

## WORK SESSION AGENDA

1. Call to Order 5:30 p.m.
2. Discussion of Items on the Regular Meeting Agenda
3. "Commission Training" presented by City Attorney Associate Holly Wells
4. Public Comments  
The public may speak to the Planning Commission regarding matters on the work session agenda that are not scheduled for public hearing or plat consideration. (3 minute time limit).
5. Commission Comments
6. Adjournment



## 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.

- A. Approval of Minutes of February 20, 2013 meeting **pg. 1**
- B. Draft Decisions and Findings for CUP 13-04, 4661 Kachemak Dr. Request for a Conditional Use Permit for more than one building containing a permitted principal use on a lot **pg. 7**

**6. Presentations**

- A. "Commission Training" presented by City Attorney Associate Holly Wells

**7. Reports**

- A. Staff Report PL 13-21, City Planner's Report **pg. 13**

**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.

**9. Plat Consideration**

**10. Pending Business**

- A. Staff Report PL 13-22, Amending the HAPC Bylaws & Policies and Procedures March 6, 2013 **pg. 17**
- B. Staff Report PL 13-23, Land Allocation Plan March 6, 2013 **pg. 37**

**11. New Business**

- A. Staff Report PL 13-24, Diamond Creek Plan **pg. 39 w/ supplemental attachment at end of packet**
- B. Staff Report PL 13-25, 2008 Homer Comprehensive Plan - Chapter 4 Land Use **pg. 41**

**12. Informational Materials**

- A. City Manager's Report from February 25, 2013 City Council Meeting **pg. 43**
- B. KPB Planning Commission Notice of Decisions **pg. 45**
- C. Public Hearings: When and How to Hold Them by Bob Meinig **pg. 59**

**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 9:30 p.m. An extension is allowed by a vote of the Commission. Next regular meeting is scheduled for March 20, 2013. A work session will be held at 5:30 pm.



Session 13-03, a Regular Meeting of the Homer Advisory Planning Commission was called to order by Chair Erickson at 6:30 p.m. on February 20, 2013 at the City Hall Cowles Council Chambers located at 491 E. Pioneer Avenue, Homer, Alaska.

PRESENT: COMMISSIONERS ERICKSON, HIGHLAND, SLONE, STEAD, VENUTI

STAFF: CITY PLANNER ABOUD  
DEPUTY CITY CLERK JACOBSEN

### **Approval of Agenda**

Commissioner Highland requested that the Transportation Committee Report be added under Reports. The amended agenda was approved by consensus of the Commission.

### **Public Comment**

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

### **Reconsideration**

### **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.

- A. Approval of Minutes of February 6, 2013 meeting

### **Presentations**

#### **Reports**

- A. Staff Report PL 13-17, City Planner's Report

City Planner Abboud reviewed his staff report.

- B. Transportation Committee Report

Commissioner Highland reported on the TAC discussion about steep slopes and the proposed east west corridor at Waddell Way.

### **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 13-16, CUP 13-04, 4661 Kachemak Drive, Request for Conditional Use Permit for more than one building containing a principal permitted use on a lot

City Planner Abboud reviewed the staff report.

Kurt St. Jean, applicant, commented regarding his plan to build three small homes on the lot with the goal of keeping it private and keeping a natural buffer on the lot.

HOMER ADVISORY PLANNING COMMISSION  
REGULAR MEETING MINUTES  
FEBRUARY 20, 2013

Chair Erickson opened the public hearing. No public was present and the hearing was closed.

In response to questions about the wetlands, Mr. St Jean said he has applied for permitting through the Corps of Engineers and he does intend to build on pilings.

VENUTI/STEAD MOVED TO ADOPT STAFF REPORT PL 13-16, CUP 13-04 AT 4661 KACHEMAK DRIVE, REQUEST FOR A CONDITIONAL USE PERMIT FOR MORE THAN ONE BUILDING CONTAINING A PRINCIPAL USE ON THE LOT, WITH STAFF RECOMMENDATIONS AND FINDINGS.

Commissioner Highland expressed concern about three buildings on an area that is 80% wetlands. Point was raised that ACOE will make the determination on the wetlands and they are the experts.

Commissioner Bos commented that the development is consistent with the goals Comp Plan; he thinks the applicant's plan is good and likes the use of buffers.

Commissioner Slone commented that he understands the rural residential area as low density, primarily residential, but this recommendation is more consistent with urban residential. City Planner Abboud responded that urban residential allows multifamily dwellings as long as they are kept to 40% of the lot, meet the open space requirement, and 7500 square foot lots are allowable.

VOTE: YES: BOS, STEAD, HIGHLAND, SONNEBORN, VENUTI, ERICKSON, SLONE

Motion carries

### **Plat Consideration**

### **Pending Business**

A. Staff Report PL 13-14, Amending the HAPC Bylaws and Policies and Procedures

City Planner Abboud reviewed his staff report.

The Commission did not have any recommendations to amend meeting times. They discussed the suggested verbiage options listed on item bylaw item S. Representing the Commission.

Commissioner Bos suggested the following language:  
*The Commission shall act as a body. A member of the Commission may not speak or act for the Commission.*

There was discussion as to what language need to be included in the wording. Concern was raised with removing the words, *when representing the Commission.*

VENUTI/BOS MOVED TO UTILIZE THE SECOND PARAGRAPH AMENDED AS COMMISSIONER BOS PROPOSED.

There was no further discussion.

VOTE: YES: SONNEBORN, STEAD, VENUTI, ERICKSON, BOS

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NO: HIGHLAND, SLONE

Motion carried.

Commissioner Slone raised the issue of extending the public comment time from three minutes to five minutes. Point was raised that the bylaws say that the three minute time limit may be adjusted up or down by two minutes by the Chair with concurrence of the body. The body discussed pros and cons of extending the time limit. Staff noted that Resolution 06-115(A) adopted by the City Council defines public comment time limits.

SLONE/HIGHLAND MOVED TO AMEND THE BYLAWS THAT THE TIMELIMIT FOR PUBLIC TESTIMONY IS LIMITED TO FIVE MINUTES.

Commissioner Highland noted that when they are discussing a controversial subject, three minutes is more than enough when you have a room full of public wanting to provide comments. When the public has a three minute time limit it encourages them to keep their information very succinct, and that is pretty important. The ability to adjust the time gives them flexibility if the need arises. She also noted that applicants are not held to the time limit.

VOTE: YES: SONNEBORN, SLONE  
NO: STEAD, ERICKSON, BOS, HIGHLAND, VENUTI

Motion failed.

SLONE/HIGHLAND MOVED THAT UPON REQUEST OF A COMMISSIONER, THAT PORTION OF THE RECORD DESIGNATED BY HIM/HER SHALL BE PRESENTED TO THE CITY COUNCIL AT THEIR NEXT REGULARLY SCHEDULED MEETING.

Commissioner Slone commented that it would be included in whichever document it would be more relevant.

There was discussion that all the information the Commission considers in a decision making process, including minutes, is provided to the City Council when they take action on something the Commission considers. City Planner Abboud added that it is important that the body put on the record their discussion on findings, whether or not they approve of them, and especially if they propose new findings, so the decisions are clear and included in the record. Point was raised that the language suggested is more of minority position saying that the Commission voted this way, but I disagreed, and this why. It conflicts with the language they approved regarding representing the Commission.

Commissioner Slone explained he's suggesting that input they hear may show community thoughts and values are shifting regarding the City's laws, it is their job to pass that on to City Council.

There was extensive discussion about process, and using Homer City Code and the Comprehensive Plan in their decision making. Other comments included that any person can express their personal views as a citizen, and in previous actions the Council has received pages and pages of information from the Commission.

Commissioner Venuti called for the question. There was no objection to the Call for the Question.

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VOTE: YES: SLONE

NO: STEAD, ERICKSON, VENUTI, HIGHLAND, BOS, SONNEBORN

Motion failed.

**New Business**

A. Staff Report PL 13-18, Land Allocation Plan

Chair Erickson noted that they discussed the Land Allocation Plan with Planning Technician Engebretsen and staff will bring a memorandum back at their next meeting.

**Informational Materials**

- A. City Manager's Report from January 28, 2013 City Council Meeting
- B. KPB Planning Commission Notice of Decisions

**Comments of the Audience**

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

None

**Comments of Staff**

None

**Comments of the Commission**

Commissioner Highland asked if they could discuss wetlands in our CUP's at the next meeting. She knows they go on to the Corps of Engineers, but she feels like these things are important enough that it be part of the CUP discussion, on a larger basis. City Planner Abboud noted that her request is somewhat vague but encouraged any commissioner to talk to Planning staff about issues they have with a CUP. Ms. Highland said she would talk to staff. She also encouraged the group to read the City's Climate Action Plan. She has been reading it and it has some good information.

Commissioner Bos confirmed that City Attorney Wells will be at the next worksession. He noted they never have enough time with her.

Chair Erickson submitted her resignation from the Planning Commission effective immediately. She explained that she is increasingly distracted at the meetings as recent actions to finance the extension of the natural gas line to City residents will negatively impact her business. She feels that her personal situations require her full attention, forcing her to pull back from extra activities. She has enjoyed working with the Commission. She provided her written letter for the record.

**ADJOURN**

HOMER ADVISORY PLANNING COMMISSION  
REGULAR MEETING MINUTES  
FEBRUARY 20, 2013

There being no further business to come before the Commission, the meeting adjourned at 7:56 p.m. The next regular meeting is scheduled for March 6, 2013 at 6:30 p.m. in the City Hall Cowles Council Chambers.

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MELISSA JACOBSEN, CMC, DEPUTY CITY CLERK

Approved: \_\_\_\_\_





## City of Homer Planning & Zoning

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### HOMER ADVISORY PLANNING COMMISSION Meeting of February 20, 2013

RE: Conditional Use Permit (CUP) 13-04  
Address: 4661 Kachemak Drive  
Legal: T 6S R 13W SEC 14 SEWARD MERIDIAN HM GOVT LOT 33 WEST  
OF KACHEMAK DRIVE

### DECISION

#### Introduction

Kurt St. Jean ("Applicant") applied to the Homer Advisory Planning Commission (the "Commission") under Homer City Code 21.12.030 (n), for approval of "more than one building containing a permitted principle use on a lot" in the Rural Residential District.

The applicant proposes to construct three dwellings on 0.89 acres; a primary residence and two smaller rentals cabins. The lot is served by a paved road and city water and sewer service.

The application was scheduled for a public hearing as required by Homer City Code 21.94 before the Commission on February 20, 2013. Notice of the public hearing was published in the local newspaper and sent to ten (12) property owners of nine (11) parcels.

At the February 20, 2013 meeting of the Commission, the Commission voted to approve the request with seven (7) Commissioners present and seven (7) Commissioners voted in favor of the conditional use permit.

#### Testimony

The Applicant spoke at the public hearing.

**Findings of Fact**

**The criteria for granting a CUP are set forth in HCC 21.71.030 & HCC 21.71.040.**

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

**Finding 1:** HCC 21.12.030(n) allows for more than one building containing a permitted principle use on a lot.

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

**Finding 2:** The use and structures are compatible with the purpose of the Rural Residential District.

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

**Finding 3:** The value of adjoining properties will not be negatively affected greater than other permitted uses such as multi-family units and mobile homes or conditionally permitted uses such as kennels, group care homes and recreational facilities.

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

**Finding 4:** This proposal is compatible with existing uses of surrounding residential land.

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

**Finding 5:** Public services and facilities are adequate for the proposed use and structures.

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

**Finding 6:** The development is in harmony with the scale, bulk, coverage and density and will not have an undue harmful effect of the neighborhood character.

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

**Finding 7:** This proposal is not unduly detrimental to the health, safety or welfare of the surrounding area or the City of the Homer.

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

**Finding 8:** This proposal shall comply with local, state and federal regulations

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

**Finding 9:** This proposal meets the intent of the Homer Comprehensive Plan in that it provides diversified housing stock.

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

**Finding 10:** Project to comply with the Outdoor Lighting section of the Community Design Manual.

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

1. Special yards and spaces.
2. Fences, walls and screening.
3. Surfacing of vehicular ways and parking areas.
4. Street and road dedications and improvements (or bonds).
5. Control of points of vehicular ingress and egress.
6. Special restrictions on signs.
7. Landscaping.
8. Maintenance of the grounds, buildings, or structures.
9. Control of noise, vibration, odors, lighting or other similar nuisances.
10. Limitation of time for certain activities.
11. A time period within which the proposed use shall be developed and commence operation.
12. A limit on total duration of use or on the term of the permit, or both.

13. More stringent dimensional requirements, such as lot area or dimensions, setbacks, and building height limitations. Dimensional requirements may be made more lenient by conditional use permit only when such relaxation is authorized by other provisions of the zoning code. Dimensional requirements may not be altered by conditional use permit when and to the extent other provisions of the zoning code expressly prohibit such alterations by conditional use permit.
14. Other conditions necessary to protect the interests of the community and surrounding area, or to protect the health, safety, or welfare of persons residing or working in the vicinity of the subject lot.

**Finding 11:** No special conditions are necessary.

**Conclusion**

Based on the foregoing findings of fact and law, Conditional Use Permit 13-04 is hereby approved with Findings 1-11.

Date: \_\_\_\_\_

\_\_\_\_\_  
Chair, Franco Venuti

Date: \_\_\_\_\_

\_\_\_\_\_  
City Planner, Rick Abboud

***NOTICE OF APPEAL RIGHTS***

Pursuant to Homer City Code, Chapter 21.93.060, any person with standing 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 \_\_\_\_\_, 2013. A copy was also delivered to the City of Homer Planning Department and Homer City Clerk on the same date.

