

Session 21-23, a Regular Meeting of the Planning Commission was called to order by Chair Scott Smith at 6:31 p.m. on October 20, 2021 at Cowles Council Chambers in City Hall located at 491 E. Pioneer Avenue, Homer, Alaska, and via Zoom Webinar.

PRESENT: COMMISSIONERS BARNWELL, BENTZ, CONLEY, CHIAPPONE, HIGHLAND, SMITH, VENUTI

STAFF: CITY PLANNER ABBOUD
CITY CLERK JACOBSEN

APPROVAL OF THE AGENDA

BENTZ/VENUTI MOVED TO APPROVE THE AGENDA AS PRESENTED.

There was no discussion.

Chair Smith confirmed that the Commissioners received the supplemental packet and were prepared to act on Staff Report 21-62. The Commissioners concurred they received the materials and were prepared.

VOTE: NON OBJECTION: UNANIMOUS CONSENT

Motion carried.

PUBLIC COMMENTS ON ITEMS ALREADY ON THE AGENDA

RECONSIDERATION

CONSENT AGENDA

- A. Planning Commission Regular Meeting Minutes of September 15, 2021
- B. Decision and Findings for Conditional Use Permit 21-07 at 1554 Homer Spit Road
- C. Homer Lake Street Rehabilitation Right of Way Acquisition Preliminary Plat Time Extension Request

HIGHLAND/BENTZ MOVED TO APPROVE THE CONSENT AGENDA AS PRESENTED.

There was no discussion.

VOTE: NON OBJECTION: UNANIMOUS CONSENT.

Motion carried.

PRESENTATIONS / VISITORS

REPORTS

A. Staff Report 21-61, City Planner's Report

City Planner Abboud reviewed his staff report that was included in the packet. He answered questions from the Commission regarding items in his report. He addressed the Safeway parking lot progress and that they're fulfilling the requirements of code with the expansion of their parking lot. They discussed the recent State determination to allow ATV's on roadways and City Clerk Jacobsen advised that Council had recently adopted code prohibiting ATV's on city streets. They also touched on Resolution 21-065 regarding non-motorized amenities on Kachemak Drive and the challenges for bicyclist and pedestrians, and the work of the Homeless Coalition.

Commissioner Bentz noted her surprise that strategic planning and the comprehensive plan on the horizon, it seems staff has a lot of different irons in the fire as far as plan development that are coalescing and could help them look at a longer term vision for the community and land. She referenced hazard planning, storm water and drainage planning, and transportation planning and shared that as a Commission they can think of the components of the plans together and that will help with the strategic planning process. Near term it will be interesting to see what policy recommendations the hazard planning team comes up with, that will help with long term planning and perhaps bring some specific code changes like setbacks, definitions, coastal bluff definitions, and so forth.

Chair Smith suggested having the Borough Transportation Planning Department present at a future worksession, similar to Platting Manager Huff's presentation tonight. City Planner Abboud said he'd try to work that in and shared that the strategic planning he referenced is more of developing a work plan for the office as they continue to have more demand for services than hours so they need to prioritize things. He's interested in having transportation professionals help in considering what the future is likely to bring, and not get caught in the solution of today.

PUBLIC HEARINGS

A. Staff Report 21-64, Remand from the Board of Adjustment of Conditional Use Permit 20-15 at 106 W. Bunnell Ave.

Commissioner Venuti was excused from participating due to ruling of his conflict of interest regarding this matter, and was moved to a waiting room.

Commissioner Bentz reported a potential ex-parte communication in that she received a phone message from a concerned member of the public. Commissioner Bentz pointed out that the member of the public put her comments in writing and they're provided the in supplemental packet, so she doesn't think she has any other information than the other Commissioners have, but wanted to bring this before the Commission to determine if she had bias in any way based on the phone message.

Chair Smith asked if Commissioner Bentz engaged in conversation with the member of the public. Commissioner Bentz responded she did not, it was a message left on her phone and once she realized what it was about she recognized it would be ex parte communication if she were to call the person back. The written comments are part of the record now in the supplemental packet and that's the substance of the comments in the message.

HIGHLAND/BARNWELL MOVED THAT COMMISSIONER BENTZ HAS EX-PARTE COMMUNICATION.

Commissioner Highland shared that due to the fact it was a message on a phone with no return phone call there is no ex-parte communication.

VOTE: NO: HIGHLAND, BARNWELL, CHIAPONNE, CONLEY, SMITH

Motion failed.

Chair Smith summarized the decision and order remanding CUP 20-15 to the Planning Commission, and then opened the public hearing.

Frank Griswold, city resident and appellant in the remanded matter, commented regarding Commissioner Bentz's disclosure of ex-parte and that it wasn't disclosed appropriately in accordance with Homer City Code. He commented that complex dispositive motions are under consideration tonight and should therefore be addressed in a special public hearing and not during a regular commission meeting where public comment is limited to three minutes. He noted on July 29, 2021 Attorney Holmquist agreed with him that the Commission should provide notice to neighboring property owners and set a special meeting to solely address his motion to dismiss the appeal, but the Commission did not do so. Instead they voted to dismiss the appeal, in hopes it would go to a hearing officer. He referenced notice requirements outlined in City Code and that proper notice was not given, and explained the two toll free numbers provided for the Zoom meeting were working but the meeting id and passcode did not work. Finally the City Planner is a party to the appeal and should not have written the staff report encouraging dismissal of the appeal and should not have engaged in ex-parte communication with Commission related to the applicant's temporary withdrawal of the CUP application. He cited Kleven v. Yukon Koyukuk School District related to a moot claim, and Knox v. Service Employee International Union Local 1000 when an action is not moot and questioned what precedent the Commission wants to set. He also noted matters that are not allowable in Homer City Code related to appeals, and an appellate procedure rule of the Alaska Courts regarding filing a motion for reconsideration. He encouraged the Commission comply with the Boards instructions and if the Board sees fit to dismiss the appeal, so be it.

