



Homer City Hall

491 E. Pioneer Avenue

Homer, Alaska 99603

www.cityofhomer-ak.gov

City of Homer Agenda

**Planning Commission Regular Meeting
Wednesday, October 2, 2019 at 6:30 PM
Council Chambers**

CALL TO ORDER, 6:30 P.M.

AGENDA APPROVAL

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

RECONSIDERATION

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.

- [A.](#) Minutes of the September 4, 2019 Planning Commission Meeting **p. 3**

PRESENTATIONS / VISITORS

REPORTS

- [A.](#) Staff Report 19-84, City Planner's Report **p. 11**

PUBLIC HEARINGS

- [A.](#) Staff Report 19-83, Ordinance Amending HCC 21.30.020 to allow boat sales, rentals, service, repair and storage, and boat manufacturing as a permitted use in the Marine Industrial District **p. 37**
- [B.](#) Staff Report 19-85, Conditional Use Permit 19-07 to allow a parking lot expansion adjacent to the Seafarer's Memorial Park on Homer Spit Road **p. 45**

PLAT CONSIDERATION

- [A.](#) Staff Report 19-82 AA Mattox Aplin 2019 Replat Preliminary Plat **p. 77**

PENDING BUSINESS

NEW BUSINESS

- [A.](#) Staff Report 19-81, Kenai Peninsula Borough Draft Ordinance Adopting KPB 20.80, Subdivision Private Streets and Gated Subdivision **p. 91**

INFORMATIONAL MATERIALS

- [A.](#) City Manager Reports for City Council Meetings on Sept. 9 & Sept. 23 **p. 119**
- [B.](#) Kenai Peninsula Borough Notice of Decisions **p. 141**

COMMENTS OF THE AUDIENCE Members of the audience may address the Commission on any subject. (3 min limit)

COMMENTS OF THE STAFF

COMMENTS OF THE COMMISSION

ADJOURNMENT

Next Regular Meeting is Wednesday, October 16th, at 6:30 p.m. All meetings scheduled to be held in the City Hall Cowles Council Chambers located at 491 E. Pioneer Avenue, Homer, Alaska. Meetings will adjourn promptly at 9:30 p.m. An extension is allowed by a vote of the Commission

Session 19-15, a Regular Meeting of the Homer Advisory Planning Commission was called to order by Chair Venuti at 6:31 p.m. on August 21, 2019 at the City Hall Cowles Council Chambers located at 491 E. Pioneer Avenue, Homer, Alaska.

PRESENT: COMMISSIONERS HIGHLAND, PETSKA-RUBALCAVA, DAVIS, SMITH AND VENUTI

ABSENT: COMMISSIONERS BOS AND BENTZ(EXCUSED)

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

APPROVAL OF THE AGENDA

Chair Venuti called for a motion to approve the agenda.

HIGHLAND/SMITH – SO MOVED.

There was no discussion.

VOTE. NON-OBJECTION. UNANIMOUS CONSENT.

Motion carried.

PUBLIC COMMENT ON ITEMS ALREADY ON THE AGENDA

RECONSIDERATION

ADOPTION OF CONSENT AGENDA

- a. Approval of minutes of August 21, 2019
- b. Preliminary Plat Time Extension Request for Chamberlain and Watson Subd. 2017 Replat

Chair Venuti requested a motion to approve the Consent Agenda.

HIGHLAND/SMITH – SO MOVED.

There was no discussion.

VOTE. NON-OBJECTION. UNANIMOUS CONSENT.

Motion carried.

VISITORS/PRESENTATIONS

REPORTS

A. Staff Report 19-76, City Planner's Report

Chair Venuti invited the City Planner Abboud to review his report for the commission.

City Planner Abboud reviewed Staff Report 19-76 and commented on the following:

- New Marijuana Manufacturing Facility in Old Town
- Amended Ordinance 19-19(S) at the last Council meeting and will be back for the upcoming Council meeting
- Council decision to demolish the HERC building and what was needed in the interim
- Participated in the vacation of an easement just prior to this meeting with City Council. The issue was forwarded to Council from the Borough Assembly. Council was silent on the issue. The Borough has indicated that they will be working on the regulations for easements as there is no requirement to notice neighboring properties for utility easements.
- Medical district is awaiting the decision on the Appeal.
- Staff Absences and Training
- Proposed Worklist scheduling for future meetings

Commissioner Highland volunteered for the October 28, 2019 Council meeting.

A brief discussion ensued on attendance at Council meetings.

Commissioner Smith requested to trade meetings with Commissioner Rubalcava since he was going to be out of state September 21st through November 7th and it was determined that attending the September 23, 2019 Council meeting was not necessary since the Planning Commission would not be meeting on September 18, 2019 and would have no new information to pass along to Council. Commissioner Rubalcava stated she can still attend the meeting on Monday.

PUBLIC HEARING(S)

A. Staff Report 19-77, Oscar Munson No. 23 Section-Line Easement Vacation Plat

Chair Venuti introduced the item by reading of the title.

City Planner Abboud reviewed Staff Report 19-77 for the Commission noting there were some wetlands in the area even though the wetlands mapping indicated otherwise.

There was no applicant present.

Chair Venuti opened the Public Hearing seeing no one from the audience coming forward to provide testimony he closed the Public Hearing and opened the floor to questions from the Commission.

Commission requested information from the City Planner on the following:

- Standard protocol when someone builds a structure in an easement
- If the Commission did not approve the vacation would it affect the future sale of the property in question
- This vacation does not address the setback encroachment

Chair Venuti requested a motion hearing no further questions from the Commission.

SMITH/HIGHLAND MOVED TO ADOPT STAFF REPORT 19-77 AND FORWARD A RECOMMENDATION APPROVING THE VACATION WITH THE FOLLOWING COMMENT: PUBLIC ACCESS TO THE BEACH IS PRESERVED BY THE EXISTING 30 FOOT DEDICATED RIGHT OF WAY IMMEDIATELY ADJACENT TO THE PROPOSED SECTION LINE EASEMENT VACATION.

Discussion was briefly held on the lack of clarity on the vacation since the house had been built into the easement since the 1950's.

VOTE. NON-OBJECTION. UNANIMOUS CONSENT.

Motion carried.

B. Staff Report 19-78, H.K. Davis Subdivision Road Easement Vacation Petition

Chair Venuti introduced the item into the record by reading of the title.

City Planner Abboud provided a review of Staff Report 19-78 for the Commission noting the following:

- Vehicular use
- Other access
- Lots have access to utilities outside the right of way to be vacated

Applicant was present, they indicated that they were available for questions.

Chair Venuti opened the Public Hearing seeing no one from the audience coming forward to provide testimony he closed the Public Hearing and opened the floor to questions from the Commission.

City Planner Abboud responded to questions from the Commission on the following:

- Vacation of this right of way does not impact vehicular access
- The City has no plans to develop the access
- This Right of Way is not included in the Transportation Plan

- There is no reason to place a moratorium on vacating this easement since the sole reason it was created was to provide access to a landlocked parcel and that is no longer true.
- Easements can be vacated or granted as needed

Commissioners entertained discussion that included the following points:

- There is Davis Street which could be used as a through street to Kachemak Drive
- Evaluating the intent there was no applicable reason to keep the easement other than convenience since it is not a maintained road and it is questionable as to the possible liability that there may be in leaving the easement

City Planner Abboud restated that it is not a road but an easement that the public uses

Chair Venuti requested a motion hearing no further comments or questions from the Commission.

SMITH/HIGHLAND MOVED TO ADOPT STAFF REPORT 19-78 AND FORWARD A RECOMMENDATION APPROVING THE VACATION OF A 40 FOOT ROAD EASEMENT.

A brief discussion ensued on the easement and including it in the Transportation Plan rewrite after further review of the Plan by Commissioner Highland and City Planner Abboud who stated that this area was annexed after the Plan was written and that this easement was only 40 feet and 60 feet was required for a road.

VOTE. NON-OBJECTION. UNANIMOUS CONSENT.

Motion carried.

C. Staff Report 19-79, Bakke Subdivision Vacation Plat

Chair Venuti introduced the item by reading of the title into the record.

City Planner Abboud provided a summary of Staff Report 19-79 for the Commission noting the following:

- The authority of the Commission on this action is based on the property being in the Bridge Creek Watershed District
- This area is not eligible for city services or road maintenance
- The City does not plan to provide services in this area in the future

Mr. Leif Monnett and Mrs. Rotterman, applicants, made a presentation on the request to vacate the temporary easement for public access based on the installation and construction of permanent dedicated public access via Steinhäuser Street and Ginny Avenue as was required

and that the easement that bisects the parcels was intended to be a temporary access which is no longer required and is stated as such on all recorded documents.

Mr. Monnett provided information regarding the inherent damage and trouble that they have suffered, and also neighboring property owners, from persons that have dumped and or left trash and debris, removed trees and caused damage and destruction to native vegetation.

Chair Venuti opened the Public Hearing and seeing no one from audience coming forward to provide testimony opened the floor to questions from the Commission.

Commissioners asked the following questions of the applicants:

- Future planned development of the property in the easement
- Access to the east of the property/easement
- Future intent to limit public access by installation of a gate
- Requested clarification on the route that would be available to the public to access further east of the property

Mr. Monnett and Mrs. Rotterman responded to the questions of the commission as follows:

- Future development may and probably will consist of a riding cabin on skids placed on the property within the temporary easement
- The Public can access further east by using Steinhauser Street north to Ginny Avenue turning east
- They intend to install a locking permanent gate and signage. They would prefer the Borough to install signage as the previous signage that they have installed was vandalized, removed totally or ignored

HIGHLAND/RUBALCAVA MOVED TO ADOPT STAFF REPORT 19-79 AND FORWARD A RECOMMENDATION OF APPROVAL FOR THE VACATION OF THE EASEMENT WITH COMMENTS 1 AND 2:

1. CARRY OVER THE NOTE STATING THAT DEVELOPMENT OF THE AREA (SOUTH OF THE EASEMENT) IS SUBJECT TO THE CITY OF HOMER ZONING ORDINANCE.
2. INCLUDE PLAT NOTE STATING FORMER EASEMENT IS THE BOUNDARY OF THE CITY OF HOMER'S BRIDGECREEK WATERSHED DISTRICT. THE CITY OF HOMER ZONING ORDINANCE APPLIES.

Discussion ensued on including a recommendation for the Borough to place signage regarding access and the City Planner stating that it was outside the Commission purview; usage of the temporary easement by the public; and the applicants thorough presentation and accounting of historical access.

VOTE. NON-OBJECTION. UNANIMOUS CONSENT.

Motion carried.

PLAT CONSIDERATION

PENDING BUSINESS

NEW BUSINESS

A. Staff Report 19-80, Election of Officers

Chair Venuti introduced the item by reading of the title and opened the floor for nominations of chair.

Commissioner Highland inquired if Chair Venuti would consider serving as Chair for another term.

Chair Venuti stated that he was not opposed to serving as Chair for another year.

There were no further nominations.

There was no objections expressed to Chair Venuti being re-elected to serve as Chair.

Chair Venuti thanked the Commission and requested nominations for the office of Vice Chair

Commissioner Highland questioned nominating someone who was not present.

She was informed that there was no prohibition to that action by the Clerk and City Planner.

Commissioner Highland nominated Commissioner Bentz.

Chair Venuti nominated Commissioner Smith.

Commissioner Highland retracted her nomination recalling that Commissioner Bentz had commented about additional responsibilities.

Commissioner Smith accepted the nomination of Vice Chair.

There were no objections expressed to Commissioner Smith being elected to serve as Vice Chair.

INFORMATIONAL MATERIALS

- A. City Manager's Report for the August 26, 2019 Homer City Council Meeting
- B. Kenai Peninsula Borough Notice of Decisions:
 - i. Lloyd Race 2019 Preliminary Plat
 - ii. The Shire Preliminary Plat

C. Appointment of Jason Davis to the Planning Commission

COMMENTS OF THE AUDIENCE

COMMENTS OF THE STAFF

Deputy City Clerk Krause thanked the Commission for a short meeting.

City Planner Abboud had no comments.

COMMENTS OF THE COMMISSION

Commissioner Highland welcomed Jason Davis to the Commission, she was glad to see the seat filled and that he asked really good questions. Ms. Highland was wondering on the EDC, Parks & Rec and the Planning Commission on the Wayfinding signs and if they come up with some ideas will the Commission have input or will there be an opportunity for them to comment on those designs. She was expecting that it would need some approval by someone with the city.

City Planner Abboud responded that he suggested a specific group composed of members from various groups, such as member of the Planning Commission and agreed that they should work together.

Commissioner Highland did not want to see things go cross-wise and questioned if this would come through the Commission.

City Planner Abboud was unsure but there was the intent to include this in the Transportation Plan so there is the expectation that it could come before the Commission and will double check on the status of that and get back to the Commission.

Commissioner Rubalcava welcomed Commissioner Davis to the Planning Commission.

Commissioner Smith echoed the welcome and commented that it was always great to have unique perspectives and Commissioner Davis seemed to pick up on it pretty quickly. It was a good meeting. Quick and it appears that they will be handling more things as the community grows.

Commissioner Davis commented that he had a couple of thoughts on how the Commission conducts business and noted that the reason that groups like theirs hold Public Hearings is to be transparent and the public doesn't get angry. It seems appropriate that they would only notify people within 300 feet of the planned action, but he felt that the people who might get upset in this case are the people, like he does, who use the road near the Gear Shed who will get angry, not the neighbors. Commissioner Davis felt that they should do a real public notice

on this somewhere so those people who really use the road, have an option to participating. The issue up on the ridge is a little different since it isn't a city road there is not much the City has to do other than state they have no issue but a lot of people, the general public, really use that trail to get to the Wynn Nature Center and if they should not have a different policy to notify the public or is there already something that they do to notify the whole public.

City Planner Abboud explained that there are guidelines defined in City Code on Public Notice. In general the Planning department will be working more with the Borough on items like this.

Deputy City Clerk Krause provided further information to Commissioner Davis on the Public Notice is advertised in a local paper and on the City website at least one week prior to the meeting date scheduled.

Chair Venuti welcomed Commissioner Davis and commented on the amount of work that is being done for the traffic signal that is being installed. He never could have imagined the amount of work was required to have that installed with retaining walls and the like. He also commented on the Wayfinding signage with a preference for signage directing people to the Pioneer Avenue Business District.

There was brief discussion on future meeting dates for items for the Commission agenda.

ADJOURN

There being no further business to come before the Commission, the meeting adjourned at 7:55 p.m. The next regular meeting is scheduled for Wednesday, October 2, 2019 at 6:30 p.m. in the City Hall Cowles Council Chambers. There is a worksession scheduled at 5:30 p.m. prior to the meeting.

RENEE KRAUSE, MMC, DEPUTY CITY CLERK

Approved: _____



City of Homer

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Planning

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(p) 907-235-3106

(f) 907-235-3118

TO: Homer Advisory Planning Commission
FROM: Rick Abboud AICP, City Planner
DATE: October 2, 2019
SUBJECT: Staff Report 19-84 City Planner's Report

City Council 9/9/19

Ordinance 19-40, An Ordinance of the City Council of Homer, Alaska, Amending Homer City Code Chapter 21.27.040, Dimensional Requirements, to Allow Commercial Buildings up to 75 Feet in Height in the East End Mixed Use District with a Conditional Use Permit. Planning Commission. Recommended Dates Introduction September 9, 2019 Public Hearing and Second Reading September 23, 2019
Memorandum 19-121 from Planning Director as backup

Ordinance 19-41, An Ordinance of the City Council of Homer, Alaska, Amending Homer City Code Chapter 21.24.020, Permitted Uses and Structures; and Homer City Code 21.26.020, Permitted Uses and Structures, to Expand Manufacturing Activities in the General Commercial 1 and General Commercial 2 Zoning Districts. Planning Commission. Recommended Dates Introduction September 9, 2019 Public Hearing and Second Reading September 23, 2019
Memorandum 19-122 from City Planner as backup

Resolution 19-058, A Resolution of the City Council of Homer, Alaska, Acknowledging the Rosebud Court Road Reconstruction and Paving Special Assessment District will not be Created Based on Property Owner Objections. City Clerk. Recommend adoption.

Resolution 19-059, A Resolution of the City Council of Homer, Alaska, Noting the Insufficiency of the Petition for Cityview Avenue Road Reconstruction and Paving Special Assessment District. City Clerk. Recommend Adoption.

Resolution 19-061, A Resolution of the City Council of Homer, Alaska, Adopting the 2020-2025 Capital Improvement Plan and Establishing Capital Improvement Project Legislative Priorities for Fiscal Year 2021.
ADOPTED as amended.

Amended:

Approved updates and amendments to the Multiuse Community Center Phase 1 project.

Removed the Homer Conference Center (a long range project) from the CIP
Approved updates and amendments to the Fire Department Fleet Management projects, Fleet
Management and removed Rescue 1 Remount
Approved relocating the New Public Works Facility to the Mid-Range Section from Long Range section.

Added eight new projects and classified them as follows:

- Port and Harbor Cathodic Protection project – mid range
- Public Works Raw Water Transmission Main Replacement – Mid Range
- ADA Committee – All below projects are Mid-Range
 - o City Hall Access Barrier Removal
 - o Public Restroom Barrier Removal
 - o Nick Dudiak Fishing Lagoon Accessible Ramp & Retaining Wall
 - o Removing Parking & pavement Accessibility Barriers at City Facilities
 - o ADA Self Evaluation & Transition Plan for City Parks, Trails and Campgrounds
- Volunteer Fire Department Fire Hall Expansion Phase 1 – Mid Range

The top 5

1. Homer Barge Mooring & Large Vessel Haul Out Repair Facility
2. Large Vessel Port Expansion
3. Storm Water Master Plan
4. Main Street Sidewalk North
5. Multi-Use Community Center, Phase 1

Ordinance 19-19 (S)(A), An Ordinance of the City Council of Homer, Alaska, Amending Homer City Code Title 14.08, “Water Rules and Regulations” to add HCC 14.08.015, “Water Service Area” and Permitting the City to Provide Water Service Outside the City of Homer so long as the Property Served is Adjacent to a Water Main Installed to Serve City Property and such Service is Required by Law or Authorized by Ordinance and Requiring a Council Approved Agreement Regulating Use, Operation, Installation, and Maintenance of Water Service on the Property. Introduction April 22, 2019, Postponed to May 28, 2019, Public Hearing June 10, 2019, Referred to Planning Commission, Port & Harbor Advisory Commission and Economic Development Advisory Commission, Postponed to August 26, 2019 and September 9, 2019

FAILED with discussion.