Date: \_\_\_\_\_

\_\_\_\_\_  
Travis Brown, Planning Clerk

Kurt St. Jean  
722 Waddell St.  
Homer, AK 99603

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

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





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## STAFF REPORT PL 13-21

**TO:** Homer Advisory Planning Commission  
**FROM:** Rick Abboud, City Planner  
**MEETING:** March 6, 2013  
**SUBJECT:** City Planner's Report

**City Council 2.25.13**  
Consent agenda items

### MEMORANDUM 13-032

**TO:** Mayor Wythe and Homer City Council  
**FROM:** Walt Wrede  
**DATE:** February 20, 2013  
**SUBJECT:** TRACT 1-A, Fishing Hole Subdivision # 2

At the last meeting on February 11, the Council heard a presentation from the Wooden Boat Society about its desire to lease land on Tract 1-A, sometimes referred to as the Pier One Lot. Several Council members inquired about what the proper steps and process would be for it to formally consider a lease proposal on this property. It was agreed that I would provide a memorandum outlining the steps and recommending a course of action. There are several steps Council should take in order to stay consistent with the provisions contained in the Code, the Lease Policies, and the Land Allocation Plan:

1. **Make the Land Available for Lease:** Every year the Council revises and approves the Land Allocation Plan. An important part of this process is establishing which City parcels are available for lease. With the exception of the Pier One lease, Tract 1-A is currently not available for lease. Council could make it available by passing a Resolution amending the Land Allocation Plan. As part of the resolution approval process, Council should also consider 1) How much land to make available for lease, 2) the location 3) whether it is only available to non-profits that meet zoning and other land use regulation requirements, and 4) Whether to make the property available to Wooden Boat Society exclusively or RFP it as preferred by the Lease Policies.
2. **Forward Instructions to the Lease Committee.** The instructions would include information about the land now available for lease, and depending upon what Council decides, the instructions could include requesting recommendations about exclusive use, direction to issue an RFP, and direction to develop a new set of evaluation criteria specific to non-profits.
3. **Follow the Process:** Regardless of whether the City chooses to go with an RFP or an exclusive opportunity to lease for the Wooden Boat Society, there is a formal process to follow already established in the Lease Policies. For example, the RFP, proposal, review, and recommendation to Council process is well established. Similarly, if the Council wishes to go "sole source" so to speak, without the benefit of an RFP, it must make and adopt findings about why it is in the public interest to do so. The Lease Committee is required to make recommendations to Council in that circumstance also.

**RECOMMENDATION:** The first step is to consider whether to make the property, or a portion of it, available for lease. This involves amending the Land Allocation Plan. The City Clerk reminded me that Council is scheduled to have a workshop on the Land Allocation Plan with the affected Commissions in late March. That would be the perfect time to discuss this and get input from the Commissions at the same time. The Council could take action if it chooses when it amends and approves the Land Allocation Plan at the following meeting. I would recommend deferring action until that time.

D. Resolution 13-021, A Resolution of the City of Homer, Alaska, Approving Seasonal Day Use Parking at the Homer Education and Recreation Center Parking Lot and Authorizing the City Manager to Work with the State for Signage as Needed. City Manager. Recommend adoption.

Memorandum 13-031 from Community and Economic Development Coordinator and Planning Technician as backup

#### City Manager's Report

City Manager Wrede reported the deadline for the re-appropriation of the \$2M is March 7th for the capital budget. Both Senator Micciche and Representative Seaton are on board. The Mayor will be talking to them on her upcoming Juneau trip. Council requested re-appropriation of the \$2M to the Skyline Fire Station with remaining funds going towards the Harbormaster's office. The estimate for the Harbormaster's office without the bathrooms is \$2M. After the Skyline Fire Station is built there should be \$1 .3M or \$1 .4M to put towards the Harbormaster's office.

Discussion on Waddell Way, the proposed east/west corridor from Lake Street to Heath Street ensued. The corridor is a long term goal of the Transportation Plan. The Transportation Advisory Committee recommended the road be placed through the HEA property. A request to purchase the land is before HEA for consideration. There is a potential buyer for the Waddell property. A Worksession will be scheduled when more information is available.

City Manager Wrede reported Council appropriated \$20,000 for survey and engineering work on the Kachemak Drive trail. Public Works Director Carey Meyer has been looking at it closely. The original vision was to angle up the bluff; it is extremely steep in some places. To get a 10-ft. wide pathway bridges and retaining walls would be needed. Carey outlined a different plan for the trail, an extension of the existing trail that goes to the airport. The trail would stay at the toe of the bluff, similar to the Spit trail. His idea was it didn't make sense to spend a lot of money surveying a trail that would be too expensive to build. It received mixed results at the Parks and Recreation Advisory Commission meeting. The resolution approving the survey was not specific about a route; the money was to be used on a survey.

**FEMA Floor Map Updates:** With the adoption of the Flood Insurance Rate Maps (FIRM) postponed until later in 2013, staff is working with folks who are/were considering starting construction projects on the Spit this spring. Projects permitted this spring must be elevated based on the current maps which in many instances means the building pad and/or piling must be higher than if constructed using the proposed FIRM. Site by site, staff is helping property owners and leaseholders make an educated decision on how to proceed.

**"Signs for Thriving Business"** workshops are scheduled for:

March 5<sup>th</sup> and repeated April 2<sup>nd</sup>

12 noon to 12:45pm

Homer Chamber of Commerce and Visitor Center

Dotti's presentation covers Homer's sign standards as in size, height and temporary signs. She's also providing insights on what makes signs effective as in color choice, font size. The workshops are FREE, brown bag lunch style and planning commissioners are always welcome.

**Rain Garden Grant:** Homer's Soil & Water Conservation District (HSWCD) has obtained a 50/50 match grant to help cover the cost of installing rain gardens. Dotti is reaching out to property owners where storm water runoff is straining the City's infrastructure. Approximately 50 letters have been sent to encourage property owners to contact the HSWCD for assistance in the design and installation of a rain garden. In turn, this helps to decrease drainage and flooding problems and reduce the strain on the City's storm water system.

**RV Day Parking** in the HERC parking lot was approved by City Council on 2/25/13. Dotti is working with Katie Koester and a small "RV Group" from the Economic Development Commission to make sure that the parking area is identified on the tourist maps and highway signs to direct RV drivers.

### **Activities**

Travis returned from sunny Mexico and jointly Dotti had been called into jury selection a few days. I have been part of several internal meetings regarding the City Emergency Operation Plan update, been talking to potential developers, and attended the Borough Planning Commission meeting. The exceptions requested of the Paradise South Subdivision were not approved. We heard from a representative of the surveyor that they would resubmit with a lot of 40,000sf or more. As of yet, the Borough minutes were not available. Julie continues to work with the Parks and Rec Committee and on several projects.





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## STAFF REPORT PL 13-22

**TO:** Homer Advisory Planning Commission  
**FROM:** Rick Abboud, City Planner  
**MEETING:** March 6, 2013  
**SUBJECT:** Amending the HAPC Bylaws & Policies and Procedures March 6, 2013

### Introduction

The changes to the documents are listed below. If no other amendments are forwarded this will be added to the next agenda and off to the City Council after that.

### *Zoning Ordinance Amendments – Review Standards*

The review standards are found on page 8 of 9 in the Policies and procedures. Lines 338-346 will be struck and replaced with **In reviewing a code amendment or map amendment, the Commission must consider the standards of review as established in HCC 21.95.**

### *Representing the Planning Commission*

The language approved by motion is included on lines 241-244.

Please take time to review both the bylaws and policies and procedures for any comments or suggestions you may have for the rest of these documents.

Att.

Feb. 6, 2013 Draft Policies and Procedures  
March 6, 2013 Draft Bylaws



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# Policies and Procedures Homer Advisory Planning Commission



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**Feb. 6, 2013 Draft**

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## **QUALIFICATION STATEMENT**

13 Nothing in this chapter should be considered in lieu of any applicable laws and procedures found in the  
14 Alaska State Statutes, the Kenai Peninsula Borough Code of Ordinances, where applicable, or the Homer  
15 City Code.

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## **INTRODUCTION**

37 The purpose of this policy manual is to clarify the role of the Homer Advisory Planning Commission  
38 (“Commission”) in administration of the Homer Zoning Ordinance, Title 21, and Subdivisions, Title 22.  
39 Further, this manual describes policies for the Commission that are supplementary or explanatory to the  
40 requirements of Homer City Code.

41  
42 This manual is divided into sections, which explain the policies for administering and implementing the  
43 land use permitting ordinances and the zoning ordinance.

44  
45 The policy and procedure manual will be endorsed by resolution of the City Council and may be amended  
46 at any meeting of the Commission by a majority plus one of the members, provided that notice of the  
47 proposed amendment is given to each member in writing. Proposed amendments to the procedure manual  
48 shall be introduced at one meeting and action shall be taken at a subsequent Commission meeting.

## 51 **PUBLIC TESTIMONY AND COMMENT**

52  
53  
54 The Commission invites citizen participation regarding matters brought before it for consideration.

55  
56 For any public participation before the Commission, the citizen should walk to the microphone located at  
57 the rostrum directly in front of the Commission podium, sign in, and after receiving recognition from the  
58 Chair, state his/her name and address and purpose for appearing. Comments are limited to three minutes.  
59 In special circumstances, this time limit may be extended by two minutes by the Chair with concurrence  
60 of the body. Items that generate a large amount of citizen interest may be taken out of their regular  
61 position on the agenda at the discretion of the Commission as an accommodation to the public. Moving  
62 these items on a published agenda will be done at the beginning of the meeting, during the adoption of the  
63 agenda.

### 64 **Comment time limits**

65  
66 Comments and testimony are limited to three minutes. In special circumstances, this time limit may be  
67 adjusted by two minutes up or down by the Chair with concurrence of the body.

### 68 **Public Comment**

69  
70 Any citizen desiring to speak on any matter other than public hearing items or preliminary plats on the  
71 agenda may do so under “Public Comments.” After the public comment period is introduced, the Chair  
72 may recognize any member of the public who wishes to address the Commission. No official action will  
73 be taken by the Commission under this item.

### 74 **Public Hearings and Plats**

75  
76 The public may comment on public hearing items and preliminary plats when those agenda items are  
77 addressed by the commission. These are generally items eight and nine on the regular agenda.

### 78 **Comments on topics not on the agenda**

79  
80 Any citizen desiring to speak on a matter not on the agenda may do so under “Comments of the  
81 Audience,” item number thirteen on the regular agenda.

## 82 **DELIBERATION of QUASI-JUDICIAL DECISIONS**

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When making a quasi judicial decision, the Commission may choose to deliberate at an open meeting, or may choose to meet at a time, date and location set by the Commission. Such a meeting for deliberations only is not subject to the Open Meetings Act and is not required to be open to the public.

**APPEALS  
(Quasi Judicial)**

**PURPOSE**

The purpose of review of appeals before the Commission is to ascertain that errors of fact or interpretation have not been made pertaining to zoning matters. Generally, appeals to the Commission will be appeals of a determination, decision, or permitting matter decided upon by the City Planner.

The City Council, sitting as the Board of Adjustment, hears appeals of decisions made by the Commission. For example, conditional use permits, variance, etc, can be appealed to the Board of Adjustment, or a matter that was appealed to the Commission can be further appealed to the Board of Adjustment.

**Public Hearing**

Appeals before the Commission require a public hearing. Notice of the public hearing will be in accordance with HCC 21.93 and HCC 21.94.

**Review Standards**

In reviewing an appeal request, the Commission will consider:

1. Documentation of evidence;
2. The Record of Appeal; and
3. Controlling sections of Chapter 21 Homer City Code;
4. Any new evidence or testimony presented during the public hearing.

Once the public hearing is closed, the Commission cannot hear additional comments on the topic.

**Determination**

All decisions will be in writing. The officially adopted minutes shall be made part of the decision. A specific statement of findings and reasons supporting the decision shall be made. Copies of the decision will be promptly mailed to the persons participating in the appeal.

An appeal from an action or determination of the Commission is to be filed with the city clerk within thirty days of the distribution of the decision document.

**REVIEW OF BRIDGE CREEK WATERSHED  
PROTECTION DISTRICT**

**PURPOSE**

The Commission may approve development within the Bridge Creek Watershed Protection District (BCWPD) subject to the standards provided in the zoning ordinance and in compliance with the Comprehensive Plan, for those uses or structures specified within the Bridge Creek Watershed Protection District ordinance. The purpose is to prevent the degradation of the water quality and protect the Bridge Creek Watershed to ensure its continuing suitability as a water supply source for the City's public water

137 utility. These provisions benefit the public health, safety, and welfare of the residents of the City of  
138 Homer and other customers of the city's water system by restricting land use activities that would impair  
139 the water quality, or increase the cost for treatment.

#### 140 **Conditional Use**

142 A conditional use permit may be issued in accordance with Chapter 21.61 and subject to the requirements  
143 of the Bridge Creek Watershed Protection District Chapter 21.40.060 Conditional uses and structures,  
144 and/or Chapter 21.40.080 Erosion sediment control, Chapter 21.40.090 Agricultural activity, Chapter  
145 21.40.100 Timber growing and harvesting operations, Chapter 21.40.110 Stream buffers, and Chapter  
146 21.40.130 Exceptions to buffers.

#### 147 **Preliminary Plats**

148 The Commission will review and comment on all subdivision proposals within the Bridge Creek  
149 Watershed Protection District.

## 153 **REVIEW POLICIES FOR CONDITIONAL USE PERMITS** 154 **(Quasi -Judicial)**

### 155 **PURPOSE**

157 It is recognized that there are certain uses which are generally considered appropriate in a district,  
158 provided that controls and safeguards are applied to ensure their compatibility with permitted principal  
159 uses. The conditional use permit procedure is intended to allow Commission consideration of the impact  
160 of the proposed conditional use on surrounding property and the application of controls and safeguards.  
161 This procedure assures that the conditional use will be compatible with the surrounding area and in  
162 keeping with the character and integrity of the neighborhood.

### 163 **Public Hearing**

164 A public hearing before the Commission is required before a conditional use permit may be granted.  
165 Notice of the public hearing will be in accordance with HCC 21.94.

### 166 **Review Standards**

167 The Commission has 45 days from the close of the public hearing to make a decision on a conditional use  
168 permit application. The applicant may agree, in writing, to the extension of the 45 day time period for  
169 Commission action.

170 The Commission may approve, approve with conditions, or disapprove an application. The Commission  
171 must prepare written findings and reasons supporting its decision. Approval of a conditional use permit  
172 requires five yes votes. If a conditional use permit is denied, the written findings and reasons for that  
173 decision will be approved by those who voted against the permit, even if the number against is less than a  
174 majority of the Commission.

