

Session 21-01, a Special Meeting of the Planning Commission was called to order by Acting Chair Roberta Highland at 5:41 p.m. on January 6, 2021 at Cowles Council Chambers in City Hall located at 491 E. Pioneer Avenue, Homer, Alaska via Zoom Webinar. One seat vacant due to resignation.

PRESENT: COMMISSIONERS HIGHLAND, PETSKA-RUBALCAVA, BARNWELL, VENUTI AND BENTZ

ABSENT: COMMISSIONER SMITH (EXCUSED)

STAFF: CITY PLANNER ABBOUD
CITY CLERK JACOBSEN
DEPUTY CITY CLERK KRAUSE

Vice Chair Petska-Rubalcava encountered technical difficulties in connecting and audio. Commissioner Highland opened the meeting and requested the Clerk to perform roll call.

APPROVAL OF THE AGENDA

Acting Chair Highland requested a motion to approve the agenda.

VENUTI/BARNWELL – MOVED TO APPROVE THE AGENDA.

There was no discussion.

VOTE. NON-OBJECTION. UNANIMOUS CONSENT.

Motion carried.

NEW BUSINESS

- A. Appeal Hearing on Appeal of the City Planning Staff Issuance of Zoning Permit 1020-782 issued to Scott and Stacy Lowry for their property located at 541 Bonanza Avenue

Acting Chair Highland introduced the item and stated for the record that a motion to continue the appeal hearing has been filed by Jermain, Dunnagan & Owens (JDO), attorneys for the City of Homer, for the purpose of addressing unresolved procedural issues. The documents regarding this motion were provided in a supplemental packet, including the motion to continue from JDO, opposition to the motion submitted by Mr. Griswold, and response to the opposition provided by JDO, along with a proposed order granting continuance.

Acting Chair Highland requested a motion to continue the hearing.

Vice Chair Petska-Rubalcava joined the meeting in progress via telephone at 5:45 p.m.

BENTZ/VENUTI MOVED TO APPROVE THE MOTION TO CONTINUE THE HEARING AS SUBMITTED BY JDO FOR THE PURPOSE OF CLARIFICATION AND AGREEMENT BY PARTIES ON PROCEDURAL ISSUES FOR THE APPEAL HEARING.

Acting Chair Highland opened the floor for discussion, hearing no questions forthcoming from the Commissioners stated she would like additional information on the request for continuation.

Max Holmquist, attorney for the City, explained that the continuation was requested by the City to allow additional time, stating a preference for 14 days delay in lieu of the 10 days mentioned in the motion, due to the availability of all parties, for establishing the procedural process since the City Code is vague on the procedure for appeal hearings before the Commission.

Attorney Holmquist noted the items that generally occur and what is stated in city code. He further stated that without advance notice of the procedure that is going to apply in this hearing the City would be prejudiced in presenting their case.

Attorney Holmquist noted that Mr. Griswold expressed concerns in his briefing on the city's motion and further stated that it is the City's position that it is in the best interests of everyone involved to continue the hearing date to reach a resolution on the procedure with Mr. Griswold.

Attorney Holmquist indicated that Mr. Griswold had presented objections on most of the proposed stipulated hearing procedures offered and believes that with some additional time they will be able to reach an agreement. He also noted the 40 page laydown submitted by Mr. Griswold stating the postponement would allow for review of the material.

Mr. Griswold inquired if he would be allowed to comment.

City Clerk Jacobsen state that it would be appropriate to allow Mr. Griswold to comment briefly at this time.

There was no objection from the Commission.

Mr. Griswold indicated that he had used the raised the hand icon but was not recognized. He continued by stating that he would like to address the issues that were just raised but that he had preliminary matters he wanted to discuss first on the potential disqualification of a commissioner.

Acting Chair Highland interrupted Mr. Griswold and requested clarification on a procedural issue from City Clerk Jacobsen regarding the motion currently on the floor that has nothing to do with disqualification.

City Clerk Jacobsen responded that they are required to dispense with the motion on the floor to determine if there is going to be a continuance. If it is determined that the hearing will be continued Mr. Griswold will have an opportunity to present preliminary issues with participation

of commissioners with bias or conflict of interest. She reiterated that currently the Commission was addressing the motion to continue the hearing.

Mr. Griswold inquired if he may respond to City Clerk Jacobsen.

Acting Chair Highland queried City Clerk Jacobsen if it was appropriate that Mr. Griswold speak only to the motion on the floor.

City Clerk Jacobsen responded that was correct and Mr. Holmquist can correct her if she was wrong, but that was the procedure that they were following at this time to determine whether or not the hearing was going to be continued.

Acting Chair Highland commented that she wanted to sure they were doing this correctly and requested input from Attorney Holmquist.