Ordinance 19-19(S-2)(A), An Ordinance of the City Council of Homer, Alaska, Amending Homer City Code Title 14.08, “Water Rules and Regulations” to add HCC 14.08.015, “Water Service Area” and Permitting the City to Provide Water Service Outside the City of Homer so long as the Property Served is Adjacent to a Water Main Installed to Serve City Property and such Service is Required by Law or Authorized by Ordinance and Requiring a Council Approved Agreement Regulating Use, Operation, Installation, and

Maintenance of Water Service on the Property.
Memorandum 19-117 from City Attorney as backup
FAILED with discussion.

Resolution 19-060, A Resolution of the City Council of Homer, Alaska, Expressing its Intent to Enter into a Contractual Agreement with the Firm to be Named to Provide Legal Services to the City of Homer. Mayor/Council.

Resolution 19-060(S), A Resolution of the City Council of Homer, Alaska, Expressing its Intent to Enter into a Contractual Agreement with the Firm Jermain, Dunnagan & Owens, P.C. of Anchorage, Alaska, to Provide Legal Services to the City of Homer.

ADOPTED with discussion.

City Council 9/23/19

Ordinance 19-40, An Ordinance of the City Council of Homer, Alaska, Amending Homer City Code Chapter 21.27.040, Dimensional Requirements, to Allow Commercial Buildings up to 75 Feet in Height in the East End Mixed Use District with a Conditional Use Permit. Introduction September 9, 2019, Public Hearing and Second Reading September 23, 2019.

ADOPTED without discussion.

Ordinance 19-41, An Ordinance of the City Council of Homer, Alaska Amending Homer City Code 21.24.020, Permitted Uses and Structures; and Homer City Code 21.26.020, Permitted Uses and Structures, to Expand Manufacturing Activities in the General Commercial 1 & General Commercial 2 Zoning Districts. Introduction September 9, 2019 Public Hearing and Second Reading September 23, 2019.

ADOPTED without discussion.

Natural Hazards

The Coastal Stability project has been approved by FEMA. Project planning will start in late fall/winter.

The Lidar images taken to help evaluate landslide hazards last spring look great and the contractors will be processing the data further.

Appeals

We have prevailed on all points of appeal regarding the CUP for Windjammer's porch.

I am working on a supplemental brief regarding the appeal of the remand hearing for the medical clinic and a hearing is scheduled for October 7th. After doing the math, I find that this issue may not be disposed with until early January, after accounting for the time allowance for

the decision and subsequent appeal timeframe. So far, this looks to be the time when we may be able to work on evaluating a medical district.

Work list

- Green Infrastructure – We will be planning a work session or presentation from public works regarding the latest grant implementation.
- Medical district – awaiting decision on the appeal
- Transportation plan – Memo to council
- Permit requirements – Will return after further review
- Signs – Due to time constraints associated with scheduled time off, we plan to jump into the subject in the first meeting in October.

City Council report sign up

10.14.19 Bos

10.29.19 Highland

11.6.19

11.20.19

Att.

**Windjammer Decision on Appeal – Administrative Law Judge Decision on Remand of CUP
14-05**

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON REFERRAL
BY THE HOMER ADVISORY PLANNING COMMISSION**

| | | |
|------------------------------|---|---------------------|
| In the Matter of |) | |
| |) | |
| CONDITIONAL USE PERMIT 14-05 |) | OAH No. 19-0355-MUN |
| _____ |) | Agency No. 14-05 |

DECISION ON APPEAL

I. Introduction

Terry Yager, a tenant in a commercial building on Pioneer Avenue in Homer, Alaska, applied for a conditional use permit (CUP) to install a covered porch on their building. The porch would encroach within the 20-foot setback required between the street right-of-way and any structure. The application, CUP 14-05, went to a public hearing before the Homer Advisory Planning Commission (Commission) on April 16, 2014. After Frank Griswold submitted written objections to the granting of the CUP, the Commission approved the application.

Mr. Griswold appealed to the Homer Board of Adjustment (Board). After a series of appellate decisions on the question of his standing to contest the Commission's decision, the matter was remanded to the Board for a decision on the merits of Mr. Griswold's challenge to the CUP.

This decision finds that the Commission had the authority under state law and the Homer City Code (HCC) to consider and grant the CUP application; the HCC specifically allows setback reductions to be dealt with through the CUP process. In addition, the Planning Commission's decision granting Mr. Yager's application was based on substantial evidence of the CUP's compliance with Homer planning standards and ordinances. Therefore, the Commission's decision is affirmed.

II. Facts and Proceedings

A. The permit application and public hearing

John and Norma Smith own a building at 320 W. Pioneer Avenue in Homer, Alaska, in a zoning area designated as the Central Business District (CBD).¹ They own and operate a small hotel there, the Windjammer Suites. The CBD has a setback requirement: "[b]uildings shall be set back 20 feet from all dedicated rights-of-way, except as allowed by subsection(b)(4) of this section."² The Smith's building is rectangular and sits at an angle, with its eastern face fronting on Pioneer Avenue. Their son-in-law, Terry Yager, applied for a CUP which would allow them to build a covered porch along the portion of the building facing Pioneer Avenue, which at that time

¹ Agency Record (AR) 29.
² HCC 21.18.040(b)(1).

was a blank wall.³ A triangular portion of the porch would encroach a maximum of 10 feet into the 20-foot setback from the edge of Pioneer Avenue.⁴

Mr. Yager's application included, among other things, a description of the intended addition to the property, an aerial photograph of the neighborhood where the building is located, as-built-surveys showing the location of the current building on its lot and the distance between the building and the edge of Pioneer Avenue, and a drawing showing the proposed addition to the building and how much it would encroach on the 20-foot setback.⁵

B. The Public Hearing

Mr. Yager's application went to a public hearing in front of the Planning Commission on April 16, 2014. Prior to the hearing, the Homer City Planner's office issued a written report⁶ which recommended approval of the application and made ten factual findings:

1. Applicable code authorizes the proposed use by CUP in that zoning district, because hotels are a permitted use within the CBD, and the relevant ordinance, HCC 21.18.040(b), allows a setback reduction if approved through the CUP process.⁷
2. The proposed use is "compatible with the purpose of the zoning district," because the covered porch "provides protection from the weather and enhances a pedestrian-friendly atmosphere along Pioneer Avenue."
3. "The value of adjoining property will not be negatively affected because this proposal improves the exterior façade of an existing building."
4. "The proposal is compatible with existing uses of surrounding land," because "[w]ithin 250 feet there are three buildings [with] reduced setbacks to Pioneer Avenue and ... decks similar to the proposed deck."
5. "The covered deck will not increase the need for public services."
6. The proposal "will not cause undue harmful effect upon desirable neighborhood character," because "[t]he scale, bulk, coverage and density of the proposed covered porch will be in harmony with other facades along Pioneer Avenue [and] will not have an undue harmful effect on Pioneer Avenue character."
7. "The [proposed porch] will not be unduly detrimental to the health, safety or welfare of the surrounding area or the city as a whole."

³ Mr. Yager signed the application as "applicant," and Mr. Smith signed as "property owner." AR 38.

⁴ AR 44.

⁵ AR 35–46. Mr. Griswold acknowledges that because the building sits at an angle, only a portion of the porch encroaches on the setback; only a small portion actually encroaches 10 feet.

⁶ Staff Report PL 14-33, AR 29-34.

⁷ AR 30; the report contains a typographical error at this juncture, referring to a non-existent provision, HCC 21.08.040(b).

8. “With an approved CUP, this proposal will comply with the applicable regulations and conditions specified in HCC Title 21.”
9. “The proposal is not contrary to the applicable land use goals and objectives of the Comprehensive Plan,” because “[t]he commercial streetscape of Pioneer Ave will be enhanced by the construction of the covered porch and by the provision of direct pedestrian access from the sidewalk to the business.”
10. “The covered deck will meet the applicable provisions of the Community Design Manual;” (a) it will “provide space for outdoor leisure;” (b) it “will be prominently visible on Pioneer Avenue and provide architectural interest to the existing blank wall;” (c) the porch will be “proportional to the existing 9,000 sf building;” (d) the porch will “provide easy and direct access to Pioneer Avenue;” (e) it “provides an appropriate covering over the deck;” (f) “[l]andscaping shall include flower box plantings along the rim of the deck facing Pioneer Avenue;” (g) “[t]he area between the proposed covered deck and Pioneer Avenue will not be used for parking;” and (h) “[a]ll lighting shall meet the outdoor light standards per HCC 21.59.030 ... by using downward directional lighting.”⁸

The staff report recommended that the latter point be incorporated into a condition on the CUP to require downward directional lighting.⁹ It also recommended a condition requiring landscaping in the form of the flower box plantings mentioned above.¹⁰

Prior to the hearing, Mr. Griswold submitted two sets of written objections to the requested CUP.¹¹ His primary argument in these filings was that the requested CUP should be treated as a request for a variance which, in Mr. Griswold’s view, would be improper if granted.¹² In response to these filings, the Homer City Clerk provided a short memorandum from the city’s counsel opining that it was appropriate to consider the application as a CUP rather than as a variance.¹³

Mr. Yager and Mr. Smith appeared at the hearing, and Mr. Yager spoke in support of the application.¹⁴ Two commissioners, Ms. Erickson and Mr. Venuti, indicated that they had potential conflicts of interest as a result of their business dealings with Mr. Yager. After discussion, motions were brought regarding both potential conflicts; the Commission voted in both instances against finding any conflicts of interest.¹⁵

⁸ AR 30–34.

⁹ AR 33.

¹⁰ *Id.*

¹¹ AR 48-49, 59-60. Mr. Griswold, however, did not speak at the public hearing.

¹² *Id.*

¹³ AR 61.

¹⁴ AR 63.

¹⁵ AR 63-64.

After the vote on potential conflicts of interest, there was discussion of the proposed porch construction; no one from the public appeared to testify regarding the application.¹⁶ A motion was then made to adopt the planning staff report and approve the CUP, incorporating the staff's findings 1 through 10 and the two conditions mentioned above. The Commission took a recess to review Mr. Griswold's written objections and the memorandum from the city's attorney. The commission then voted unanimously in favor of granting the CUP.¹⁷

Subsequently, the Commission issued a written decision, documenting its approval of CUP 14-05.¹⁸ This written decision documents the Commission's vote to adopt the planning staff report, including the 10 findings in the report and the two conditions recommended by the staff.¹⁹ The decision was signed by the Commission's chairperson and by City Planner Rick Abboud.²⁰

C. Mr. Griswold's appeal

Mr. Griswold timely appealed the Commission's decision to the Homer Board of Adjustment (Board).²¹ The Board found that Mr. Griswold lacked standing to contest the decision. Mr. Griswold further appealed to the Superior Court, which affirmed the Board's decision on standing. The Alaska Supreme Court, however, reversed on the standing question, and the matter was remanded to the Board for a decision on the merits.²² Mr. Griswold then requested that the appeal be heard by a hearing officer instead of the Board. As allowed by HCC 21.93.030, the Homer City Clerk appointed an administrative law judge (ALJ) employed by the Alaska Office of Administrative Hearings to serve as the hearing officer.

Mr. Griswold and City Planner Abboud each filed opening briefs to the Board, and Mr. Griswold filed a reply brief.²³ They each also filed supplemental briefs with the hearing officer after the remand to the Board.²⁴ Mr. Yager did not file a brief or otherwise participate in the appeal.

¹⁶ AR 64.

¹⁷ *Id.*

¹⁸ AR 70-74.

¹⁹ *Id.*

²⁰ AR 74.

²¹ AR 17.

²² See AR 2-16 (*Griswold v. Homer Board of Adjustment*, Op. No. 7354 (Alaska Supreme Court, April 19, 2019), which includes detailed discussion of Board and Superior Court decisions regarding standing issues).

²³ AR 103-120.

²⁴ Mr. Griswold moved to strike briefs filed by City Planner Abboud, and to disqualify Mr. Abboud from participating in the appeal on behalf of the Commission. These issues were addressed in a pre-hearing order issued by the undersigned hearing officer on June 20, 2019, which denied both requests.

Oral argument was held on July 11, 2019. Mr. Griswold and City Planner Abboud participated in the oral argument.²⁵ The matter was then taken under advisement.

III. Discussion

A. Procedure

Applications for CUPs are submitted to the City Planner.²⁶ The application is reviewed, and once deemed complete, the City Planner is required to schedule and notice a public hearing before the Commission.²⁷ Following the public hearing, the Commission is required to act on the application and issue a decision that contains its written findings and reasoning in support of the decision.²⁸

A person who “actively and substantively participated” in the matter before the Commission has the right to appeal the Commission’s decision granting or denying a CUP.²⁹ The appeal may be either to the Board of Adjustment or a hearing officer appointed by the City Manager.³⁰

Appeals are heard solely on the established record, unless there are allegations involving new evidence or changed circumstances, in which event the hearing officer may remand the matter to the lower administrative body (here the Commission).³¹ After briefing, an appeal hearing is to be held, and a decision issued.³²

B. Standards of Review

The applicable standards of review on appeal are set by the Homer City Code. The standard of review on purely legal issues is one of independent judgment.³³ The standard of review for factual findings is one of “substantial evidence”:

The Board of Adjustment or hearing officer shall defer to the findings of the lower administrative body regarding disputed issues of fact. Findings of fact adopted expressly or by necessary implication by the lower body shall be considered as true if they are supported by substantial evidence. . . . “Substantial evidence,” as used in this

²⁵ At the outset of oral argument, Mr. Griswold orally requested that this decision be held in abeyance until the Superior Court issues its decision in another appeal by Mr. Griswold regarding a CUP in the CBD (3HO-18-00240CI; OAH case no. 18-0321-MUN); he followed that up with a written request submitted after oral argument. The request was denied by order dated July 17, 2019, because the hearing officer lacks the authority to extend the timeframe to issue a decision under HCC 21.93.100(a).

²⁶ HCC 21.71.020.

²⁷ HCC 21.71.030, HCC 21.27.050 (a).

²⁸ HCC 21.71.050(b).

²⁹ HCC 21.93.030(a), HCC 21.93.500(a).

³⁰ HCC 21.93.030, HCC 21.93.500(a).

³¹ HCC 21.93.510(a).

³² HCC 21.93.530–.550.

³³ HCC 21.93.540(d).

section, means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion.³⁴

Thus, the substantial evidence standard requires the reviewer to uphold the original factual findings if they are supported by substantial evidence, even if the reviewer may have a different view of the evidence. In reviewing whether a decision is based on substantial evidence, “[i]t is not the function of the [hearing officer] to reweigh the evidence or choose between competing inferences, but only to determine whether such evidence exists.”³⁵

C. Points on Appeal

Mr. Griswold filed an amended notice of appeal to the Board on June 3, 2014.³⁶ His points on appeal are summarized as follows:

1. The Planning Commission is an advisory body which does not have the legal authority to approve CUPs.
2. It was inappropriate for City Planner Abboud to sign the Commission’s decision.
3. Terry Yager is not an attorney and therefore was not authorized to be the “applicant” for the CUP or to represent the Smiths before the Commission.
4. Commissioners Erickson and Venuti had conflicts of interest that should have barred them from voting on the CUP application.
5. “Notwithstanding HCC 21.18.040(b)(4),” a setback reduction is not a “use” which can be considered in connection with an application for a CUP.
6. The Commission erred “by solely considering the effects of the covered porch ... instead of considering the effects of the Windjammer Suites hotel *and* the covered porch.”
7. The Commission erred because it really granted a “*de facto* variance” and therefore illegally granted “an arbitrary and capricious spot zone.”
8. The Commission’s findings are not supported by substantial evidence.
9. The Commission erred by failing to identify any purposes of the CBD with which the covered porch would be compatible.
10. The Commission erred in finding that adjoining property values would not be negatively affected by the covered porch.
11. The Commission erred in finding that the covered porch would be compatible with other buildings along Pioneer Avenue.
12. The Commission erred in finding that the covered porch would not cause undue harmful effect upon neighborhood character.

³⁴ HCC 21.93.540(e).

³⁵ *Interior Paint Co. v. Rodgers*, 522 P.2d 164, 170 (Alaska 1974).

³⁶ AR 18–24.

13. The Commission erred by failing to provide evidence in support of its finding that the covered deck will not be unduly detrimental to the health, safety and welfare of the surrounding area.
14. The Commission erred in finding that the with the approved CUP, the covered porch will comply with applicable planning ordinances and standards under the HCC Title 21.
15. HCC 21.18.040(b)(4) is “in direct conflict with HCC 11.80.110” which requires a minimum 20-foot building setback in Homer.
16. The Commission erred in finding that the covered porch is not contrary to the land use goals and objectives of Homer’s Comprehensive Plan.
17. The Commission erred in failing to make findings regarding Windjammer Suites compliance with Homer’s Community Design Manual (CDM).
18. The Commission erred in failing to make all provisions of the CDM conditions for approval of the CUP.
19. The Commission erred in determining that flower box plantings along the edge of the covered porch constitute “landscaping.”
20. The Commission demonstrated bias by omitting HCC 21.71.040(a) from its review criteria for the CUP.³⁷

D. Discussion

For purposes of discussion and analysis, it is useful to group Mr. Griswold’s appeal points into three categories: legal, procedural, and factual.

1. Legal challenges.

- a. Does the Commission have the legal authority to consider CUP applications (Appeal Point 1)?

Mr. Griswold argues that the inclusion of the word “advisory” in the Planning Commission’s title renders it a purely advisory body without the requisite legal authority to hear and decide CUP applications.

The Alaska Supreme Court has expressly stated that “[t]he Kenai Peninsula Borough delegated to the City of Homer the zoning authority for areas within the City.”³⁸ The City of Homer’s ordinances state that “there shall be a Planning Commission established and functioning pursuant to Chapter 2.72 HCC.”³⁹ Chapter 2.72 of the city code created the “Homer Advisory Planning Commission.”⁴⁰ Under HCC 2.72.050, “Zoning powers and duties,” subsection (a)(2)

³⁷ *Id.*

³⁸ *Griswold v. City of Homer*, 925 P.2d 1015, 1017 (Alaska 1996).