175 **Specific conditions may be required.** Such conditions will be part of the terms under which the  
176 conditional use permit is granted and violations of such terms shall be deemed a violation of this  
177 ordinance. Failure to meet any time limitations imposed by the conditional use permit shall void the  
178 permit. An extension may be granted following a public hearing on the matter. Extensions will be  
179 granted for good cause only.

180 The development of the conditional use project or site, following issuance of the permit, will be in  
181 accordance with the conditions of the permit, standards of the zoning regulations and/or the approved site  
182 plan. Failure to observe any conditions or standards will be deemed a violation.

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**Determination**

The Commission must make findings of fact sufficient to support its decision. Upon determination the Commission will document the decision and the basis for decision. The petitioner will be notified by mail by a copy of the meeting minutes and the decision documentation.

**Appeals**

The Commission Chair will alert the petitioner and other interested parties in attendance that an appeal of the Commission's decision is possible and that the appeal must be filed within thirty days of the distribution of the decision document.

**NONCONFORMITY REVIEW POLICIES**

**PURPOSE**

The Commission shall review and determine the nonconformity of certain structures and uses. The purpose of review is to establish the commencement date of use, establish the effective date of applicable regulations, formally accept the nonconformity and/or establish a reasonable schedule for termination of a nonconformity which significantly impairs the public health, safety and general welfare.

City code states which nonconformities are reviewed by the City Planner and which are reviewed by the Commission. Generally, the Commission will be reviewing nonconforming uses within the city, excluding the areas annexed on March 20, 2002.

**Public Hearing**

The Commission shall conduct a public hearing per HCC 21.94.

**Review Standards**

It shall be the responsibility of the owner to show proof of continuing nonconformity of any property, use or structure.

Prior to determining the nonconformity of a use or structure, the Commission will determine:

1. The commencement date of use;
2. The effective date of applicable regulations.

There may exist uses, or structures which were legal before the effective date of the controlling regulation, but which are now prohibited under the terms of the existing ordinance. See HCC 21.61.040.

To avoid undue hardships, actual construction lawfully begun prior to the effective date of the zoning ordinance will be allowed to continue provided the work will be carried on diligently. Actual construction is defined as the placement of materials in a permanent position and fastened to produce a product.

**Nonconforming Uses of Land/Structures**

236 When a lawful structure exists prior to September 28, 1982, but does not meet the district or ordinance  
237 requirements, it shall be considered nonconforming. Nonconforming structures may be continued and/or  
238 expanded only on the legal lot.  
239

240 Legally existing structures are those that:

- 241 1. Exist prior to effective date of Ordinance 4-300-2 (Interim Zoning Ordinance) dated June  
242 13, 1966.  
243
- 244 2. Exist prior to effective date of Ordinance No. 33 (Kenai Peninsula Borough) dated May 2,  
245 1967 and are in compliance with Ordinance 4-300-2.  
246
- 247 3. Exist prior to effective date of Ordinance 78-13 (Kenai Peninsula Borough) dated May 16,  
248 1978 and are in compliance with Kenai Peninsula Borough Ordinance No. 33 and Homer  
249 Ordinance 4-300-2.  
250
- 251 4. Exist prior to effective date of Ordinance 82-15 (Homer Zoning Ordinance) dated  
252 September 28, 1982 and are in compliance with previous zoning ordinance requirements.  
253

254  
255 Once a structure made nonconforming by this title is abandoned or brought into conformity with this title,  
256 the structure shall thereafter conform to the regulations of the zone in which it is located, and the  
257 nonconformity shall not be allowed to continue.  
258

259 The lawful use may continue so long as it remains lawful. It may expand in accordance with 21.61.040.  
260 Once a use made nonconforming by this title is abandoned, changed, discontinued, or ceases to be the  
261 primary use of a lot, the use of that lot shall thereafter conform to the regulations of the zone which the lot  
262 is located, and the nonconformity shall not thereafter be resumed or allowed to continue.  
263

264 A reasonable schedule for the termination of a nonconforming land use/structure which specifically  
265 impairs the public health, safety and general welfare will be established by amendment to the zoning  
266 ordinance. (See Zoning Amendment procedure.)  
267

### 268 **Determination**

269 Upon presentation of such proof that establishes the continuing nonconformity of any use or structure,  
270 the Commission shall formally accept the nonconformity, as a valid use or structure until such time as the  
271 use ceases. Upon determination by the Planning Commission staff will document the decision and basis  
272 for decision. The petitioner will be notified by mail by a copy of the relevant meeting minutes and the  
273 decision documentation.  
274

### 275 **Appeals**

276 The Commission Chair will alert the petitioner and other interested parties that an appeal of the  
277 Commission's decision is possible. The appeal must be filed within thirty days of the distribution of the  
278 decision document. The City Clerk will process all appeals.  
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## PRELIMINARY PLAT REVIEW POLICIES

### PURPOSE

The purpose of this policy statement is to clarify the position of the Commission with regard to their recommendations of acceptance or denial of preliminary plats. This review provides the opportunity for the City to make comments and recommendations to the Kenai Peninsula Borough Planning Commission. The Kenai Peninsula Borough holds platting powers for the entire borough, both inside and outside the city limits. The Homer Advisory Planning Commission acts as an advisory body to the Borough Planning Commission on plat matters inside city limits and within the Bridge Creek Watershed Protection District.

The preliminary plat process allows an exchange of information between the subdivider, the Planning and Zoning Office, and the Commission. Proper utilization of the preliminary process should result in a recommendation of approval for the majority of the plats.

### Procedures

**General.** Kenai Peninsula Borough Code 20.12.050 governs subdivisions in first class cities. A surveyor will submit one full size copy and a 11" x 17" reduced copy of the preliminary plat to the Planning Director when subdividing land in the City of Homer or the Bridge Creek Watershed Protection District. The Commission shall review the plat and take action within forty-nine days of the date of receipt unless the applicant agrees to an extension. Recommendations of the Commission based upon lawful ordinances shall be incorporated in the final plat.

The Commission will consider plats and make recommendations. The staff report and minutes are then forwarded to the borough planning department.

The borough planning commission makes the final determination. Once the preliminary plat has been accepted, the final plat is submitted to the borough for either administrative approval or approval by the borough planning commission.

## ZONING ORDINANCE AMENDMENTS

### PURPOSE

The Commission will review all proposals to amend the zoning ordinance or zoning map and make recommendations to the City Council. Neither the Commission nor City Council may consider a zoning map amendment that establishes a new zone within an area of less than one acre, excluding streets and rights-of-way, except for the extension of existing district boundaries. Neither the Commission nor City Council may consider a zoning ordinance request which is substantially the same as any other amendment submitted within the previous nine months and which was rejected.

### Initiation/Application

Amendments to the zoning ordinance will be made in accordance with HCC 21.95. The amendment request will be scheduled for the next Planning Commission meeting according to the Commission meeting schedule and due dates.

### Public Hearing

A public hearing before the Commission is required. Notice of the public hearing will be in accordance with HCC 21.94. In the case of a zoning ordinance amendment or major district boundary change, no notification of neighboring property will be required, but notices will be posted in at least three public places.

### Review Standards

338 The Commission will generally review the zoning amendment to determine:  
339

- 340 1. The public need and justification for the proposed change;  
341 2. The effect on the public health, safety and welfare;  
342 3. The effect of the change on the district and surrounding property; and  
343 4. The relationship to the Comprehensive Plan and purposes of the zoning regulations.  
344

345 A balanced decision on a rezone request is one that is not arbitrary, has legitimate public purpose and is  
346 consistent with the comprehensive plan.  
347

348 **In reviewing a code amendment or map amendment, the Commission must consider the standards**  
349 **of review as established in HCC 21.95.**  
350

### 354 **Determination**

355 The Commission will make findings and send its written recommendations to the City Council along with  
356 meeting minutes and public records relating to the proposed amendment. Such recommendations of the  
357 Commission shall be advisory only and shall not be binding on the City Council.  
358  
359

## 360 **POLICY FOR REVIEW OF ZONING VARIANCES** 361 **(Quasi-Judicial)** 362

### 363 **PURPOSE**

364 The Commission may grant a variance to provide relief when a literal enforcement of the regulations and  
365 standards of the zoning ordinance, Chapter 21, would deprive a property owner of the reasonable use of  
366 his real property.  
367

368 The purpose of review is to ascertain that those conditions specified as necessary to granting a variance  
369 shall be satisfied; that the variance will be the minimum necessary to permit the reasonable use of land or  
370 structure, and that the variance will not be granted which will permit a land use in a district in which that  
371 use is otherwise prohibited.  
372

### 373 **Public Hearing**

374 A public hearing before the Commission is required before a variance may be granted. Notice of the  
375 public hearing will be in accordance with HCC 21.94.  
376

### 377 **Review Standards**

378 In reviewing a variance request and prior to granting a variance, the Commission must consider the  
379 standards of review as established in HCC 21.72. All of the conditions must exist before a variance can  
380 be granted.  
381

### 382 **Determination**

383 The Commission must prepare written findings and reasons supporting its decision. Approval of a  
384 variance requires five yes votes. If a variance is denied, the written findings and reasons for that decision  
385 will be approved by those who voted against the permit, even if the number against is less than a majority  
386 of the Commission. Upon determination, staff will document the decision and the basis for decision. The  
387 petitioner will be notified by mail with a copy of the meeting minutes (those portions that apply to the  
388 petition) and the decision documentation.

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The Commission Chair will alert the petitioner and other interested parties that an appeal of the Commission's decision is possible. The appeal must be filed within thirty days of the distribution of the decision document. The City Clerk will process all appeals.



**HOMER ADVISORY PLANNING COMMISSION**  
**March 6, 2013 Draft BY-LAWS**

The Homer Advisory Planning Commission is established with those powers and duties as set forth in Title 1, Section 76, of the Homer City Code. The Commission is established to maximize local involvement in planning and to implement and recommend modifications to the Homer Zoning Ordinance, Title 21, and Subdivisions, Title 22. The Commission's jurisdiction is limited to the area within the City boundaries and that area designated as the Homer Bridge Creek Watershed Protection District.

The Homer Advisory Planning Commission ("Commission") consists of seven members; no more than one may be from outside the city limits. Members will be appointed by the Mayor subject to confirmation by the City Council for three-year terms (except to complete terms). The powers and duties of the Commission are described in HCC 1.76.030.

A. To abide by existing Alaska State law, Borough Code of Ordinances, where applicable, and Homer City Code pertaining to planning and zoning functions;

B. To abide by Robert's Rules of Order, so far as this treatise is consistent with Homer City Code;

C. Regular Meetings:

All Commission members should be physically present at the designated time and location within the City for the meeting. Teleconferencing is not permitted.

1. First and third Wednesday of each month at 6:30 p.m.
2. Agenda deadline is two weeks prior to the meeting date at 5:00 p.m. Agenda items requiring public hearing must be received three weeks prior to the Commission hearing. However, conditional use applications may be scheduled for public hearing in accordance with HCC 21.94. Preliminary plats must be submitted the Friday two weeks before the Commission meeting.
3. Items will be added to the agenda upon request of staff, the Commission or a Commissioner.
4. Public notice of a regular meeting shall be made as provided in HCC Chapter 1.14
5. Meetings will adjourn promptly at 9:30 p.m. An extension is allowed by vote of the Commission.  
Procedure: The Chair will entertain a motion to extend the meeting until a specific time. After the motion has been seconded, the Commission will vote. A yes vote will extend the meeting until the specified time. A no vote will require that the Chair conclude business at or before 9:30 pm and immediately proceed to comments of the audience, the Commission and adjournment.

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**D. Special Meetings:**

All Commission members should be physically present at the designated time and location within the City for the meeting. Teleconferencing is not permitted.

1. Called by Chair or majority of the Commission.
2. Require reasonable notification be given to the Planning Department staff and twenty-four hour notice to Commissioners.
3. Public notice of a special meeting shall be made as provided in HCC Chapter 1.14

**E. Duties and Powers of the Officers:**

A Chair and Vice-Chair shall be selected annually in August or as soon thereafter as practicable by the appointive members. The Chair shall preside at all meetings of the Commission, call special meetings in accordance with the by-laws, sign documents of the Commission, see that all actions and notices are properly taken, and summarize the findings of the Commission for the official record. The Vice-Chair shall perform all duties and be subject to all responsibilities of the Chair in his/her absence, disability or disqualification of office. The Vice-Chair will succeed the Chair if he/she vacates the office before the term is completed to complete the un-expired term. A new Vice-Chair shall be elected at the next regular meeting.

**F. Committees**

1. The Chair shall appoint committees for such specific purposes as the business of the Commission may require. Committee appointments will be confirmed by the Commission. Committee membership shall include at least two Commissioners. Other Committee members may be appointed from the public.
2. One Committee member shall be appointed Chair and be responsible for creating an agenda and notifying the City Clerk of meetings so they may be advertised in accordance with Alaska State Law and Homer City Code.
3. One Committee member shall be responsible for furnishing summary notes of all Committee meetings to the City Clerk.
4. Committees shall meet in accordance with Commission bylaws and Robert's Rules.
5. All committees shall make a progress report at each Commission meeting.
6. No committee shall have other than advisory powers.
7. Per Robert's Rules, upon giving a final report, the Committee is disbanded.

