing that it would be safer towards the top rather than half way down the hill.

Mr. Becker responded that in order to move the structures down the hill and be as effective as they are now, the tower would have to be increased at least 30 feet. The type there now would be inadequate to take to that height and a more substantial tower would be required to accommodate it. A more substantial tower would require additional guy wire as the higher you go up the more you have to guy out to support the tower, and there really isn't room to accommodate the guying. To change to a self supporting tower would increase cost substantially. He added that when the tower was installed, Police Chief Robl wanted the tower to be at the highest point possible for fire and police communications. To get back to where we are now could cost the City another $30,000 to $50,000. Mr. Becker further explained that he built at the location that was selected by the Police Chief after a site visit, as the highest and best location for the police and fire communication coverage area. At the time there was no thought of going down the hill because it didn't make sense and he was unaware of the setback issue. To move it 1.4 times further down the hill, approximately 30 feet, would be a major project disturbing the slope for installing a self supporting tower, let alone the challenge of getting a crane in there. It is an impractical and expensive proposition. Mr. Becker would not say this is the last developmental opportunity for his property. Initially he wasn't sensitized to the setback issue. Whatever comes along in the future he will certainly be dealing with necessary applications at the front of the project. The property is a perfect site for telecommunications and it can be developed further, provided he is in line with the code requirements. Mr. Becker reminded the Commission that Chief Robl approached him

about putting the tower on his site. He further responded that he didn't apply to be a public utility because he is a landlord not a utility.

There was discussion that having a utility easement and allowing this doesn't set precedence that a tower can be put up just anywhere. The CUP process gives the Commission the power to determine where it should be placed. Telephone polls and power lines can go in utility easements anywhere.

Mr. Becker explained that in negotiations about the site he asked Chief Robl if he needed any building permits for a shelter like this. Chief Robl responded a few days later that he didn't need any building permits. Mr. Becker believes there was a miscommunication of a building permit versus a zoning permit. Had he known the distinction between the two he would have asked the proper question, and he probably would have gotten the correct answer. At that point though, he was not sensitized to the difference between a building permit and zoning permit. He feels that is the crux of the miscommunication. He never had direct discussion with City Manager Wrede, only second hand through Chief Robl that he didn't need a building permit. He added that the other factor was that Chief Robl made it clear he wanted to occupy the building prior to July 4th. Mr. Becker was building it in June, and the third week in June, Procom came in and installed the city's equipment in the building. It was up and running before the end of June. It was very important to the Chief to be up and running by the time the large influx of people came into town. Things were working great, and the permitting issue came to a head. He applied for the CUP and the variance, as planning staff explained both were needed. He explained at this time he does not have a lease with the City yet as the City Manager is waiting for all the permits to be in place before signing the lease. The City is paying the monthly rent, but he is stuck out on a limb if something happens. The City has already spent $23,000 to move the equipment and have Procom install it at this location, and to move it would be at least another $23,000. Mr. Becker further explained that the building size is adequate for being able to access the equipment housed inside with some room for future expansion as needed.

Mr. Becker reiterated that the structures are where they need to be. It is the highest and best point for communications. Had he known about the zoning requirements before hand he would have applied for the permits first.

Lastly, Attorney Westerburg responded that the public utility easement includes specific entities such as Mr. Becker's use. It can be granted to just a public utility or specify the uses. Also, regarding the steep slope development plan, in theory a person could develop anything anywhere if they wanted to spend the enough money and have the right engineering, but at some point it would become economically unfeasible, impractical, or inefficient.

Chair Minsch opened the public hearing. There were no public comments. Chair Minsch closed the public hearing and opened the floor for rebuttal.

City Attorney Wells commented that she felt there is some confusion about use of a public utility easement. A good example to keep in mind is that a public utility easement exists on many properties in order to allow things like telephone poles. They need to be public utilities to get that easement with out going through a variance process. The person seeking or recording the easement will usually offer compensation for the easement and the interest is going to be placed in a public utility, like ACS or HEA for example. That is who would get the easement and how it would function and connect with local code provisions. While there is a risk that a utility will place a "building" on your property, the risk is there because they are a public utility. The regulations are exhaustive by the RCA and public utilities are State governed.

City Planner Abboud added that in Homer you can put a telephone poll anywhere.

Question was raised about the purpose of a 20 foot setback and if there are safety issues with this projects location. City Planner Abboud said there are a multitude of purposes for setbacks, including aesthetics, public safety off rights-of-way, utilities, locations for sidewalks or drainage, and ingress and egress. The 20 foot setback is required for anything platted on a right-of-way. He added that presently there is no development on either side of the towers, and that the area is geographically challenged for development.

BOS/VENUTI MOVED TO DELIBERATE AFTER THIS MEETING.

There was no discussion.

VOTE: NON OBJECTION: UNANIMOUS CONSENT.

Motion carried.

The Commission took a break at 8:05 p.m. and the meeting resumed at 8:12 p.m.

B. Staff Report PL 11-72, 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

City Planner Abboud reviewed the staff report.

Kenton Bloom, applicant's representative, explained that his clients are amenable to making changes and one reason they looked at the design in the terms they did was that the existing architecture on the boardwalk reflects the same kind of look that you see along the spit. In an effort to integrate the street view of the buildings they added a 200 square foot structure with a gable that would tend to extend over a portion of the wash house as an additional roofing area. They would add a gable over the uplifted roof in the middle of the structure so that those gables would match and follow the same pitch with what is seen on the buildings that are already there. He also noted that the colors in the drawings presented represent new and old, not paint scheme. They are working towards a maritime look as seen in the new drawings presented. The remaining structure with the restaurant and so forth they saw the square shape addition like something that would be seen by the Glacier Drive In and the fish and chips area. The five feet has been removed from the setback. The privacy fence is at the point of the diagonal cut off so that there is access along the wash room and mechanical room that will be somewhat restricted but allows access for maintenance. It will be differentiated for the public and people in the cabins so the porch will be exclusive to the cabin. Regarding the PUD, not asking for the variance makes it a moot point and now they are looking at just a CUP. He reiterated that his clients are open to consider recommendations on concepts. They want the Commission understand the notion they are working with is trying to create a viable long term sustainable economic basis for being in business on the spit. They are trying to balance out the cost of building the new deck area, the buildings, and having the business work in a way to support it over a long period of time. They are very keen on doing a nice job and doing something that beautifies the spit.

Chair Minsch opened the public hearing.

Dave Brauner, business owner on the Central Charter's Boardwalk, commented in opposition of the proposal. He said he is a physician, not an architect or engineer, but is also a new business owner on the spit along with his wife, and this will have a huge impact in their business. They purchased the building on the end in mid-March. As part of the evaluation process they spoke with the boardwalk owner, the seller, and their realtor. The property was listed as having unobstructed views of Kachemak Bay and they bought the property expecting that was what they were buying. They spoke with the owner of the boardwalk several times about their renovation plans, the owner described the additional decking was for a boarding room situation but never mentioned it would completely cover and obstruct their view. They did not receive documents from the Commission until about two weeks after they had been in business. They found out about it from the neighbor which is why they are here at the last minute. They opened May 6th and everyday people come in and look out their windows and enjoy the view and a meal. The Commissions decision tonight will completely obliterate the view, and obliterate all their plans for making this a viable long term restaurant. It is the only portion of the Kachemak side of the spit that he knows of that will be a double-decker boardwalk. Everything else along the boardwalk is built for views. In the document describing the project the view is highlighted as an important business feature of all the businesses except his and the sweater shop next door. They have hired a real estate attorney out of Anchorage to help evaluate the plans and business plans for the spit. The document provided tonight is a creation of the attorney's investigation. The term he uses is view shed. There are clear definitions in the city's building and development plans that view shed will not be impaired, and view shed is going away. 45 inches cuts into the middle of their window and from that point up is the board walk.

Question was raised about the purchase and lease situation and if his lease guaranteed a view. Dr. Brauner responded that he bought the building and leases the boardwalk space from Central Charters. He said that the lease does not guarantee a view.

There was discussion of the notification procedures and City Planner Abboud explained that there is a process of notifying business owners and information for mailing is received from the Borough. He isn't sure if the recent purchase had anything to do with the issue.

There were no further public comments. Chair Minsch closed the public hearing and opened the floor to rebuttal.

Mr. Bloom commented that this is the first he has heard of the concerns expressed in public testimony. He added that the permit for the boardwalk extension was approved in April of 2010.

In response to questions, Mr. Bloom explained that the Alpaca Connection, Sea Lion, and Crab Shack do not have doors on the ocean side of the buildings. The new portion of boardwalk will not be up against the current boardwalk, due to FEMA regulations the new boardwalk will have to be raised. In relation to the drawings, the 200 square foot building is an addition from the last plans the Commission saw and it is intended to be used as an additional small scale retail shop.

City Planner Abboud added, regarding the overhang of the roof line into the setback, that it is allowable for the roof line to over hang in to the setback up to two feet.

Mr. Bloom responded to Chair Minsch's comments that the proposal is unattractive and does not meet the bulk and scale for the area. He expressed that if he could get some specifics on what she is referring to he would be better able to address it. Comment was made that the proposal doesn't show there is much texture on the buildings and everything is the same color. Presently the buildings have a lot of texture and variety of colors. Mr. Bloom responded that he has tried to explain that there are different

shades and follow a maritime theme. They are planning to use earth tones. He continued that they are trying to diminish in their minds, the awkwardness of the random colors of the buildings as it doesn't have a complementary feel. In reading the conditions the City is looking for, one thing that stood out is there should be a consistency, which is what they were trying to work toward. He noted that he did not think a detailed architectural review is something that is required and the Commission is not being clear on where they want him to go. Discussion ensued that the texture of the new construction will be board and batten. Central Charters is the same type of construction and in future planning the other buildings may follow suit in a longer range period of time. He hears what they are wanting and feels that the owners are working toward the same idea.

Discussion ensued and consideration was given to false fronts on the second story of the new building on the street side, perhaps with dormers or fake windows. Mr. Bloom confirmed the idea of false fronts, similar to some buildings in town, which might have some angles.

Other points raised noted that in relation to the condos or some of the other things on the spit, this is very attractive. The horse is out of the barn as far as aesthetics is concerned on the spit. It was acknowledged that there are things on the spit that some consider eyesores, and some simple, inexpensive things can be done in this project to add the charm they are looking for.

Regarding the issue brought up in public testimony the Commission acknowledged Dr. Brauner's concern, but it is an issue that will have to be addressed directly with the property owner.

Discussion continued regarding aesthetics. Mr. Bloom said their volume and scale concept is trying to diminish things so they don't overwhelm what is in front. He noted the gabled roof on the midsection overwhelms the buildings in front, and their goal is to avoid that. Considering the uses involved and they way the new buildings are intended to be used, he thinks the bulk, scale, and harmony is adequate. On the ocean side they are looking for a clean and unobtrusive line in the way the cabins and restaurant relate to the beach and off shore.

