

Session 21-31 a Special Meeting of the Homer City Council was called to order on December 13, 2021 by Mayor Ken Castner at 4:00 p.m. at the City Hall Cowles Council Chambers located at 491 E. Pioneer Avenue, Homer, Alaska, and opened with the Pledge of Allegiance.

**PRESENT:** COUNCILMEMBERS ADERHOLD, DAVIS, ERICKSON, HANSEN-CAVASOS, LORD

**ABSENT:** COUNCILMEMBER VENUTI (excused)

**STAFF:** CITY CLERK JACOBSEN  
ATTORNEY BRANDT-ERICHSEN

**AGENDA APPROVAL** (Only those matters on the noticed agenda may be considered, pursuant to City Council's Operating Manual, pg. 6)

Mayor Castner announced the laydown information requested by Appellant Frank Griswold, including Preliminary Matters, laydown materials from the November 8<sup>th</sup> special meeting, also Appellants motion for sanctions & default judgement dated April 4, 2021, Appellants Motion to Strike New Evidence dated July 26, 2021, and August 4, 2021 Planning Commission Minutes.

ADERHOLD/LORD MOVED TO APPROVE THE AGENDA.

There was no discussion.

VOTE: NON OBJECTION: UNANIMOUS CONSENT

Motion carried.

### **PENDING BUSINESS**

Mayor Castner announced the Board of Adjustment (BOA) is meeting to take up Appellant Frank Griswold's Motion for Leave to Supplement Points on Appeal to address the Planning Commissions Dismissal of Appeal by Frank Griswold and the Recommendation by the Planning Commission to Dismiss the Appeal of Conditional Use Permit 20-15 for the Reconstruction of a Restaurant Building at 106 W. Bunnell Avenue. He advised that each party may provide oral argument for 15 minutes total on the topics. The appellant may reserve time to rebut following the appellee's oral arguments and opened the floor to Mr. Griswold.

Mr. Griswold requested the Board address his preliminary matters before he begins his argument.

It was noted that there are two items on the agenda for consideration and question was raised whether it's appropriate to take up additional matters. Advice was requested from Attorney Brandt-Erichsen who summarized the matters. Mayor Castner interjected with questions for Mr. Griswold. Mayor Castner asked him to elaborate on why the Board wouldn't have the ability to have a Council of its choosing, in reference to preliminary matter 1.

Mr. Griswold responded his concern relates to the Mayor's comment regarding the BOA's representation and his reference to a Chinese curtain on August 2<sup>nd</sup>. If the attorney for the BOA is in a separate law firm than the City's attorney, JDO, and if they aren't sharing files or in any way affiliated with JDO, then there wouldn't be any need for that. Mr. Griswold requested clarification as to under what circumstances Attorney Brandt-Erichsen was hired for this matter. There was discussion confirming Attorney Brandt-Erichsen is not affiliated with JDO, and was hired by the City Manager to serve as counsel to the BOA.

Mayor Castner requested Attorney Brandt-Erichsen comment regarding the second preliminary matter of the BOA's failure to address Mr. Griswold's motion for sanctions and default judgement. Attorney Brandt-Erichsen responded regarding the April 8<sup>th</sup> motion, he is unsure what relief is being requested regarding this matter or how it fits in. The motion came in after the BOA issued their decision in March and he's not certain what the BOA role would be in addressing the request after the matter was remanded back to the Planning Commission.

Mr. Griswold explained the role he intended was for the BOA to provide guidance to the Commission that they were going down a rabbit hole and considering this new evidence was trickling in by ex parte communication between Mr. Abboud and the applicant. If there's new evidence or a change in circumstance that has to come before the BOA, then the BOA has the option of remanding it back to the commission for taking evidence. The only thing the Commission was authorized to address was ownership and conflicts of interest. The new evidence or change of circumstance was inappropriate for them to address. They were supposed to respond to the remand, and they delayed it until Mr. Abboud got the applicant to withdraw it. It should have come to the BOA for direction regarding the new evidence.

Mayor Castner commented unless and if the new information is the withdrawal of the application, which is alluded to in the third preliminary matter, than it's a legal question whether it's an interrupting event that stops everything. He thinks what the BOA decided is that when the application was withdrawn, there was no harm, other than the process harm that's been indicated.

Mr. Griswold raised the issue again regarding his motion for sanctions and default judgement in that it was never addressed by the BOA.

Mayor Castner asked for a motion to place Mr. Griswold's motion for sanctions and default judgement in abeyance until you've (the BOA) reached your final determination.

ADERHOLD/LORD SO MOVED

There was no discussion.

At request of the Mayor, Attorney Brandt-Erichsen confirmed this action should be fine procedurally.

VOTE: NON OBJECTION: UNANIMOUS CONSENT.

Motion carried.

Mayor Castner acknowledged the third preliminary matter regarding the mootness issue and suggested it's something that isn't properly before the BOA now because it hasn't been presented in a procedurally correct manner.