³⁹ HCC 21.91.010.

⁴⁰ HCC 2.72.010.

explicitly authorizes the Commission to “[a]ct upon requests for PUDs, variances and conditional use permits.” Mr. Griswold’s argument fails because the Homer City Code expressly confers the Advisory Planning Commission with the authority to act upon requests for CUPs. Simply including the term “advisory” in the title of the Commission does not eliminate its authority to act as a decision maker on CUP applications.

b. Can a property owner receive a setback reduction through a CUP (Appeal Points 5 and 7)?

Mr. Griswold makes two related arguments on this point. He argues that a setback reduction for a covered porch is not a “use,” *per se*, which can be considered for a CUP. And he argues that an application to allow a structure to encroach into a designated setback is in reality a request for a variance. He then argues that granting such a request would be an illegal “use variance.” In addition, although not mentioned in his points on appeal, Mr. Griswold argues that the HCC provision providing for the CUP process for a setback reduction is unconstitutional as applied.

i. *Is a setback reduction for a covered porch a “use?”*

Mr. Griswold’s argument on this point is somewhat difficult to discern. He argues as follows:

The Commission did not have the authority to apply the conditional use criteria under HCC 21.71 when considering CUP 14-05 because the “use” being applied for is a setback reduction i.e., a dimensional requirement which does not constitute a use.⁴¹

This argument, however, ignores the fact that the CUP application concerned a covered porch requiring a setback reduction. A covered porch constitutes a “use” of the formerly unoccupied portion of the property.

Mr. Griswold also appears to argue that because HCC 21.18.030 contains a list of “uses” which require a CUP to be permitted in the CBD, and “setback reduction” is not listed as a conditional use under HCC 21.18.030,” therefore the CUP requested by Mr. Yager cannot possibly concern a “use.” There are two problems with this argument. First, as already mentioned, the CUP concerns the “use” of a covered porch requiring a setback reduction. Second, the list of uses contained in HCC 21.18.030 is not an exclusive list for which CUPs can be allowed in the CBD; the fact that covered porches requiring reduced setbacks are not listed does not render them absolutely impermissible. Any other reading of HCC 21.18.030 would run counter to the principle of statutory

⁴¹ Griswold Ancillary Opening Brief at 7.

construction that “seemingly conflicting provisions must be harmonized unless such an interpretation would be at odds with statutory purpose.”⁴² HCC 21.18.030 must be read in concert with HCC 21.18.040(b)(4), which explicitly provides that in the CBD, setbacks from dedicated rights of way may be allowed “if approved by a conditional use permit.” Reading the two ordinances together, it is clear that a CUP can be used to not only allow the uses provided in HCC 21.18.030, but also to allow a covered porch with a reduced setback.

ii. *Use variances*

Mr. Griswold further argues that Mr. Yager’s request for a setback reduction is an illegal use variance, which is disallowed under AS 29.40.040(b) to any other than a home rule city.⁴³ He cites to the *Alaska Planning Commission Handbook (Handbook)* in support of his argument. The *Handbook*, however, is not a statute, regulation, or ordinance; rather, it is a publication issued by the Alaska Department of Commerce and Economic Development as a nonbinding guide for local planning commissions.⁴⁴ Although quoting accurately from the *Handbook*, Mr. Griswold misapplies the explanation contained within the *Handbook* regarding use and area variances. “Area variances” provide “relief from setback ... and similar requirements and are permitted by AS 29.40.040(b).”⁴⁵ Because the CUP application is one for a relief from a setback, it would therefore be an area variance under the definition provided in the *Handbook*, and allowable under AS 29.40.040(b).

iii. *CUP versus Variance*

Mr. Griswold elaborates on his variance argument by contending that because relief from a setback requirement is a variance, it is therefore reversible error for a setback reduction to be handled as a CUP. However, the City of Homer has chosen to enact specific ordinances relating to the CBD. Those ordinances set out a variety of outright permitted uses “except when such use requires a conditional use permit by reason of size, traffic volumes, or other reasons set forth in this

⁴² *Davis Wright Tremaine LLP v. State, Dept. of Administration* 324 P.3d, 293, 299 (Alaska 2014) (citation omitted).

⁴³ Homer is classified as a first-class city, not a home rule municipality. See <https://www.commerce.alaska.gov/dcr/DCRAExternal/community/Details/9c16b6f1-1486-4cf4-a1ff-21a74ecd4967> (date accessed August 10, 2018).

⁴⁴ The *Planning Commission Handbook* is available online at: <https://www.commerce.alaska.gov/web/Portals/4/pub/Planning%20Commission%20Handbook%20Jan%202012.pdf> (date accessed August 10, 2018).

⁴⁵ *Planning Commission Handbook*, p. 68.

chapter.”⁴⁶ Retail businesses are included in the list of “uses [that] are permitted outright.”⁴⁷ The HCC then provides that “all structures and uses” in the CBD are subject to a 20 foot setback requirement “except as allowed by subsection (b)(4) of this section.”⁴⁸ Subsection (b)(4) specifically states that “[if] approved by a conditional use permit, the setback from a dedicated right-of-way, except from the Sterling Highway or Lake Street, may be reduced.”⁴⁹

A review of the relevant ordinances shows that the City made a conscious choice to handle setback reduction in the CBD through the CUP process, rather than the variance process. Thus, Mr. Yager’s CUP application is well within the Planning Commission’s authority (and that fact was outlined for the Commission by the city attorney in his memorandum prior to the Commission’s vote in favor of the CUP application in April 2014). The relatively straightforward language of HCC 21.18.040(b)(4) means that Mr. Griswold’s argument fails.

iv. Is HCC 21.18.040 unconstitutional as applied?

Although Mr. Griswold did not raise a constitutional argument in his points on appeal, he argues in his briefing that HCC 21.18.040 was unconstitutional as applied. However, he fails to adequately explain the underlying basis for his argument in his briefs, and he was unable to do so during oral argument. In his post-remand opening brief, he simply cites to case law for the general proposition that otherwise constitutional laws could be unconstitutional as applied; he then argues that the Commission exceeded its authority by applying HCC 21.18.040(b)(4) to something that does not meet the definition of a “use.”⁵⁰ When the hearing officer asked him during oral argument to elaborate on this issue, he simply stated that treating a variance as a CUP application violates due process.

Because Mr. Griswold failed to articulate any facts or reasoning on this issue, he has not established that HCC 21.18.040 was unconstitutionally applied by the Commission in this case.

c. Is HCC 21.18.040(b)(4) in direct conflict with HCC 11.08.110 and therefore invalid (Appeal Point 15)?

HCC 11.08.110 is an ordinance that sets a general rule requiring a “minimum 20-foot building setback which shall apply to any property line abutting any dedicated road or street right-of-way.” Another relevant, general ordinance is HCC 21.71.040(b)(13). It reads as follows:

⁴⁶ HCC 21.18.020.

⁴⁷ HCC 21.18.020(a).

⁴⁸ HCC 21.18.040(b)(1).

⁴⁹ HCC 21.18.040(b)(4).

⁵⁰ Griswold Ancillary Opening Brief at 8 (*citing State v. ACLU of Alaska*, 204 P.3d 364, 372 (Alaska 2009)).

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 relaxed by conditional use permit when and to the extent other provisions of the zoning code expressly prohibit such alteration by conditional use permit.

HCC 21.18.040(b)(1) provides that within the CBD, “[b]uildings shall be set back 20 feet from all dedicated rights-of-way, except as allowed by subsection (b)(4).” As already mentioned, HCC 21.18.040(b)(4) explicitly states that within the CBD, “[i]f approved by a conditional use permit, the setback from a dedicated right-of-way ... may be reduced.” Reading all of these ordinances together as a whole, both the general rules and specific rules for the CBD require a 20-foot setback, but because there is no “express” prohibition against it, the 20-foot setback requirement “may be made more lenient by” a conditional use permit. As a result, Mr. Griswold’s argument on this issue is not supported by the HCC.

2. Procedural Challenges

Mr. Griswold makes three procedural challenges in his points on appeal. First, he challenges the Planning Commission’s decision because it bears the City Planner’s signature. Second, he argues that Mr. Yager is not an attorney and therefore should not have been allowed to apply for the CUP or represent the property owners on the application. Third, he argues that the Commission erred by considering only the effects of the covered porch, rather than considering the effects of both the hotel and the covered porch.

a. The City Planner signed the Commission’s decision (Appeal Point 3)

The Commission’s decision, which was issued on May 14, 2014, bears two signatures. The first signature is that of the Commission Chair Franco Venuti. Below it is the signature of Mr. Abboud, the City Planner.⁵¹ Mr. Griswold makes a general objection to the decision because it bears the City Planner’s signature. The HCC requires that the Planning Commission “shall promptly issue written findings and reasons supporting its decision.”⁵² Because the Vice Chair signed the decision, the Planning Commission has complied with its duty to issue the written decision. The City Planner’s signature does not demonstrate that the Planning Commission has not fulfilled its legal duty to issue a decision, or otherwise invalidate the decision.

⁵¹ AR 74.

⁵² HCC 21.71.050(b).

Mr. Griswold also makes a related argument, that Mr. Abboud signed the decision in order to somehow “circumvent” the requirement under HCC 21.71.060 that “the City Planner shall promptly issue a conditional use permit in accordance with a decision of the Commission approving an application.” Notwithstanding this prompt issuance requirement, Mr. Griswold argues that the permit should not have been issued until the decision was “final,” i.e., after all appeals had been exhausted. This argument, however, is based on Mr. Griswold’s misreading of the same signature page of the Commission’s decision, which cites the HCC’s provision regarding standing, describes the 30-day timeframe for appealing to the Board and then states that any decision not timely appealed “shall be final.” From these provisions, Mr. Griswold cobbles together an argument that the permit should have been held in abeyance for all these years while his appeals have been litigated all the way up to the Alaska Supreme Court, and then through a remand o a hearing on the merits, with more possible appeals to follow; and that Mr. Abboud signed the decision to circumvent that process. To accept Mr. Griswold’s argument on this issue would mean that any project requiring a CUP could be delayed for many years by a determined challenger.

Stated quite simply, Mr. Abboud’s signature on the document constituted issuance of the CUP, in accordance with the requirements of HCC 21.71.060. Mr. Griswold’s argument fails, because the City Planner is required to promptly issue a CUP after Commission approval.

b. Mr. Yager’s role in obtaining the CUP for property owned by the Smiths

As discussed above, Mr. Yager signed the CUP application as “applicant,” and Mr. Smith signed it as “property owner.” Mr. Griswold argues that Mr. Yager is not an attorney and therefore he was engaging in the unlicensed practice of law by representing the Smiths’ interests in connection with the CUP application. Mr. Griswold’s argument, however, is based on a misunderstanding of the statutes and rules of the Alaska Bar that govern unauthorized practice of law issues. The facts are that Mr. Yager and Mr. Smith both signed the application, and they both appeared before the Commission, with Mr. Yager taking the lead in presenting the basic elements of the application. There is no evidence that Mr. Yager held himself out as an attorney or “represented” Mr. Smith in a manner that could be construed as acting as his legal counsel. By merely submitting a CUP application jointly with Mr. Smith, the owner of the relevant property, and then appearing with him at a Commission hearing on the application and speaking factually about the application, Mr. Yager took no steps that could be viewed as unauthorized practice of law.

Mr. Griswold also makes a related argument that Mr. Yager is not bound by the terms of the CUP because he is not the property owner. However, the more important question is whether the property owner, Mr. Smith, is bound by the CUP. The City’s recourse for any violation would be against the property owner.

Mr. Yager’s role in pursuing the CUP application did not constitute unauthorized practice of law. His signing of the application and appearance before the Commission did not render the CUP invalid.

c. The Commission’s failure to consider the effects of both the hotel and the covered porch

Mr. Griswold’s argument on this issue is, again, difficult to discern. He states in his amended notice of appeal that the Windjammer Suites hotel and the covered porch constitute a permitted hotel use, not requiring a CUP; therefore the Commission “should have focused on the effects of the [hotel] encroaching into the reduced setback instead of just focusing on the effects of the proposed covered porch.”⁵³ Mr. Griswold did not elaborate on this issue during the July 11, 2019 oral argument; and the hearing officer is unable to locate any discussion of it within Mr. Griswold’s four briefs filed in this matter (totaling approximately 74 pages of briefing).

The CUP application at issue in this case concerned a covered porch requiring a reduced setback within the CBD, and the effect of that proposed change on “neighborhood character, property values etc.” was the proper subject of the Commission’s inquiry. Absent any cognizable argument in support of this point by Mr. Griswold, the Commission’s failure to consider the effects of the hotel and the covered porch together is not fatal to its decision granting the CUP.

3. Factual Arguments

Mr. Griswold makes a number of factual arguments. First, he generally argues that the decision of the Commission was not based on substantial evidence (Appeal Point 8); he then addresses specific factual findings of the Commission (Appeal Points 9 – 14, 16 – 19). He additionally argues that two Commissioners had impermissible conflicts of interest (Appeal Point 4), and that the Commission overall demonstrated bias (Appeal Point 20).

a. Adequacy of the evidence (Appeal Point 8)

In order to receive a CUP, “[t]he applicant must produce evidence sufficient to enable meaningful review of the application.” Mr. Yager’s application showed the current building, its

⁵³ AR 20.

orientation to the street, the existing distance between the building and the required setback, the design of the proposed renovations to the building, how those renovations would appear from the street, and how they would encroach into the required setback. This provided sufficient evidence to evaluate a simple request, the renovation of the frontage of an existing building, specifically adding a covered porch along what at the time was a blank wall on the building.

Mr. Griswold argues that the Commission's decision, generally, was not based on substantial evidence. As discussed above, substantial evidence means "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."⁵⁴ Mr. Griswold's amended notice of appeal states that the Commission's findings are not supported by substantial evidence and characterizes them as "non-objective, inadequate, off-point, [and] contrived to the point of being ridiculous."⁵⁵ He provides no additional analysis on this general issue, however. Therefore, it makes more sense to address each of his specific factual arguments, individually.

i. Compatibility with purposes of the CBD (Appeal Point 9)

One of the criteria for review of a CUP is whether the "proposed use(s) and structure(s) are compatible with the purpose of the zoning district."⁵⁶ The Planning Commission's Finding 2 provides that "[t]he proposed use(s) and structure(s) are compatible with the purpose of the zoning district..." with the specific finding that "the covered porch provides protection from the weather and enhances a pedestrian-friendly atmosphere along Pioneer Avenue."⁵⁷ Mr. Griswold argues that finding is erroneous because "protection from the weather" is not one of the explicit purposes of the CBD; and "a pedestrian-friendly atmosphere," while listed as something to be encouraged within the CBD, is a subjective concept. He also argued at oral argument that in his opinion, adding a covered porch to the building, where previously there had been a blank wall, does not make the property more pedestrian friendly. Mr. Griswold's comments at that time are telling:

Most pedestrians do not want to be within speaking distance of a structure or otherwise engage it. ... I don't need to ... engage or speak to a porch or anybody on the porch. If I'm walking, I'm in Alaska because I like open air and nature and I like to see green grass and ... if I wanted to live in New York City with buildings on either side ... some people find comfort in that, I don't... I don't think most Alaskans or Homerites do... but it's an arguable point, you can't just say this is

⁵⁴ HCC 21.93.540(e).

⁵⁵ AR 20.

⁵⁶ HCC 21.71.030(b).

⁵⁷ AR 71.

pedestrian friendly because [you] think it's pedestrian friendly just like I can't say it's not pedestrian friendly because I don't like it.⁵⁸

Mr. Griswold's argument highlights the fact that some aspects of the land-use planning process are, by necessity, subjective. This is a theme that seems to run throughout his various factual objections to the Commission's decision in this case. In any event, however, encouraging a "pedestrian-friendly atmosphere" is stated within the purposes of the CBD, and the planning staff report made the finding that the covered porch with reduced setback at issue here would be pedestrian friendly. The Commission adopted the report of the planning staff, including those findings. As a result, there is substantial evidence demonstrating that the Planning Commission identified the purposes of the CBD zoning district and provided the basis for the finding that the proposed covered porch with reduced setback was compatible with the purpose of the CBD.

ii. Effect on adjoining property values (Appeal Point 10).

One of the criteria for review of a CUP is whether the proposed use will not negatively affect the value of the adjoining property more than it would be by other "permitted or conditionally permitted uses" in the CBD.⁵⁹ Mr. Griswold argues that the Planning Commission's Finding 3 to this effect was erroneous, because it failed "to consider the deleterious effects of the ... encroachment into the setback, that a covered porch is not inherently an improvement ..., and that the exterior façade of the [hotel] could be improved without further encroaching into the 20-foot setback"⁶⁰ The staff planning report to the Commission drew the conclusion that because the proposed use - the covered porch with reduced setback - was replacing a blank wall facing the street with an attractive covered porch, this constituted an improvement to the exterior façade of the building.⁶¹

Mr. Griswold's argument is illustrative of the often subjective nature of planning analysis, discussed above. He disagrees with the subjective views of the planning staff and believes that the blank wall facing the street was at least as attractive and desirable for the neighborhood as the proposed covered porch. The Commission, however, was entitled to adopt the findings of the staff report if the Commissioners found them to be reasonable and factually based. The Commissioners adopted the reasonable conclusion of the staff that the porch would be an improvement, which can

⁵⁸ Griswold oral comments, July 11, 2019, at hearing record approx. 52:40.

⁵⁹ HCC 21.71.030(c).

⁶⁰ AR 20-21.