City Planner Abboud added that because of the buildings in front of the cabins, adding elements to the cabins could force them to be build up in the back and there would still be a depth problem.

Mr. Bloom stated they would be supportive of adding some façade elements to break up the roof line.

They continued discussion of ideas for aesthetics.

BOS/VENUTI MOVED TO TAKE THE MOTION TO ADOPT STAFF REPORT PL 11-49 CUP 11-06 CENTRAL CHARTERS BOARD WALK OFF THE TABLE FOR FURTHER CONSIDERATION.

There was discussion explaining the motion to take something off the table.

VOTE: NON OBJECTION: UNANIMOUS CONSENT.

Motion carried.

BOS/HIGHLAND MOVED TO AMEND THE MOTION ON THE FLOOR TO ADOPT STAFF REPORT PL 11-72 CUP 11-06 4721 HOMER SPIT ROAD, CENTRAL CHARTERS BOARDWALK EXPANSION WITH STAFF RECOMMENDATIONS AND FINDINGS INCLUDING RECOMMENDATIONS AND FINDINGS, INCLUDING RECOMMENDATION TO DENY THE PUD.

There was no discussion to the amendment.

VOTE: NON OBJECTION: UNANIMOUS CONSENT.

Motion carried

Commissioner Bos expressed that there has been plenty of discussion and he feels it is apparent that they are going to do what they can to make everyone happy.

There was brief discussion that the findings related to the PUD should be removed.

MINSCH/BOS MOVED TO DELETE REFERENCES TO THE PUD STARTING AT THE TOP OF PAGE 185 ENDING AT FINDING 18 ON PAGE 186.

There was no discussion.

VOTE: NON OBJECTION: UNANIMOUS CONSENT.

Motion carried.

Brief discussion ensued regarding recommendation 3.
MINSCH/HIGHLAND MOVED TO ADD CONDITION FOUR THAT THE APPLICANT IS REQUIRED TO MAKE EVERY ATTEMPT TO BRING THIS NEW ADDITION INTO HARMONY, SCALE, AND BULK WITH APPROPRIATE DESIGN FEATURES.

There was brief discussion.

VOTE: NON OBJECTION: UNANIMOUS CONSENT.

Motion carried.

There was no further discussion on the main motion as amended.

VOTE (Main motion as amended): YES: BOS, MINSCH, HIGHLAND, DRUHOT, VENUTI, DOLMA

Motion carried

C. Staff Report PL 11-71, Draft Ordinance 11-xx, Conservation District

City Planner Abboud reviewed the staff report.

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

There was no further Commission discussion with staff.

BOS/HIGHLAND MOVED TO FORWARD THE DRAFT CONSERVATION DISTRICT ORDINANCE TO THE CITY COUNCIL FOR PUBLIC HEARING AND ADOPTION.

There was no discussion.

VOTE: NON OBJECTION: UNANIMOUS CONSENT

Motion carried.

PLAT CONSIDERATION

A. Staff Report PL 11-67, Oscar Munson No. 25 Goode Replat Preliminary Plat CANCELED

PENDING BUSINESS

A. Staff Report PL 11-68, Draft Ordinance 11-xx Sign Code Amendments

Chair Minsch advised that the Commission discussed the sign code amendments in the worksession and staff will be bringing it back at another meeting.

B. Staff Report PL 11-69, Bylaws Change to Amend the Meeting Time

HIGHLAND/BOS MOVED TO APPROVE THE DRAFT RESOLUTION AMENDING THE PLANNING COMMISSION BYLAWS TO CHANGE THE REGULAR MEETING TIME TO START AT 6:30 P.M. AND END AT 9:30 P.M. AND SCHEDULE THIS FOR SECOND NOTICE AT THE JULY 20TH REGULAR MEETING.

There was brief discussion regarding the requirement for the second notice.

VOTE: NON OBJECTION: UNANIMOUS CONSENT.

Motion carried.

NEW BUSINESS

No new business items were scheduled.

INFORMATIONAL MATERIALS

There were no informational materials.

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

There were no staff comments.

COMMENTS OF THE COMMISSION

Commissioner Venuti commented that he is glad Central Charter was moved on, but he feels bad for the Brauner's situation as it will cost some money. There isn't anything the Commission could do for them.

Commissioner Dolma had no comment.

Commissioner Highland requested that the Commission take some time at a worksession to discuss the idea disallowing any more residential use on the spit.

Commissioner Druhot commented that a non resident applicant has come forward so she will be stepping down. She agreed with Commissioner Venuti and feels like they did the right thing by approving Central Charters, but she feels bad for the other property owner's that are being affected.

Commissioner Bos thanked Commissioner Druhot for her service and wished her luck in her future endeavors. He questioned the procedure for making motions and Deputy City Clerk Jacobsen commented that it is appropriate to say "I move" or "I make a motion"

Chair Minsch commented that we will miss Commissioner Druhot. She felt the Commission handled the issue with Central Charters well. The tenants have a civil issue between them and the landlord and it has nothing to do with the Commission. She appreciates their concern, but they handled it well.

ADJOURN

There being no further business to come before the Commission, the meeting adjourned at 9:26 p.m. The next regular meeting is scheduled for July 20, 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

491 East Pioneer Avenue Telephone (907) 235-3106
Homer, Alaska 99603-7645 Fax (907) 235-3118
E-mail: Planning@ci.homer.ak.us
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HOMER ADVISORY PLANNING COMMISSION
Meeting of June 15, 2011

RE: Variance 10-01, 1033 Skyline Drive, on remand from BOA

DECISION

I. Introduction

On July 21, 2010, a hearing was held before the Homer Advisory Planning Commission ("Commission") regarding a CUP (10-04) and Variance (10-01) request from David Becker ("Applicant") on property located in the Rural Residential District at 1033 Skyline Drive. The Homer Planning Office ("Department") recommended approval of both but, after holding hearing and receiving public testimony, the Commission voted to approve CUP 10-04 for use as a Public Utility Facilities and Structures and denied the Applicant's variance request at the regularly scheduled meeting August 18, 2010. This action was challenged by the Applicant and brought before the Homer Board of Adjustment ("Board") and received on remand by the Homer Advisory Planning Commission at the regularly scheduled meeting on June 15, 2011.

The application was scheduled for a public hearing as required by Homer City Code 21.94 before the Commission on June 15, 2011. Notice of the June 15, 2011 public hearing was published in the local newspaper and sent to 14 property owners of 15 parcels.

Testimony from the applicant's representative, Dan Westerberg and the applicant was received at the public hearing. No other public testimony was offered at the hearing. After deliberations, the commission voted to approve the variance with five Commissioners voting in favor and one Commissioners absent, allowing lawful placement of the 9' x 20' structure 15.1' into the 20' setback, or 4.9' from the Skyline Drive right-of-way.

II. Background

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 Commission's actions and reasoning to address these findings are discussed below.

<u>The Incomplete Record</u>

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 a new hearing was held in order to ensure a more complete record.

<u>Commission's Denial of Becker's Variance Request</u>

The Commission reconsidered the variance decision based upon evidence presented in the additional hearing.

Consideration of the Public Utility Easement

The new hearing allowed for the introduction of the new evidence, recorded Utility Easement. In order to determine if an enterprise of facility qualifies as a "public utility" for the purpose of an easement, the Commission determined that such enterprise should be considered a "public utility" by the State of Alaska. A stay from May 18th to June 16th was provided for Becker to gather evidence regarding the status of his companies as "public utilities" under State law.

III. Analysis

In Becker's Memorandum on Remand, he argues that the erection of towers and an equipment shelter in the set back on the property in question should be permitted because:

1) The equipment shelter is not a "building" and thus is not governed by the setback requirements in the Homer City Code
2) The public utility easement is enforceable
3) There is substantial evidence supporting Becker's variance application

The Structure Erected by Becker is Subject to the Setback Requirements under the Homer City Code

The equipment shelter erected by Becker constitutes a "building" under the Homer City Code and thus is subject to the setback requirements under the Code. Contrary to the dialogue provided by Becker interpreting the City Code, a person or entity may not erect towers or equipment shelters, even where such structures qualify as a public utility or structure, in the Rural Residential district without first obtaining a conditional use permit and cannot erect such structures in a setback without obtaining a variance.

Homer City Code 21.12.040 provides the setback requirements for "buildings" in the RR district. The equipment shelter is clearly a "building" under the HCC. Under HCC 21.03.040, a "building" is any structure used or intended to be used or intended for supporting or sheltering any use or occupancy." "Use" means "the purpose for which land or a structure is occupied, arranged, designed or intended, or for which either land or a structure is or may be occupied or maintained." Finally, "structure" is defined as "anything constructed or erected that requires location on the ground or that is attached to something having location on the ground." See HCC 21.03.040.

Nowhere in the definitions are public utility facilities excluded from the definition of "buildings" nor does it make sense to except such facilities from the definition of buildings. Indeed, excluding public utility facilities from the definition of buildings simply because a separate definition of a public utility facility is provided in the Code would potentially exempt all uses specifically defined in the Code from the dimensional requirements under the Code. For example, HCC 21.12.030, permits not only public utility facilities and structures as a conditional use in the RR district, but also group care homes. While "group care home" is separately defined under the Code, such homes are traditionally housed in buildings. Under Becker's rationale, any building used to house a group home would be exempt from the

dimensional requirements of the Code and could be erected in a setback without a variance. Such a rule would have detrimental effects on Homer's zoning efforts.

Becker's argument that the definition of building is too broad and would encompass poles and other minimal structures is also without merit. The purpose of setbacks is to prohibit erection of structures in the setback, whether the structure is a fence, pole, or a shelter. Public utility companies do in fact obtain public utility easements to erect poles within setbacks and landowners often seek variances for the erection of fence. Again, Becker must obtain a variance to erect a "building" in the setback, regardless of whether that building constitutes a public utility facility permitted in the district with a conditional use permit.

The Public Utility Easement Does Not Permit Erection of the Structures in the Setback

In Becker's Memorandum on Remand, Becker recognizes that neither of the parties leasing the tower space are registered public utilities with the Regulatory Commission of Alaska ("RCA"). Similarly, there is no argument made that the landowner or the entity erecting the buildings in the setback are public utilities registered with the RCA. As argued by the Department in its Staff Report submitted in May, 2011 and for all of the reasons stated in that report, a public utility easement cannot be relied upon by Becker to permit construction in the setbacks unless the entity granted the easement qualifies as a public utility under State law. Becker's concession that the entities granted the easement are not registered as public utilities with the RCA requires the Commission to ignore the public utility easement recorded by Becker and focus instead on evidence regarding Becker's variance application.