Attorney Holmquist responded that he appreciated the opportunity but his representation is limited to the City and he did not believe that he could advise the Commission as to this procedure. He noted the city's position and that the commission was allowing Mr. Griswold to provide comment on that issue.

Acting Chair Highland requested Mr. Griswold to limit his comments to the motion on the floor regarding the continuance at this time.

Mr. Griswold stated his objection on the grounds that if a Commissioner has a disqualifying bias then they should not participate in this matter or a future matter. He continued stating he believed that it would be an error not to allow him to raise his issues on the disqualifications and further stated that if a Commissioner participates in one motion prejudices him on eliminating them from future motions. He believed that it should have been brought up earlier. But will proceed if that was the ruling.

Acting Chair Highland requested clarification from City Clerk Jacobsen.

City Clerk Jacobsen responded that typically a motion for continuance is dealt with prior to reaching this point. She did not believe that a Commissioner voting to continue an appeal necessarily obligates that Commissioner to participate when the actual matter comes before the Commission. Biases, conflicts of interest as well as ex parte communications can be addressed. She further explained that if they address bias and conflict now they will not have a quorum to continue this meeting, however that is not a determining factor to continue in this manner.

Acting Chair Highland requested clarification from Mr. Griswold if he was intending to object to the continuance.

Mr. Griswold stated that he intended to address that matter after the preliminary matters were addressed or he could address it at this time.

City Clerk Jacobsen advised Acting Chair Highland to allow Mr. Griswold five minutes to state his preliminary matters and then continue from there.

Mr. Griswold stated that he did not believe that Commissioner Rubalcava signed a proper Oath of Office and did not believe she was qualified to sit as a Commissioner due to signing her Oath on December 30, 2020 which states that she signed it before July 15, 2020 which is impossible, in his mind this constitutes perjury. If she does not have a valid oath then she will not give him equal justice so in his opinion she is not qualified to sit on the Commission.

Mr. Griswold stated he would like a ruling on that issue before raising the second since depending on that ruling they would still have a quorum.

City Clerk Jacobsen requested Mr. Griswold to continue since he still had time remaining in the five minutes allotted.

Mr. Griswold stated his second objection is the participation of Commissioner Venuti due to his statement during the September 2, 2020 Public Hearing portion of the meeting on CUP 20-14 Commissioner Venuti exhibited animosity towards him by characterizing him as a “pain in the neck for long time, which could be considered in a negative manner due to the past litigation. He further commented that Commissioner Venuti said “he seems to be setting policy” and now the City Attorney is asking him to assist the Commission in setting policy, namely this appeal. Due to Commissioner Venuti animosity towards him he does not believe he can be an impartial adjudicator.

Mr. Griswold stated that if the two Commissioners are found disqualified he has been told that a new Commissioner is to be appointed at the Council meeting on January 11, 2021, meaning that this hearing could be continued. He further stated that there is a rule that if there are not enough Commissioners left, then all participate, unless the meeting could be postponed to another time when there could be a quorum. Depending on many Commissioners the Commission disqualifies this meeting could continue at a later date with the new commissioner and the one who is absent.

Acting Chair Highland requested confirmation from City Clerk Jacobsen if a newly appointed Commissioner would be able to participate in the action if continued.

City Clerk Jacobsen confirmed that the new Commissioner would be provided all materials relevant to the appeal to fully participate.

Acting Chair Highland asked for Mr. Griswold comments on the motion on the floor.

Mr. Griswold noted that his time has expired and wished the Commission to proceed.

Attorney Holmquist stated that he was willing to state the City's position to Mr. Griswold's preliminary objections.

Attorney Holmquist stated as to the first issue on the Oath of Office from Commissioner Rubalcava there is no dispute that Commissioner Rubalcava has taken the oath and there is no reason she could not proceed to hear this issue and Mr. Griswold has not presented any legal authority from city code or otherwise that would suggest that the Commissioner Rubalcava could not participate, even assuming the facts are as he suggests they are; as to the second issue of the bias of Commissioner Venuti, Mr. Griswold representations about what was said but has provided no evidence of such and has not sufficiently shown that there is bias by Commissioner Venuti.

City Clerk Jacobsen directed Acting Chair Highland to address the matter on the floor before the commission. Upon further comment she confirmed Mr. Griswold still had the opportunity to respond to Attorney Holmquist's remarks regarding the request for a continuance.