There were no further comments and the hearing was closed.

The Commission discussed how best to proceed with this matter. They acknowledged the points raised in the remand and the points raised by Mr. Griswold. One matter relates to tax code which is not their specialty, and they'd need to be advised on how to address that.

BENTZ/HIGHLAND MOVED THAT THE COMMISSION POSTPONE DELIBERATION WITH STAFF SUPPORT AT A TIME TO BE DETERMINED.

There was no discussion.

VOTE: NON OBJECTION: UNANIMOUS CONSENT

Motion carried.

Commissioner Venuti was admitted back to the meeting.

PLAT CONSIDERATION

PENDING BUSINESS

A. Staff Report 21-62, Parking Requirements for One Bedroom Dwelling Units

City Planner Abboud reviewed his staff report that was included in the packet. There were no questions from the Commission.

BENTZ/VENUTI MOVED TO RECOMMEND ADOPTION OF THE DRAFT ORDINANCE AMENDING HOMER CITY CODE 21.55.090A1 AND FORWARD TO PUBLIC HEARING.

There was no discussion.

VOTE: NON OBJECTION: UNANIMOUS CONSENT.

Motion carried.

NEW BUSINESS

A. Staff Report 21-63, Motion to Dismiss and Motion for Leave to Supplement Points on Appeal of CUP 20-15 Submitted by Frank Griswold

There was discussion regarding process and an attempt to determine the meaning of Leave to Supplement Points of appeal.

HIGHLAND/BENTZ MOVED THAT THE PLANNING COMMISSION DENIES TAKING UP THE MOTION FOR RECONSIDERATION AND THE MOTION FOR LEAVE TO SUPPLEMENT POINTS ON APPEAL OF CUP 20-15 SUBMITTED BY APPELLANT GRISWOLD AND THAT THE PLANNING COMMISSION RECOMMENDS THE BOARD OF ADJUSTMENT DISMISS THE APPEAL OF CUP 20-15 DUE TO THE FACT THAT THE APPLICANT HAS WITHDRAWN THEIR CONDITIONAL USE PERMIT APPLICATION AND THEREFORE THE PERMIT NO LONGER EXISTS.

Commissioner Highland referenced the information on page 79 of the packet which notes that HCC 21.93 does not authorize a party to supplement or modify points on appeal, and that the motion is moot because the appeal was dismissed. She questioned if the Commission isn't supposed to act on this, then why was it in their packet. She personally agrees with the

conclusion noted on page 80 of the packet, and feels the Board of Adjustment should dismiss the appeal.

Commission Chiappone asked for clarification on the motion from the Board of Adjustment. City Clerk Jacobsen explained if she understood the discussion at the last Board of Adjustment meeting, one of the arguments was that the Planning Commission didn't have the authority to dismiss the appeal and that the Board of Adjustment would be the body that would make that decision. She explained when the Board of Adjustment came out of their executive session on September 20th, they adopted the motion that while the Board of Adjustment believes it is a moot point due to the lack of an active permit application, the Board of Adjustment believes that the appeal procedurally should be before the Planning Commission for Appellant Frank Griswold's motion for reconsideration and motion for leave to supplement points on appeal of CUP 20-15 and the Board directs the Clerk to refer that motion back to the Planning Commission for consideration.

Commissioner Bentz commented the motion on the floor as it stands would be in alignment with the Board of Adjustment vote and also in alignment with the City's proposed order to deny taking up these motions. She's in agreement with the motion on the floor.

Commissioner Highland referenced packet page 33 under staff recommendations and noted its reference to HCC 21.93 does not contain a procedure for reconsideration of a final decision in a zoning appeal, or for allowing an appellant to supplement their points on appeal. HCC 21.93.110 states that zoning appeal decisions are final decisions. Since the code doesn't have a procedure she feels that's a strong argument.

VOTE: YES: BARNWELL, SMITH, CONLEY, CHIAPONNE, BENTZ, HIGHLAND

Motion carried.

INFORMATIONAL MATERIALS

- A. City Manager's Report for September 27 & October 11, 2021 City Council Meetings
- B. Kenai Peninsula Borough Notice of Decisions
- C. Planning Commission Calendar

COMMENTS OF THE AUDIENCE

COMMENTS OF THE CITY STAFF

City Clerk Jacobsen said it was nice to be with you all tonight, thank you for a good meeting.

COMMENTS OF THE COMMISSION

Commissioner Highland said it was an interesting meeting.

Commissioner Chiappone thanked the group for their help tonight.

Commissioner Conley apologized for his technical difficulties and thanked everyone for a good meeting.

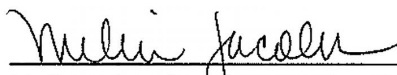
Commissioner Venuti said he enjoyed the worksession tonight. He's glad Ms. Keiser was able to join and get her input. He thanked staff for doing a great job.

Chair Smith enjoyed the meeting, he thought it would be a little more involved than it was. He's looking forward to their future worksessions. He thinks what the City Planner has mapped out is outstanding.

There were no other comments.

ADJOURN

There being no further business before the Commission, the meeting was adjourned at 8:18 p.m. The next Regular Meeting is Wednesday, November 3, 2021 at 6:30 p.m. A worksession is scheduled for 5:30 p.m. All meetings scheduled to be held in the City Hall Cowles Council Chambers located at 491 E. Pioneer Avenue, Homer, Alaska and via Zoom webinar.



Melissa Jacobsen, MMC, City Clerk

Approved: November 3, 2021