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

Findings in consideration of new evidence presented that the need for a variance is moot.

Finding 1: The equipment shelter erected by Becker constitutes a "building" under the Homer City Code and thus is subject to the setback requirements under the Code.

Finding 2: No evidence has been provided that the applicant or any clients of the said facility are considered a "public utility" by the State of Alaska.

Finding 3: The public utility easement recorded by Becker on September 2, 2010 is not a basis for erecting structures in violation of Homer City Code.

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: The applicant's lot provides no other place for the tower to better serve its purpose, with an approved CUP others in the same district do not need a variance due to topography.

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 3: The purpose of the tower is telecommunications, in part, for emergency services.

   Finding 4: The Commission recognizes the important and time sensitive nature of emergency communication requirements related to Fire, EMT, and other vital public safety concerns.

   Finding 4: The parcel has steep slopes of approximately 38% to 42%. Parcels this steep are often consider "unfeasible" for typical residential development, 2008 City of 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 in support of emergency services.

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 3: The necessity of the site specific requirements for the structure, nature of its purpose and the topographical challenges of the site were not caused by the actions of the applicants.

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

Finding 4: Hardship and inconvenience is not the sole reason for this variance request, other special circumstances exist.

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: The current location of the structure is the minimum variance necessary to permit its reasonable use.

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 MET ALL THE REQUIREMENTS FOR GRANTING A VARIANCE AND THE APPLICATION IS APPROVED.

Date:_____ _____
Chair, Sharon Minsch

Date:_____ _____
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 _____, 2010. A copy was also delivered to the City of Homer Planning Department and Homer City Clerk on the same date.

Date:_____ _____
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

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Web Site *www.ci.homer.ak.us*

STAFF REPORT PL 11-80

TO: Homer Advisory Planning Commission
FROM: Rick Abboud, City Planner
MEETING: July 20, 2011
SUBJECT: Planning Director's Report

June 27th Regular City Council Meeting

Bob Howard, Port and Harbor Advisory Commissioner, reported the commission is still discussing parking on the Spit, fines for long term parking specifically. People that park long term will rack up a significant fine at $25 per day. The commission moved to limit the long term parking fine to $250 and allow the person to pay a $250 fine and be issued a long term parking pass. The parking regulations are for compliance, not revenue. A resolution will reach Council at the July meeting and the commission would appreciate positive support for the fall fishing season. The parking program is working quite well with 50 long term and 10 seasonal parking passes issued to date. It has produced between $10,000 and $12,000 in income for the Port and Harbor enterprise fund.

Resolution 11-068, A Resolution of the City Council of Homer, Alaska, Awarding a Contract to Herndon Construction of Homer, Alaska, in the Amount of $3,533,004.74 for the Kachemak Drive Phase Two Water and Sewer Project and Authorizing the City\PASSED.

July 25th Regular City Council Meeting

Conservation District Ordinance introduction

Commission Appointments: Jennifer Sonneborn and Shelley Erickson will be appointed to the planning commission at the July 25th City Council meeting.

Activities: Still working the kinks out of our new office. Internet can be a challenge and our phones are run through the connection, so we may experience difficulties with those as well. We are now joined by administration, IT, and the Mayor. The staff, as well as myself, have been taking off days here and there. With Julie gone, we have to adjust our work priorities accordingly.

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STAFF REPORT PL 11-75

TO: Homer Advisory Planning Commission
FROM: Rick Abboud, City Planner
MEETING: July 20, 2011
SUBJECT: Vacation of a portion of Spruce Lane which was previously dedicated as a "knuckle" and its associated 15ft utility easement.

Requested action: Conduct a public hearing and recommend approval of the vacation of the "knuckle" and its associated 15ft. utility easement.

GENERAL INFORMATION

Applicants:	Roger Imhoff, RLS PO Box 2588 Homer AK 99603	Christopher & Angie Newby PO Box 2581 Homer AK 99603	Walt Wrede City of Homer Homer AK 99603

Requested Action:	Vacation of a public right of way
Location:	Spruce Lane at terminus of Clover Lane
Zoning Designation:	Rural Residential
Existing Land Use:	Vacant
Surrounding Land Use:	North: Residential South: Residential East: Residential West: Residential
Comprehensive Plan:	2008 Homer Comprehensive Plan, Chapter 4, Goal 5, Objective B, "Maintain the availability of lands designated for rural residential use; improve the zoning code for this category to withstand the pressure for platting large lots into smaller ones in that district."
Public Notice:	Notice was sent to 35 property owners of 49 parcels as shown on the KPB tax assessor rolls.

ANALYSIS:

This vacation request lies within the Rural Residential zoning district. A preliminary plat also accompanies this request. The plat requires a separate platting action and vote. This staff report will only address the vacation of the right of way. The purpose of the vacation is to get rid of the "knuckle" created for the current five lot subdivision which is being proposed to merge into one lot. The ROW requested for vacation also includes a previously required utility easement, which would be vacated. The plat dedicates a new utility easement along Spruce Lane ROW. This vacation request negates the need for the existing five lots to all be served by public utilities, leaving one lot large enough to qualify for on-site wastewater disposal with the approval of AKDEC. It also neatly replaces small urban sized lots with one more appropriate for the Rural Residential District.

REVIEW

The city of Homer does not have code criteria to review a right of way vacation. Applicable Kenai Peninsula Borough Code states:

20.04.010 Purpose of provisions.
The purpose of this title is to promote an adequate and efficient street and road system, to provide utility easements, to provide minimum standards of survey accuracy and proper preparation of plats, and to protect and improve the health, safety and general welfare of the people.

Staff Finding: An adequate and safe road system is provided by remaining ROW serving this lot.

20.28.140. Partial vacation allowed.

Where the planning commission finds that a right-of-way must be preserved for ultimate use, but determines there is excessive width for all intended accommodations within the right-of-way, the commission may approve a partial vacation of a right-of-way such that the width is reduced to the maximum necessary for the intended use. Such vacation shall conform to this title for the class of right-of-way involved except where the right-of-way is not intended to be used for vehicular purposes.

(Ord. No. 84-9, § 1(part), 1984)

Staff Finding: The proposed partial vacation reduces the Spruce Lane ROW to the maximum necessary road standards for a local road width of 60 feet.

20.28.170. Utility provisions.

All existing and future utility requirements shall be considered when evaluating a vacation request. Rights-of-way which are utilized by a public utility or which logically would be required by a public utility shall not be vacated, unless it can be demonstrated that equal or superior access is or will be available. Where an easement would satisfactorily serve the utility interests, and no other public need for the right-of-way exists, the commission may approve the vacation and require that a public utility easement be granted in place of the right-of-way.

(Ord. No. 84-9, § 1(part), 1984)

Staff Finding: A fifteen foot utility easement along the entire boundary of Spruce Lane, as depicted in the proposed preliminary plat, is adequate and appropriate for the newly proposed lot.

PUBLIC WORKS COMMENTS: The Public Works Department had no comments.

FIRE DEPARTMENT COMMENTS: Fire Chief Painter had no problem with the vacation.

STAFF COMMENTS
Staff recommends the Commission recommend approval of the partial vacation of the right-of-way as described on the Preliminary Plat, dated 6-24-2011, Cooper Subdivision 2011 Addition.

ATTACHMENTS
1. Vacation Petition
2. Preliminary Plat and vacation map
3. Location map

Kenai Peninsula Borough Planning Department

144 North Binkley
Soldotna, Alaska 99669-7599
Toll free within the Borough 1-800-478-4441, extension 2200
(907) 714-2200

Petition to Vacate Public Right-of-Way/Section Line Easement
Public Hearing Required

Upon receipt of complete application with fees and all required attachments a public hearing before the Planning Commission will be scheduled. The petition with all required information and attachments must be in the Planning Department at least 30 days prior to the preferred hearing date. By State Statute and Borough Code, the public hearing must be scheduled within 60 days of receipt of complete application.

- [x] Fees - $300 non-refundable fee to help defray costs of advertising public hearing. Plat fees will be in addition to vacation fees.
- [ ] City Advisory Planning Commission. Copy of minutes at which this item was acted on, along with a copy of City Staff Report.
- [ ] Name of public right-of-way proposed to be vacated is Spruce Lane "knuckle" ; dedicated by plat of Cooper Subd No 4 Subdivision, filed as Plat No. 93-62 in HOMER Recording District.
- [x] Are there associated utility easements to be vacated? [x] Yes [ ] No
- [ ] Are easements in use by any utility company; if so which? No
- [ ] Easement for public road or right-of-way as set out in (specify type of document) _____ as recorded in Book _____ Page _____ of the _____ Recording District. (Copy of recorded document must be submitted with petition)
- [ ] Section Line Easement. Width of easement must be shown on sketch.
- [x] Submit three copies of plat or map showing area proposed to be vacated. Must not exceed 11 x 17 inches in size. In the case of public right-of-way the submittal must include a sketch showing which parcels the vacated area will be attached to. Proposed alternative dedication is to be shown and labeled on the sketch.

Has right-of-way been fully or partially constructed?	[ ] Yes	[x] No
Is right-of-way used by vehicles/pedestrians/other?	[ ] Yes	[x] No
Has section line easement been constructed?	[ ] Yes	[ ] No
Is section line easement being used?	[ ] Yes	[ ] No
Is alternative right-of-way being provided?	[x] Yes Spruce Lane 60' R/W	[ ] No

The petitioner must provide reasonable justification for the vacation. Reason for vacating:
The "knuckle" portion of Spruce Lane was dedicated to provide access for lots within Cooper Subd No 4. The lines common to Lots 1-5 are being vacated so there is no longer a necessity for the "knuckle" or its associated utility easement.

The petition must be signed (written signature) by owners of majority of the front feet of land fronting part of right-of way or section line easement proposed to be vacated. Each must include mailing address and legal description of his/her property.