93 **G. Motions to Reconsider:**

94  
95 Notice of reconsideration shall be given to the Chair or Vice-Chair, if the Chair is  
96 unavailable, within forty-eight hours from the time the original action was taken.  
97 A member of the Commission who voted on the prevailing side on any issue may  
98 move to reconsider the commission's action at the same meeting or at the next  
99 meeting of the body provided the above 48-hour notice has been given.  
100 Consideration is only for the original motion to which it applies. If the issue  
101 involves an applicant, staff shall notify the applicant of the reconsideration.  
102

103 **H. Conflict of Interest:**

104  
105 A member of the Commission shall disqualify himself/herself from participating  
106 in any official action in which he/she has a substantial **financial** interest per HCC  
107 1.12. The member shall disclose any financial interest in the topic before debating  
108 or voting. The member cannot participate in the debate or vote on the matter,  
109 unless the Commission has determined the financial interest is not substantial.  
110

111 Following the Chair's announcement of the agenda item, the Commissioner  
112 should state that he has a conflict of interest. Once stated, the member should  
113 distance himself/herself from all motions. The Commission must move and vote  
114 on whether or not there is a conflict of interest. At this time, a motion shall be  
115 made by another Commissioner restating the disclosed conflict. Once the motion  
116 is on the floor the Commissioner can disclose his/her financial interest in the  
117 matter and the Commission may discuss the conflict of interest. A vote will then  
118 be taken. An affirmative vote excuses the Commissioner and he/she takes a seat  
119 in the audience or remains nearby. Upon completion of the agenda item, the  
120 Commissioner will be called back to join the meeting.  
121

122 **I. Situation of personal interest**

123  
124 A situation of personal interest may arise. For example, a Commissioner may live  
125 in the subject subdivision or may be a neighboring property owner. If the  
126 Commissioner feels that by participating in the discussion he/she may taint the  
127 decision of the Commission, or be unable to make an unbiased decision, the  
128 Commissioner should state his/her personal interest. The same procedure as  
129 above should be followed to determine the conflict.  
130

131 **J. Ex parte Communications**

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133 Ex parte contacts are not permitted in quasi-judicial actions. Ex parte  
134 communications can result in a violation of procedural due process. If a  
135 Commissioner finds him/herself about to be involved in ex parte contact the  
136 Commissioner should recommend that the citizen submit their comments in  
137 writing to the Commission or testify on record. If a Commissioner has been  
138 involved in an ex parte contact, the contact and its substance should be disclosed

139 at the beginning of the hearing. The Commissioner should state whether or not  
140 s/he thinks s/he can make an unbiased decision.

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143 **K. Quorum; Voting:**

144  
145 Four Commission members shall constitute a quorum. Four affirmative votes are  
146 required for the passage of an ordinance, resolution or motion. Conditional use  
147 permits and zoning variances require a majority plus one vote. Voting will be by  
148 verbal vote, the order to be rotated. The final vote on each resolution or motion is  
149 a recorded roll call vote or may be done in accordance with J. Consensus. For  
150 purposes of notification to parties of interest in a matter brought before the  
151 Commission, the Chair may enter for the record the vote and basis for  
152 determination.

153  
154 The City Manager, or his/her designee and Public Works Director shall serve as  
155 consulting members of the Commission but shall have no vote.

156  
157 **L. Findings:**

158  
159 Findings will be recorded for conditional use permits, variances, acceptance of  
160 nonconforming status and zoning ordinance amendments. The findings will  
161 include the result of the vote on the item and the basis of determination of the  
162 vote, as summarized by the Chair or Vice-Chair, in the absence of the Chair.

163  
164 **M. Consensus:**

165  
166 The Commission may, from time-to-time, express its opinion or preference  
167 concerning a subject brought before it for consideration. Said statement,  
168 representing the will of the body and meeting of the minds of the members may  
169 be given by the presiding officer as the consensus of the body as to that subject  
170 without taking a motion and roll call vote.

171  
172 **N. Abstentions:**

173  
174 All Commission members present shall vote unless the Commission, for special  
175 reasons, permits a member to abstain. A motion to excuse a member from voting  
176 shall be made prior to the call for the question. A member of the Commission  
177 requesting to be excused from voting may make a brief oral statement of the  
178 reasons for the request and the question of granting permission to abstain shall be  
179 taken without further debate. An affirmative vote of the Commission excuses the  
180 Commissioner. A member may not explain a vote or discuss the question while  
181 the roll call vote is being taken. A member may not change his/her vote thereafter.

185 **O. Vacancies:**  
186

187 A Commission appointment is vacated under the following conditions and upon  
188 the declaration of vacancy by the Commission. The Commission shall declare a  
189 vacancy when the person appointed:  
190

- 191 1. Fails to qualify;  
192 2. Fails to take office within thirty days after his/her appointment;  
193 3. Resigns and the resignation is accepted;  
194 4. Is physically or mentally unable to perform the duties of his/her office;  
195 5. Misses three consecutive or six regular meetings in a calendar year; or  
196 6. Is convicted of a felony or of an offense involving a violation of his/her  
197 oath of office.  
198

199 **P. Procedure for Consideration of Agenda Items:**  
200

201 The following procedure will normally be observed:  
202

- 203 1. Staff presents report and makes recommendation;  
204 2. If the agenda item involves an applicant s/he may make a presentation;  
205 3. Commission may ask questions of the applicant and staff.  
206

207 **Q. Procedure for Consideration of Public Hearing Items:**  
208

- 209 1. Staff presents report and makes recommendation;  
210 2. Applicant makes presentation;  
211 3. Public hearing is opened;  
212 4. Public testimony is heard on item (presentation of supporting/opposing  
213 evidence by public – Commission may ask questions of public);  
214 5. Public hearing is closed;  
215 6. Rebuttal of evidence by staff (if any);  
216 7. Rebuttal of evidence by applicant (if any);  
217 8. Commission may ask questions of the applicant, and staff.  
218 9. The Commission will move/second to accept the staff report, with or  
219 without staff recommendations. The Commission will discuss the item,  
220 may ask questions of staff, and make amendments to the recommendations  
221 of staff. Amendments may be made by motion/second.  
222 10. The Commission may continue the topic to a future meeting. Once the  
223 public hearing is closed no new testimony or information will be accepted  
224 from the public. The Commission may ask questions of the applicant and  
225 staff.  
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**R. Procedure for Consideration of Preliminary Plats :**

The following procedure will normally be observed:

1. Staff presents report and makes recommendations;
2. Applicant makes presentation;
3. Public comment is heard on the item;
4. Applicant may make a response;
5. Commission may ask questions of applicant, public and staff.

**S. The Commission shall act as a body. A member of the Commission may not speak or act for the Commission without recommendation or direction given by the Commission. The Chair or Chair's designee shall serve as the official spokesperson of the Commission.**

**ST. By-Laws Amended:**

The by-laws may be amended at any meeting of the Commission by a majority plus one of the members, provided that notice of said proposed amendment is given to each member in writing. The proposed amendment shall be introduced at one meeting and action shall be taken at a subsequent Commission meeting. The by-laws will be endorsed by a resolution of the City Council.

**TU. Procedure Manual:**

The policy and procedure manual will be endorsed by resolution of the City Council and may be amended at any meeting of the Commission by a majority plus one of the members, provided that notice of said proposed amendment is given to each member in writing. Proposed amendments to the procedure manual shall be introduced at one meeting and action shall be taken at a subsequent Commission meeting.

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

DATE  
WEDNESDAY AT 6:30 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).

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**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.

**6. Presentations**

**7. Reports**

**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.

**9. Plat Consideration**

**10. Pending Business**

**11. New Business**

**12. Informational Materials**

**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 9:30 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."





# City of Homer Planning & Zoning

491 East Pioneer Avenue  
Homer, Alaska 99603-7645

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*Fax* (907) 235-3118  
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## STAFF REPORT PL 13-23

**TO:** Homer Advisory Planning Commission  
**THROUGH:** Rick Abboud, City Planner  
**FROM:** Julie Engebretsen, Planning Technician  
**MEETING:** March 6, 2013  
**SUBJECT:** Land Allocation Plan

**Please bring your land allocation plan from the last packet**

### Introduction

At the last work session, the Commission discussed the Land Allocation Plan. Staff said they would report back about the Pier One property. Below is an update on that property, and the comments the Commission had consensus on. Please review the comments and make any amendments, additions etc. Staff will forward a memo with Commission comments to the City Council.

### Comments

Page C-9. Designate Lots 3, 13 and 14 as public recreation.

Page E-21. Initiate the process to change the street name of Adams Drive to Jack Gist Lane.

Page E-26 Designate all lots as Mariner Park.

Page E-35 Designate End of the Road Park as a park.

### Pier 1 Theater Lot

At the Council meeting on February 25<sup>th</sup>, Council decided that this property should have its own work session. The Wooden Boat Society would still like to lease some land. Council directed the harbormaster to solicit letters of interest from folks who have expressed interest in leasing the land. The Council will have a meeting just to talk about this lot, separate from the Land Allocation work session. The HAPC has already commented to Council on this lot. The HAPC can make more comments via the land allocation plan, or leave your comments as they are.

### Staff Recommendation

Planning Commission approve comments to the City Council.





# City of Homer

## Planning & Zoning

491 East Pioneer Avenue  
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### Staff Report PL 13-24 Diamond Creek Plan

To: Homer Advisory Planning Commission  
From: Julie Engebretsen, Planning Technician  
Date: March 6, 013  
RE: Diamond Creek Plan

#### Introduction

HCC Title 1.76, in part states that the Commission will review park plans, and make recommendations to Council on whether the plans are consistent with the Comprehensive Plan, and established planning principles.

The Diamond Creek Plan (DCP) is hereby submitted to the HAPC for comment and a recommendation to the City Council. The DCP is basically a management plan; its not a formal land use plan, or part of a comprehensive plan. Its more like a park development plan, although in this case is more about preservation and recreation than building anything.

#### Brief history

The City acquired some property between the dump and Diamond Ridge a few years ago, through the State Forest Legacy Program. That program requires all development on this land to be approved by the state, prior to any construction. It's a lot of work to ask for permission every time someone wants to build a trail on this property! Instead, an overall management plan could be approved by the City and the State, encompassing all the things we hope to do in the coming years. When that is approved, it will be much more straightforward to build trails and improvements already included in the adopted plan.

The state demonstration forest is next to the City property. The Homer Soil and Water Conservation District has a management agreement with the State to manage the demonstration forest. Their management plan and agreement needed to be updated. They were able to acquire a grant to write a plan that will cover both City and State land (saving the City and staff a lot of time and money).

The plan includes a detailed review of the soil, plant and animals found within the properties. It also includes a trail and access plan for future development. The specific goals and objectives of the land use management portion can be found on pages 12-14.

#### Analysis

In essence, the plan catalogues the natural resources of these properties, and sets out future management guidelines. For example, it will be a non-motorized area, with conservation,

recreation and education goals. (see pages 12-14). These goals exclude things like logging, or motorized recreation activities such as a dirt bike track.

When the City or a citizen wants to undertake a project, that project must meet the goals of the plan. So a new summer trail route is permissible; an ATV trail is not. Deviation from this plan would require state approval via the Forest Legacy program.

The draft plan is now ready for public review and approval by the City. The Parks and Recreation Advisory Commission has had a commissioner actively working on this plan for several months. That Commission is also reviewing the plan more in-depth, and are scheduled to make a final recommendation to the Council at their March 21<sup>st</sup> meeting.

### **Conclusion**

The first step toward any trail or recreational development on the City property is adoption of a management plan, and approval by the state through the Forest Legacy Program. The City Council will need to pass a resolution, approving the plan.

**Requested action:** Discuss the plan and make any recommended changes. Please make a recommendation to the City Council to approve the plan.

**Attachment:** Draft Diamond Creek Plan



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**STAFF REPORT PL 13-25**

**TO:** Homer Advisory Planning Commission  
**FROM:** Rick Abboud, City Planner  
**MEETING:** March 6, 2013  
**SUBJECT:** Land Use, 2008 Homer Comprehensive Plan - Chapter 4

**Introduction**

As mentioned at the last meeting, the Comprehensive Plan is a guiding document for making decisions. Specifically as stated in HCC 21.01.030, "The Homer Zoning Code is adopted as one means of implementing of the general goals and policies of the Homer Comprehensive Plan." With many Commissioners coming on board after the adoption of the plan, we would be well served to review the plan in accordance with what has already been done, that which we chose delay or reconsider and that which is on the horizon.

My direction of the Planning Department provides that we are constantly addressing goals in the plan. Currently, we are in the final stages of addressing major items in the form of text and map amendments in the Marine Districts. I do have plans to continue implementing the plan. I try not to get the Commission going in too many different directions, especially on larger projects. That said, it is time to consider the next big thing. In my estimation we do need to talk about density requirements, specifically proposed text and map amendments for the R2 District described in the plan. This district is meant as a transitional district of medium density between Rural Residential and Urban Residential to which utilities have already been installed or are expected to extend. Once the R2 District and Urban Residential Districts are separated from the existing Rural Residential we will be better prepared to review the Rural District and not create too many non-conforming properties.

**Big Picture First**

In order to make the best decision we must consider how our decisions work in relation to the entire community. Many guiding principles of the community are found in the one page Chapter 3. Our land use goals are expressed in Chapter 4. A valuable resource to review the criteria of the zoning districts and thought behind the various districts is Appendix B. Much of this thought is also guided Chapter 6, Public Service and Facilities. Holy Cow! We are not even finished yet! Specific implementation tables are found at the end of each chapter (I am in the process of creating a comprehensive review of all suggested action items in Chapter 4). All this information should prepare you to talk about today's subject, the Land Use Recommendations map found on page 4-7 (if you do not have a fold out version of this, there will be extras in the packet or at the meeting). Of course, we will use the current zoning map to compare current zoning to the future recommendations.

All the items mentioned above are used to frame our conversation but there is even more needed. Homer Comprehensive Plan Chapters 3, 4, 5, Appendix B and Land Use Recommendation Map prepare us for the future. The current zoning code describes the present. A familiarity with the Homer City Code Residential Districts is also necessary, where they are located, what is allowed, the dimensional requirements and so forth. I hope that I am not being too remedial, but there is a lot of work associated with making planning decisions that will affect the community for generations to come. There is a great amount of detail associated with the Commission's work.

Going through this material you will notice several themes. Density in the downtown and urban core, walkability, environmental responsibility, and efficient service distribution are but a few of the concerns. We want to support reasonable regulation and keep what makes Homer special. One thing has changed a great deal since the plan and that is economics. Our ability to support services and keep living in Homer as affordable as possible is becoming a greater concern.

### **Tonight's subject**

Review of future land use recommendations. I will have zoning and infrastructure maps that relate to the Land Use Recommendations. A lot of the conversation will be about densities and discussion on the order of the next steps to take in implementation of the plan goals.