⁶¹ AR 30.

lead one to the reasonable conclusions that the encroachment into the setback would only increase the subject property's value, and because it would be an improvement to the neighborhood, it would not negatively affect the value of adjoining properties. The application itself, Mr. Yager's testimony, and the Planning Staff report, which was approved by the Planning Commission, all provide substantial evidence supporting this finding. Consequently, there is substantial evidence supporting this finding.

iii. Compatibility with other buildings (Appeal Point 11)

One of the criteria for review of a CUP is whether the "proposal is compatible with existing uses of surrounding land."⁶² The Planning Staff report, which was adopted by the Commission, specifically noted that "[t]he covered porch is compatible with the other buildings along Pioneer Avenue. Within 250 feet there are three buildings that have reduced setbacks ... and offer decks similar to the proposed deck."⁶³ Mr. Griswold argues that the Commission's Finding 4 to this effect was erroneous, because some buildings in the neighborhood do not encroach on the setback, and the Commission failed to identify whether other buildings with similar porches along Pioneer Avenue in the CBD are permitted, non-conforming, or illegal structures.⁶⁴

The concept of "compatibility" would appear to be aimed at land uses that are markedly different from one another, e.g., a noxiously loud factory may not be compatible next to a hospital and a nursing home. In any event, however, the review criterion in question does not require the level of analysis inherent in Mr. Griswold's argument on this point. The Commission's finding included reference to three buildings close to the Windjammer Suites with which the proposed use would be compatible.⁶⁵ Although this issue presents another subjective question on which Mr. Griswold may differ with the Commission, substantial evidence supported the finding that the covered porch with reduced setback would be "compatible with existing uses of surrounding land."

iv. Effect on neighborhood character (Appeal Point 12)

One of the criteria for review of a CUP is whether the "proposal will not cause undue harmful effect upon desirable neighborhood character."⁶⁶ The Commission's Finding 6 stated:

⁶² HCC 21.71.030(d).

⁶³ AR 72.

⁶⁴ AR 21.

⁶⁵ AR 72.

⁶⁶ HCC 21.71.030(f).

The scale, bulk, coverage and density of the proposed covered porch will be in harmony with other facades along Pioneer Avenue. The covered deck will not have an undue harmful effect on Pioneer Avenue character.⁶⁷

Mr. Griswold argues that the Planning Commission's finding here was erroneous, because "the scale, bulk, coverage, and density of the Windjammer Suites hotel including the covered porch were never calculated and may exceed the maximum limits allowed by city code."⁶⁸ This argument, however, assumes that the use in question to be analyzed by the Commission was the hotel and the porch together. The impact of the hotel itself on the neighborhood character was not at issue before the Commission, and it is not at issue in this appeal.

Mr. Griswold's argument on this point is misplaced. The record shows that the applicant and the Planning Staff presented evidence to the Planning Commission which demonstrated that the ordinance's review criterion was satisfied. There is substantial evidence in support of this factual finding.

v. *Health, safety and welfare of surrounding area (Appeal Point 13)*

Another of the criteria for review of a CUP is whether the proposed use "will not be unduly detrimental to the health, safety, or welfare of the surrounding area of the City as a whole."⁶⁹ Mr. Griswold argues that the Planning Commission's Finding 7 to this effect was erroneous. He states certain assumptions regarding the purposes of the 20-foot setback requirement, and then argues that "the Commission had a duty to explain why it is now in the public's interest to reduce [the] setback by 50%."⁷⁰

The evidence presented to the Commission showed that the applicants operated a hotel and wished to add the covered porch to enhance the wall of their building facing out onto Pioneer Avenue. The uncontroverted evidence, as discussed above, shows that this addition would improve the building's street appearance, and no one has suggested that the covered porch would affect traffic or safety issues. There was no evidence that the proposed use would harm "health, safety, or welfare" of either the CBD or the City – a complete absence of any evidence, or even a suggestion, of detrimental effect. There was substantial evidence that supported this finding.

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⁶⁷ AR 72.

⁶⁸ AR 21.

⁶⁹ HCC 21.71.030(g).

⁷⁰ AR 21-22.

vi. *Compliance with HCC Title 21 (Appeal Point 14)*

One of the criteria for review of a CUP is whether the proposed use will comply with the city code.⁷¹ Mr. Griswold argues that the Planning Commission’s Finding 8 (“[w]ith an approved CUP, this proposal will comply with the applicable regulations and conditions specified in HCC Title 21”⁷²) to this effect was erroneous.⁷³ Mr. Griswold argues that the Commission applied circular reasoning in this finding, i.e., by premising compliance with HCC Title 21 only on obtaining approval of a CUP.

Mr. Griswold is incorrect. The Commission, by adopting this finding, was simply stating that the CUP approval process was sufficient to ensure the compliance of the proposed porch and reduced setback with the code. The Commission correctly found compliance with the city code. .

vii. *Consistency with the Comprehensive Plan (Appeal Point 16)*

One of the criteria for review of a CUP is whether the proposed use will “not be contrary to the applicable land use goals and objectives of the Comprehensive Plan.”⁷⁴ Mr. Griswold argues that the Commission’s Finding 9 to this effect was erroneous in that the Commission “didn’t even identify the applicable land use goals” and failed to determine if the proposed use was contrary to them.

Mr. Griswold’s argument here fails to note that the Planning Staff report, which was adopted by the Commission, specifically refers to components of the Comprehensive Plan, and states that the proposed use would enhance “the commercial streetscape of Pioneer Ave.” in furtherance of the referenced goals.⁷⁵ No evidence was presented to the Commission that the proposal was contrary to the Comprehensive Plan. Given the evidence in this case, including the Planning Staff report, and the information presented regarding the proposed covered porch, there was substantial evidence supporting this finding.

viii. *Compliance with Community Design Manual (Appeal Points 17 & 18)*

One of the criteria for review of a CUP is whether the proposed use will “comply with all applicable provisions of the Community Design Manual” (Manual).⁷⁶ Mr. Griswold argues in his

⁷¹ HCC 21.71.030(h).

⁷² See AR 55.

⁷³ To the extent that it is more of a legal argument, it is addressed in sections 1(b) and 1(c) above, which conclude that the pertinent portions of the HCC allow use of a CUP to reduce the 20-foot setback requirement.

⁷⁴ HCC 21.71.030(i).

⁷⁵ AR 32, 72.

⁷⁶ HCC 21.71.030(j). The *Community Design Manual for the City of Homer* is available online at <https://www.cityofhomer-ak.gov/planning/community-design-manual> (dated accessed August 10, 2018).

amended notice of appeal that the Commission erred by failing to make findings that the Windjammer Suites Hotel constituted a residential use subject to the requirements of the Manual.⁷⁷ His next point on appeal argues that the Commission erred “by failing to identify all applicable provisions of the [Manual} and making them conditions for approval of the CUP.”⁷⁸ In his opening brief after remand, he appears to amend these arguments, contending that the Commission erred by finding that the covered deck would meet the applicable provisions of the Manual.⁷⁹

Mr. Griswold presents no authority for the proposition that every potentially applicable provision of the Manual must have been imposed as a condition for approval of the proposed covered porch at issue here. Compliance with the provisions of the Manual was properly addressed by the Planning Staff report, which was adopted by the Commission; it specifically refers to the applicable provisions of the Community Design Manual, and states that the proposed covered porch comports with them.⁸⁰ The approved CUP includes a condition that outdoor lighting must be compliant with the Community Design Manual, as well as the condition discussed above regarding landscaping in the form of flower box plantings.⁸¹ In addition, the Commission had Mr. Yager’s application in front of them, which included design plans for the proposed renovations that encroached on the setback. The Planning Commission had adequate evidence to make this finding, *i.e.*, the finding is supported by substantial evidence.

ix. Landscaping issue (Appeal Point 19)

Mr. Griswold objects to the Planning Commission’s conclusion that the CUP condition requiring flower box plantings along the front edge of the covered porch facing Pioneer Avenue constitutes “landscaping.”⁸² He argues that true landscaping would be possible if the land were not to be occupied by the covered porch.⁸³ It is apparent that Mr. Griswold simply disagrees that flower boxes can be characterized as landscaping.⁸⁴ He presents no authority for the proposition that flower box plantings are not properly characterized as “landscaping” that can aid a project in meeting the terms of the Community Design Manual. The mere fact that he has a philosophical

⁷⁷ AR 23.

⁷⁸ *Id.*

⁷⁹ Griswold Ancillary Opening Brief at 18-19.

⁸⁰ Ar 32-33.

⁸¹ AR 73.

⁸² AR 23.

⁸³ *Id.*

⁸⁴ Mr. Griswold also argues that the terms of the flower box condition are too ambiguous to be enforceable (the condition states “landscaping shall include flower box plantings along the edge of the deck facing Pioneer Ave.” AR 73. Because he did not further address this argument in his briefing or at oral argument, however, it is waived.

disagreement with the planning staff and the Commission on this issue does not render the condition invalid.

b. Conflicts of interest and bias (Appeal Points 4 & 20)

Mr. Griswold first argues that Commissioners Erickson and Venuti had conflicts of interest that should have barred them from voting on the CUP application (Appeal Point 4). As discussed above, both Commissioners disclosed their potential conflicts to the Commission. After discussion, motions were brought and the Commission as a whole voted against finding conflicts on the part of Ms. Erickson and Mr. Venuti. In his briefing, Mr. Griswold notes that the discussion described in the Commission's meeting minutes indicates that both Ms. Erickson and Mr. Venuti stated that their conflicts had to do with business relationships with Mr. Yager rather than with Windjammer Suites, but they apparently did not indicate whether their business relationships involved Mr. Yager's real estate business.⁸⁵ It is pertinent here to note that along with adding the covered porch, a portion of the Windjammer Suites was going to be remodeled to create an office for Mr. Yager's real estate business.

Mr. Griswold argues that the primary concern under HCC 1.18.030 is whether the City official has a financial interest in the subject of the proposed action. He implies that Ms. Erickson and Mr. Venuti could have had financial relationships with Mr. Yager's real estate business that might implicate the concerns covered by HCC 1.18.030.

Mr. Griswold fails to note, however, that the proposed action at issue here is not the remodeling of the hotel to accommodate Mr. Yager's real estate office, it is simply the CUP to allow the addition of the covered porch with a reduced setback. In addition, as pointed out by Mr. Abboud in his brief on remand, seven commissioners voted in favor of the CUP, so the two commissioners' votes were not instrumental in approval of the CUP. In other words, even if one assumes *arguendo* that Ms. Erickson and Mr. Venuti should have been disqualified, the failure to disqualify them constituted harmless error.

Mr. Griswold also argues that the Commission overall demonstrated bias "by deliberately omitting HCC 21.71.040(a) from its review criteria" (Appeal Point 20).⁸⁶ HCC 21.71.040(a) provides that:

The Planning Commission will review and may approve, approve with conditions, or deny an application for conditional use permit. The application shall not be

⁸⁵ Griswold Ancillary Opening Brief at 24-26.

⁸⁶ AR 23.

approved unless it is established that the proposal, with conditions if necessary, satisfies the applicable review criteria.

This argument apparently relates back to Mr. Griswold's contentions regarding the Community Design Manual, discussed at length above.⁸⁷ However, nowhere does Mr. Griswold explain how the Commission's analysis of the provisions of the Manual demonstrates bias on the part of the Commissioners. His failure to address this allegation in his briefs or at oral argument results in a waiver of the argument.

c. Non-conforming use issue

Mr. Griswold raised one additional argument for the first time at oral argument; he pointed out that the Windjammer Suites building was built in 1975, before any setback requirements existed in City Code, that the building already slightly encroached on the 20-foot setback when it was enacted, and that as a result the encroachment was grandfathered in. This historical encroachment of approximately two feet into the setback was noted in the Planning Staff report to the Commission.⁸⁸ Mr. Griswold contended at oral argument that this meant that the building was a legal, "non-conforming structure," and that provisions of the HCC provide that non-conforming structures cannot be enlarged if to do so would increase their non-conformity.⁸⁹ Mr. Griswold conceded that this was the first time he had raised this issue throughout the history of this proceeding.

The question of whether the decision to grant the CUP at issue here violated HCC provisions regarding non-conforming uses is beyond the scope of this proceeding. Appeals to the Board of Adjustment are heard solely on the established record, unless there are allegations involving new evidence or changed circumstances.⁹⁰ Mr. Griswold's failure to raise this issue to the Commission or in his four appeal briefs to the Board bars him from raising it now.

IV. Summary

A review of Mr. Griswold's numerous points on appeal in this case demonstrates that his arguments lacked either a legal or a factual basis. The Homer City Code created a Homer Advisory Planning Commission with the legal authority to consider, grant, or deny applications for Conditional Use Permits. The Homer City Code specifically provides that an applicant in its

⁸⁷ See Griswold Ancillary Opening Brief at 20-21.

⁸⁸ AR 29-30.

⁸⁹ See HCC 21.61.030(a), .040(c).

⁹⁰ HCC 21.93.510(a).

Central Business District can request and receive leave to reduce the otherwise required 20-foot setback requirement, by applying for a CUP through the Conditional Use Permit process. The Homer City Code provides an explicit list of conditions which must be considered by the Planning Commission in deciding whether to grant or deny the application. There is substantial evidence in the record demonstrating that the Commission did consider the relevant factors and substantial evidence that supports its findings on those conditions. Finally, there is nothing in the record that shows the process was flawed, or that the Planning Commission's decision in favor of the CUP for the covered porch with reduced setback at the Windjammer Suite building was biased.

V. Conclusion

The decision of the Homer Advisory Planning Commission dated May 14, 2014, which granted Conditional Use Permit 14-05, is affirmed.

DATED: September 9, 2019

By: _____


Andrew M. Lebo

Administrative Law Judge

NOTICE OF APPEAL RIGHTS

This is a final decision. If you wish to appeal this decision, you must file an administrative appeal to the Alaska Superior Court, within 30 days from the date this decision is distributed to you. See HCC 21.91.130 and Alaska Rule of Appellate Procedure 602.

Certificate of Service: I certify that on September 9, 2019 a true and correct copy of this Decision was distributed as follows: Frank Griswold (by email); Rick Abboud, City Planner (by email); Melissa Jacobsen, City Clerk (courtesy copy by email).

By: _____


Office of Administrative Hearings



City of Homer

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Staff Report PL 19-83

TO: Homer Advisory Planning Commission
FROM: Rick Abboud, City Planner
DATE: October 2, 2019
SUBJECT: Ordinance Amending HCC 21.30.020 to allow boat sales, rentals, service, repair and storage, and boat manufacturing as a permitted use in the Marine Industrial District.

Introduction

Currently, boat sales, rentals, service, repair and storage, and boat manufacturing in the Marine Industrial District is a conditional use, while marine equipment sales, rentals, service, repair and storage is a permitted use.

Analysis

A significant amount of the Marine Industrial District revolves around services for boats. These uses are traditional to the district and they do not constitute a need for special consideration in a CUP.

The Marine Industrial District is a logical location for these activities and the CUP process would have little to offer over allowing the uses outright as a permitted use. Allowing these boat related activities as a permitted use will save applicants, the Planning Commission, and planning staff time and money.

With the concurrence of support of the Planning commission, this item was referred to the Port and Harbor Commission for comments. The item was an agenda item at August 28th meeting of the Port and Harbor Commission where a motion was passed with unanimous consent supporting the draft amended.

Staff Recommendation

Hold a public hearing and make recommendation for adoption to the City Council

Att.

Draft Ordinance

Port and Harbor minutes

**CITY OF HOMER
HOMER, ALASKA**

Planning

ORDINANCE 19-xx

AN ORDINANCE OF THE CITY COUNCIL OF HOMER, ALASKA, AMENDING HOMER CITY CODE 21.30 MARINE INDUSTRIAL ZONING DISTRICT SECTION 21.30.020 PERMITTED USES AND STRUCTURES, TO ADD BOAT SALES, RENTALS, SERVICE, REPAIR AND STORAGE, AND BOAT MANUFACTURING AS A PERMITTED USE AND; SECTION 21.30.030 CONDITIONAL USES AND STRUCTURES, TO REMOVE BOAT SALES, RENTALS, SERVICE, REPAIR AND STORAGE, AND BOAT MANUFACTURING AS A CONDITIONAL USE.

WHEREAS, the 2011 Homer Spit Comprehensive Plan encourages development related to the boating industries; and

WHEREAS, 2018 Homer Comprehensive Plan Economic Vitality Chapter objectives include promoting the marine trades; and

WHEREAS, marine equipment sales, rentals, service, repair and storage are permitted uses in the Marine Industrial District; and

WHEREAS, the Marine Industrial Use District has adopted nuisance standards; and

WHEREAS, the Port and Harbor Commission supports the ordinance with unanimous consent.

NOW THEREFORE, THE CITY OF HOMER ORDAINS:

Section 1. Homer City Code 21.30.020, Permitted uses and structures is hereby adopted to read as follows:

The following uses are permitted outright in the Marine Industrial District, except when such use requires a conditional use permit by reason of size, traffic volumes, or other reasons set forth in this chapter:

- a. Port and harbor facilities;
- b. Manufacturing, processing and packing of sea products;
- c. Cold storage;

- 43
44 d. Dry docks;
45
46 e. Wharves and docks, marine loading facilities, ferry terminals, marine railways;
47
48 f. Marine equipment sales, rentals, service, repair and storage;
49
50 g. Boat launching or moorage facilities, marinas, boat charter services;
51
52 h. Warehouse and marshaling yards for storing goods awaiting transfer to marine vessels or
53 off-loaded from a marine vessel and awaiting immediate pickup by land-based
54 transportation;
55
56 i. Mobile food services;
57
58 j. Itinerant merchants, provided all activities shall be limited to uses permitted outright under
59 this zoning district;
60
61 k. Recreational vehicle parks, provided they shall conform to the standards in Chapter 21.54
62 HCC;
63
64 l. Caretaker, business owner or employee housing as an accessory use to a primary use, and
65 limited to no more than 50 percent of the floor area of a building and for use by an occupant
66 for more than 30 consecutive days;
67
68 m. More than one building containing a permitted principal use on a lot;
69
70 n. Restaurant as an accessory use;
71
72 o. Parks;
73
74 p. As an accessory use, one small wind energy system per lot.

75
76 **q. Boat sales, rentals, service, repair and storage, and boat manufacturing;**
77

78
79 Section 2: Homer City Code 21.30.030, Conditional uses and structures is hereby adopted to
80 read as follows:
81

82 The following uses may be permitted in the Marine Industrial District when authorized by
83 conditional use permit issued in accordance with Chapter 21.71 HCC:
84

a. Planned unit development, limited to water-dependent or water-related uses and excluding all dwellings;

~~b. Boat sales, rentals, service, repair and storage, and boat manufacturing;~~

~~b~~. Extractive enterprises related to other uses permitted in the district;

~~d~~. Campgrounds;

~~e~~. Bulk petroleum storage;

~~f~~. Helipads;

~~g~~. Heliports;

~~h~~. Indoor recreational facilities;

~~i~~. Outdoor recreational facilities;

~~j~~. Public utility facilities and structures;

~~k~~. The location of a building within a setback area required by HCC 21.30.040(b). In addition to meeting the criteria for a conditional use permit under HCC 21.71.030, the building must meet the following standards:

1. Not have a greater negative effect on the value of the adjoining property than a building located outside the setback area; and

2. Have a design that is compatible with that of the structures on the adjoining property.

Section 3: This ordinance is of a permanent and general character and shall be included in the City Code.