Submitted by: Signature x _____ As: ☑ Petitioner ☐ Representative

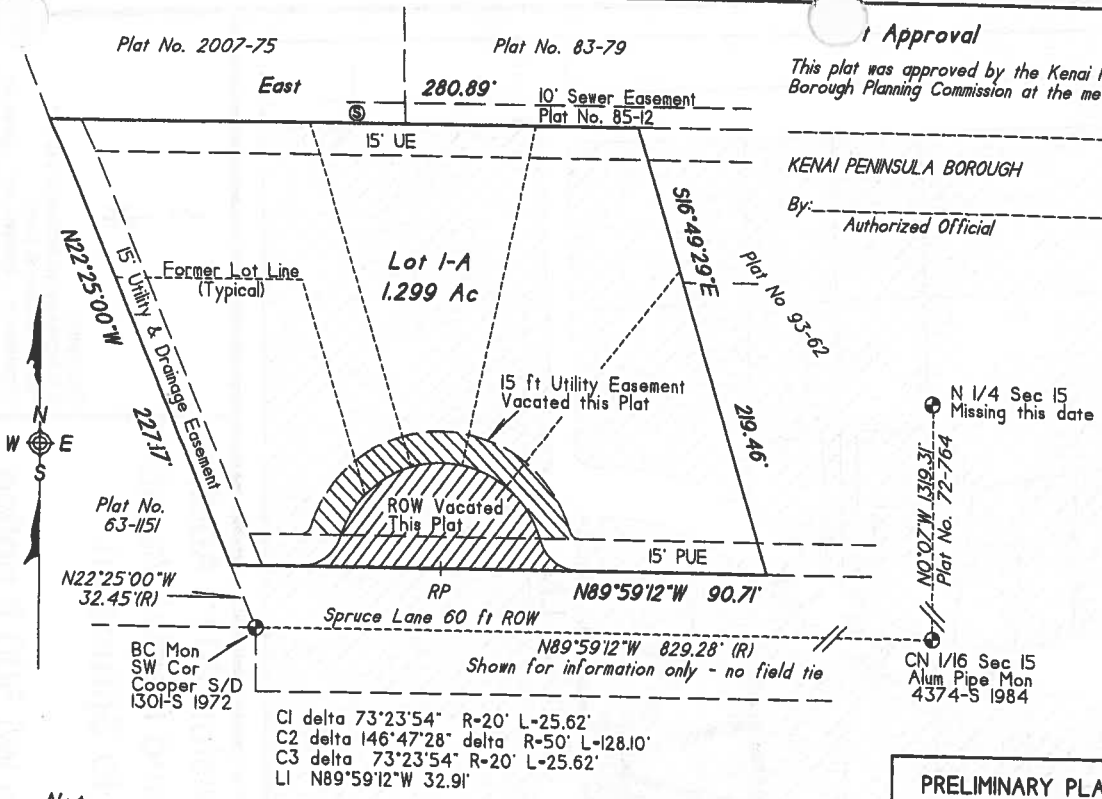
Name Christpher L. Newby

Address PO Box 1124
Homer AK 99603

Phone 907-235-6527

Petitioners:

Signature	x _____	Signature	x _____
Name	Christopher L. Newby	Name	Angela M. Newby
Address	PO Box 1124 Homer AK 99603	Address	same address
Owner of	Lots 1-5 Cooper S/D No 4	Owner of	Lots 1-5 Cooper S/D No 4
Signature		Signature	
Name		Name	
Address		Address	
Owner of		Owner of	



C1 delta 73°23'54" R=20' L=25.62'
C2 delta 146°47'28" delta R=50' L=128.10'
C3 delta 73°23'54" R=20' L=25.62'
L1 N89°59'12"W 32.91'

Notes

1. All wastewater disposal systems shall comply with existing applicable laws at the time of construction.

2. WASTEWATER DISPOSAL: Plans for wastewater that meet regulatory requirements are on file at the State of Alaska Department of Environmental Conservation.

3. This subdivision is subject to City of Homer Zoning Regulations. Refer to the Parent Plats and the Homer City Code for all current setback and site development restrictions. Owners should check with the City of Homer prior to development activities.

4. The 15 ft fronting the rights-of-way is an underground utility easement. No permanent structure shall be constructed or placed within the utility easement which would interfere with the ability of the utility to use the easement.

5. No field survey was conducted for this plat. Dimensions are of Record.

6. Former Lots 1-5 are currently effected by that Subdivision Agreement with the City of Homer Recorded in Book 229 Page 324 regarding the issuance of building permits.

t Approval

This plat was approved by the Kenai Peninsula Borough Planning Commission at the meeting of

_____

KENAI PENINSULA BOROUGH

By:_____
Authorized Official

Ownership Certificate

We hereby certify that we are the owners of the real property shown and described hereon and that we hereby adopt this plan of subdivision and by our free consent dedicate all rights-of-way to public use and grant all easements to the use shown.

_____
Christopher L. Newby Angela M. Newby DATE
PO Box 1124
Homer Ak 99603

Notary's Acknowledgement
Subscribed and sworn to me before me this _____ day

of _____. 20____

for Christopher L. Newby and Angela M. Newby

_____
Notary Public for Alaska
My Commission Expires_____

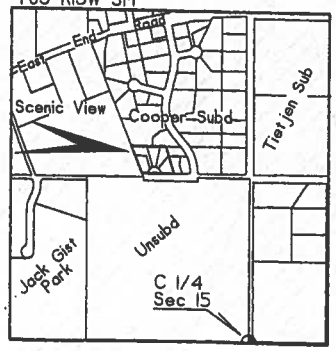
Surveyors Certificate

I hereby certify that I am a Registered Land Surveyor and that this plat represents a survey made by me or under my direct supervision and the monuments shown hereon actually exist as described and that the dimensions and other details are correct to the best of my knowledge.

_____
Roger W. Imhoff LS 5780 Date

PRELIMINARY PLAT
6-24-2011

Vicinity Map 1"= 1000 ft
T6S R13W SM



Cooper Subdivision 2011 Addition

Being a vacation of a portion of the Right-of-Way for Spruce Lane and the associated utility easement AND a vacation of the common lot lines between Lots 1-5 of Cooper Subd. No 4 Replat as shown on Plat No. 93-62 HRD

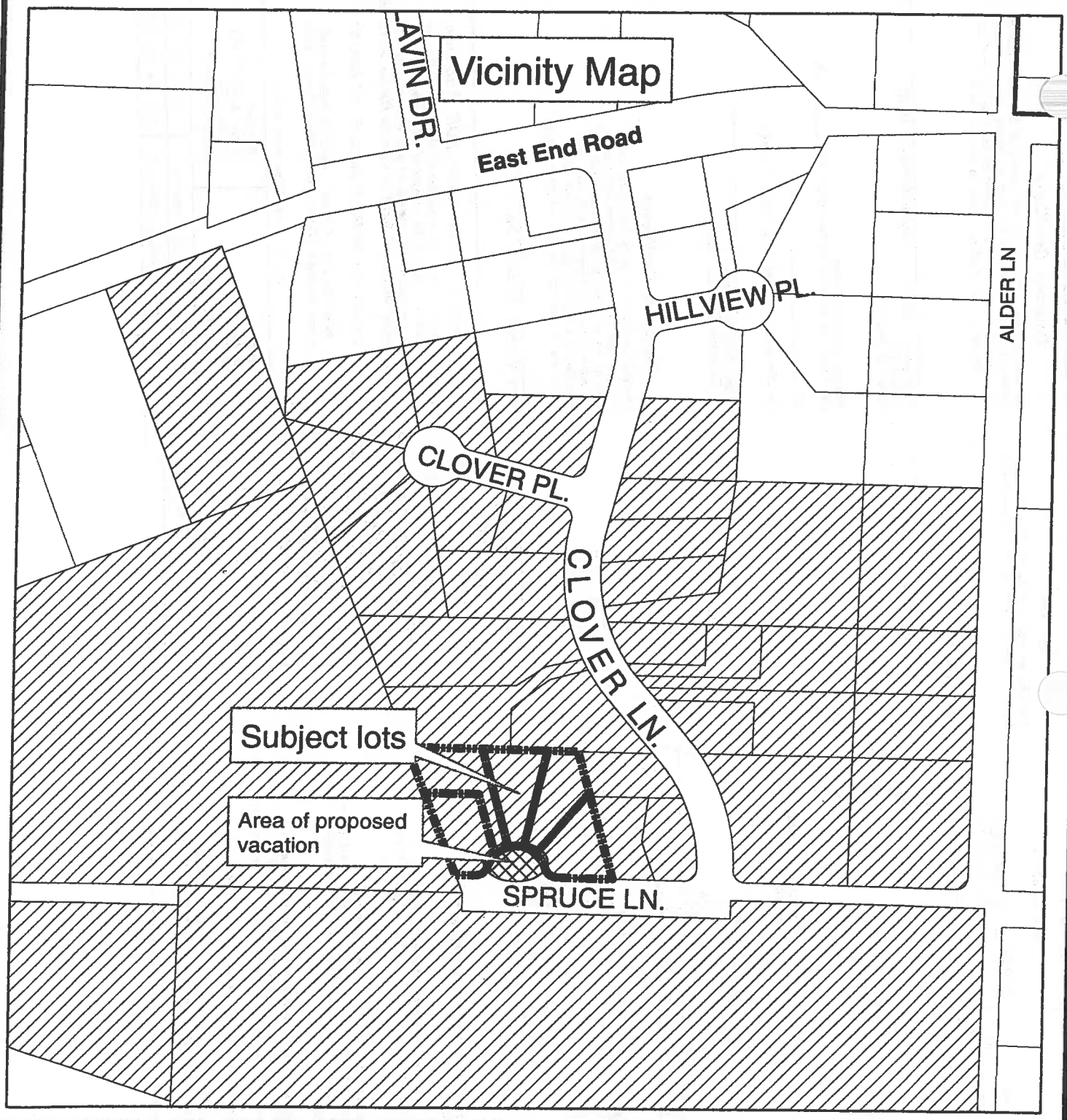
Located within the NW 1/4 Section 15. T6S. R13W. SM

Within the City of Homer - Kenai Peninsula Borough Homer Recording District. Third Judicial District. Alaska

Contains 1.299 Acres. more or less

Clients:	Surveyor:
Newby PO Box 1124 Homer AK 99603	Roger W. Imhoff. RLS PO Box 2588 Homer Ak 99603

Drawn: RWI	File Cooprnew.cgo	Date: June 2011
Scale 1" = 60 ft	FileCoopernewby.vcd	KPB File No. 2011-



City of Homer
Planning and Zoning Department
July 7, 2011

Cooper Subdivision 2011 Addition
Prelinary Plat and Partial Vacation
adjacent to Spruce Ln.

Shaded area w/i 500 ft notice

500 250 0 Feet

N

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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Homer, Alaska 99603-7645

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STAFF REPORT PL 11-74

TO: Homer Advisory Planning Commission
FROM: Rick Abboud, City Planner
MEETING: July 20, 2011
SUBJECT: Cooper Subdivision 2011 Addition

Requested Action: Preliminary Plat approval for the vacation of common lot lines.