### **Staff Recommendation**

Study up for the next big conversations. Remember to bring Comprehensive plan and maps.

**MANAGERS REPORT**  
**February 25, 2013**

**TO:** MAYOR WYTHE / HOMER CITY COUNCIL

**FROM:** WALT WREDE

UPDATES / FOLLOW-UP

1. Finance Director Resignation: Finance Director Regina Mauras has accepted a job in Washington State and has tendered her resignation. Her last day at work will be March 8. She will make herself available after that if questions come up. We have started the recruitment process for this very important position. I would like to thank Regina for all of her dedication and hard work over the past seven years. She has contributed a lot to the City and its financial management. I would especially like to take note of the very significant improvements she made in the areas of internal controls and basic accounting practices. Regina was a real asset and she will be missed.
2. Damage at Water Treatment Plant: At recent meetings the Council was briefed on the extreme weather event that caused damage to the sewer collection system and to three structures in town. Understandably, most of the focus to date has been on the damage to the structures and the displaced tenants. However, there was also extensive damage to the sewer treatment plant itself. We did not realize the extent of the damage at the time but that is now becoming clear. The staff at the treatment plant has performed yeoman's work troubleshooting and making repairs to insure that the plant is functioning properly. Much of this work was done standing in knee deep sewage. Lots of overtime has been needed and these guys deserve a special thank you for keeping the community and Kachemak Bay protected from potential contamination. The bottom line though, is that the cost of repairs now exceeds \$100,000 and could continue to grow. We have not yet brought forward an appropriation ordinance because we did not fully understand the extent of the damage or ultimate cost for repairs and for health and safety reasons, we needed to move fast. At the time this was written, we were considering whether to file an insurance claim. The deductible for this policy is \$100,000. This insurance is for coverage of property damage to property owned by the City and differs from the coverage in place regarding the private structures.
3. Grant Aviation: As you probably heard by now, Grant Aviation is discontinuing service to Homer effective immediately. We are currently in the process of terminating their lease at the terminal and all of the normal steps that entails.
4. Transportation Committee Recommendations: Council recently asked the administration to look into acquiring the ROW that would be needed to push Waddell Way through to Heath St.; an important step in implementing the Transportation Plan. It has come to the City's attention that there is a potential buyer for the property (currently for sale) and PW and Planning have been working with the interested party to see if we can work out a plan that benefits all. There are a number of variables and considerations that come into play when

thinking about the best alignment for the proposed east-west corridor. Carey brought this issue to the Transportation Committee at their meeting on the 19<sup>th</sup>. The Committee gave it careful consideration and its recommendations are attached. We hope to talk about this in some detail at the Committee of the Whole.

5. Emergency Operations Plan Update: Chief Painter has hosted three meetings so far. The next meeting is scheduled for Thursday, February 21. The Emergency Operations Plan is a very important document and we appreciate the volunteers who are participating on the Committee.
6. Trip to Juneau: Next week the Mayor and Katie will travel to Juneau to visit legislators and members of the administration. We have developed a general work plan / agenda on issues to be addressed but any input the Council might have would be most welcome.
7. Harbor Projects; This week I hope to be able to start the harbor revenue bond application process with the Alaska Municipal Bond Bank. The goal is to have the financing in place close to the time the capital budget is approved so that we can keep to the proposed construction schedule.
8. Lillian Walli Estates: The Council requested by resolution that the City initiate the petition process for forming a road, water, and sewer special assessment district in Lillian Walli Estates. The Planning Department is working on that and is making good progress. Letters of interest went out to all property owners recently.
9. Port and Harbor Rate Study: The adopted budget contains funding for a Port and Harbor Rate Study. We are starting to focus attention on that issue and we should have more information for you soon.
10. Fiscal Impacts of the drill rig Endeavor: At the last meeting we discussed the possible benefits of commissioning a study of the economic impacts associated with the drill rig being moored in Homer. Several Council members expressed interest in doing this. This agenda contains a resolution on that topic sponsored by the Mayor and Council member Burgess to get the issue on the table.

#### **ATTACHMENTS**

1. Lobbyist Report
2. Memorandum re: Tract 1-A, Fishing Hole Subdivision # 2
3. Recommendations from the Transportation Committee re: Transportation Plan and Waddell Way



# **KENAI PENINSULA BOROUGH**

PLANNING DEPARTMENT  
144 North Binkley Street • Soldotna, Alaska 99669-7520  
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**MIKE NAVARRE**  
BOROUGH MAYOR

February 19, 2013

## **NOTICE OF DECISION KENAI PENINSULA BOROUGH PLAT COMMITTEE**

### **MEETING OF FEBRUARY 11, 2013**

**RE:** Bunnell's Subdivision No. 19 Tract A 2012 Replat

The Plat Committee reviewed and granted approval of the subject preliminary plat during their regularly scheduled meeting of February 11, 2013 based on the findings that the preliminary plat met the requirements of the Kenai Peninsula Borough Code 20.12; 20.14 and 20.20.

Please contact the Planning Department if you need additional information.

This notice and unapproved minutes of the subject portion of the meeting were sent February 19, 2013 to:

**City of:** City of Homer  
491 East Pioneer Avenue  
Homer, AK 99603

**Advisory Planning Commission/Community Council:**  
Homer Advisory Planning Commission  
491 East Pioneer Avenue  
Homer, AK 99603

**Survey Firm:** Seabright Survey + Design  
1044 East Road, Suite A  
Homer, AK 99603

**Subdivider/Petitioner:** Christian Community Church  
3838 Bartlett St.  
Homer, AK 99603-7505

**KPB File Number:** 2013-024



**AGENDA ITEM E. SUBDIVISION PLAT PUBLIC HEARINGS**

Staff Report given by Paul Voeller

Plat Committee Meeting: 02/11/13

Staff has grouped the plats located under **AGENDA ITEM E (AGENDA ITEM F - FINAL PLATS WILL NEED SEPARATE REVIEW)**. They are grouped as:

- A. **Simple** (lot splits, small number of lots, replats, no exceptions required) or non-controversial (may require redesigns, create larger number of lots, no public comments received, no exceptions required) – 2 Plats
  - 2. River Bridge Est Sub 2013 Addition; KPB File 2013-022 [Johnson / Hassell]
  - 8. Bunnell’s Sub No. 19 Tract A 2012 Replat; KPB File 2013-024 [Seabright / Christian Community Church]

**Staff recommends** the committee determine whether any members of the public, surveyors or committee members wish to speak to any of the plats in this group and remove the specific plats from the group, voting on the remainder of plats in the group in a single action to grant preliminary approval to the plats subject to staff recommendations and the conditions noted in the individual staff reports.

**END OF STAFF REPORT**

Chairman Martin opened the meeting for public comment. Seeing and hearing no one wishing to comment, Chairman Martin closed the public hearing and opened discussion among the Committee.

**MOTION:** Commissioner Gross moved, seconded by Commissioner Isham to grant preliminary approval to the following preliminary plats per staff recommendations and conditions.

- 2. River Bridge Est Sub 2013 Addition; KPB File 2013-022 [Johnson / Hassell]
- 8. **Bunnell’s Sub No. 19 Tract A 2012 Replat; KPB File 2013-024 [Seabright / Christian Community Church]**

**VOTE:** The motion passed by unanimous consent.

GROSS YES	HOLSTEN ABSENT	ISHAM YES	LOCKWOOD YES	MARTIN YES	4 YES 1 ABSENT
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**AGENDA ITEM E. SUBDIVISION PLAT PUBLIC HEARINGS**

- 8. Bunnell’s Subdivision No. 19 Tract A 2012 Replat  
KPB File 2013-024; Seabright/Christian Community Church

**STAFF REPORT**

Plat Committee Meeting: 2/11/13

Location: City of Homer  
 Proposed Use: Church  
 Water/Sewer: City  
 Zoning: Residential Office District  
 Assessing Use: Institutional Church  
 Parent Parcel Number(s): 175-133-40

Supporting Information:

The proposed plat subdivides a 4-acre tract into two lots containing approximately 0.6 and 3.6 acres. The subdivision is served by city water and sewer. The subdivision fronts paved Bartlett Street and unimproved Swatzell Street.

Homer Advisory Planning Commission approved the plat on December 5, 2012 subject to:

1. Dedicate the 30-foot wide extension of Swatzell Street to the northern line [of the subject plat].  
*Borough staff comments: Per KPB 20.20.030, staff recommends compliance with the Homer Advisory Planning Commission's recommendation. The requested dedication will overlie a 15-foot trail easement granted to the City of Homer. The Homer Commission did not comment on the underlying trail easement so apparently it is not a problem.*
2. Label Swatzell Street.  
*Borough staff comments: The street was labeled on the plat submitted for KPB review.*
3. Correct Plat Note 5 to state "trail easement" instead of "trial easement."  
*Borough staff comments: Staff recommends compliance with the Homer Advisory Planning Commission's recommendation.*
4. Correct Plat Note 3 to state, "This subdivision is subject to . . ." rather than "in subject to."  
*Borough staff comments: Staff recommends compliance with the Homer Advisory Planning Commission's recommendation.*
5. Dedicate a 15-foot utility easement on Lot 1 along Bartlett and Swatzell Streets.  
*Borough staff comments: Staff recommends the requested easement be granted. Due to the location of the building on Lot 2, Homer Advisory Planning Commission did not recommend extending the 15-foot utility easement within Lot 2.*
6. Shift the northern lot line of Lot 2 north to comply with zoning setback requirements.  
*Borough staff comments: Staff recommends compliance with the Homer Advisory Planning Commission's recommendation.*
7. Dedicate a shared driveway easement between Lots 1 and 2 from Bartlett Street.  
*Borough staff comments: KPB Code does not require property owners to grant driveway easements. This is a development matter to be worked out between the owner and City of Homer.*

Per Planning Commission Resolution 2000-25, if the Certificate to Plat indicates any beneficial interests affect this property, they will be notified and given 30 days from the date of the mailing of the notification to respond. They are given the opportunity to notify staff if their beneficial interest prohibits or restricts subdivision or requires their signature on the final plat. If no response is received within 30 days, staff will assume they have no requirements regarding the subdivision and it may be finalized.

A physical address may be affected by the replat. Homer Planning and Zoning Department can answer questions about the effect of the replat on addresses.

**STAFF RECOMMENDATION:** Grant approval of the preliminary plat subject to any above recommendations, and the following conditions and findings:

**REVISE OR ADD TO THE PRELIMINARY PLAT IN ACCORDANCE WITH THE PROVISIONS CONTAINED IN KPB 20.12 (FORM AND CONTENTS), KPB 20.14 (WASTEWATER DISPOSAL), AND KPB 20.20 (DESIGN REQUIREMENTS) AS FOLLOWS:**

1. **20.12.060. - Form and contents required. The preliminary plat shall be drawn to scale of sufficient size to be clearly legible and shall show the following:**

Platting staff comments: The plat complies with the following portions of 20.12.060: B, C, E, and F.

Platting staff comments: The following portions of 20.12.060 are not applicable to the subject plat: H and I.

Platting staff comments: Additional information is provided for the following portions of 20.12.060 or additional information, revision or corrections are required

A. Within the Title Block

1. Name 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,
2. Legal description, location date, and total area in acres of the proposed subdivision,
3. Name and address of owner, and registered land surveyor;

*Platting Staff Comments: The subdivision name reflects the platting action being undertaken, which could make it difficult to research in the future. Staff requests the name be revised, such as Bunnell's Subdivision No. 23 or Bunnell's Subdivision No. 19 Church Replat. Staff recommends City of Homer be included in the title block.*

D. 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;

*Platting Staff Comments: Staff recommends the section lines and the section number in which the plat is located be included in the vicinity map.*

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

*Platting Staff Comments: Staff recommends the following corrections be made:*

- Provide a status label to the north: 30-A.
- Correct the status label to the south ( 37A-1) and southeast (53A1, 52A1).

J. Block and lot numbering per Section 20.16.110 and approximate dimensions and total numbers of proposed lots;

*Platting Staff Comments: Staff recommends the 3.604 parcel have one label, for example Tract A-1.*

K. Within the limits of first class cities, the approximate location of known existing municipal sewers, water mains, and other utilities within the subdivision and immediately abutting thereto;

*Platting Staff Comments: A request was made for this information on February 2, 2013.*

L. Contours at suitable intervals when any roads are to be dedicated unless the planning director or commission finds evidence that road grades will not exceed 6 percent on arterial streets, and 10 percent on other streets.

*Platting Staff Comments: Per KPB GIS, the area within the dedication requested by Homer Advisory Planning Commission is not steep. Confirmation was requested from the surveyor.*

M. Approximate locations of slopes over 20 percent in grade. (Ord. No. 78-37, § 2(part), 1979)

*Platting Staff Comments: Per KPB GIS, the area within the dedication requested by Homer Advisory Planning Commission is not steep. Confirmation was requested from the surveyor.*

**20.12.070. - Statement required when—Contents. Information which is not shown on the plat shall be presented in written or mapped form and shall include:**

Platting staff comments: The submittal complies with 20.12.070 (A-D).

**2. KPB 20.14 -- Wastewater Disposal**

*Platting Staff Comments: The appropriate wastewater disposal note is on the plat.*

**3. KPB 20.20 Design Requirements -- 20.20.010. - Standards applicable.**

Platting staff comments: The plat complies with the following portions of 20.20: 20.20.035, 20.20.060, 20.20.080, 20.20.140, 20.20.150, 20.20.180, 20.20.190, 20.20.200, 20.20.210, and 20.20.220.

Platting staff comments: The following portions of 20.20 are not applicable to the subject plat: 20.20.020, 20.20.050, 20.20.090, 20.20.120, 20.20.130, 20.20.230, 20.20.240, and 20.28.

Platting staff comments: Additional information is provided for the following portions of 20.20 or additional information, revision or corrections are required

20.20.030. - Proposed street layout—Requirements.

*Platting Staff Comments: A 30-foot half dedication for Swatzell street will bring the plat into compliance with 20.20.030. The Homer Transportation Plan cites the need to extend Swatzell Street. Swatzell Street is the only dedicated public access for six parcels.*

20.20.040. - Easements—Requirements.