Mr. Griswold explained that in the motion it indicates the BOA has already made up their mind regarding mootness, so it's no longer an impartial adjudicatory body. Under city rules, if the matter can't be postponed to a time when there is an impartial board, then all would be allowed to participate, and there's a provision in the code that an alternative option is to use a hearing officer. A hearing officer wasn't his initial choice to hear this appeal, but in light of the fact that the BOA has indicated in writing they believe it is a moot point due the lack of an active permit application, that's very difficult to overcome. This body is supposed to be impartial and not render a decision before hearing the evidence.

Mayor Castner asked Mr. Griswold if it would be preferred for the BOA to adjourn and assign this matter to a hearing officer. Mr. Griswold responded he didn't think there is another proper option. He questioned at what point does the hearing officer take over, it's very muddy when one body starts something and another takes over.

Mayor Castner asked for confirmation. Mr. Griswold said he chose the BOA and up and until the time they revealed this strong bias on the issue now before them, that's not acceptable to him.

Mayor Castner asked for a motion to adjourn the BOA and turn the matter over to a hearing officer.

ADERHOLD/LORD MOVED TO ADJOURN THE BOA HEARING AND REMAND ALL THE ACTIONS TO A HEARING OFFICER UNDER HOMER CITY CODE.

There was brief discussion with Attorney Brandt-Erichsen regarding the wording of the action.

ADERHOLD/LORD MOVED TO AMEND THE MOTION TO REFER THE ISSUES BEFORE THE BOARD OF ADJUSTMENT TO A HEARING OFFICER FOR A DECISION AND THAT THIS IS MADE AT THE REQUEST AND CONSENT OF MR. GRISWOLD.

Mayor Castner opened the floor to Attorney Holmquist to comment.

Attorney Holmquist expressed the City's position regarding Mr. Griswold's request is that there really is no reason to refer it to a hearing officer. What Mr. Griswold claims to be a form of bias appears to the City to be a factual finding that was determined at a prior meeting by the BOA. It's been 7 or 8 months since the applicant withdrew her application and the City would prefer to have this decided tonight by the BOA. But if the BOA prefers to refer it to a hearing officer the City won't object.

Mayor Castner responded he felt Mr. Griswold was correct regarding initial concerns by the BOA regarding ownership and representation of ownership, and that never got sifted out along the way. He thinks allowing the BOA to move this along to someone who can look at it with fresh eyes is probably in the best interest of the City.

Boardmember Aderhold noted for the record she doesn't believe there is any bias on her part. Whether the BOA continues work on this or it goes to a hearing officer, it won't be finished tonight because there isn't time.

Boardmember Lord echoed the feeling of impartiality she feels she's continued to bring to the table. In terms of the mootness of the application, they're working with independent legal counsel and that's the best she has to go off of. In terms of concepts of a factual finding, there is no permit on the table, it was withdrawn. She believes motives behind whomever to that action are outside their jurisdiction. If she's getting legal advice that there is no permit to be batting around, she has a difficult time figuring out the BOA is supposed to adjudicate something that doesn't exist. She's not interested in impugning people's motives as to why or why not the permit is on the ground. She's comfortable with a hearing officer, however she does think, as Mr. Holmquist noted, it's a factual finding.

Mr. Griswold commented the BOA shouldn't even know that there is no longer a permit. None of that evidence was legitimately presented.

VOTE (motion to amend): YES: ERICKSON, ADERHOLD, LORD, DAVIS, HANSEN-CAVASOS

Motion carried.

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

VOTE (main motion as amended): YES: ADERHOLD, HANSEN-CAVASOS, LORD, ERICKSON, DAVIS

Motion carried.

- a. Consideration of Motion for Leave to Supplement Points on Appeal to Address Planning Commission's Dismissal of Appeal by Frank Griswold, Appellant

Memorandum 21-201 from City Clerk as backup

- b. Recommendation by the Planning Commission to Dismiss the Appeal of Conditional Use Permit (CUP) 20-15 for the Reconstruction of a Restaurant Building at 106 W. Bunnell Avenue, Homer, Alaska based on the Applicant's Withdrawal of their CUP Application.

Memorandum 21-202 from City Clerk as backup

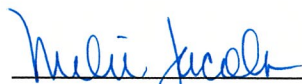
## NEW BUSINESS

### COMMENTS OF THE AUDIENCE

Mr. Griswold commented he'd like to know the status of the Planning Commission's August 4<sup>th</sup> decision and what is the extent of their future involvement. By the BOA going to a hearing officer, does that also mean they are no longer involved and it would be solely a hearing officer decision that would be appealed to the superior court.

### ADJOURN

There being no further business to come before the Council as Board of Adjustment Mayor Castner adjourned the meeting at 4:37 P.M. The next Regular Meeting is Monday, January 10, 2022 at 6:00 p.m., Committee of the Whole at 5:00 p.m. All meetings scheduled to be held in the City Hall Cowles Council Chambers located at 491 E. Pioneer Avenue, Homer, Alaska.



Melissa Jacobsen, MMC, City Clerk

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

January 10, 2022