GENERAL INFORMATION

Applicants:	Christopher & Angie Newby PO Box 1124 Homer, AK 99603	Surveyor: Roger W. Imhoff, RLS PO Box 2588 Homer, AK 99603
Location:	2246,..50,56,60 & 82 Spruce Ln.	
Parcel ID:	17930025, ……26, 27, 28, & 29	
Size of Existing Lot(s):	0.24, .26, .25, .23 & .23 Acres	
Size of Proposed Lots(s):	1.299 Acres	
Zoning Designation:	Rural Residential District	
Existing Land Use:	Vacant	
Surrounding Land Use:	North: Residential South: Residential East: Residential West: Residential	
Comprehensive Plan:	2008 Homer Comprehensive Plan, Chapter 4, Goal 5, Objective B, "Maintain the availability of lands designated for rural residential use; improve the zoning code for this category to withstand the pressure for platting large lots into smaller ones in that district."	
Wetland Status:	Not indicated as possible wetlands in wetlands mapping	
Flood Plain Status:	Flood Hazard area D, Flood hazards undetermined	
BCWPD:	Not within the Bridge Creek Watershed Protection District.	
Utilities:	City water and sewer are available nearby.	
Public Notice:	Notice was sent to 35 property owners of 49 parcels, as shown on the KPB tax assessor rolls.	

ANALYSIS:

This subdivision is within the Rural Residential District. The Rural Residential District is primarily to provide an area in the City for low-density, primarily residential development…

This plat vacates the common lot lines between five lots. The lot meets the dimensional size requirement of a minimum 40,000 square feet in areas not served by public water and sewer.

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

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

Staff Response: The plat meets these requirements.

2. North point;

Staff Response: The plat meets these requirements.

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

Staff Response: The plat meets these requirements.

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

Staff Response: The plat meets these requirements.

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

Staff Response: Private parcels are shown. No public use areas other than Rights of Way are noted.

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

Staff Response: The plat meets these requirements.

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

Staff Response: The plat meets these requirements.

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

Staff Response: The plat meets these requirements.

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

Staff Response: The plat meets these requirements (not applicable to this area).

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

Staff Response: The plat meets these requirements.

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

Staff Response: The plat meets these requirements.

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

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

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

Staff Response: The plat meets these requirements.

PUBLIC WORKS COMMENTS: The department supports the replat along with the proposed ROW vacation of the blister on the north side. This plat will clear up some outstanding issues surrounding the original plat. No subdivision agreement improvements should be required as part of this plat.

FIRE DEPARTMENT COMMENTS: There are no Fire Department issues with this plat.

STAFF COMMENTS/RECOMMENDATIONS:
Planning Commission recommend approval of the preliminary plat.

ATTACHMENTS

1. Preliminary Plat
2. Letter from surveyor
3. Contours

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

6-24-2011

Julie Engebretsen
COH Planning Dept
Homer Ak 99603

RE: REVISED Preliminary Plat
Cooper Subd 2011 Addition

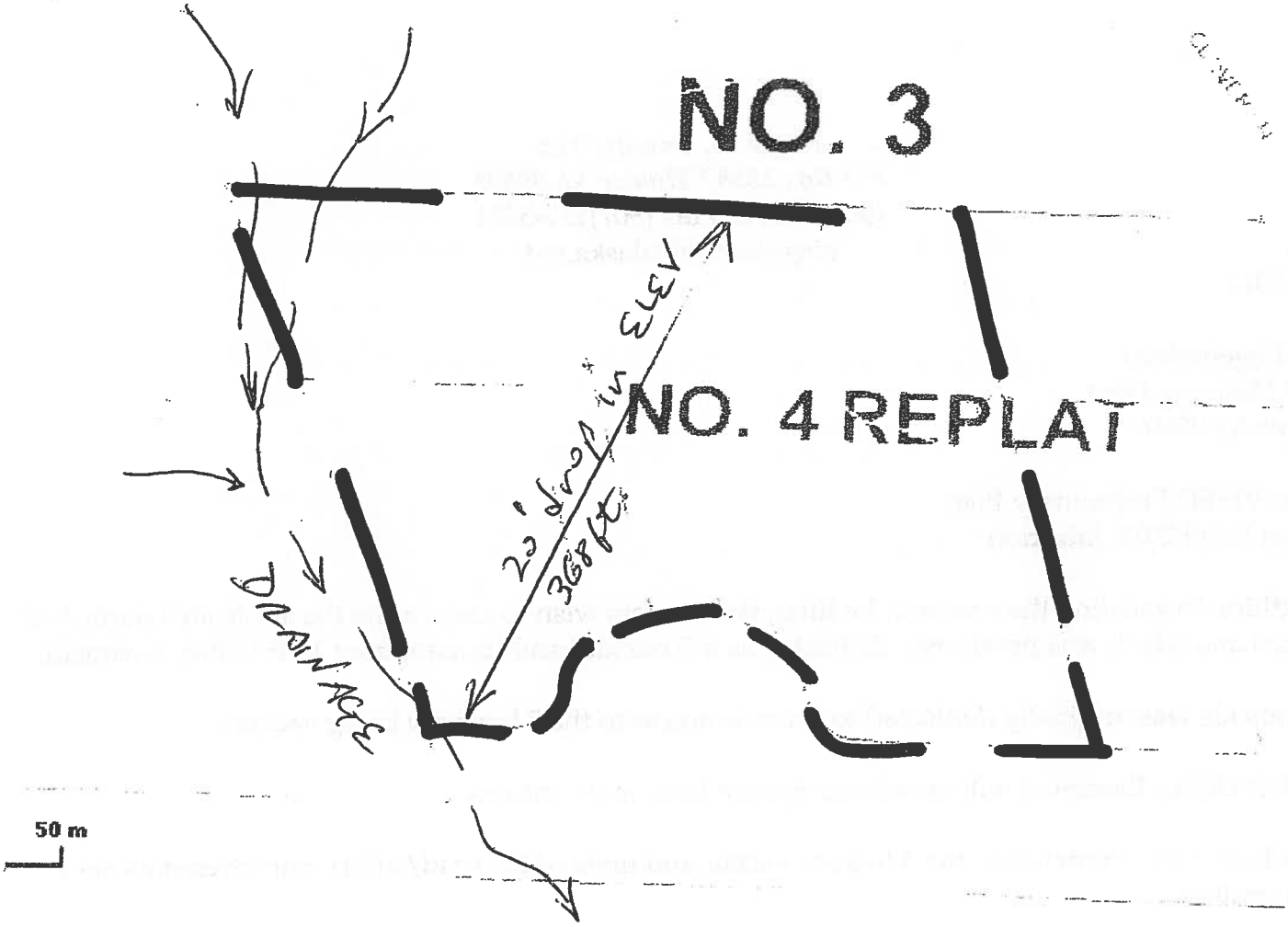
In addition to vacating the common lot lines, the Owners wish to also vacate the applicable portion of Spruce Lane which was previously dedicated as a "knuckle" and its associated 15 ft Utility Easement.

The knuckle was originally dedicated to provide access to the 5 lots now being vacated.

The 15 ft Utility Easement will now front Spruce Lane in its entirety.

To the best of my knowledge, the 5 lots are vacant and none of the road/utility improvements have been installed.

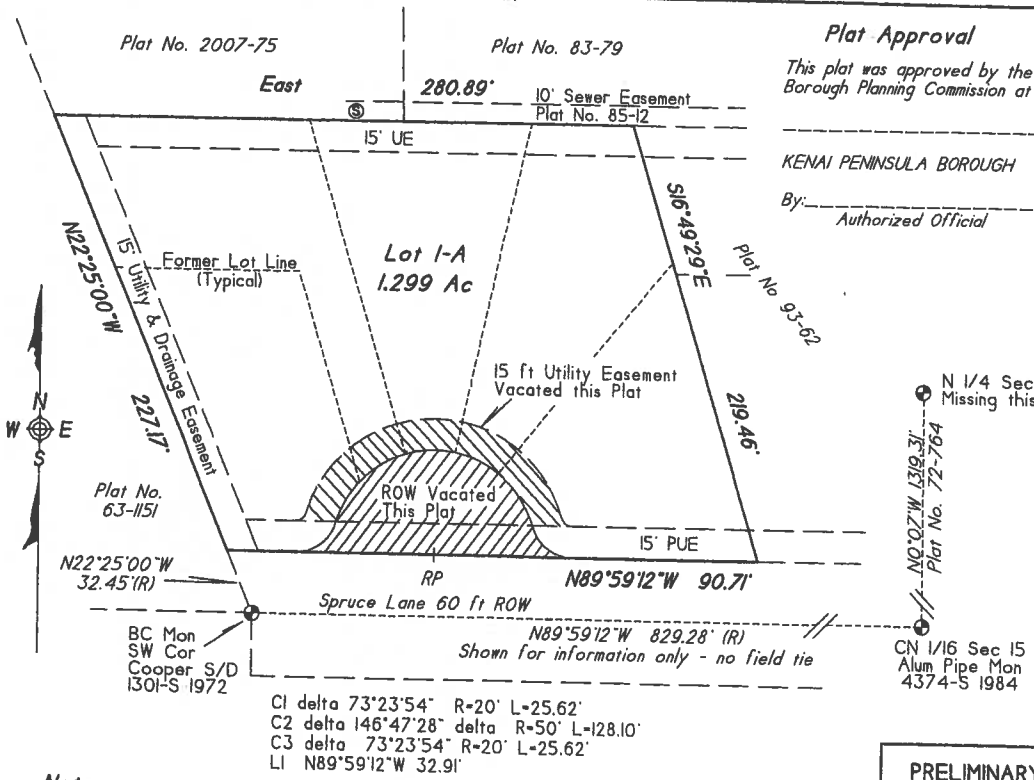
Thanks,



Kenai Peninsula Borough GIS Division

4' CONTOURS

$\frac{20 \text{ ft drop}}{368 \text{ ft}} \times 100 = 5.4\%$ SIDE SLOPE



C1 delta 73°23'54" R=20' L=25.62'
C2 delta 146°47'28" delta R=50' L=128.10'
C3 delta 73°23'54" R=20' L=25.62'
L1 N89°59'12"W 32.91'

Plat Approval

This plat was approved by the Kenai Peninsula Borough Planning Commission at the meeting of

_____

KENAI PENINSULA BOROUGH

By:_____
Authorized Official

Ownership Certificate

We hereby certify that we are the owners of the real property shown and described hereon and that we hereby adopt this plan of subdivision and by our free consent dedicate all rights-of-way to public use and grant all easements to the use shown.

_____
Christopher L. Newby Angela M. Newby DATE
PO Box 1124
Homer Ak 99603

Notary's Acknowledgement
Subscribed and sworn to me before me this _____ day

of _____. 20____

for Christopher L. Newby and Angela M. Newby

_____
Notary Public for Alaska
My Commission Expires_____

Surveyors Certificate

I hereby certify that I am a Registered Land Surveyor and that this plat represents a survey made by me or under my direct supervision and the monuments shown hereon actually exist as described and that the dimensions and other details are correct to the best of my knowledge.

_____
Roger W. Imhoff LS 5780 Date

35

Notes

1. All wastewater disposal systems shall comply with existing applicable laws at the time of construction.

2. WASTEWATER DISPOSAL: Plans for wastewater that meet regulatory requirements are on file at the State of Alaska Department of Environmental Conservation.