*Platting Staff Comments: Staff recommends compliance with the recommendations submitted by the utility providers.*

20.20.070. - Alleys.

*Platting Staff Comments: Homer Advisory Planning Commission did not request alleys.*

20.20.100. - Half streets.

*Platting Staff Comments: Homer Advisory Planning Commission recommended a 30-foot half dedication be provided for Swatzell Street within the subject plat to its northern boundary. The parcel adjoining the 30-foot half dedication contains one acre. It is reasonable to expect a matching dedication in the future; therefore, a half dedication within the subject plat is acceptable.*

20.20.110. - Streets—Width requirements.

*Platting Staff Comments: See platting staff's comments for 20.20.100.*

20.20.160. - Blocks—Length requirements—Generally.

*Platting Staff Comments: The block does not have an east/west dedication. Based on the parcel sizes and configurations and existing development, it appears unlikely that a 60-foot east/west dedication can be obtained within the block. The block generally complies with 20.20.160.*

20.20.170. - Pedestrian ways required when.

*Platting Staff Comments: Homer Advisory Planning Commission did not request pedestrian ways.*

20.20.235. - Building setbacks—Within cities.

*Platting Staff Comments: Staff recommends the surveyor confirm that the northern boundary of Lot 2 is located such that it complies with the requirements of the setbacks per the zoning district.*

20.20.250. - Different standards in cities.

*Platting Staff Comments: Homer Advisory Planning Commission did not recommend different standards.*

20.20.260. - Flood plain requirements.

*Platting Staff Comments: Per Homer City staff report, the plat is within Zone D, flood hazards undetermined. A plat note was not recommended.*

*Per KPB GIS mapping, no anadromous streams flow through the subdivision.*

**4. Additional requirements for administrative approval of the final plat (KPB 20.16) -- 20.16.010. - Preparation requirements generally.**

Platting staff comments: The plat complies with the following portions of 20.16: 20.16.080 and 20.16.100.

Platting staff comments: The following portions of 20.16 are not applicable to the subject plat: 20.16.035, 20.16.040, 20.16.045, 20.16.046, and 20.16.070.

Platting staff comments: Additional information is provided for the following portions of 20.16 or additional information, revision or corrections are required

20.16.020. - Filing—Form and number of copies required. ~

*Platting Staff Comments: **Staff recommends** two full size copies of the plat be provided for final review. Electronic submission is not acceptable.*

20.16.030. - Certificate of borough finance department required.

*Platting Staff Comments: **Staff recommends** compliance with 20.16.030.*

20.16.050. - Plat specifications.

*Platting Staff Comments: **Staff recommends** compliance with 20.16.050.*

20.16.060. - Improvements—Installation agreement required.

*Platting Staff Comments: **Staff recommends** a written statement be provided from the appropriate city official that improvements required by city ordinance are or will be installed.*

20.16.090. - Accuracy of measurements.

*Platting Staff Comments: The GIS Division will confirm closure meets 20.16.090 when the final plat is submitted. **Staff recommends** compliance with 20.16.090.*

20.16.110. - Block and lot numbering.

*Platting Staff Comments: **Staff recommends** one designation be provided for the 3.604 acre parcel.*

20.16.120. - Utility easements.

*Platting Staff Comments: **Staff recommends** compliance with the recommendations submitted by the utility providers.*

20.16.130. - Easements.

*Platting Staff Comments: **Staff recommends** compliance with 20.16.130.*

20.16.140. - Other data required by law.

*Platting Staff Comments: **Staff recommends** compliance with 20.16.140.*

20.16.145. - Plat notes.

*Platting Staff Comments: Additional plat notes may be required based on easements/covenants in the final Certificate to Plat. For clarity, **staff recommends** Plat No. 01-05 HRD be revised to Plat No. 2001-05 HRD in Plat Note 5.*

20.16.155. - Certificates, statements and signatures required.

*Platting Staff Comments: **Staff recommends** compliance with 20.16.155. **Staff recommends:***

- *Correct the year in the Notary's Acknowledgement.*
- *Provide documentation confirming who is authorized to sign the plat on behalf of the church, for example a resolution.*

20.16.160. - Survey and monumentation.

*Platting Staff Comments: **Staff recommends** compliance with 20.16.160*

20.16.170. - Approval—Authority—Certificate issued when.

*Platting Staff Comments: If the Plat Committee conditionally approves the preliminary plat, staff recommends compliance with 20.16.170.*

20.16.180. - Administrative approval.

*Platting Staff Comments: If the Plat Committee conditionally approves the preliminary plat and the final plat conforms to the conditions, staff will issue an administrative approval with notice to the Planning Commission as set forth in 20.16.180.*

20.16.190. - Disapproval. When a plat has been disapproved by the planning commission, it may be refiled once more with corrections for approval within 28 days of notification of first disapproval. If disapproved again, said plat shall be void. A new fee will be required for subdivision of the property in the voided plat.  
*Platting Staff Comments: If the Plat Committee disapproves the proposed plat, staff recommends findings be cited and adopted in support of the denial.*

**NOTE: REVIEW OF A DECISION OF THE PLAT COMMITTEE MAY BE HEARD BY THE PLANNING COMMISSION ACTING AS PLATTING BOARD BY FILING WRITTEN NOTICE THEREOF WITH THE BOROUGH PLANNING DIRECTOR ON A FORM PROVIDED BY THE BOROUGH PLANNING DEPARTMENT. THE REQUEST FOR REVIEW SHALL BE FILED WITHIN 10 DAYS AFTER NOTIFICATION OF THE DECISION OF THE PLAT COMMITTEE BY PERSONAL SERVICE OR SERVICE BY MAIL.**

**A REQUEST FOR REVIEW MAY BE FILED BY ANY PERSON OR AGENCY THAT PARTICIPATED AT THE PLAT COMMITTEE HEARING EITHER BY WRITTEN OR ORAL PRESENTATION. THE REQUEST MUST HAVE AN ORIGINAL SIGNATURE; FILING ELECTRONICALLY OR BY FACSIMILE IS PROHIBITED. THE REQUEST FOR REVIEW MUST BRIEFLY STATE THE REASON FOR THE REVIEW REQUEST AND APPLICABLE PROVISIONS OF BOROUGH CODE OR OTHER LAW UPON WHICH THE REQUEST FOR REVIEW IS BASED.**

**NOTICE OF THE REVIEW HEARING WILL BE ISSUED BY STAFF TO THE ORIGINAL RECIPIENTS OF THE PLAT COMMITTEE PUBLIC HEARING NOTICE. CASES REVIEWED SHALL BE HEARD DE NOVO BY THE PLANNING COMMISSION ACTING AS THE PLATTING BOARD (KPB 2.40.080).**

END OF STAFF REPORT

B. *Plats needing specific actions or controversial* - (public comments received, major staff concerns, exceptions required) – 6 Plats

**AGENDA ITEM E. SUBDIVISION PLAT PUBLIC HEARINGS**

1. Schwanke Subdivision 2013 Addition  
KPB 2013-017; Johnson/Letzring, Inc.

Staff Report given by Paul Voeller

Plat Committee Meeting: 2/11/13

Location:	Sterling area
Proposed Use:	Residential, Recreational, Commercial
Water/Sewer:	On-site
Zoning:	Unrestricted
Assessing Use:	Commercial, Residential Improved, Vacant
Parent Parcel Number(s):	065-050-49, 065-520-02, 065-520-01

**Supporting Information:**

The proposed plat subdivides 3 lots into 4 lots ranging in size from 1 to 2.4 acres. A soils report is required, and an engineer will sign the plat. The plat fronts the Sterling Highway, constructed Sammie Circle, and Borough maintained Kenai Drive.

Per Planning Commission Resolution 2000-25, if the Certificate to Plat indicates any beneficial interests affect this property, they will be notified and given 30 days from the date of the mailing of the notification to respond. They are given the opportunity to notify staff if their beneficial interest prohibits or restricts subdivision or requires their signature on the final plat. If no response is received within 30 days, staff will assume they have no requirements regarding the subdivision and it may be finalized.



## **KENAI PENINSULA BOROUGH**

PLANNING DEPARTMENT

144 North Binkley Street • Soldotna, Alaska 99669-7520

**PHONE:** (907) 714-2200 • **FAX:** (907) 714-2378

Toll-free within the Borough: 1-800-478-4441, Ext. 2200

[www.borough.kenai.ak.us](http://www.borough.kenai.ak.us)

**MIKE NAVARRE**  
BOROUGH MAYOR

# **NOTICE OF PROPOSED UTILITY EASEMENT VACATION**

Notice is hereby given that an application to vacate a drainage easement in the City of Homer has been received by the Planning Department of the Kenai Peninsula Borough.

In accordance with Chapter 20 of the Borough Code of Ordinances, all owners of properties within a 300-foot radius must be notified of the proposed vacation. According to Borough records, you are an owner of property within that radius; or you are an affected party.

- A. Location: Vacate a portion of the 5-foot wide drainage easement along the east boundary of Lot 1 granted by Tamian Subdivision (Plat HM 86-87), and that a portion of the north 47-feet will remain as shown on Tamian Subdivision Lot 1 as-built survey plat showing encroachments; all within Section 21, Township 6 South, Range 13 West, Seward Meridian, Alaska; the City of Homer and within the Kenai Peninsula Borough. KPB File 2013-035 PC Resolution No. 2013-06
- B. Purpose as stated in petition: The culvert has been relocated to the east as stated by Carey Meyer of the City of Homer. My house was built in 1969. The easement was granted in 1986. My house was there before the easement was granted. I am not able to sell my house with this encroachment.
- C. Petitioner: Douglas W. Alaniva of Homer, Alaska.

The Planning Commission will be considering and acting upon this petition at their regular meeting, **Monday, March 11, 2013**. The meeting will be held in the Assembly Chambers of the Kenai Peninsula borough building, 144 N. Binkley Street, Soldotna, Alaska, starting at 7:30 p.m.

Written comments may be submitted to the attention of Sylvia Vinson-Miller or Maria Sweppy, Kenai Peninsula Borough Planning Department - 144 N. Binkley Street - Soldotna, Alaska 99669. **Please provide written comments to the Planning Department by Friday, March 8, 2013.**

For additional information, contact Sylvia Vinson-Miller or Maria Sweppy, Resource Planning Department, 907-714-2200 (1-800-478-4441 Toll Free within the Kenai Peninsula Borough). Fax number is 907-714-2378.

Paul Voeller  
Planning Officer



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

RECEIVED

JAN 31 2013

**Petition to Vacate Utility Easement**  
**No Public Hearing Required**

Submit completed form to the Kenai Peninsula Borough Planning Department, 144 North Binkley St., Soldotna, AK 99669

**KENAI PENINSULA BOROUGH**  
**PLANNING DEPARTMENT**

Upon receipt of complete application with all required attachments the vacation will be scheduled for Planning Commission action. The petitioner must secure and submit written comments from utility companies. If the easement is within city limits; secure and submit city's written comments. The completed petition, with all required attachments, accompanied by a \$75.00 non-refundable fee, must be submitted to the Planning Department a minimum of thirty (30) days prior to the meeting at which the Planning Commission will take action.

Fees - \$75.00 non-refundable fee attached.

To accomplish an approved vacation; a Planning Commission Resolution must be filed with the State Recorder to enter the vacation into the public records. Petitioner must pay filing fees (usually \$22-\$27).

Utility easement requested to be vacated was granted by plat of TAMIAN Lot ONE Subdivision, filed as Plat No. 86-87 in Homer Recording District.

Utility easement proposed to be vacated was granted by (specify type of document) Plat as recorded in Book 122 Page 51 of the Homer Recording District. (Copy of recorded document must be submitted with petition)

Comments from N/A Electric Association attached.

Comments from N/A Gas Company attached.

Comments from N/A Telephone Company attached.

Comment from N/A Cable Company attached.

Comments from City of Homer attached.

Three copies of plat or map showing area proposed to be vacated. If easement was granted by document; one copy of recorded document must be submitted.

If an existing structure is encroaching into easement; As-Built showing encroachment must be attached.

Is easement being used by utility company?  Yes  No  
 If yes, which utility N/A

The petitioner must provide reasonable justification for the vacation. Reason for vacating:

*carey meyer of the city of Homer letters my house was built in 1969  
 The easement was granted in 1986, my house was there before  
 the easement was granted. I am not able to sell my house with this encroachment*

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

Submitted by: Signature Douglas W. Alaniva  Petitioner  Representative

Name Douglas W. ALANIVA

Address 1121 Seabreeze Ct.  
 Homer, AK. 99603

Phone (907) 299-1526 cell or (719) 464-6766

**Petitioners:**

Signature \_\_\_\_\_

Name \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Owner of \_\_\_\_\_

Signature \_\_\_\_\_

Name \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Owner of \_\_\_\_\_

Signature \_\_\_\_\_

Name \_\_\_\_\_

Address \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Owner of \_\_\_\_\_