Mr. Griswold stated the following:

- In the reply the City Attorney altered their stated purpose of the proposed continuance as they initially stated the continuance was to allow them to confer with him.
 - o He did not believe there is any merit in doing that
- The Attorney switched gears by stating they could each file a proposed procedure and the Commission could decide and issue a ruling about the hearing procedures in advance of the hearing
- The applicants should not be left out of any of these discussions and in his documents he has made a point to include them but the city attorneys have not and that to him is wrong
- The City Attorney are representing the city and the Commission has no representation, they represent the Planning Department and the City Administration.
- The City Attorneys cannot be expected to recommend hearing procedures that are unfavorable to their clients, the Board of Adjustment are required to legal Counsel I believe the Commission deserves the same.
- He is not an attorney and should not be asked to provide the Commission with legal advice. I am promoting my side of the issue. He should not be asked to perform legal research on procedures and provide recommendations with no recovery for his time.
- Any hearing procedures he recommends would carry no weight
- Any continuance granted should be granted to allow the Commission to hire an attorney

Commissioner Bentz acknowledged what has been brought forward and as outlined in city code the Commission does have guidance for this appeal. Further having receiving the 40 pages as a laydown, she would recommend voting to continue the hearing since she has not been able to go through the materials provided in a deliberate manner.

Commissioner Bentz believes that the Commission should have more time to understand, given the issues that they are having on procedure on this motion to continue. It is obvious that they do not have clear cut guidelines or directions for the Commission, Appellant or the public to be

engaging in this discussion and that the Commission should have clarity before moving forward on the appeal process.

City Clerk Jacobsen noted the time at the request for additional comments on the motion from the parties present or the Commission.

Acting Chair Highland requested the Clerk to read the motion.

Deputy City Clerk Krause read the motion on the floor:

Moved by Commissioner Bentz Seconded by Commissioner Venuti

MOVE TO APPROVE THE MOTION TO CONTINUE THE HEARING AS SUBMITTED BY JDO FOR THE PURPOSE OF CLARIFICATION AND AGREEMENT BY PARTIES ON PROCEDURAL ISSUES FOR THE APPEAL HEARING.

Acting Chair Highland requested the Clerk to perform a roll call vote.

VOTE. YES. VENUTI, BENTZ, PETSKA-RUBALCAVA, BARNWELL, HIGHLAND

Motion carried.

Acting Chair Highland noted that the City Clerk has provided proposed dates of January 19, 21st or 27th for the Appeal Hearing and requested a motion to establish one of those dates or alternative date.

Commissioner Bentz questioned the process according to city code and inquired if the Commission can participate in establishing those procedures or have input on the process.

City Clerk Jacobsen stated the Commission can be involved, as pointed out in city code, the commission can prescribe some rules of procedure. It may require a special meeting or worksession to get the group together to make those decisions but the Clerk's Office will get the meetings noticed and assist the Commission.

Acting Chair Highland requested a motion to set a date hearing no further discussion.

Commissioner Petska –Rubalcava suggested the date of January 27th for discussion purposes.

A brief discussion ensued between City Clerk Jacobsen and the Commissioners on the suggested date and if that would allow for advertising, and working on the procedures with a draft prepared for review by the Commission at their meeting on January 20, 2021. It was noted that an earlier meeting could be facilitated also.

PETSKA-RUBALCAVA/BENTZ MOVED TO CONTINUE THE APPEAL HEARING TO JANUARY 27, 2021 AT 5:30 P.M.

Discussion ensued between all parties that they were available on that date and time.

VOTE. NON-OBJECTION.UNANIMOUS CONSENT.

Motion carried.

COMMENTS OF THE AUDIENCE

Mr. Griswold commented that he was puzzled the Commission did not address his preliminary issues regarding the Commissioner disqualifications. He then stated that the City Clerk informed the parties that laydowns would be accepted until 4:00 p.m. today and now it sounds like you want to change the procedures that were already established and complied with. He was not stating whether that was reasonable or not but wanted to make sure that they knew he did not violate any existing rules. He believed that the commission needed to be careful not to change procedures that the parties were already notified about in the middle of the hearing. He provided an example of hiring a lawyer and requesting an extension so that materials could be reviewed by the newly hired attorney.

Mr. Griswold continued that he was surprised that the Commission failed to discuss whether they should hire their own legal counsel and he believed that they should. He further noted that Mr. Abboud was a party and indicated he was filing a brief and should not participate in any ex parte communications with the Commission regarding these new procedures that affect an appeal that he is involved with as it could potentially affect him.

ADJOURN

There being no further business to come before the Commission, the meeting adjourned at 6:29 p.m. The next Regular Meeting is scheduled for Wednesday, January 6, 2021 at 6:40 p.m. All meetings are scheduled to be held virtually by Zoom Webinar from the City Hall Cowles Council Chambers located at 491 E. Pioneer Avenue, Homer, Alaska



RENEE KRAUSE, MMC, DEPUTY CITY CLERK

Approved: April 7, 2021