3. This subdivision is subject to City of Homer Zoning Regulations. Refer to the Parent Plats and the Homer City Code for all current setback and site development restrictions. Owners should check with the City of Homer prior to development activities.

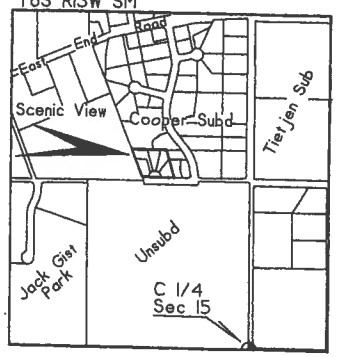
4. The 15 ft fronting the rights-of-way is an underground utility easement. No permanent structure shall be constructed or placed within the utility easement which would interfere with the ability of the utility to use the easement.

5. No field survey was conducted for this plat. Dimensions are of Record.

6. Former Lots 1-5 are currently effected by that Subdivision Agreement with the City of Homer Recorded in Book 229 Page 324 regarding the issuance of building permits.

PRELIMINARY PLAT
6-24-2011

Vicinity Map 1" = 1000 ft
T6S R13W SM



Cooper Subdivision 2011 Addition

Being a vacation of a portion of the Right-of-Way for Spruce Lane and the associated utility easement AND a vacation of the common lot lines between Lots 1-5 of Cooper Subd. No 4 Replat as shown on Plat No. 93-62 HRD

Located within the NW 1/4 Section 15, T6S, R13W, SM

Within the City of Homer - Kenai Peninsula Borough Homer Recording District, Third Judicial District, Alaska

Contains 1.299 Acres, more or less

Clients:	Surveyor:
Newby PO Box 1124 Homer AK 99603	Roger W. Imhoff, RLS PO Box 2588 Homer Ak 99603

Drawn: RWI	File Cooprnew.cgo	Date: June 2011
Scale 1" = 60 ft	FileCoopernewby.vcd	KPB File No. 2011-

City of Homer
Planning & Zoning
491 East Pioneer Avenue
Homer, Alaska 99603-7645

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E-mail *Planning@ci.homer.ak.us*
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STAFF REPORT PL 11-77

TO: Homer Advisory Planning Commission
FROM: Rick Abboud, City Planner
MEETING: July 20, 2011
SUBJECT: Draft East End Mixed Use Ordinance

GENERAL INFORMATION

The Commission reviewed the ordinance at the June 1st meeting. The ordinance in its current form is a result of consensus suggestions in relation to the last staff report, some staff clean up and other commission suggestions. The current version will have somewhat different reference lines as some things were eliminated, added and the format was cleaned up, so have a close look.

ANALYSIS:

Revisions

Lines 19-21
Changed description of purpose to more closely describe the intent of the district as currently refined.

Permitted uses and structures

- Auto fueling moved to conditional
- l. removed reference to livestock farming along with other conditions regarding the keeping of animals
- m. added private stables
- o. Attorney adjusted after explanation that home occupations were to be permitted for the existing residential.
- r. open air businesses-definition found in code-"Business, open air" or "open air business" means the retail sale or display of merchandise or services, including but not limited to farmers' markets and flea markets, conducted outdoors or under a canopy for protection from the elements and held on a regular or periodic basis. Open air business does not include (1) outdoor display or sales of goods or services by a retail or wholesale business that is principally located in a building, (2) or sales, services or rentals of any kind of boat or motorized vehicle.
- Removed "construction, assembly and storage of boats and boat equipment" because it is duplicate to "f. Boat and marine equipment sales, rentals, manufacturing, storage yard, service and repair;"
- hh. Attorney edit to accept existing residential as permitted use
- jj. Merged concepts and tailored for EEMU district, may need tweaking by attorney
- removed private stables

Conditional Uses and Structures

- eliminated multi-family, single family and duplex dwellings, mobile homes, townhouses, shelter for the homeless, group care and assisted living homes
- added c. auto fueling stations
- eliminated above and below ground categories of bulk petroleum storage leaving just the general term
- moved "more than one principle structure" to permitted use
- removed "daycare facilities"

Dimensional requirements and Building setbacks have been adjusted for clarity by the Attorney, with special consideration for ROW that has been determined unsuitable for construction by the City Council as is currently found in the RR district.

Site development requirements

- line 159, added the requirement of a level two site plan. This is a standard requirement in the GC2 district and staff figured that it would be appropriate as this district is discouraging residential. Includes triggers for Development Activity Plans and includes 3ft. of landscaping requirements.

Considerations:
With the addition of a level two site plan, a 3 foot landscaping requirement is required which is undefined and could consist of nothing more than a seeded ditch. The only other landscaping requirement is associated with parking lots of over 24 stalls or perhaps as a requirement of a CUP. In the opinion of staff, this provides inadequate buffer requirements in the case of scenarios where heavy industry may develop along East End Road and not have any buffer requirement that would actually effective at softening the appearance for those driving through or residing across the street.

We would like the Planning Commission to entertain the concept of a buffer requirement that would include fencing or plantings that provided visual relief of 6 to 8 feet at least along East End Road. A trigger for such could be the creation of impervious in excess of several thousand feet on any lot.

STAFF COMMENTS/RECOMMENDATIONS:

Planning Commission

1. Make motion to accept draft EEMU district as amended.
2. Instruct staff to distribute notices and hold public meeting(s) for district as proposed and suggested in the Comprehensive Plan.

ATTACHMENTS

1. July 12, 2011 Attorney Edit Draft Ordinance

CITY OF HOMER
HOMER, ALASKA

Planning

ORDINANCE 11-

AN ORDINANCE OF THE CITY COUNCIL OF HOMER, ALASKA, ENACTING HOMER CITY CODE CHAPTER 21.27, EAST END MIXED USE DISTRICT.

THE CITY OF HOMER ORDAINS:

Chapter 21.27

EAST END MIXED USE DISTRICT

Sections:

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 existing and accessory residential with non-residential uses. When a conflict exists between residential and nonresidential uses conflicts shall be 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. Drive-in car washes;
c. Building supply and equipment sales and rentals;
d. Garden supplies and greenhouses;
e. Boat and marine equipment sales, rentals, manufacturing, storage yard, service and repair;
f. Welding and mechanical repair;
g. Restaurants, including drive-in restaurants, clubs and drinking establishments;

h. Religious, cultural, and fraternal assembly;
i. Studios;
j. Personal services;
k. Agricultural activities, including general farming, truck farming, nurseries, tree farms and greenhouses;
l. Private stables;
m. Storage of heavy equipment, vehicles or boats;
n. Plumbing, heating and appliance service shops;
o. Home occupations on a lot whose principal permitted use is residential, provided they conform to the requirements of HCC § 21.51.010;
p. Mortuaries and Crematoriums;
q. Open air businesses;
r. Parking lots and parking garages, in accordance with HCC Chapter 21.55;
s. Manufacturing, fabrication and assembly;
t. Retail businesses;
u. Trade, skilled or industrial schools;
v. Wholesale businesses, including storage and distribution services incidental to the products to be sold;
w. Parks and open space;
x. Warehousing, commercial storage and mini-storage;
y. Recreational vehicles, subject to the standards set out in HCC § 21.54.320.(a), (b) and (c);
z. Dry cleaning, laundry, and self-service laundries;
aa. Mobile food services;
bb. As an accessory use, one small wind energy system per lot;
cc. Production, processing, assembly and packaging of fish, shellfish and seafood products;
dd. Research and development laboratories;
ee. Storage and distribution services and facilities, including truck terminals, warehouses and storage buildings and yards, contractors' establishments, lumberyards and sales, or similar uses;
ff. Cold storage facilities;
gg. Mobile commercial structures;
hh. Single family and duplex dwellings, excluding mobile homes, that existed lawfully on a lot as of the effective date of the ordinance placing the lot in the EEMU district.
ii. Dwelling units located in buildings primarily devoted to a principal business use;
jj. Customary accessory uses to any of the uses permitted in the EEMU district that are clearly subordinate to the main use of the lot or building, including without limitation wharves, docks, storage facilities, restaurant or cafeteria facilities for employees; or caretaker or employee dormitory residence if situated on a portion of the principal lot: provided that separate permits shall not be issued for the construction of any type of accessory building prior to that of the main building
kk. Taxi operation;
ll. Itinerant merchants, provided all activities shall be limited to uses permitted outright under this zoning district;

mm. More than one building containing a permitted principal use on a lot;

nn. The outdoor harboring or keeping of dogs, small animals and fowl as an accessory to a residential use in a manner consistent with the requirements of all other provisions of the Homer City Code and as long as such animals are pets of the residents of the dwelling and their numbers are such as not to unreasonably annoy or disturb occupants of neighboring property.

21.27.030 Conditional uses and structures. The following conditional 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:

a. Construction camps;

b. Extractive enterprises, including crushing of gravel, sand and other earth products and batch plants for asphalt or concrete;

c. Auto fueling stations;

d. Bulk petroleum product storage;

e. Planned unit developments;

f. Junk yard;

g. Kennels;

h. Public utility facilities and structures;

i. Impound yards;

j. Indoor recreational facilities;

k. Outdoor recreational facilities;

l. Other uses approved pursuant to HCC § 21.04.020.

21.27.040 Dimensional requirements. The following dimensional requirements shall apply to all structures and uses in the East End Mixed Use District:

a. Lot Size.

1. The minimum area of a lot that is not served by public sewer or water shall be 40,000 square feet.

2. The minimum area of a lot that is served by either a public water supply approved by the State Department of Environmental conservation, or a public or community sewer approved by the State Department of Environmental Conservation, shall be 20,000 square feet.

3. The minimum area of a lot that is served by both a public water supply approved by the State Department of Environmental conservation, and a public or community sewer approved by the State Department of Environmental Conservation, shall be 10,000 square feet.

b. Building Setbacks.

1. All buildings shall be set back 20 feet from all dedicated rights-of-way, except as allowed by subsections (b)(2) and (b)(3);

2. Adjacent to those rights-of-way that lead to Kachemak Bay and have been determined to be unsuitable for road construction by Resolution of the City Council, all buildings shall be set back from the boundary of the right-of-way according to the number of stories as follows:

Number of Stories	Setback (in feet)
1	5

1½	6
2	7
2½	8

3. Alleys are not subject to a 20 foot setback requirement. The setback requirements from any lot line abutting an alley will be determined by the dimensional requirements of subparagraphs (b)(4) and (5);

4. Buildings shall be set back five feet from all other lot boundary lot lines unless adequate firewalls are provided and adequate access to the rear of the building is otherwise provided (e.g., alleyways) as defined by the State Fire Code and enforced by the State Fire Marshal;

5. Any attached or detached accessory building shall maintain the same yards and setbacks as the main building.

c. Building Height. The maximum building height shall be 35 feet.

d. No lot shall contain more than 8,000 square feet of building area (all buildings combined), nor shall any lot contain building area in excess of 30 percent of the lot area without an approved conditional use permit.

e. Building Area and Dimensions - Retail and Wholesale.