Signature \_\_\_\_\_

Name \_\_\_\_\_

Address \_\_\_\_\_

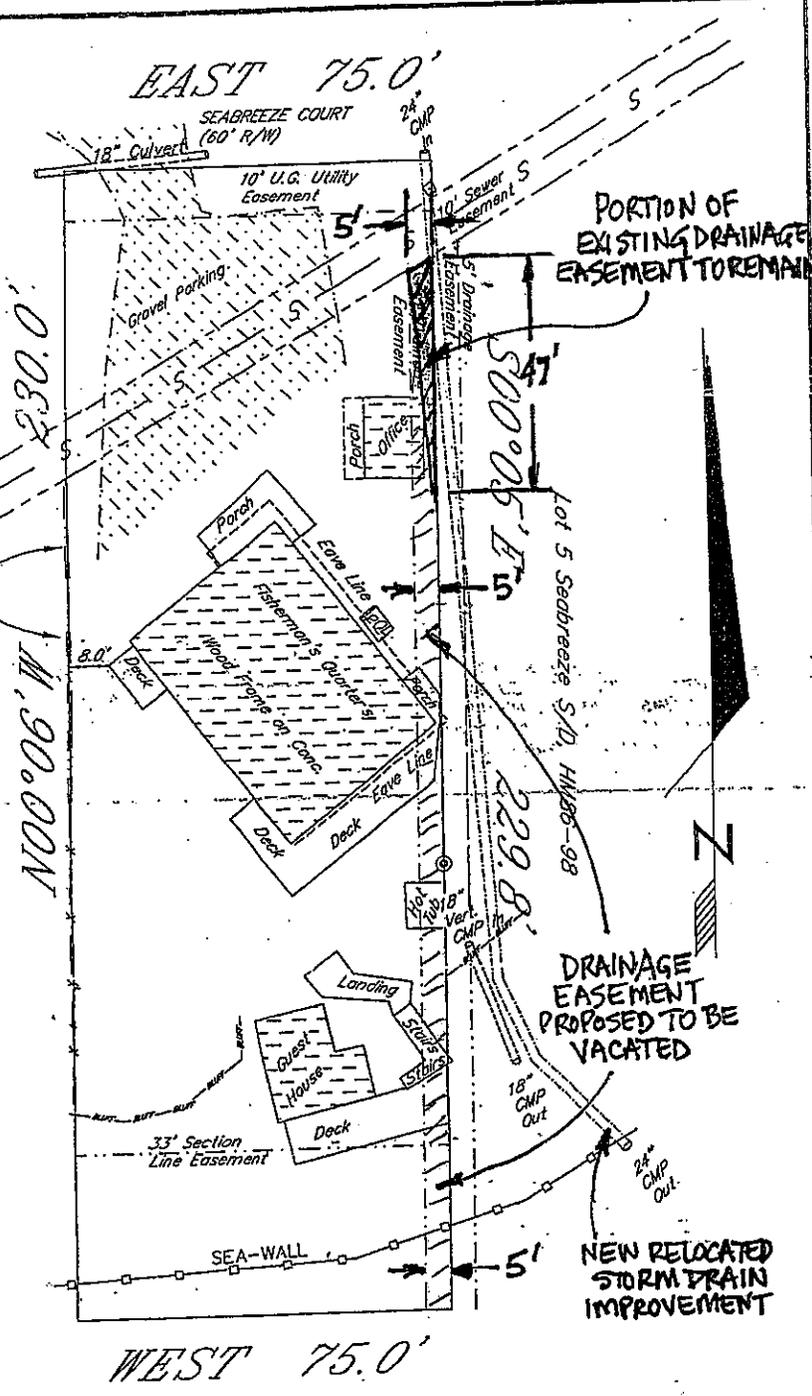
\_\_\_\_\_

\_\_\_\_\_

Owner of \_\_\_\_\_

**NOTE:**  
The City of Homer Public Works claims that there is a 20' wide water line easement along the north boundary.

The Recorded Plat, H86-87, Indicates a "Water Utility Easement". (No Width Is Given; Scales 13'±) The Plat Dedicates a 10' Underground Easement.



**CERTIFICATE AND EXCLUSIONS**

I HEREBY CERTIFY THAT I HAVE PERFORMED THE SURVEY DEPICTED HEREON. I DECLARE THAT THE INFORMATION SHOWN HEREON IS TRUE TO THE BEST OF MY KNOWLEDGE AND BELIEF.

IT IS THE EXPRESS RESPONSIBILITY OF THE OWNER TO DETERMINE THE EXISTENCE OF ANY EASEMENTS, COVENANTS, OR RESTRICTIONS WHICH DO NOT APPEAR ON THE RECORDED SUBDIVISION PLAT.

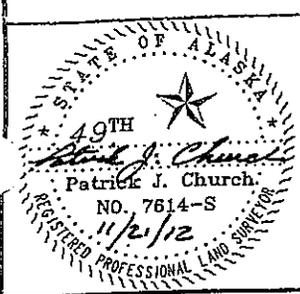
*Patrick J. Church*  
Patrick J. Church

11/21/12  
Date

- ⊙ Found 5/8" Rebar, No Cap
- ⊙ HEA Meter Loop
- Indicates 2.5" GIP Fence Post along or over the Property Line.



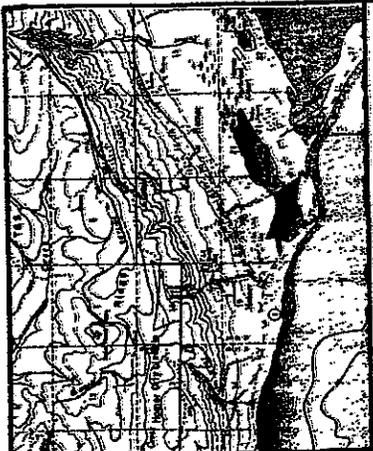
SCALE: 1"=30'



JOB No.	0375
DATE:	Oct. 18th, 2012
SCALE:	1" = 30'
BASE MAP:	AR73
FIELD BOOK:	37/4-7.
<b>PREPARED FOR:</b>	
Douglas W. Alaniva, 2405 North Condor St. Colorado Springs, Colorado 80909	

**"TAMIAN LOT ONE"**  
1121 SEABREEZE COURT  
AS-BUILT SURVEY OF LOT ONE, PLAT H86-87  
LOCATED WITHIN THE SW1/4 SW1/4 OF  
SEC. 21, TWP. 6S, RGE. 13W, S.M. ALASKA;  
TAX PARCEL: 17923026

**Patrick J. Church**  
Registered Land Surveyor  
(907) 235-7388  
P.O. Box 2080, Homer Alaska, 99603



Vicinity Map  
1/4 Mile

**CERTIFICATE OF OWNERSHIP**

We hereby certify that we are the owners of the property shown and described herein and that we have deposited this plan of subdivision and dedicate all rights in any and every parcel to public use and grant all easements to the lot shown.

*John D. Kosch*  
JOHN D. KOSCH  
P.O. Box 1163  
Homer, AK 99603

*Nancy G. Kosch*  
NANCY G. KOSCH  
P.O. Box 1163  
Homer, AK 99603

**NOTARY'S ACKNOWLEDGEMENT**

For *John D. Kosch & Nancy G. Kosch* subscribed and sworn before me this *17th* day of *September* 1988.

*Charles S. Mortimer*  
Notary Public, for Alaska  
My Commission Expires *1-5-97*



**SURVEYOR'S CERTIFICATE**  
I, the undersigned registered surveyor, hereby certify that a land survey has been completed by me or under my direct supervision and that corners and monuments have been located and established and that dimensions shown herein are true and correct to the best of my knowledge.  
*Charles S. Mortimer*  
Charles S. Mortimer, R.L.S. 3308-5  
Date *9-17-88*

**PLAT APPROVAL**

This plat was approved by the Kenai Peninsula Borough Planning Commission at the meeting of *August 25, 1988*.  
KENAI PENINSULA BOROUGH  
by *Richard O. Taysch*  
Authorized Official HOMER RECORDING DISTRICT

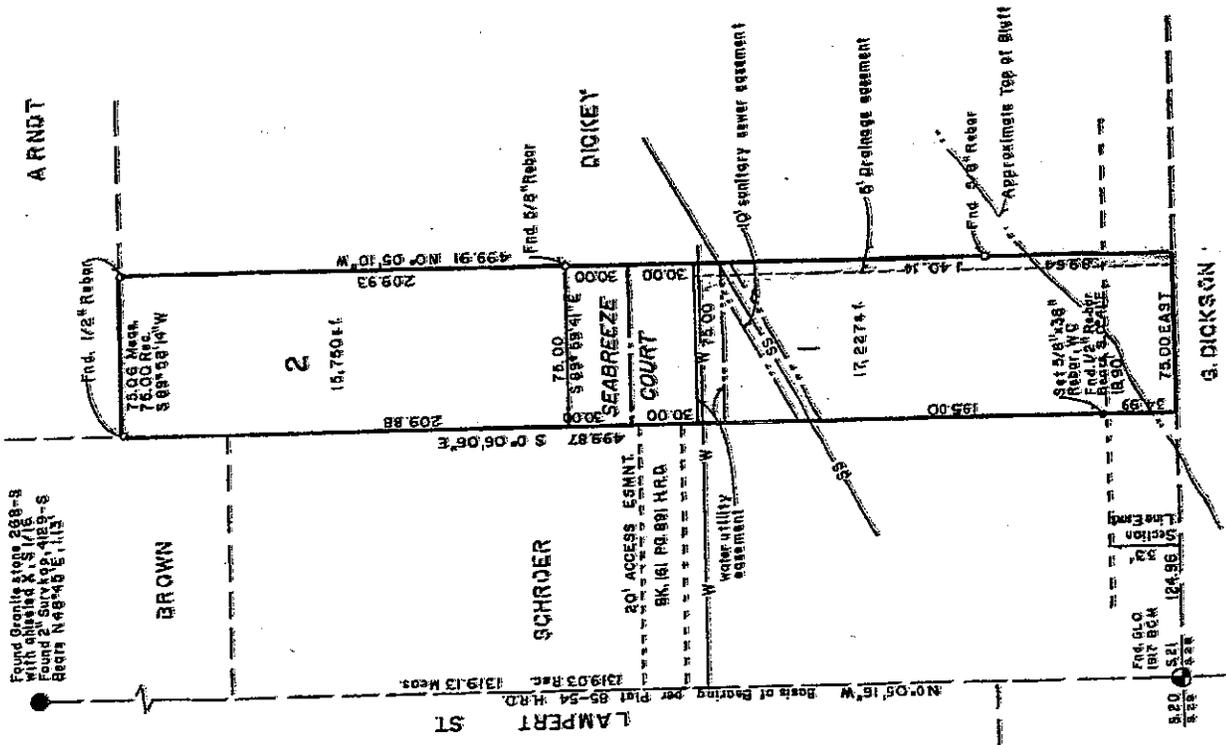
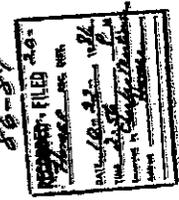
**TAMIAN SUB.**

LOCATED WITHIN THE SW 1/4 SW 1/4 SEC 21, T6S, R14W S.M. ALASKA AS RECORDED IN ASOK 122 PAGE 51 H.R.D. 8 WITHIN THE CITY OF HOMER CONTAINING 0.661 ACRES

PREPARED BY:  
JOHN & NANCY KOSCH  
P.O. BOX 1163  
HOMER, ALASKA 99603

DATE: NOV. 1988 | Sheet: 1 of 1 | K.P.B. FILE: 88-141

- NOTES:**
- 1) All underground utility easement exists along all rights of way.
  - 2) All 6" rebar of each corner unless otherwise noted.
  - 3) Soils on these lots may or may not be suitable for conventional on-site waste disposal systems. No person may construct, install, maintain, or operate a pressurized water system or a water-borne waste disposal system unless A.D.C.G. approval is obtained.





**CITY OF HOMER  
PUBLIC WORKS DEPARTMENT**

Carey S. Meyer, P.E. - Director  
3575 Heath Street  
Homer, Alaska 99603

Telephone: (907)235-3170  
Fax: (907)235-3145

EMAIL : [cmeyer@ci.homer.ak.us](mailto:cmeyer@ci.homer.ak.us)

January 31, 2013

Paul Voeller - Platting Officer  
Kenai Peninsula Borough  
144 North Binkley  
Soldotna, Alaska 99669

**RE: Partial Vacation of 5' Wide Drainage Easement  
Tamian Lot One - KPB Tax Parcel 17923026  
As Shown on Plat HM86-87**

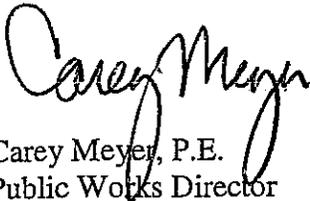
Mr. Voeller;

Please consider this as a letter of non-objection to the vacation of a portion of a 5' wide drainage easement along the east boundary of the above referenced lot (as shown on the attached drawing).

The drainage improvements that have been located in this easement in the past have been relocated to the east. The portion of the easement proposed to be vacated is no longer needed by the City.

Yours Very Truly;

**CITY OF HOMER**

  
Carey Meyer, P.E.  
Public Works Director



Reviewed 11/2008

## **Public Hearings: When and How to Hold Them**

**by Bob Meinig, MRSC Legal Consultant, August 1998**

Public bodies, such as city councils, boards of county commissioners, and planning commissions, are sometimes required by state law to hold public hearings. Since the issues addressed in these public hearings are frequently contentious, may involve due process rights of private parties, and generate litigation, it is important to know and follow proper hearing procedures. Because these procedures are not generally spelled out in the statutes that require hearings, there is no ready guide for public bodies to follow when conducting hearings. This Focus issue discusses what is legally required for public hearings, with an emphasis on quasi-judicial hearings, and summarizes the basic procedures that should be followed. While following proper hearing procedures may not eliminate litigation over the issues addressed in hearings, it will help prevent having the decisions made following public hearings overturned by the courts on procedural grounds. Following proper procedures also helps insure that public hearings are conducted fairly.

### **What is a public hearing and how it is different from a public meeting?**

A public meeting generally occurs whenever a quorum of a public body, and sometimes less than a quorum, meets together and deals in any way with the business of that body. Public meetings, whether regular or special meetings, are governed by the procedures of the Open Public Meetings Act in chapter 42.30 RCW. Although the public often is allowed to participate in regular or special meetings, public participation is not required by state law. Two basic legal requirements of a public meeting are that the public be notified and be allowed to attend.

Although a public hearing is also a public meeting, the main purpose of most public hearings is to obtain public testimony or comment. A public hearing may occur as part of a regular or special meeting, or it may be the sole purpose of a special meeting, with no other matters addressed. An "open record hearing" under 1995 regulatory reform legislation (chapter 36.70B RCW) is a public hearing, while a "closed record appeal" is a public meeting.

There are two types of public hearings, legislative and quasi-judicial, and it is important to understand the distinction between them. The purpose of a **legislative public hearing** is to obtain public input on legislative decisions on matters of policy. Legislative public hearings are required by state law when a city or county addresses such matters as comprehensive land use plans or the annual or biennial budget. Legislative public hearings are generally less formal than quasi-judicial public hearings. They do not involve the legal rights of specific, private parties in a contested setting, but rather affect a wider range of citizens or perhaps the entire jurisdiction. The wisdom of legislative decisions reached as a result of such hearings is not second-guessed by the courts; if challenged, they are reviewed only to determine if they are constitutional or violate state law. For example, a court will not review whether the basic budgetary decisions made by a city council or county commission were correctly made. On the other hand, comprehensive plans in Growth Management Act (GMA) counties may be reviewed by a growth management hearings board, and maybe later by a court, for consistency with the GMA.