ENACTED BY THE CITY COUNCIL OF THE CITY OF HOMER THIS ___ DAY OF _____,
2019.

CITY OF HOMER

KEN CASTNER, MAYOR

ATTEST:

MELISSA JACOBSEN, MMC, CITY CLERK

YES:

NO:

ABSTAIN:

ABSENT:

First Reading:

Public Hearing:

Second Reading:

Effective Date:

Reviewed and approved as to form:

Mary K. Koester, City Manager

Holly Wells, City Attorney

Date: _____

Date: _____

- C. Boat Related Uses in the Marine Industrial District
 - i. Memo from City Planner Re: Boat Related Uses in the Marine Industrial District
 - ii. Staff Report 19-71 to Planning Commission
 - iii. Draft Ordinance 19-xx Boat Activities in MI
 - iv. Planning Commission Minutes Excerpt from August 7, 2019

Deputy City Clerk Tussey referred the commissioners to City Planner Abboud's memo in the packet describing what the Planning Commission is asking the Port and Harbor Commission to weigh in on.

There was discussion on the details of Mr. Abboud's memo and the proposal to allow boat sales, rentals, service, repair and storage, and boat manufacturing as permitted uses. Commissioners deliberated on current and potential activities on the Spit (such as RV campgrounds and boat sale lots), the conditional use permit process, and what is considered permitted uses at this time under Title 21. They agreed the amendment is more of a housekeeping change than anything.

ULMER/DONICH MOVED TO SUPPORT AMENDING HOMER CITY CODE TO ADD BOAT SALES, RENTALS, SERVICE, REPAIR AND STORAGE, AND BOAT MANUFACTURING TO PERMITTED USES IN THE MARINE INDUSTRIAL DISTRICT; AND RECOMMEND TO THE PLANNING COMMISSION AND CITY COUNCIL TO APPROVE THE AMENDMENT.

There was no further discussion.

VOTE: NON-OBJECTION: UNANIMOUS CONSENT

Motion carried.

INFORMATIONAL MATERIALS

- A. North Pacific Fisheries Association Letter Re: Upcoming Management Council
- B. Upcoming AAHPA 2019 Conference Agenda
- C. 2019 Homer Harbor Beach Nourishment Project LERRD Certification
- D. Hilcorp Letter Re: Upcoming Seismic Survey Work
- E. Port & Harbor Monthly Statistical Report for July 2019
- F. Water/Sewer Bills Report for July 2019
- G. Crane & Ice Report
- H. Dock Activity Reports
- I. PHC 2019 Meeting Calendar
- J. Commissioner Attendance at 2019 City Council Meetings

There was discussion on the North Pacific Fisheries Association meeting that's coming up in Homer during the first week of October; the beach nourishment project and what the Corps of Engineers is looking to accomplish on the Spit regarding erosion control; and Hilcorps' upcoming seismic work to be conducted in the Cook Inlet.

COMMENTS OF THE AUDIENCE



City of Homer

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Staff Report 19-85

TO: Homer Advisory Planning Commission
THROUGH: Rick Abboud, City Planner
FROM: Julie Engebretsen, Deputy City Planner
DATE: October 2, 2019
SUBJECT: Conditional Use Permit (CUP) 2019-07

Synopsis The applicant proposes to expand an existing parking lot on the Open Space Recreation Zoning District. A Conditional Use Permit (CUP) is required per HCC 21.32.030(f).

Applicant: City of Homer Katie Koester, City Manager
491 E Pioneer Ave Carey Meyer, Public Works Director
Homer, AK 99603

Location: Lot 31, Homer Spit Road Subdivision Amended
Parcel ID: 18103401
Size of Existing Lot: 2.52 acres
Zoning Designation: Open Space Recreation District
Existing Land Use: Parking lot, Seafarer's Memorial, Beach
Surrounding Land Use: North: Shops, boat house gathering facility, small boat harbor
South: Kachemak Bay
East: Parking lot, RV Park
West: Shops, restaurants, boardwalk, beach

Comprehensive Plan: Homer Spit Plan Goal: Wise land management of the Spit and its resources to accommodate natural processes, while allowing fishing, tourism other marine related development, and open space/recreational uses. (p 20)

Flood Plain Status: VE 28, Velocity Zone Elevation 28 feet
BCWPD: Not within the Bridge Creek Watershed Protection District
Utilities: Public utilities are available at the site.
Public Notice: Notice was sent to 25 parcels and 8 land owners, 103 leased parcels or condominiums and 79 leases or condo owners as shown on the KPB tax assessor rolls.

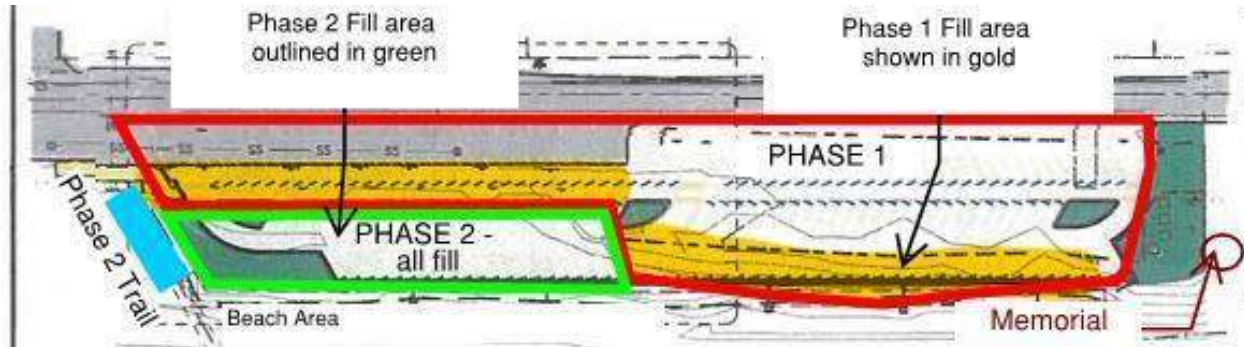
Applicant statement from application: Proposed use: provide additional parking on the Homer Spit (see attached five construction drawings). Work includes placement of fill material with Rip-Rap Armor rock at the face adjacent to Kachemak Bay. This project will be done in phases. In Phase 1, a front end loader will first be used to pick up large sections of the existing beach grass and set it aside for transplanting later in the project. We will then fill in the project area with dredged materials, approximately to the level of the highway. Materials will be compacted into place as the lot is built up. Once the area is built up to the correct elevation, the beach grass will be moved out to the seaward side of the fill and transplanted onto the bank to help stabilize the ground. Beach grass will also be transplanted onto the bank of the new lot next to the access trail for slope stabilization. In Phase 2, the surface will be paved with asphalt and five drainage outfalls will be constructed, daylighting just below elevation 23.4' (MLLW). Phase 2 will determine the amount and type of shoreline protection needed and will include the installation of riprap shoreline protection. Current plans also include an additional sea grass transition swale between the parking lot and the shoreline protection. There will be approximately 197 parking spaces with striping and parking bumpers. The number of parking spaces may be reduced contingent upon addition of 6 ADA parking spaces. The site plan will be amended to include ADA parking. Phase 2 will complete the project which will include drainage, slope protection, paving, marking, and walkways.

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25cd2c3b4bd3\ITEM-Attachment-001-91d8dc64e2997e064ad6be92b3d.docx

46

Planning Staff Analysis:

In staff's discussions with the Port, the phasing was further refined as follows:



Phase 1:

1. Pave all ADA parking spaces
2. Pave pedestrian trail through the parking lot (this will require some fill placement)
3. Curb Homer Spit road to organize parallel parking and to limit entrances and exits onto Homer Spit Road
4. Focus on the SW half of the project, nearest to the Seafarer's Memorial. The existing parking lot would be extended approximately 21 feet seaward.
5. This portion would be completed first, over an approximately three year period, resulting in a completed parking area
6. Parking area will be capped with gravel, and parking stops installed (also called a wheel stop)
7. Replant beach grass along slopes

Phase 2:

1. Fill the remainder of the project area to create an additional 50 parking spaces
2. Construct ADA pathway to beach
3. Cap with gravel and install parking stops

Paving could be accomplished in the long term, but is not necessary to improve the parking area, and adds significant expense.

The criteria for granting a Conditional Use Permit is set forth in HCC 21.71.030, Review criteria, and establishes the following conditions:

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

Analysis: HCC 21.32.020(b) authorizes open space, such as park, playground and related recreation activities. Under HCC 21.32.030(f), parking areas are authorized as a conditional use.

Finding 1: HCC 21.32.030(f) authorizes parking areas.

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

HCC 21.32.010: The purposes of the Open Space – Recreation District are primarily to promote public recreational opportunities while protecting and preserving the natural and scenic resources of the area and public access to tidelands. Generally, pedestrian uses are given priority over motorized uses

Applicant: The proposed parking area is compatible with the zoning district as it will provide localized parking as well as allow direct access to a city park (Seafarer's Memorial), the beach, and nearby businesses. It is not assumed that the structure will negatively impact adjoining properties, or be out of harmony or proportion in relation to other nearby parking areas.

Finding 2: The purpose of the Open Space – Recreation includes providing for public recreational opportunities and public access to tidelands. The parking lot will provide ease of access to Homer Spit attractions such as the beach and small boat harbor. The pedestrian trail to the beach will enhance beach access opportunities for all users, and is compatible with the purpose of the 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.

Applicant: Increasing parking capacity in this area has the potential to increase economic activity which may have a positive effect on property values and increased sales tax generation from local businesses.

Analysis: Adjoining uses include an RV park, and a boardwalk with several shops and restaurants. Many uses in the Open Space Recreation district have greater negative impacts than would be realized from a parking lot. Pipelines, railroads, fishing gear and boat storage, and indoor and outdoor recreational facilities would have a greater impact on nearby property values. Pipelines and railroad could create a lot of noise and visual impact, and indoor and outdoor recreational facilities could create more traffic.

Finding 3: A parking lot is not expected to negatively impact the adjoining properties greater than other permitted or conditional uses.

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

Applicant: The Homer Spit has many parking lots that provide residents and visitors access to commercial, industrial and recreational areas. This parking lot will satisfy the need to provide more access for commercial and recreational purposes. Vessel owners using the harbor will benefit from improving the overcrowded parking conditions that exist in that area of the Spit from May to September. South side Kachemak Bay residents who use the Homer Spit will be positively impacted by the additional parking spaces in the vicinity of Ramps 1 through 3.

Finding 4: The proposal is compatible with existing uses of surrounding land, including an RV park and a boardwalk containing shops and restaurants.

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

Analysis: City of Homer Fire Department commented that they should have more than adequate clearances for Fire Department access.

Finding 5: Existing public, water, sewer, and fire services are adequate to serve the parking lot.

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.

Applicant: Theoretically, the parking expansion will reduce existing parking issues. Also, a well-organized parking area with established ingress and egress points may reduce problems with traffic congestion as well as reduce the potential for vehicle/pedestrian conflict; improving safety overall. With the improvements, parked vehicles will no longer have to back directly onto the roadway/oncoming traffic of the Sterling Hwy (Homer Spit Rd), and an ADA pedestrian walkway will provide a safe access to the adjacent recreational beach area. State traffic engineer has approved the parking access configuration for this project.

Analysis: Desirable neighborhood character could be described by a portion of the Purpose statement for the district, to promote public recreation while protecting and preserving the natural and scenic resources of the area and public access to tidelands.

- Public recreation will be promoted by addressing the organization of the parking lot, creation of ADA parking spaces and paved pedestrian pathway to the Seafarer's Memorial and to local businesses. The parking spaces will serve

beach visitors, business customers, and harbor users on their way to enjoying Kachemak Bay.

- Public access to tidelands will be preserved and enhanced by the phase two construction of a pathway down to the beach area.
- Full construction of phases one and two will result in the loss of public beach area, particularly with phase two.

Finding 6: The Commission finds the proposal will not cause undue harmful effect upon desirable neighborhood character as described in the purpose statement of the district.

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

Analysis: The parking lot itself does not pose a health and safety issue to the surrounding area, or the city itself. The reconfiguration of existing spaces will increase the safety of the immediate area of both vehicle and pedestrian flow. The current project is in uplands and is not expected to cause erosion damage to adjacent properties at this time.

Finding 7: The project is not expected to be detrimental to the health, safety or welfare of the surrounding area or the City as a whole.

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

Analysis: Gaining a CUP along with the zoning permit process addresses the applicable regulations.

Finding 8: The proposal will comply with applicable regulations.

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

Applicant:

HOMER SPIT COMPREHENSIVE PLAN 2011 Chapter 4: Land Use and Community Design, Goal 1.5 - Ensure that high demand seasonal uses are given priority

HOMER COMPREHENSIVE PLAN 2018

Chapter 7: Economic Vitality Goal 5 -Strengthen Homer as a tourism destination.

- 3. Surfacing of parking areas:** No specific conditions deemed necessary.
- 4. Street and road dedications and improvements:** No specific conditions deemed necessary.
- 5. Control of points of vehicular ingress and egress:** No specific conditions deemed necessary.
- 6. Special provisions on signs:** No specific conditions deemed necessary.
- 7. Landscaping:** No specific conditions deemed necessary.
- 8. Maintenance of the grounds, building, or structures:** No specific conditions deemed necessary.
- 9. Control of noise, vibration, odors or other similar nuisances:** No specific conditions deemed necessary.
- 10. Limitation of time for certain activities:** No specific conditions deemed necessary.
- 11. A time period within which the proposed use shall be developed:** No specific conditions deemed necessary.
- 12. A limit on total duration of use:** No specific conditions deemed necessary.
- 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.

Applicant: First and foremost, the special improvements of this project are made with an increase in safety for both pedestrians and vehicles in mind. The new parking lot layout provides controlled points of ingress and egress and removes the need for vehicles to back directly into the on-coming traffic of the Sterling Hwy when trying to exit a parking space. A 10' wide paved pedestrian corridor running down the middle of the parking lot allows connecting pedestrian access between local businesses and the adjacent park, eliminating the need for pedestrian foot traffic along the roadside. The planned 10' wide paved pedestrian corridor will also run alongside 6 new designated handicap spaces allowing people with limited mobility easier access to these same businesses and the public park. With the same public access and enjoyment in mind, an ADA compliant gravel trail will connect the parking area to the public beach recreation area. There is currently no nearby ADA compliant trail that provides access to the base of the natural swale where the beach level begins. The Homer Spit has spectacular vista views from the beach and everyone should have access to enjoy this valuable and beautiful public recreation area. Along this trail, in areas along the pedestrian path, and in the areas surrounding the parking lot, the natural beach grasses that were transplanted at the beginning of the project will be planted back into the landscape. The native beach grass is not only aesthetically pleasing, but has the added benefit of helping

with hillslope integrity and preventing erosion. Also, because the native grasses are naturally occurring in the area, it is low maintenance in terms of landscaping when used ornamentally and will create a seamless blended border into the natural areas surrounding and around the project area.

We would like to recommend an additional special improvement of hydrodynamic separators during Phase 2 of the project. While the current Phase 1 gravel parking lot drainage plan lists dry manholes for overflow rainwater catchment, once the parking lot receives paving the natural filtration benefit provided by the soil will be limited. We feel it would be in the best interest of the area to install hydrodynamic separators as a replacement to the dry manhole rainwater collectors to prevent oils or other compounds from the parking lot being deposited through rainwater runoff onto the beach or enter into the marine environment.

FIRE DEPARTMENT COMMENTS: City of Homer Fire Department commented that they should have more than adequate clearances for Fire Department access.

PUBLIC COMMENTS: None submitted by packet printing.

STAFF COMMENTS/RECOMMENDATIONS:

Planning Commission approve CUP 19-07 with findings 1-10 and the following conditions:

Condition 1. ADA parking spaces and pedestrian path through the parking lot shall be paved.

Condition 2. Extend the paved pedestrian trail all the way to the paving at the Seafarers Memorial. There should be no gaps in paved travel surface between the ADA parking spaces and the memorial.

Condition 3. Phase one shall be completed prior to placing fill for Phase 2 as described in this staff report and depicted on the attachments.

Attachments

Application
Public Notice
Aerial Map
6(f) Boundary Map
Map 5 Spit Plan
Map 6 Spit Plan



City of Homer

www.cityofhomer-ak.gov

Planning
491 East Pioneer Avenue
Homer, Alaska 99603

Planning@ci.homer.ak.us
(p) 907-235-3106
(f) 907-235-3118

Applicant

Name: City of Homer Telephone No.: 235-3170

Address: 3575 Heath St. Email: cmeyer@ci.homer.ak.us

Property Owner (if different than the applicant):

Name: City of Homer Telephone No.: 235-3170

Address: 491 E. Pioneer Ave Email: cmeyer@ci.homer.ak.us

PROPERTY INFORMATION:

Address: No Address Lot Size: 2.52 acres KPB Tax ID # 18103401

Legal Description of Property: T 7S R 13W SEC 1 SEWARD MERIDIAN HM 0890034 HOMER
SPIT SUB AMENDED LOT 31

For staff use:

Date: 9/11/19 Fee submittal: Amount /
Received by: [Signature] Date application accepted as complete 9/11/19
Planning Commission Public Hearing Date: _____

Conditional Use Permit Application Requirements:

1. A Site Plan
2. Right of Way Access Plan
3. Parking Plan
4. A map showing neighboring lots and a narrative description of the existing uses of all neighboring lots. (Planning can provide a blank map for you to fill in).
5. Completed Application Form
6. Payment of application fee (nonrefundable)
7. Any other information required by code or staff, to review your project

Circle Your Zoning District

| | RR | UR | RO | CBD | TCD | GBD | GC1 | GC2 | MC | MI | EEMU | BCWPD |
|------------------------------------|----|----|----|-----|-----|-----|-----|-----|----|----|------|-------|
| Level 1 Site Plan | x | x | x | | | x | | | x | | | x |
| Level 1 ROW Access Plan | x | x | | | | | | | x | | | |
| Level 1 Site Development Standards | x | x | | | | | | | | | | |
| Level 1 Lighting | | | x | x | x | x | x | x | x | x | x | |
| Level 2 Site Plan | | | x | x | x | | x | x | | x | x | |
| Level 2 ROW Access Plan | | | x | x | x | | x | x | | x | x | |
| Level 2 Site Development Standards | | | x* | x | x | x | x | x | | | x | |
| Level 3 Site Development Standards | | | | | | | | | x | x | | |
| Level 3 ROW Access Plan | | | | | | x | | | | | | |
| DAP/SWP questionnaire | | | | | x | x | x | x | | | x | |

Circle applicable permits. Planning staff will be glad to assist with these questions.