1. The total floor area of retail and wholesale business uses within a single building shall not exceed 75,000 square feet.

2. No conditional use permit, Planned Unit Development, or variance may be granted that would allow a building to exceed the limits of subparagraphs (e)(1), and no nonconforming use or structure may be expanded in any manner that would increase its nonconformity with the limits of subparagraph (e)(1).

f. Screening. When one or more side or rear lot lines abut land within an RO, RR, or UR district or when a side or rear yard area is to be used for parking, loading, unloading or servicing, then those side and rear yard areas shall be effectively screened by a wall, fence, or other sight-obscuring screening. Such screening shall be of a height adequate to screen activity on the lot from outside view by a person of average height standing at street level.

21.27.050 Site and Access Plans. a. A zoning permit for any use or structure within the East End Mixed Use District shall not be issued by the City without a level two site plan approved by the City under HCC Chapter 21.73.

b. No zoning permit may be granted for any use or structure without a level two right-of-way access plan approved by the City under HCC § 21.73.100.

21.27.060 Traffic Requirements. A conditional use permit is required for every use that is estimated or expected to generate traffic in excess of the criteria contained in HCC § 21.18.060.

21.27.070 Site Development Requirements. All development on lands in this district shall conform to the level two site development standards set forth in HCC § 21.50.030.

21.27.080 Nuisance standards. The nuisance standards of HCC § 21.59.010(a) through (g)(1) apply to all development, uses, and structures in this zoning district. Open storage of materials and equipment is permitted, subject to the requirement that when a lot abuts a residential zoning district any outdoor storage of materials and equipment on the lot must be

screened from the residential district by a wall, fence, or other sight-obscuring material. The screen must be a minimum of eight feet in height.

21.27.090 Lighting Standards. The level one lighting standards of HCC § 21.59.030 apply to all development, uses, and structures in this zoning district.

Section 2. This Ordinance is of a permanent and general character and shall be included in the City Code.

ENACTED BY THE CITY COUNCIL OF HOMER, ALASKA, this _____ day of _____ 2011.

CITY OF HOMER

_____
JAMES C. HORNADAY, MAYOR

ATTEST:

_____
JO JOHNSON, CMC, CITY CLERK

YES:
NO:
ABSTAIN:
ABSENT:

First Reading:
Public Hearing:
Second Reading:
Effective Date:

Reviewed and approved as to form:

_____
Walt E. Wrede, City Manager
Date: _____

_____
Thomas F. Klinkner, City Attorney
Date: _____

City of Homer
Planning & Zoning
491 East Pioneer Avenue
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Web Site www.ci.homer.ak.us

STAFF REPORT PL 11-78

TO: Homer Advisory Planning Commission
THROUGH: Rick Abboud, City Planner
FROM: Dotti Harness-Foster, Planning Technician
MEETING: July 20, 2011
SUBJECT: DRAFT sign ordinance

Rick- OK here we are again. I would have really rather had an "attorney approved" draft at this time, but I do not. The various drafts with comments and questions are getting a bit overwhelming. Perhaps we will have an attorney lay down that is a bit further along at meeting time. For now, I have created my own draft for discussion. Have a close look and prepare questions for the Attorney, as I hope to have him available at the meeting. My goal is to have a solid final draft after this. Thanks for your patience!

At our packet deadline we had not received an updated draft sign ordinance, but in the end the recommended changes simplify the code by eliminating duplication, contradiction and streamlining enforcement. In a nutshell this ordinance:

1. Cleans up the sign definitions.
2. Makes the Table 1 abbreviations more readable.
3. Establishes signage based on principal building.
4. Allows temporary signs in the residential districts.
5. Broadens those who can apply for a sign permit to include business tenants.
6. Establishes a timeline to "amortize" existing signs on lots with multiple buildings.
7. Authorizes the Planning staff to remove temporary signs in ROWs.
8. Shortens the time to file an appeal to 7 days with the HAPC review being the final decision from the city.

Tom Klinker, the city attorney will join the meeting telephonically. He will discuss the First Amendment right to free speech by seeking content-neutral sign provisions with emphasis on temporary signs and banners. He has asked that questions be submitted by Tuesday, July 19th at 8:30 am allowing him and his staff time to do the necessary research.

The draft ordinance includes side comments by (IR) = City Attorney, and (DH) = Dotti Harness-Foster comments. At the June 15, 2011 HAPC meeting the commission asked the City's position on a 'content neutral' sign code. "Content neutral" means that a sign code may not regulate on the basis of the content or favor the display of one message over another. Typically, the burden of justifying a content-based sign code is on the city. To avoid future liability and legal costs, it is prudent to keep the sign code as content neutral as possible.

Staff understood (motion needed) that the HAPC agreed to include 'commercial' temporary signs within the temporary sign standards of a maximum of 16 sf. This provision passes the 'content neutral' test. Requiring that commercial temporary signs be removed when the business is not open, or a maximum of 12 hours per day, does not pass the 'content neutral' display time. The likelihood of a business challenging the inability to display a temporary sign during the 'off' hours is....?

I feel compelled to bring forward one topic within the sign code that the HAPC hasn't discussed; the amount of signage allowed in the RR, UR and parts of the RO district. In particular, B&Bs and churches in the RR district along the Sterling Hwy consider the existing sign allowance of four (4) sf restrictive. The existing code adds to the confusion by allowing 4 sf of signage in RR and UR, 6 sf of signage in RO unless you're along one of the main roads in the RO district then the business is allowed 50 sf. The United States Sign Council recommends allowing 8 sf in residential districts, which seems reasonable and conducive to Homer's residential areas. Discuss, and if the HAPC agrees, a motion is needed, to recommend increasing the sign allowance in the RR, UR and RO districts to 8 sf. Retain the provision for 50 sf of signage in the RO district along the main roads, per HCC 21.60.060 Table 2, (e).

STAFF RECOMMENDS:

1. Review and submit questions in advance to Dotti at dharness@ci.homer.ak.us or by calling 235-3106.
2. Motion(s) are needed to clarify the use of 'commercial' temporary signs. Line 306-307
3. Motion(s) are needed to clarify the display time for 'commercial' temporary signs. Line 313-314
4. Make amendments, if needed.

Att: Draft sign ordinance

City of Homer
Planning & Zoning

491 East Pioneer Avenue
Homer, Alaska 99603-7645

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Web Site *www.ci.homer.ak.us*

STAFF REPORT PL 11-69

TO: Homer Advisory Planning Commission
FROM: Rick Abboud, City Planner
MEETING: June 15, 2011, July 20, 2011
SUBJECT: Draft HAPC Bylaws

INFORMATION
At the June 1st Regular Meeting, a motion was approved to amend the HAPC bylaws to adjust the meeting time from 7:00 p.m. to 6:30 p.m. and change adjournment time from 10:00 p.m. to 9:30 p.m.

STAFF COMMENTS/RECOMMENDATIONS:
Planning Commission receive comments and forward to the City Council for approval.

ATTACHMENTS
1. Draft bylaws

CITY OF HOMER
HOMER, ALASKA

Planning

RESOLUTION 11-_____

A RESOLUTION OF THE CITY COUNCIL OF HOMER ALASKA AMENDING THE HOMER ADVISORY PLANNING COMMISSION BYLAWS.

WHEREAS, the Homer Advisory Planning Commission has review the Commission Bylaws; and

WHEREAS, the Homer Advisory Planning Commission recommended amendment of the Bylaws and Policies and Procedures Manual at their Regular Meeting of June 1, 2011; and

WHEREAS, the Homer Advisory Planning Commission held a public hearing on the proposed changes to the Bylaws at their Regular Meeting of June 15, 2011.

NOW, THEREFORE, BE IT RESOLVED that the City Council of Homer, Alaska amends the Homer Advisory Planning Commission Bylaws as shown in Attachment A.

ADOPTED BY THE HOMER CITY COUNCIL, ALASKA, this _____day of_____ 2011.

CITY OF HOMER

_____
JAMES HORNADAY, MAYOR

ATTEST

_____
JO JOHNSON, CMC, CITY CLERK

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STAFF REPORT PL 11-79

TO: Homer Advisory Planning Commission
THROUGH: Rick Abboud, City Planner
FROM: Dotti Harness-Foster, Planning Technician
MEETING: July 20, 2011
SUBJECT: Hostels included as a "permitted" and "conditional" housing use.

At the June 13, 2011 City Council meeting, Councilwoman Wythe sponsored an ordinance that if approved would include "hostels" as a permitted use in all the districts except Marine Industrial and would include 'hostels" as conditional use in the GC2 district.

First the definition for "hostel" per HCC 21.03 "means any building or portion of a building containing dormitory-style sleeping accommodations for not more than fifteen guests that that are used, rented or hired out on a daily or longer basis."

Per HCC 21.03 "Hostel" is not a hotel: "....The terms "hotel" and "motel" excludes bed and breakfast, rooming house, dormitory, shelter for the homeless, and hostel."

Adding 'hostels' as a permitted use aligns well with rooming houses and bed and breakfasts except in one district, the General Commercial 2 district. Conversely, the purpose of the GC2 district is to "provide a sound area for heavy commercial and industrial uses... ." Allowing 'hostels' is an area zoned for heavy commercial and industrial use is not safe, therefore not recommended by staff.

Adding 'hostels" as a conditional use to the Marine Commercial district is discussed in the 2011 Homer Spit Comprehensive Plan, Pg 25, 1.C.

Resort/Residential Land Use: "A residential option may be considered as part of the planning process. A clear policy is needed and appropriate regulations created and enforced to meet public health and safety concerns. Lodging and nightly rental facilities that may be permitted in the future can be located above existing and future commercial developments. By permitting these activities, the City can better regulate them and ensure facilities meet building, health, and safety codes."

STAFF RECOMMENDS:

1. Delete line 63-54 which references the GC2 district.
2. Discuss and amend if needed line 68-69 which references the MC district.
3. Adopt and send to public hearing Ord. 11-23.