### **The Importance of Public Process**

On certain controversial legislative issues, it can be important to conduct a thoughtful public process in advance of any public hearing. Hearings often occur late in the process and may leave citizens with the impression that local officials do not want to hear their ideas. Council or board chambers are formal and can be intimidating to citizens who are not accustomed to public speaking. The format of hearings often leaves little, if any, room for reasonable discussion, give or take, or response to prior testimony.

While beyond the scope of this Focus issue, here are some brief thoughts on public process. Involve citizens in the early stages of the policy development process. Small group processes work well for truly involving interested citizens. Make sure that there is plenty of opportunity for people to get answers to questions; this usually does not happen at a formal public hearing. Consider using a trained facilitator to facilitate discussion on really controversial issues. Good public process can be time consuming and expensive. However, these processes increase the potential to arrive at solutions that have strong support in the community.

**Quasi-judicial public hearings**, unlike legislative ones, involve the legal rights of specific parties, and the decisions made as a result of such hearings must be based upon and supported by the "record" developed at the hearing. Quasi-judicial hearings are subject to stricter procedural requirements than legislative hearings. Most quasi-judicial hearings held by local government bodies involve land use matters, including site specific rezones, preliminary plats, variances, and conditional uses.

### When are public hearings required?

A public hearing is required only when a specific statute requires one. Of course, a local government may hold a public hearing in other instances, such as when it desires public input on a sensitive or controversial policy issue. If you have any question as to whether a public hearing is required for a particular matter, we recommend that you consult with your city attorney or county prosecutor.

See also Actions for Which a Public Hearing Is Required (2004), excerpted from Local Ordinances for Washington Cities and Counties (2004), Report no.50, 05/2000.

### What procedural requirements apply to public hearings?

**Notice (legislative and quasi-judicial public hearings).** Some form of public notice is required for all public hearings. If the statute that requires a public hearing in a particular instance identifies the type of notice to be provided, those notice requirements must be followed. Such notice requirements may include publication in a newspaper, posting on and/or near real property that may be affected by the matter being addressed in the hearing, and mailing notice to specific parties. Since all public hearings are considered public meetings under the Open Public Meetings Act, the notice requirements of that law must be followed. A city or county may, of course, choose to provide any additional notice beyond whatever statutory notice requirements may exist.

If the statute requiring a public hearing does not specify the type of public notice to be provided, a good general rule to follow is to provide notice designed to alert those who may be affected by the proposed action, to inform them of its nature, and to allow them enough time to prepare for and attend the public hearing. The method of providing notice can include publication in the official newspaper, posting, mailed notice, and other means that a jurisdiction typically employs. The notice should be provided a number of days before the hearing, and a week to 10 days generally is sufficient. In some circumstances, notice of less than a week may be adequate. Ideally, each city and county should enact an ordinance that sets out the notice to be provided for public hearings, when notice provisions are not identified in the statute requiring the hearing.

**Appearance of fairness (quasi-judicial hearings).** The appearance of fairness doctrine applies to quasi-judicial hearings, not to legislative hearings. It is permissible, even expected, that members of a public body will have biases and will be lobbied by constituents when the matter is legislative. Different rules apply to quasi-judicial hearings, where a decision maker is not permitted to prejudge or have biases regarding a matter. Ex parte communications are prohibited in quasi-judicial proceedings. More information on the appearance of fairness doctrine can be found in the MRSC publication, *The Appearance of Fairness Doctrine in Washington State*, Report No. 32 (January 1995), which is also viewable on MRSC's Web site at <http://www.mrsc.org/textafd.htm>.

**Decision based on the record (quasi-judicial hearings).** A public body's decision on a quasi-

judicial matter must be based on and supported by the "record" in that matter. The "record" consists of all testimony or comment presented at the hearing and all documents or exhibits that have been submitted in connection with the matter being considered. All documents, including maps, drawings, and staff reports, should be admitted as numbered exhibits during the public hearing.

All quasi-judicial hearings should be tape recorded. If a quasi-judicial decision is appealed, the court will require a transcript of the hearing, which can be made from the tape. Tape recording of legislative hearings is not required.

## How should a public hearing be held?

**The setting.** Council or commission chambers where public meetings are usually held will often be the best place to hold a public hearing. If a large crowd that cannot be accommodated in those chambers is anticipated, a larger room should be found. Whatever room is used should be well lighted and ventilated. A microphone (on a podium, if available) should be provided to help insure that all testimony is heard and, if necessary, adequately recorded.

**Legislative hearings.** State statutes do not specify how public hearings, whether legislative or quasi-judicial, should be conducted. Because legislative hearings are generally informal, the main concern is to provide an opportunity for all attending members of the public to speak if they so desire. Time limits should be placed on individual comments if many people are intending to testify, and the public should be advised that comments must relate to the matter at hand. Order and decorum should be maintained at all times. The "ground rules" for the conduct of the hearing should be stated by the chairperson or presiding official at the beginning of the hearing.

**Quasi-judicial hearings.** Because due process protections apply to quasi-judicial matters, quasi-judicial hearings are more formal than legislative hearings. However, they should not be as formal as a court proceeding. Keep in mind that quasi-judicial decisions may be overturned by a court if proper procedures are not followed, even if the decision itself is a "correct" one. Thus, it is important to establish in advance written procedures to guide the conduct of quasi-judicial hearings, both for the sake of the public body holding the hearing and for the attending public. Copies of the procedural rules should be made available prior to the hearing to members of the public.

**Agenda.** The adopted procedures should include a standard agenda. MRSC has numerous examples of public hearing agendas that can be provided upon request. A typical agenda for quasi-judicial land use hearings might include the following:

- **Introduction.** The presiding officer introduces the matter being heard and announces the ground rules for the hearing. The presiding officer should also address the appearance of fairness doctrine by asking if any members of the hearing body have any interest, conflict, or bias that would preclude their participation and if any members have had ex parte communications regarding the matter at issue. See the discussion below concerning a "script" for the presiding officer to follow.
- **Staff report.** Planning staff describe the application being considered; identify and discuss and technical studies; describe possible alternatives; and, if appropriate, make a recommendation concerning the proposal. Members of the decision-making body should ask questions of staff at this point.
- **Applicant presentation.** The applicant, who has the burden of proof to show compliance with applicable laws, presents testimony and evidence to support the application. The applicant may have expert witnesses, who should speak at this point. The applicant should address any issues raised by staff-proposed conditions. Members of the decision-making body should ask questions.

**Should testimony be taken under oath?** Testimony at a quasi-judicial hearing should be taken under oath. However, it is not necessary that individual oaths be taken. A group oath given by the clerk or the presiding officer is sufficient and saves time.

- **Public Testimony.** Both proponents and opponents of the proposal are allowed to speak. Typically, proponents speak first, followed by opponents, pursuant to ground rules previously announced

(either at the beginning of the hearing or at the beginning of the public testimony stage). People testifying should give their names and addresses. Some jurisdictions also require speakers to provide this information in writing at the beginning of the hearing, and speakers are called according to the order on the sign-up sheet. Speakers should be given time limits and cautioned to avoid repetitious or irrelevant comments. They should not be allowed to make personal attacks.

Note that quasi-judicial bodies are not governed by the formal rules of evidence established for the courts. Comments and exhibits should be allowed as long as they have some relevance to the matter at hand. However, attempts to exercise too much control over seemingly irrelevant comments or exhibits could be perceived as censorship of legitimate public comment. If in doubt about an exhibit, admit it and decide about its reliability or relevance later.

**Should cross-examination be allowed?** As a general rule, cross-examination is not appropriate in a quasi-judicial hearing before a local government body. However, there may be instances where it should be allowed. Where the hearing assumes a distinctly adversarial posture, the proponents and opponents are represented by legal counsel, expert witnesses are called, or complex technical information is presented, cross-examination should be permitted if requested. Cross-examination can be conducted by one representative, presumably legal counsel, from each side of the matter. When requested by a party, cross-examination of planning staff who wrote and presented the staff report should also be permitted.

- *Rebuttal testimony.* Some jurisdictions allow the applicant to respond to any testimony presented. Some also allow rebuttal by staff and by opponents. Rebuttal preferably should not include new testimony or evidence.
- *Questions from the hearing body.* The hearing body may wish to direct questions to speakers either during testimony, or at the close of public testimony.
- *Close the hearing.* Sometimes it becomes necessary to continue a hearing to another day if there are more people wishing to testify than can be accommodated in one evening or afternoon. A hearing should not be allowed to last too late into the night since many of the public participants will find it necessary to leave before its conclusion. The record is closed at the conclusion of the hearing, and no other testimony or evidence should be considered by the hearing body. Deliberations and the vote on the application can take place immediately after the close of the public hearing or at some future meeting.

**Hearing Script (quasi-judicial hearings).** The presiding officer may find it helpful to have a written "script" to follow for opening and presiding over the hearing. A typical script might include the following:

- Call to order; open the hearing.
- Introduce self, hearing body, and staff.
- State the purpose of the hearing, including a brief description of the application and the action that the hearing body may legally take on the application.
- Address appearance of fairness issues; explain briefly what the appearance of fairness doctrine requires; ask the members of the hearing body:
  - *if they have any interest in the property or the application, or if they own property within a certain distance (e.g., 300 feet) of the property subject to the application;*
  - *if they stand to gain or lose any financial benefit as a result of the outcome of the hearing;*
  - *whether they can hear and consider the application in a fair and objective manner;*
  - *if they have engaged in any ex parte communications with either proponents or opponents of the application, and, if so, ask them to place on the record the substance of any such communications so that interested parties have the opportunity at the hearing to rebut the communications.*

Ask members of the audience if they wish to challenge on appearance of fairness grounds participation in the matter by any member of the hearing body, including the reasons for the request. (Any member challenged should be given the opportunity to either disqualify or refuse to disqualify him- or herself.)

Any member disqualified based on appearance of fairness grounds must leave the hearing room and must not participate further concerning the application.

- State the ground rules for the hearing and the manner in which it will proceed.
- Administer the oath to all those who may testify, as a group (or have clerk or other appropriate official administer the oath).
- Ask for staff to give a report on the application; insure that all documents, charts, maps, etc. are introduced as exhibits, with a number assigned to each exhibit.
- Ask for applicant to comment on the application, followed by the testimony of any technical experts in support of the application.
- Ask for any public testimony on the application (first by proponents and then by opponents) and state any rules regarding public testimony, such as:
  - *all speakers must speak into the microphone and give their names and addresses;*
  - *all comments should be addressed to the hearing body, should be relevant to the application, and should not be of a personal nature;*
  - *identify time limits, if any, on speaking;*
  - *avoid repetitive comments;*
  - *if there are a large number of speakers, including many who are part of groups or organizations, ask for a representative to speak on behalf of the organization or group;*
  - *unruly behavior, such as booing or hissing or harassing remarks, is prohibited.*
- Ask if everybody understands these rules.
- Ask for closing or rebuttal comments from the applicant, and, if desired, from the public.
- Ask for additional staff comments.
- Ask for questions from members of the hearing body (these questions may also be authorized to occur as testimony is presented).
- Close the hearing and state what steps are to occur next regarding the application.

MRSC has numerous examples of such scripts that will be provided upon request.

- **Deliberations.** Deliberations on a quasi-judicial matter can occur following the public hearing or at some other time. If the matter is a complex one, it is best to postpone deliberations until members of the hearing body have had time to review the exhibits and perhaps listen again to some or all of the recorded testimony. Be careful not to delay the deliberations and eventual decision beyond any applicable statutory timelines.

Although it is recommended that the deliberations occur in open session, the Open Public Meetings Act exempts from its coverage that part of a meeting which relates to quasi-judicial matters between named parties. If the deliberations are held in an open meeting, comments from the audience should not be permitted. Deliberations by the hearing body are not considered part of the record for purposes of judicial review of the decision.

**Vote/decision.** The vote on the application must occur in open session. After the vote is taken, the hearing body should direct the staff or legal counsel to prepare, based upon instructions from the hearing body, findings of fact and conclusions of law in support of the decision. After preparation of the findings and conclusions, the hearing body must vote to approve them or to send them back for modification.

## Tips For A Successful Public Hearing

The following should be kept in mind to help insure that a quasi-judicial public hearing runs smoothly, is error-free, and is fair:

- Be prepared! Don't come to the hearing cold. Review the application and supporting documentation, including SEPA documents, and any staff-prepared documents and recommendations prior to the hearing.
- Prior to the hearing, make sure that timely and proper notice was provided.
- Have clear ground rules for conducting the hearing, and make printed copies available to the

public.

- Make sure that all appearance of fairness issues are addressed.
- Be sure that the recording equipment is working properly and that there is an ample supply of blank tapes. Stop any testimony during tape changes.
- Keep order in the hearing, limit testimony where necessary, but maintain an impartial attitude.
- Make sure all witnesses identify themselves on the record and that all exhibits are properly identified for the record. Testimony that references an exhibit should identify the exhibit number.
- Make sure that every person or group (via a spokesperson) that wishes to speak has that opportunity.
- If the hearing is going on too long, adjourn it and continue it to another day.
- Ask questions, ask questions . . . of staff, legal counsel, the applicant, and people who testify.
- Make sure your decision is clear and understandable, is based on evidence included in the record, and is consistent with the legal standards that apply to the application.

## Resources

The following resources provide more detailed information concerning public hearings and the legal considerations that apply:

- You Be the Judge - A Handbook for the Land Use Decision Maker, by Jim Driscoll and Ted Hunter, prepared for the Association of Washington Cities (1993).
- The Appearance of Fairness Doctrine, MRSC Report No. 32, revised April 2011
- A Short Course on Local Planning, Planning Association of Washington and the Washington Department of Community, Trade and Economic Development, version 3.2 (March 1997).