Y/N Are you building or remodeling a commercial structure, or multifamily building with more than 3 apartments? If yes, Fire Marshal Certification is required. Status: _____

Y/N Will your development trigger a Development Activity Plan?

Application Status: _____

Y/N Will your development trigger a Storm water Plan?

Application Status: **ADEC will be notified of our activities.**

Y/N Does your site contain wetlands? If yes, Army Corps of Engineers Wetlands Permit is required.

Y/N Is your development in a floodplain? If yes, a Flood Development Permit is required.

Application Status: **Will be submitted soon**

Y/N Does your project trigger a Community Design Manual review?

If yes, complete the design review application form. The Community Design Manual is online at: <http://www.ci.homer.ak.us/documentsandforms>

Y/N Do you need a traffic impact analysis?

Y/N Are there any nonconforming uses or structures on the property?

Y/N Have they been formally accepted by the Homer Advisory Planning Commission?

Y/N Do you have a state or city driveway permit? Status: _____

Y/N Do you have active City water and sewer permits? Status: _____

1. Currently, how is the property used? Are there buildings on the property? How many square feet? Uses within the building(s)?

Public Parking and Seafarers Memorial. Yes – the memorial. 314 sq. feet. Uses within the Memorial: public remembrance and community events.

2. What is the proposed use of the property? How do you intend to develop the property? (Attach additional sheet if needed. Provide as much information as possible).

Proposed use: provide additional parking on the Homer Spit (see attached five construction drawings). Work includes placement of fill material with Rip-Rap Armor rock at the face adjacent to Kachemak Bay. This project will be done in phases. In Phase 1, a front end loader will first be used to pick up large sections of the existing beach grass and set it aside for transplanting later in the project. We will then fill in the project area with dredged materials, approximately to the level of the highway. Materials will be compacted into place as the lot is built up. Once the area is built up to the correct elevation, the beach grass will be moved out to the seaward side of the fill and transplanted onto the bank to help stabilize the ground. Beach grass will also be transplanted onto the bank of the new lot next to the access trail for slope stabilization. In Phase 2, the surface will be paved with asphalt and five drainage outfalls will be constructed, daylighting just below elevation 23.4' (MLLW). Phase 2 will determine the amount and type of shoreline protection needed and will include the installation of riprap shoreline protection. Current plans also include an additional sea grass transition swale between the parking lot and the shoreline protection. There will be approximately 197 parking spaces with striping and parking bumpers. The number of parking spaces may be reduced contingent upon addition of 6 ADA parking spaces. The site plan will be amended to include ADA

parking. Phase 2 will complete the project which will include drainage, slope protection, paving, marking, and walkways.

(Note: There may be a period of time between Phase 1 and Phase 2. At the completion of Phase 1 if there is no funding available to move on to Phase 2, staff will work to sign and layout the newly created gravel space for public parking.)

CONDITIONAL USE INFORMATION: Please use additional sheets if necessary. HCC21.71.030

- a. What code citation authorizes each proposed use and structure by conditional use of the permit?

HCC 21.32.030 Conditional uses and structures. f. Parking areas

- b. Describe how the proposed uses(s) and structures(s) are compatible with the purpose of the zoning district?

The proposed parking area is compatible with the zoning district as it will provide localized parking as well as allow direct access to a city park (Seafarer's Memorial), the beach, and nearby businesses. It is not assumed that the structure will negatively impact adjoining properties, or be out of harmony or proportion in relation to other nearby parking areas.

- c. How will your proposed project affect adjoining property values?

Increasing parking capacity in this area has the potential to increase economic activity which may have a positive effect on property values and increased sales tax generation from local businesses.

- d. How is your proposal compatible with existing uses of the surrounding land?

The Homer Spit has many parking lots that provide residents and visitors access to commercial, industrial and recreational areas. This parking lot will satisfy the need to provide more access for commercial and recreational purposes. Vessel owners using the harbor will benefit from improving the overcrowded parking conditions that exist in that area of the Spit from May to September. South side Kachemak Bay residents who use the Homer Spit will be positively impacted by the additional parking spaces in the vicinity of Ramps 1 through 3.

- e. Are/will public services adequate to serve the proposed uses and structures?

Yes.

- f. How will the development affect the harmony in scale, bulk, coverage and density upon the desirable neighborhood character, and will the generation of traffic and the capacity of surrounding streets and roads be negatively affected?

Theoretically, the parking expansion will reduce existing parking issues. Also, a well-organized parking area with established ingress and egress points may reduce problems with traffic congestion as well as reduce the potential for vehicle/pedestrian conflict; improving safety overall. With the improvements, parked vehicles will no longer have to back directly onto the roadway/oncoming traffic of the Sterling Hwy (Homer Spit Rd), and an ADA pedestrian walkway will

provide a safe access to the adjacent recreational beach area. State traffic engineer has approved the parking access configuration for this project.

- g. Will your proposal be detrimental to the health, safety or welfare of the surrounding area or the city as a whole?

No.

- h. How does your project relate to the goals of the Comprehensive Plan?

HOMER SPIT COMPREHENSIVE PLAN 2011

Chapter 4: Land Use and Community Design

Goal 1.5 - Ensure that high demand seasonal uses are given priority

HOMER COMPREHENSIVE PLAN 2018

Chapter 7: Economic Vitality

Goal 5 - Strengthen Homer as a tourism destination.

Chapter 6: Facilities and Services

Goal 1 - Provide and improve city-operated facilities and services to meet the current needs of the community, anticipate growth, conserve energy, and keep pace with future demands.

Goal 2

Objective C - VISITOR SERVICES – Provide and sustain public services and facilities to serve visitors

- **2.2 improve traffic flow and safety on the Sterling Highway (Homer Spit Road)**
- **Limit number of access points to the Sterling Highway.**

- i. The Planning Commission may require you to make some special improvements. Are you planning on doing any of the following, or do you have suggestions on special improvements you would be willing to make? **(circle each answer)**

1. Y/N Special yards and spaces.
2. Y/N Fences, walls and screening.
3. Y/N Surfacing of parking areas.
4. Y/N Street and road dedications and improvements (or bonds).
5. Y/N Control of points of vehicular ingress & egress.
6. Y/N Special provisions on signs.
7. Y/N Landscaping.
8. Y/N Maintenance of the grounds, buildings, or structures.
9. Y/N Control of noise, vibration, odors, lighting, heat, glare, water and solid waste pollution, dangerous materials, material and equipment storage, or other similar nuisances.
10. Y/N Time for certain activities.
11. Y/N A time period within which the proposed use shall be developed.
12. Y/N A limit on total duration of use.

13. Y/N Special dimensional requirements such as lot area, setbacks, building height.
14. Y/N Other conditions deemed necessary to protect the interest of the community.

First and foremost, the special improvements of this project are made with an increase in safety for both pedestrians and vehicles in mind. The new parking lot layout provides controlled points of ingress and egress and removes the need for vehicles to back directly into the on-coming traffic of the Sterling Hwy when trying to exit a parking space. A 10' wide paved pedestrian corridor running down the middle of the parking lot allows connecting pedestrian access between local businesses and the adjacent park, eliminating the need for pedestrian foot traffic along the roadside. The planned 10' wide paved pedestrian corridor will also run alongside 6 new designated handicap spaces allowing people with limited mobility easier access to these same businesses and the public park. With the same public access and enjoyment in mind, an ADA compliant gravel trail will connect the parking area to the public beach recreation area. There is currently no nearby ADA compliant trail that provides access to the base of the natural swale where the beach level begins. The Homer Spit has spectacular vista views from the beach and everyone should have access to enjoy this valuable and beautiful public recreation area. Along this trail, in areas along the pedestrian path, and in the areas surrounding the parking lot, the natural beach grasses that were transplanted at the beginning of the project will be planted back into the landscape. The native beach grass is not only aesthetically pleasing, but has the added benefit of helping with hillslope integrity and preventing erosion. Also, because the native grasses are naturally occurring in the area, it is low maintenance in terms of landscaping when used ornamentally and will create a seamless blended border into the natural areas surrounding and around the project area.

We would like to recommend an additional special improvement of hydrodynamic separators during Phase 2 of the project. While the current Phase 1 gravel parking lot drainage plan lists dry manholes for overflow rainwater catchment, once the parking lot receives paving the natural filtration benefit provided by the soil will be limited. We feel it would be in the best interest of the area to install hydrodynamic separators as a replacement to the dry manhole rainwater collectors to prevent oils or other compounds from the parking lot being deposited through rainwater runoff onto the beach or enter into the marine environment.

PARKING

1. How many parking spaces are required for your development? **197**
If more than 24 spaces are required see HCC 21.50.030(f)(1)(b). **This plan complies.**
2. How many spaces are shown on your parking plan? **197**
3. Are you requesting any reductions? **No, see plans.**

Include a site plan, drawn to a scale of not less than 1" = 20' which shows existing and proposed structures, clearing, fill, vegetation and drainage.

I hereby certify that the above statements and other information submitted are true and accurate to the best of my knowledge, and that I, as applicant, have the following legal interest in the property:

CIRCLE ONE:

Owner of record

Lessee

Contract purchaser

Applicant signature: _____

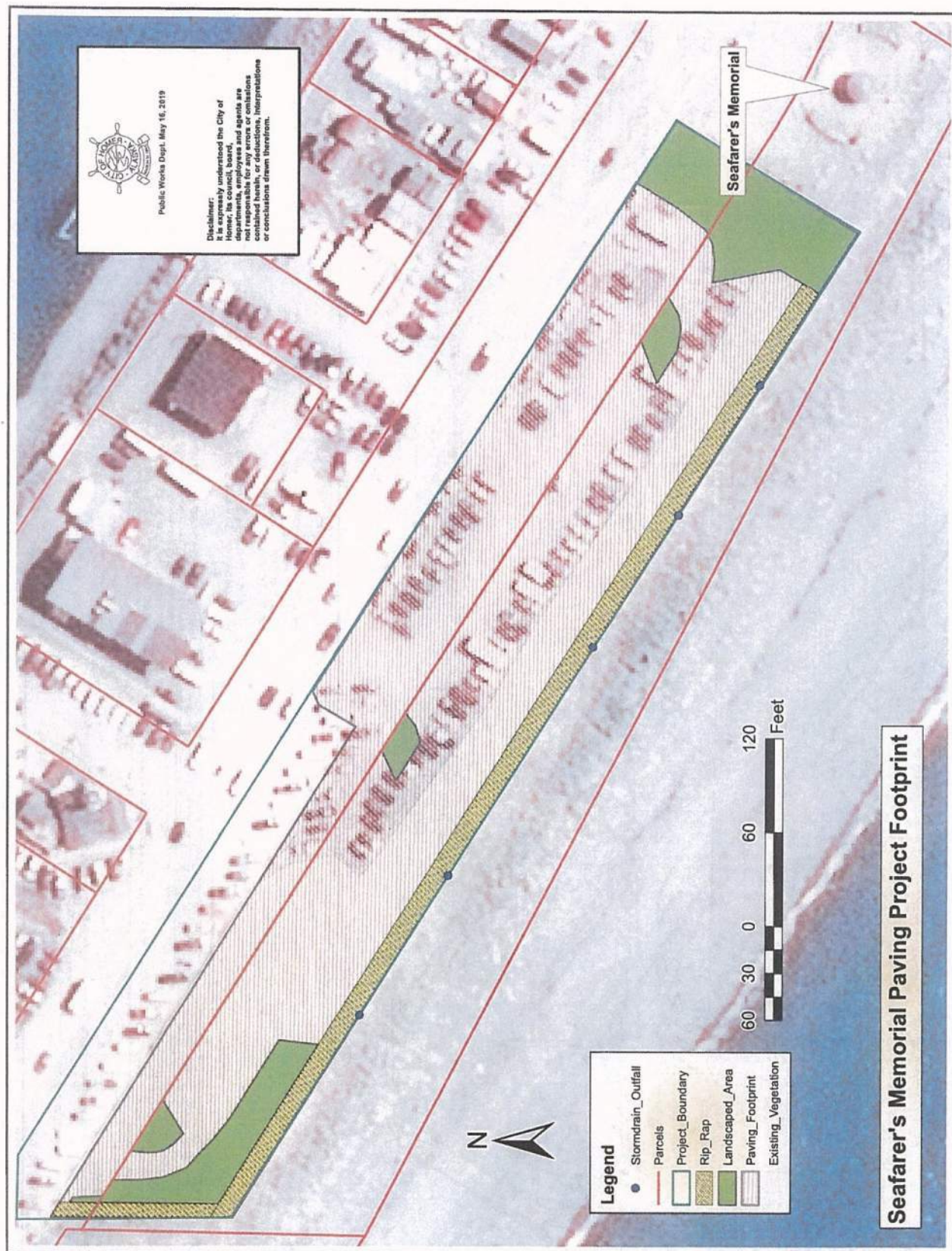
Carney Meyer

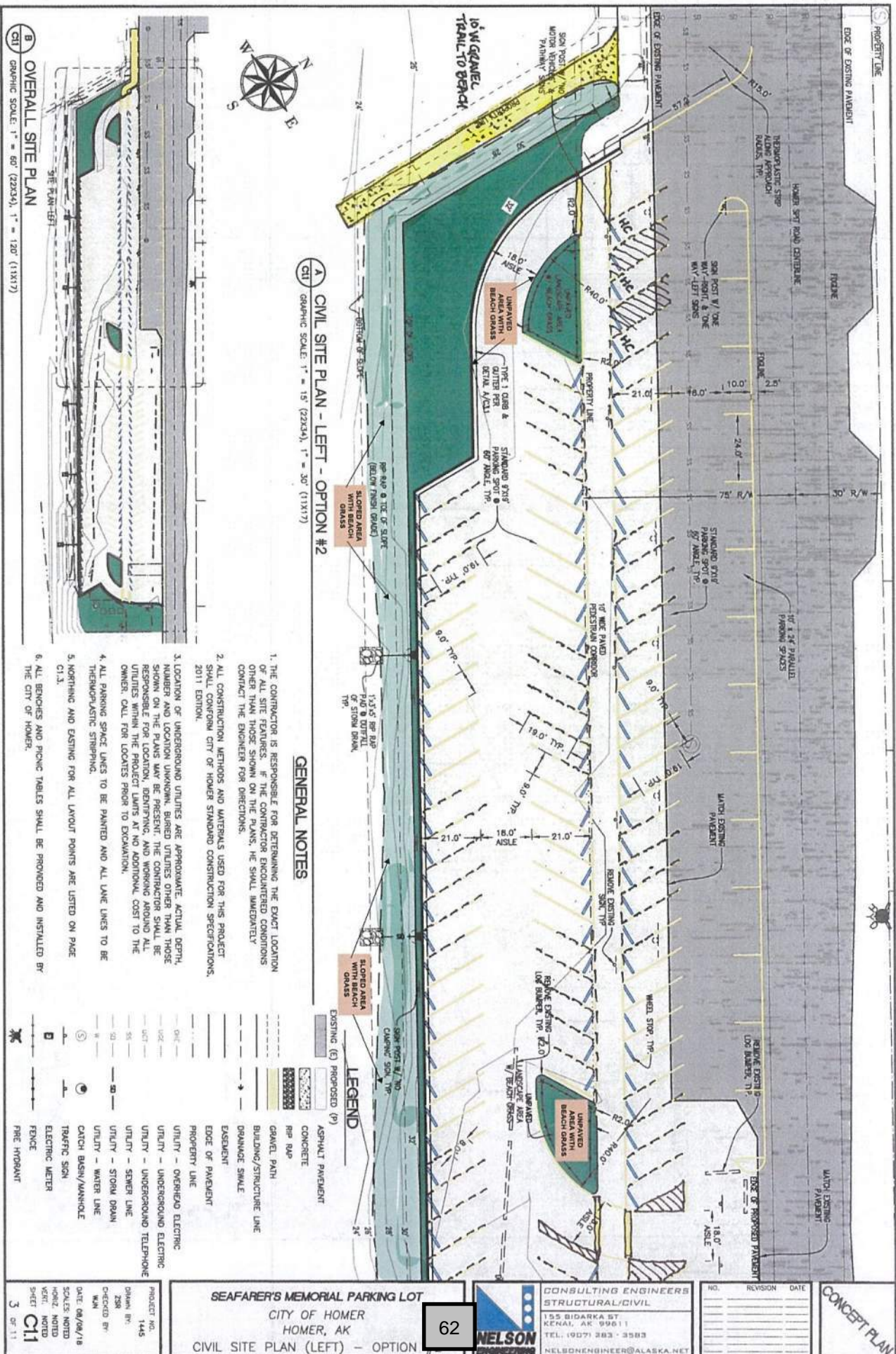
Date: *9/11/19*

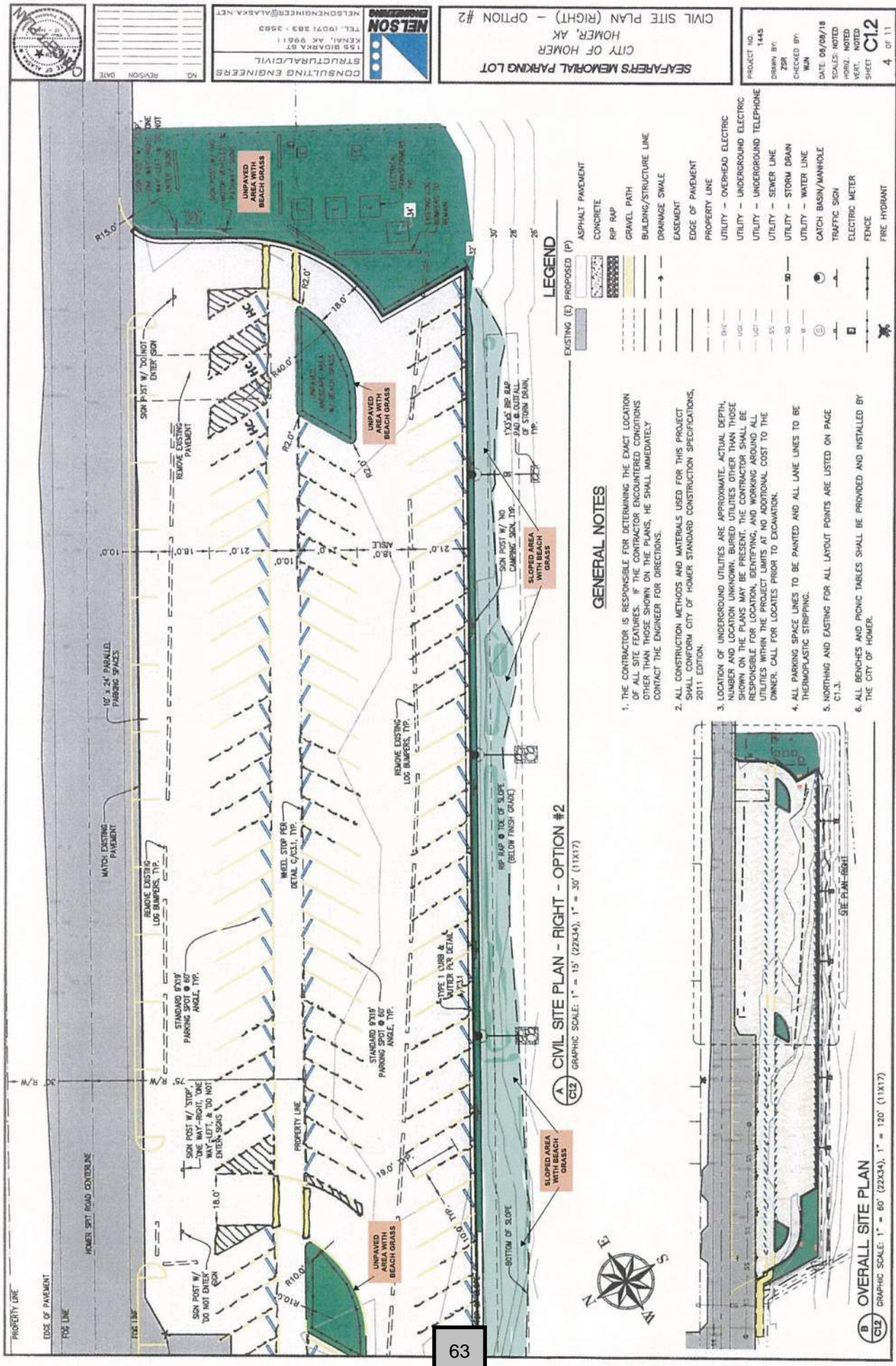
Property Owner's signature: _____

Kurt Koester

Date: *9.11.19*







| NO. | REVISION | DATE |
|-----|----------|------|
| | | |
| | | |
| | | |
| | | |

NELSON CONSULTING ENGINEERS
STRUCTURAL/CIVIL
155 BROADWAY
KENAI, AK 99501
TEL: (907) 383-3583
NELSONENGINEERS@ALASKA.NET

SEAFARER'S MEMORIAL PARKING LOT
CITY OF HOMER, AK
CIVIL SITE PLAN (RIGHT) - OPTION #2

PROJECT NO. 1445
DRAWN BY: ZSR
CHECKED BY: NUN
DATE: 06/08/18
SCALE: NOTED
HORIZ. NOTED
VERT. NOTED
SHEET C12
4 OF 11

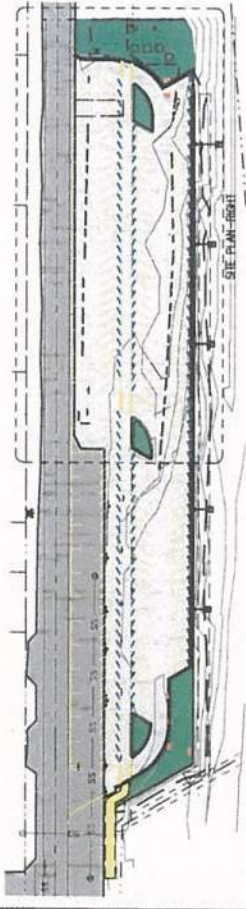
LEGEND

| EXISTING (E) | PROPOSED (P) |
|--------------|--------------------------------|
| | ASPHALT PAVEMENT |
| | CONCRETE |
| | RIP RAP |
| | GRAVEL PATH |
| | BUILDING/STRUCTURE LINE |
| | DRAINAGE SWALE |
| | EASEMENT |
| | EDGE OF PAVEMENT |
| | PROPERTY LINE |
| | UTILITY - OVERHEAD ELECTRIC |
| | UTILITY - UNDERGROUND ELECTRIC |
| | UTILITY - SEWER LINE |
| | UTILITY - STORM DRAIN |
| | UTILITY - WATER LINE |
| | CATCH BASIN/MANHOLE |
| | TRAFFIC SIGN |
| | ELECTRIC METER |
| | FENCE |
| | FIRE HYDRANT |

GENERAL NOTES

1. THE CONTRACTOR IS RESPONSIBLE FOR DETERMINING THE EXACT LOCATION OF ALL SITE FEATURES. IF THE CONTRACTOR ENCOUNTERS CONDITIONS OTHER THAN THOSE SHOWN ON THE PLANS, HE SHALL IMMEDIATELY CONTACT THE ENGINEER FOR DIRECTIONS.
2. ALL CONSTRUCTION METHODS AND MATERIALS USED FOR THIS PROJECT SHALL CONFORM CITY OF HOMER STANDARD CONSTRUCTION SPECIFICATIONS, 2011 EDITION.
3. LOCATION OF UNDERGROUND UTILITIES ARE APPROXIMATE. ACTUAL DEPTH, NUMBER AND LOCATION UNKNOWN. BURIED UTILITIES OTHER THAN THOSE SHOWN ON THE PLANS MAY BE PRESENT. THE CONTRACTOR SHALL BE RESPONSIBLE FOR LOCATION, IDENTIFYING, AND WORKING AROUND ALL UTILITIES WITHIN THE PROJECT LIMITS AT NO ADDITIONAL COST TO THE OWNER. CALL FOR LOCATES PRIOR TO EXCAVATION.
4. ALL PARKING SPACE LINES TO BE PAINTED AND ALL LANE LINES TO BE THERMOPLASTIC STRIPPING.
5. NORTHING AND EASTING FOR ALL LAYOUT POINTS ARE LISTED ON PAGE C1.3.
6. ALL BENCHES AND PIVOT TABLES SHALL BE PROVIDED AND INSTALLED BY THE CITY OF HOMER.

A CIVIL SITE PLAN - RIGHT - OPTION #2
GRAPHIC SCALE: 1" = 15' (22X34), 1" = 30' (11X17)



B OVERALL SITE PLAN
GRAPHIC SCALE: 1" = 60' (22X34), 1" = 120' (11X17)



Aerial Overview



| NO. | REVISION | DATE |
|-----|----------|------|
| | | |
| | | |
| | | |

RELSON ENGINEERING
 CONSULTING ENGINEERS
 STRUTURAL/CIVIL
 550 DAKOTA ST.
 KENAI, AK 99541
 TEL: (907) 282-3583
 E-MAIL: NCHCER@ALASKA.NE

SEAFARER'S MEMORIAL PARKING LOT
 CITY OF HOMER, AK
 SITE SECTION

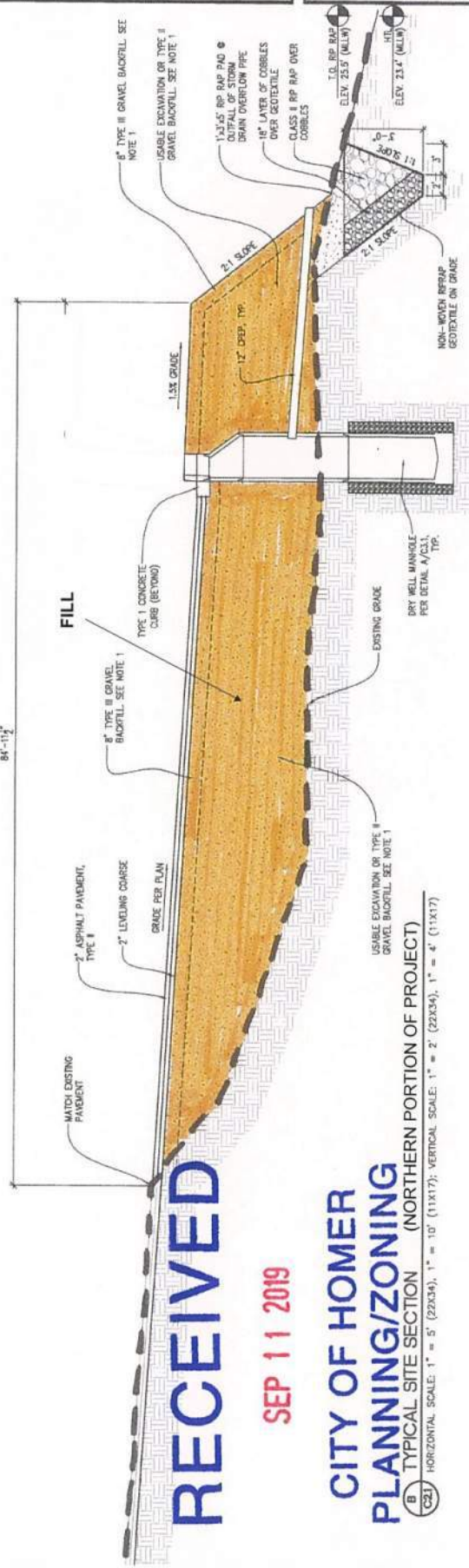
PROJECT NO. 1445
 DRAWN BY: ZSR
 CHECKED BY: WIN
 DATE: 01/22/16
 SCALES: NOTED
 HORZ.: NOTED
 VERT.: NOTED
 SHEET: C2.1
 8 OF 11



TOTAL PROJECT
 CUT= 600 CY
 FILL= 5,800 CY

TYPICAL SITE SECTION NOTES:
 1. ALL FILLS UNDER PARKING LOT SHALL BE PLACED IN LIFTS NOT EXCEEDING 12" AND COMPACTED TO 95 PERCENT OF MAXIMUM DRY DENSITY.
 2. GROUND SURFACE SHALL BE PREPARED TO RECEIVE FILL BY REMOVING VEGETATION, NONCOMPACTED FILL, STONES AND OTHER UNSUITABLE MATERIALS. SCARIFY BOTTOM OF EXCAVATION TO PROVIDE BOND WITH NEW FILL.
 3. SEE SHEET C1.4 & C1.5 GRADING PLAN FOR ASPHALT PAVEMENT GRADES.

A TYPICAL SITE SECTION (SOUTHERN PORTION OF PROJECT)
 C2.1 HORIZONTAL SCALE: 1" = 5' (22X34), 1" = 10' (11X17); VERTICAL SCALE: 1" = 2' (22X34), 1" = 4' (11X17)



RECEIVED

SEP 11 2019

CITY OF HOMER
PLANNING/ZONING
B TYPICAL SITE SECTION (NORTHERN PORTION OF PROJECT)
 C2.1 HORIZONTAL SCALE: 1" = 5' (22X34), 1" = 10' (11X17); VERTICAL SCALE: 1" = 2' (22X34), 1" = 4' (11X17)

Grading and drainage plan

PUBLIC HEARING NOTICE

Public notice is hereby given that the City of Homer will hold a public hearing by the Homer Advisory Planning Commission on Wednesday, October 2, 2019 at 6:30 p.m. at Homer City Hall, 491 East Pioneer Avenue, Homer, Alaska, on the following matter:

A request for Conditional Use Permit (CUP) 19-07 to expand the parking area adjacent to the Seafarer's Memorial Park on Homer Spit Road from approximately 120 spaces to approximately 197 spaces. A CUP is required for parking areas according to Homer City Code 21.32.030(f). The subject parcel is lot 31 Homer Spit Amended, T. 7 S., R. 13 W., SEC. 1, S.M. HM 0890034.

Anyone wishing to present testimony concerning this matter may do so at the meeting or by submitting a written statement to the Homer Advisory Planning Commission, 491 East Pioneer Avenue, Homer, Alaska 99603, by 4:00 p.m. on the day of the meeting.

The complete proposal is available for review at the City of Homer Planning and Zoning Office located at Homer City Hall. For additional information, please contact Rick Abboud at the Planning and Zoning Office, 235-3106.

NOTICE TO BE SENT TO PROPERTY OWNERS WITHIN 700 FEET OF PROPERTY. THE NOTICE AREA HAS BEEN EXPANDED BEYOND THE REQUIRED 300 FEET IN ORDER TO REACH MORE BUSINESSES AND PROPERTY OWNERS

.....

VICINITY MAP ON REVERSE

Vicinity Map

City Limits

Boat Harbor

Ice Dock Rd

Fish Dock Rd

Ramp 3

Ramp 2

Homer Spit Road

Seafarer's Memorial Park.
Proposed project would expand the
parking lot.

Kachemak Bay



City of Homer
Planning and Zoning Department

9/18/2019

Request for CUP 19-07 Seafarer's Memorial Park Parking Lot Expansion

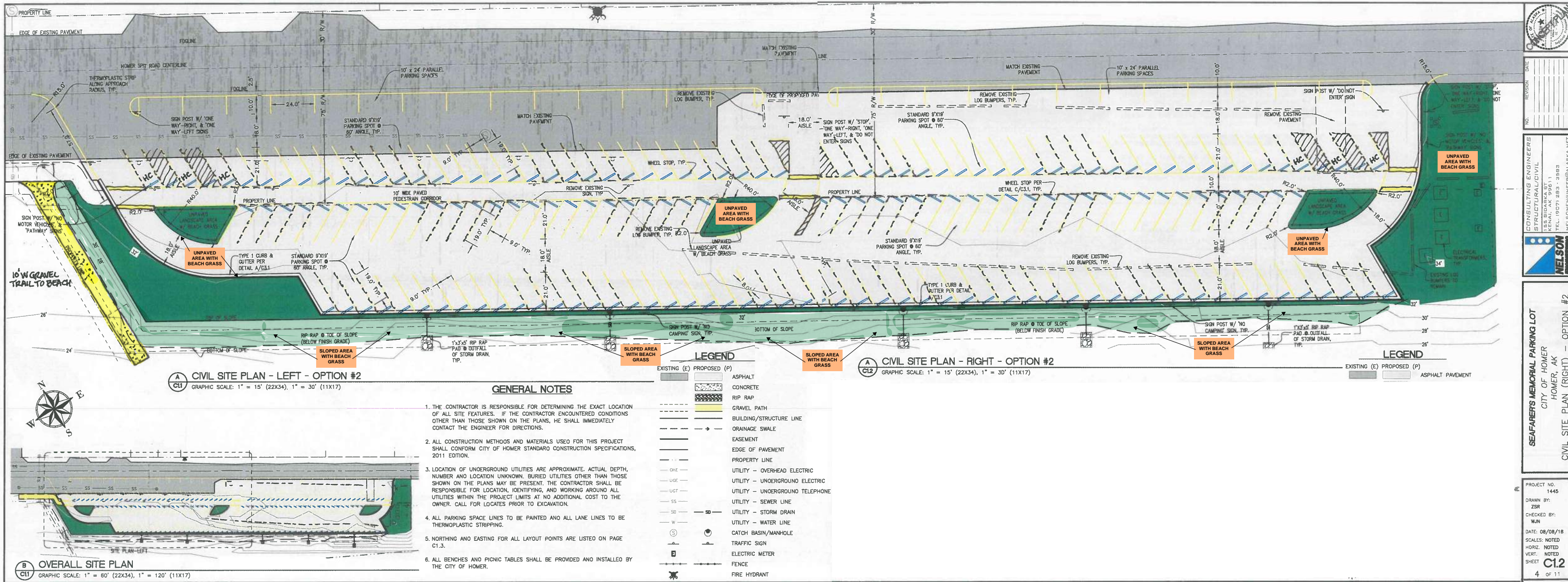
Marked lots are w/in 700 feet
and property owners notified.