Att: Ord. 11-23

CITY OF HOMER
HOMER, ALASKA

Wythe

ORDINANCE 11-23

AN ORDINANCE OF THE CITY COUNCIL OF HOMER, ALASKA, AMENDING HOMER CITY CODE SECTIONS 21.12.020; 21.14.020; 21.16.020; 21.18.020; 21.20.020; 21.22.020; 21.24.020; 21.26.020; ADDRESSING PERMITTED USES AND STRUCTURES; AND HOMER CITY CODE 21.28.030 CONDITIONAL USES AND STRUCTURES; TO ADD HOSTEL AS A PERMITTED USE IN THE RURAL RESIDENTIAL, URBAN RESIDENTIAL, RESIDENTIAL OFFICE, CENTRAL BUSINESS, TOWN CENTER, GATEWAY BUSINESS, GENERAL COMMERCIAL 1, AND GENERAL COMMERCIAL 2 ZONING DISTRICTS, AND TO ADD HOSTEL AS A CONDITIONAL USE IN THE MARINE COMMERCIAL ZONING DISTRICT.

WHEREAS, Homer City Code (pertinent section) provides a definition for "Hostel"; and,

WHEREAS, The sections of the Homer City Code under consideration provide for "permitted" and "conditional" housing uses in the various zoning districts, but no provision is made for the location of "hostels".

THE CITY OF HOMER ORDAINS:

RR

Section 1. Subsection (e) of Homer City Code 21.12.020, Permitted uses and structures, is amended to read as follows:

e. Rooming house, ~~and~~ bed and breakfast **and hostel**;

UR

Section 2. Subsection (f) of Homer City Code 21.14.020, Permitted uses and structures, is amended to read as follows:

f. Rooming house, ~~and~~ bed and breakfast **and hostel**;

RO

Section 3. Subsection (d) of Homer City Code 21.16.020, Permitted uses and structures, is amended to read as follows:

d. Rooming house, ~~and~~ bed and breakfast **and hostel**;

CBD

Section 4. Subsection (cc) of Homer City Code 21.18.020, Permitted uses and structures, is amended to read as follows:

cc. Rooming house, ~~and~~ bed and breakfast **and hostel**;

[**Bold and underlined added.** ~~Deleted language stricken through.~~]

TCD

Section 5. Subsection (x) of Homer City Code 21.20.020, Permitted uses and structures, is amended to read as follows:

x. Rooming house, ~~and~~ bed and breakfast **and hostel**;

GBD

Section 6. Subsection (o) of Homer City Code 21.22.020, Permitted uses and structures, is amended to read as follows:

o. Rooming house, ~~and~~ bed and breakfast **and hostel**;

GC1

Section 7. Subsection (ii) of Homer City Code 21.24.020, Permitted uses and structures, is amended to read as follows:

ii. Rooming house, ~~and~~ bed and breakfast **and hostel**;

GC2

Section 8. Subsection (v) of Homer City Code 21.26.020, Permitted uses and structures, is amended to read as follows:

v. Hotels, ~~and~~ motels **and hostels**;

MC

Section 9. Subsection (h) of Homer City Code 21.28.030, Conditional uses and structures, is amended to read as follows:

h. Hotels, ~~and~~ motels **and hostels**;

Section 10. This Ordinance is of a permanent and general character and shall be included in the City Code.

ENACTED BY THE CITY COUNCIL OF HOMER, ALASKA, this _____ day of _____ 2011.

CITY OF HOMER

_____
JAMES C. HORNADAY, MAYOR

ATTEST:

_____
JO JOHNSON, CMC, CITY CLERK

[**Bold and underlined added.** ~~Deleted language stricken through.~~]

MANAGERS REPORT
June 27, 2011

TO: MAYOR HORNADAY / HOMER CITY COUNCIL

FROM: WALT WREDE

UPDATES / FOLLOW-UP

1. Attorney Contract: The City attorney recently returned from vacation but he is aware that Council would like to know if he proposes any amendments to his contract. He has assured me that he will address this issue prior to the meeting. At the time this was written, that had not yet occurred but I and sure I will be able to report on that by meeting time.
2. Health Insurance: We are currently looking into hiring a broker to assist us with managing the City's Health Insurance Program. Most cities have brokers and it appears that hiring one would not cost any additional money since the broker would be paid by the plan administrator (Meritain Health). The broker would do some of the tasks Meritain is doing now for us. A broker would have a number of advantages including helping to shop for competitive rates and acting as a consultant on all things related to health insurance. This is very important in this time of rapidly changing rules and regulations. If the City moves ahead on this, we would issue an RFP for broker services. A sample RFP is attached so that you can see the scope of what a broker might be asked to do. We are currently evaluating a number of cost saving measures for the health care plan and will be talking with the employees about the options soon. Council will be pleased to know that at this point we project that we will likely be in a position to reduce the contribution to the health insurance fund, or at least keep it static, again this year. This is great considering that most other municipalities are experiencing huge cost increases. The primary reasons for this are the fact that Homer has a well managed self insured plan, the staff has been relatively healthy overall, and the reserve account is very healthy. **(NEW INFORMATION)**. I included the above report again since this might be a topic we want to address during the workshop on the parity study. Andrea and I are both planning to attend the first Borough meeting on health care plans scheduled for June 29 at noon in Soldotna. We are beginning the process of re-establishing the employee committee so that it is organized and in good position to provide input on any proposed modifications to the insurance plan.
3. KBBI / Emergency/Disaster Equipment Contribution: After the recent tsunami in Japan, we discovered some flaws in our overall emergency communication system and SOPs. One of them was that the radio stations did not get quick and accurate information for emergency broadcast messages. In a recent meeting with KBBI, Chief Robl suggested that one good way to provide staff with alerts, even late at night when no one is in the office, is for key personnel to have a NOAA Marine / Emergency Alert Radio in their homes. Funding was an issue. We offered to contribute $135.00 from the Police communications budget to purchase

three of these radios for KBBI. We reasoned that this expenditure was justified in the interest of public safety.

4. City Hall Construction: You have probably noticed that construction is well under way. The foundation for the addition has been poured and much of the drainage work, including the storm water retention area is pretty far along. Preliminary renovation work in the old planning, IT, and administration areas has begun. The planning, administration, and IT staff are all now located at the Old Intermediate School. This move was a major undertaking and we could not have done it without tremendous assistance from the Homer High Football team. We anticipate being at this location until Thanksgiving or Christmas. We are tracking the costs associated with this move. So far the costs are minimal and include a contribution to the football team and re-keying the building. We expect costs will stay low through the summer and early fall months. We are using very little electric and heat at this point and will do what we can to minimize energy usage. The Boys and Girls Club is closed for the summer and depending upon decisions made later on, they may not be there in the fall either. That will also reduce energy costs.
5. State Capital Projects / : At the time this report was written, we were still waiting, like everyone else around the state, to see what the Governor might decide regarding the Capital Budget. We sent him correspondence regarding the gas line and the Mayor invited him to visit Homer and view the project himself. During the past two weeks, Bryan, Anne Marie, and your lobbyist Linda Anderson, have been providing information to the Director of the Office of Management and Budget regarding the cruise ship passenger enhancement project. Karen has been communicating with us directly and has been asking good questions, which we hope is a positive sign.
6. Old Intermediate School: Last week I met with the two groups that submitted proposals to lease the old intermediate school as requested by the combined Lease and EDC Committees. The purpose of the meetings was to obtain more information that would be needed before the committee would be prepared to make a recommendation to the Council. There are several immediate issues for us to consider. First, the applicant who submitted a proposal to lease the entire building does not want to occupy it until the fall of 2012. If this proposal is ultimately accepted by the Council, it would mean keeping the building in "warm status" for almost a year. Second, and more immediate, is the Boys and Girls Club. The Club has not secured a new location. Since we are occupying the building, and will be until the end of the year, the Council could consider allowing the Club to continue to occupy the lower floor until then. The Club's Board has stated that it would be able to make payments of $700 per month to help offset the cost of utilities.
7. Transportation Committee Recommendation: At the last meeting, the Council received a recommendation from the Transportation Committee that all intersections on the Sterling Highway between Pioneer Avenue and Lake Street be designated as right hand turn only. I assume Lake Street would be exempt because of the traffic signal and that this scheme would be summer only. Council asked for a map showing the intersections involved with turning arrows. It also

asked for a draft resolution. A large map will be provided at the meeting for discussion purposes. The draft resolution is attached.

8. Fishing Hole Concerns: As you know, the Fishing Hole has been filling in and it needs to be dredged. We have discussed this as a capital project in need of funding on several occasions in the past few years. You may also know that ADF&G is experiencing a survival problem with stocked smolt; especially with the early kings. This occurred again this year when over 50% of the smolt died in the pens on June 6. A decision was made to release the fish early the next day which may further reduce survivability. There are many theories about what is going on. Some think that the depth of the lagoon may a problem. ADF&G has also discovered a Chaetoceros Bloom (Diatoms) which is known to affect the gills of young fish. ADF&G is currently doing research on this bloom and other possible explanations with assistance from KBRR and others. They are also doing depth studies at the lagoon. As the results of these studies come in and the scientists get a better idea of what they think the problem is, we will provide updates and perhaps invite ADG&G to make a presentation. In the meantime, the City should probably focus on how to get the dredging done.
9. Training Dates: At the last meeting, during the discussion about the records retention ordinance, it was suggested that a training session for Council (and maybe for Commissions too) about public records and especially the use of e-mail would be a good idea. I discussed this topic with Holly and she could put something together quickly if the Council is ready to proceed. A target date for this training would be very helpful. Feedback from the Council would be very helpful.
10. Playground Improvements / Karen Hornaday Park: This agenda contains an ordinance that is up for second reading and public hearing which would make a $5,000 contribution to the Homer Foundation to be used as seed money to launch a much bigger effort by HoPP to make major improvements at the playground. Some concerns have been expressed by individual Council members about this money being used for administration fees or for activities that do not include the direct purchase of playground equipment. Please let me know if any of these issues are of concern to the full Council. We have been looking further into these questions and are prepared to discuss them. I would also remind the Council that as the grantor, it can place conditions or stipulations upon grants or contributions that it makes. The agenda also contains a resolution approving an MOU between the City, the Homer Foundation, and HoPP. I have attached information located by the Clerk's office for the Mayor which shows that a similar approach (to the one proposed in the MOU) was used in 1997; the last time the playground was improved significantly.
11. STIP Amendment #22: DOT/PF recently issued Amendment # 22 to the State Transportation Improvement Program Plan. The Mayor asked that I provide an update for the Council regarding Homer Projects. At the time this report was drafted, we were still reviewing the amendment. I will be prepared to provide a verbal report at the meeting.
12. Kachemak Drive Water and Sewer / Phase II: The objection period is over and it looks like the property owners have given a pretty definitive "thumbs up" for

moving ahead. As a result, the Tentative Agenda for this meeting contains several resolutions regarding this project. One awards the construction contract to the low bidder. The other authorizes us to borrow the additional money needed for financing the construction phase. At the time this was written, we were reviewing all of the information to make sure we are ready to go on both fronts.

ATTACHMENTS

1. Letter from Homer Children's Services
2. Information from Prior Playground Project
3. Draft Resolution