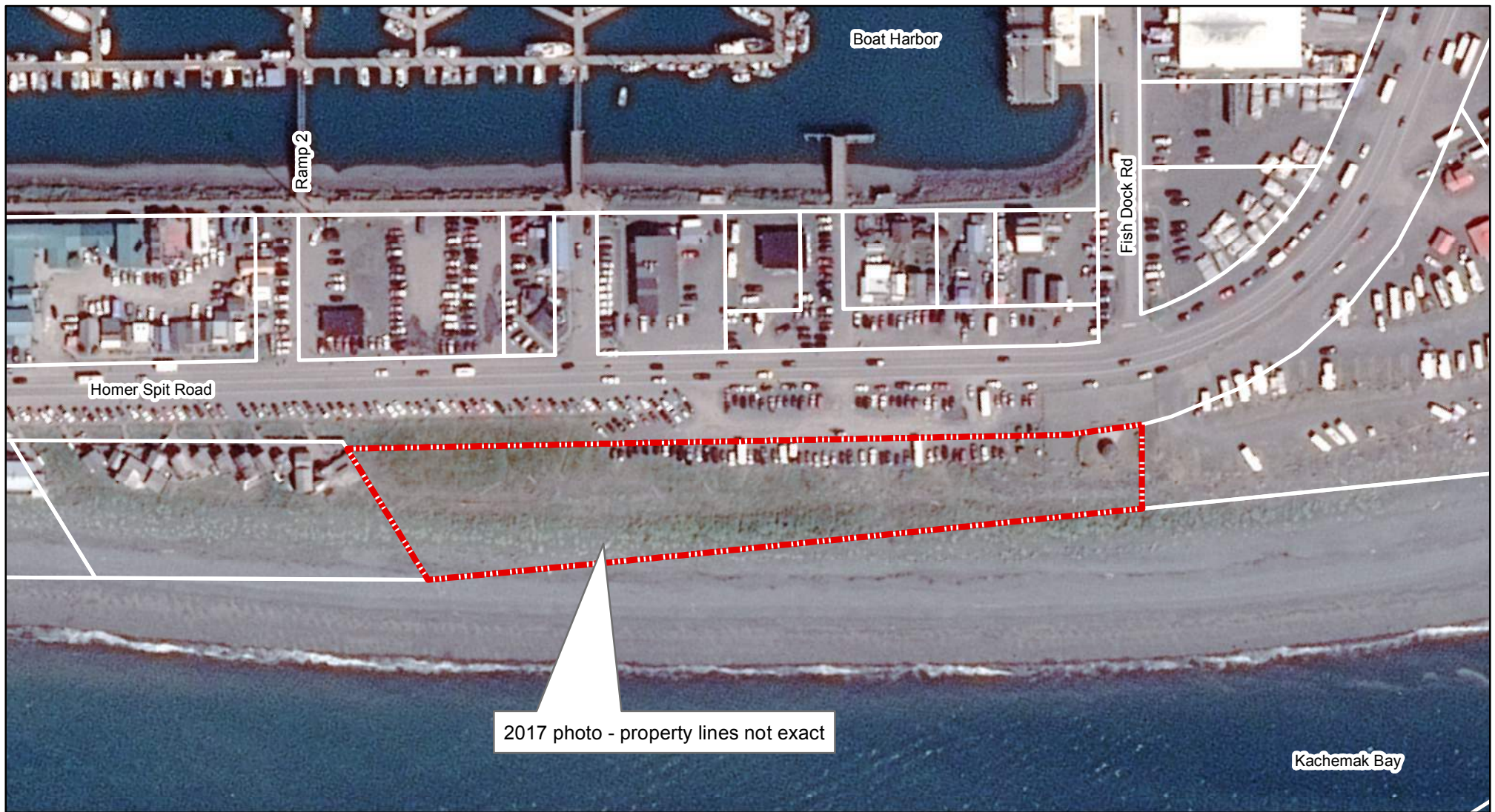
0 250 500 1,000 Feet

68



Disclaimer:
It is expressly understood the City of
Homer, its council, board,
departments, employees and agents are
not responsible for any errors or omissions
contained herein, or deductions, interpretations
or conclusions drawn therefrom.





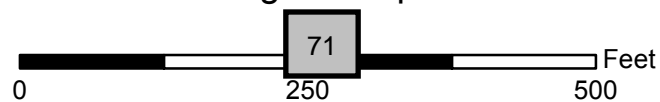
Aerial Map



City of Homer
Planning and Zoning Department

9/18/2019

Request for CUP 19-07 Seafarer's Memorial Park Parking Lot Expansion



*Disclaimer:
It is expressly understood the City of Homer, its council, board, departments, employees and agents are not responsible for any errors or omissions contained herein, or deductions, interpretations or conclusions drawn therefrom.*

Parcel "A" 6(f)(3) Boundary Area Legal Description:

Beginning at the west corner of Lot 28-A, Homer Spit Amended, as shown on Plat # 2017-32, recorded at the Homer Recording District, Alaska; thence 60 feet, N 31° 12' 41" E along the northwest property line of said Lot 28-A, thence leaving said northwest property line S 59° 30' 58" E, a distance of 75'; thence 60 feet, S 31° 12' 41" W to the southwest property line of said Lot 28-A, thence N 59° 30' 58" W, along the southwest property line of said Lot 28-A a distance of 75 feet to the point of beginning, containing 4,500 square feet, more or less.

CONCURRENCE:

Rich Ahlberg Km

Katie Koester
City Manager
City of Homer, Alaska

FISH DOCK ROAD

Lot 50

PARCEL "C"

CITY OF HOMER TIDELANDS

DIRECTOR'S LINE - TIDELAND BOUNDARY

Lot 27

PARCEL "B"

Scale: 1" = 200'

73

Parcel "B" 6(f)(3) Boundary Area Legal Description:

The northwestern twenty feet (20') of Lot 31, Homer Spit Amended, as shown on KPB Plat #89-34, recorded in the Homer Recording District Alaska, T6S, R13W, S1, Seward Meridian; being a strip of land twenty feet wide, immediately adjacent and parallel to the northwest property line, and also being immediately adjacent to Lot 27; containing 3,595 square feet, more or less.

Parcel "C" 6(f)(3) Boundary Area Legal Description:

Beginning at the west corner of Lot 31, Homer Spit Amended, as shown on KPB Plat #89-34, recorded in the Homer Recording District Alaska, T6S, R13W, S1, Seward Meridian; thence along the southwestern boundary of said Lot 31, 296.69', S 63° 54' 10" E; thence 545.92', S 64° 09' 06" E; thence leaving said Lot 31 boundary and along the southwest boundary of Lot 50, 625.71', S 64° 09' 06" E, to the south corner of said Lot 50, thence 250', S 25° 50' 54" W; thence parallel to the southwest property line of said Lot 50, N 64° 09' 06" W, thence parallel to the southwest boundary of said Lot 31, 545.92', N 64° 09' 06" W, thence 296.69', N 64° 09' 06" W, thence 250', N 25° 50' 54" E to the point of beginning; containing 367,080 square feet, more or less.

Map 5: FUTURE LAND USE CONCEPT ENLARGEMENT



Map 6: FUTURE PARKING CONCEPT





City of Homer

www.cityofhomer-ak.gov

Planning

491 East Pioneer Avenue
Homer, Alaska 99603

Planning@ci.homer.ak.us

(p) 907-235-3106

(f) 907-235-3118

Staff Report 19-82

TO: Homer Advisory Planning Commission **19-82**
FROM: Julie Engebretsen, Deputy City Planner
THROUGH: Rick Abboud, City Planner
DATE: 10/1/2019
SUBJECT: AA Mattox Aplin 2019 Replat

Requested Action: Approval of a preliminary plat to shift a common lot line

General Information:

| | | |
|---------------------------|--|---|
| Applicants: | Marianne Aplin 4290 Shirley Court Homer AK 99603 Geovera LLC, Steve Smith PO Box 3235 Homer AK 99603 | Paul Neal III, Trustee PO Box 3368 Homer AK 99603 |
| Location: | Shirley Court, east of the Homer High School | |
| Parcel ID: | 17705133, 17705157 | |
| Size of Existing Lot(s): | 0.45 and 1.687 acres | |
| Size of Proposed Lots(s): | 0.662 and 1.476 acres | |
| Zoning Designation: | Urban and Rural Residential | |
| Existing Land Use: | Residential and Vacant | |
| Surrounding Land Use: | North: Vacant land/new subdivision South: Single family residential East: Single family residential West: Homer High School grounds | |
| Comprehensive Plan: | Chapter 4 Goal 3: Encourage High Quality Buildings and site development that complement Homer's beautiful natural setting. | |
| Wetland Status: | The 2005 wetland mapping shows no wetland areas. | |
| Flood Plain Status: | Zone D, flood hazards undetermined. | |
| BCWPD: | Not within the Bridge Creek Watershed Protection District. | |

| | |
|----------------|--|
| Utilities: | City water and sewer are available. Lot 14-A is currently connected. Lot 8-A-1 would be served from development to the north. This lot is large enough that city water and sewer are not required. |
| Public Notice: | Notice was sent to 50 property owners of 61 parcels as shown on the KPB tax assessor rolls. |

Analysis: This plat will shift the common lot line between two parcels. This action will create more land behind the existing home on proposed lot 14-A.

Homer City Code 22.10.051 Easements and rights-of-way

- A. The subdivider shall dedicate in each lot of a new subdivision a 15-foot-wide utility easement immediately adjacent to the entire length of the boundary between the lot and each existing or proposed street right-of-way.

Staff Response: The plat does not meet these requirements. A 15 foot utility easement is required on Lot 14-A along Shirley Court. A 15 foot easement was granted on Nelson Avenue by another recent plat. Staff spoke with the surveyor and he will revise this preliminary plat. This preliminary plat will be revised to show all existing easements.

- B. The subdivider shall dedicate in each lot of a new subdivision any water and/or sewer easements that are needed for future water and sewer mains shown on the official Water/Sewer Master Plan approved by the Council.

Staff Response: The plat meets these requirements.

- C. The subdivider shall dedicate easements or rights-of-way for sidewalks, bicycle paths or other non-motorized transportation facilities in areas identified as public access corridors in the Homer Non-Motorized Transportation and Trail Plan, other plans adopted by the City Council, or as required by the Kenai Peninsula Borough Code.

Staff Response: The plat meets these requirements.

Preliminary Approval, per KPB code 20.25.070 Form and contents required. The commission will consider a plat for preliminary approval if it contains the following information at the time it is presented and is drawn to a scale of sufficient size to be clearly legible.

- A. Within the Title Block:
 1. Names of the subdivision which shall not be the same as an existing city, town, tract or subdivision of land in the borough, of which a 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; and
 3. Name and address of owner(s), as shown on the KPB records and the certificate to plat, and registered land surveyor;

Staff Response: The plat meets these requirements.

- B. North point;

Staff Response: The plat meets these requirements.

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

Staff Response: The plat meets these requirements.

- 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;

Staff Response: The plat meets these requirements.

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

Staff Response: The plat meets these requirements.

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

Staff Response: The plat meets these requirements.

- G. Status of adjacent lands, including names of subdivisions, lot lines, lock numbers, lot numbers, rights-of-way; or an indication that the adjacent land is not subdivided;

Staff Response: The plat meets these requirements.

- H. Approximate location of areas subject to inundation, flooding or storm water overflow, the line of ordinary high water, wetlands when adjacent to lakes or non-tidal streams, and the appropriate study which identifies a floodplain, if applicable;

Staff Response: The plat meets these requirements.

- I. Approximate locations of areas subject to tidal inundation and the mean high water line;

Staff Response: The plat meets these requirements.

- J. Block and lot numbering per KPB 20.60.140, approximate dimensions and total numbers of proposed lots;

Staff Response: The plat meets these requirements.

- K. Within the limits of incorporated cities, the approximate location of known existing municipal wastewater and water mains, and other utilities within the subdivision and immediately abutting thereto or a statement from the city indicating which services are currently in place and available to each lot in the subdivision;

Staff Response: The does not meet these requirements. Information is on file with the City of Homer Public Works Department.

- 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;

Staff Response: The plat meets these requirements. No road dedication is proposed.

- M. Approximate locations of slopes over 20 percent in grade and if contours are shown, the areas of the contours that exceed 20 percent grade shall be clearly labeled as such;

Staff Response: The plat meets these requirements.

- N. Apparent encroachments, with statement indicating how the encroachments will be resolved prior to final plat approval; and

Staff Response: The plat meets these requirements.

- O. If the subdivision will be finalized in phases, all dedications for through streets as required by KPB 20.30.030 must be included in the first phase.

Staff Response: The plat meets these requirements.

Public Works Comments: PW has no comment.

Fire Department Comments: No comments received.

Staff Recommendation:

Planning Commission recommend approval of the preliminary plat with the following comments:

1. Include a plat note stating "Property owner should contact the Army Corps of Engineers prior to any on-site development or construction activity to obtain the most current wetland designation (if any). Property owners are responsible for obtaining all required local, state and federal permits."
2. Grant a 15 foot utility easement along Shirley Court.
3. Show all easements granted by AA Mattox Gwen's 2019 Replat, such as the utility easement adjacent to Nelson Ave.

Attachments:

1. Preliminary Plat
2. Surveyor's Letter
3. Public Notice
4. Aerial Map

NOTES

1. BASIS OF BEARING FOR THIS SURVEY IS FROM THE PLAT OF AA MATTOX GWEN'S 2019 ADDITION (HM 2019-???)
2. ALL LOTS WITHIN THIS SUBDIVISION ARE SUBJECT TO CITY OF HOMER ZONING REGULATIONS. REFER TO THE HOMER CITY CODE FOR ALL CURRENT SETBACK AND SITE DEVELOPMENT RESTRICTIONS. OWNERS SHOULD CHECK WITH THE CITY OF HOMER PLANNING DEPARTMENT PRIOR TO DEVELOPMENT ACTIVITIES.
3. THESE LOTS ARE SERVED BY CITY OF HOMER WATER AND SEWER.
4. NO PERMANENT STRUCTURES SHALL BE CONSTRUCTED OR PLACED WITHIN A UTILITY EASEMENT WHICH WOULD INTERFERE WITH THE ABILITY OF A UTILITY TO USE THE EASEMENT.
5. ORIGINAL CORNERS WERE FOUND DISTURBED. SET NEW CORNER MONUMENTS AT PROPORTIONED POSITIONS.

LEGEND

- INDICATES PRIMARY MONUMENT RECOVERED THIS SURVEY AS SHOWN
- INDICATES 1-1/2" ALCAP (4015-S 1983) RECOVERED THIS SURVEY
- INDICATES 5/8" REBAR RECOVERED THIS SURVEY
- INDICATES 2" ALCAP ON 5/8" REBAR (7538-S, 2019) SET THIS SURVEY

INDICATES SLOPES EXCEEDING 20%

NOTARY'S ACKNOWLEDGMENT

FOR: _____
ACKNOWLEDGED BEFORE ME THIS _____
DAY OF _____, 2019.
NOTARY PUBLIC FOR ALASKA
MY COMMISSION EXPIRES: _____

NOTARY'S ACKNOWLEDGMENT

FOR: _____
ACKNOWLEDGED BEFORE ME THIS _____
DAY OF _____, 2019.
NOTARY PUBLIC FOR ALASKA
MY COMMISSION EXPIRES: _____

WASTEWATER DISPOSAL

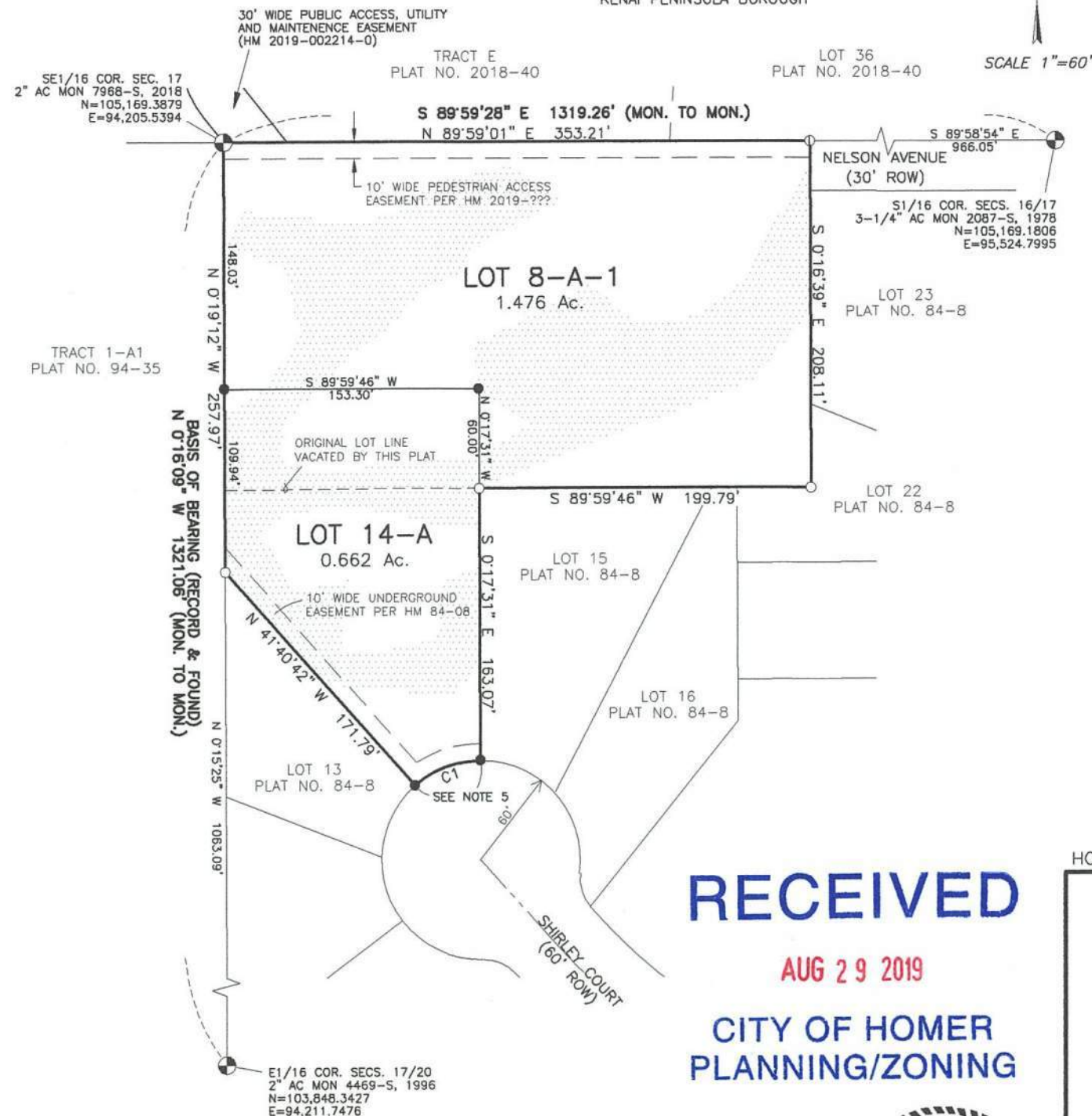
PLANS FOR WASTEWATER DISPOSAL THAT MEET REGULATORY REQUIREMENTS ARE ON FILE AT THE DEPARTMENT OF ENVIRONMENTAL CONSERVATION.

PLAT APPROVAL

THIS PLAT WAS APPROVED BY THE KENAI PENINSULA BOROUGH PLANNING COMMISSION AT THE MEETING OF _____

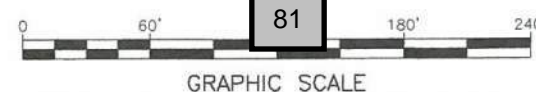
SURVEYOR _____ LICENSE # _____ DATE _____

BY: _____ AUTHORIZED OFFICIAL
KENAI PENINSULA BOROUGH
DATE _____



CURVE TABLE

| CURVE | DELTA | RADIUS | LENGTH | CHORD BRNG | CHORD DIST |
|-------|-----------|--------|--------|---------------|------------|
| C1 | 41°23'11" | 60' | 43.34' | S 69°00'53" W | 42.40' |

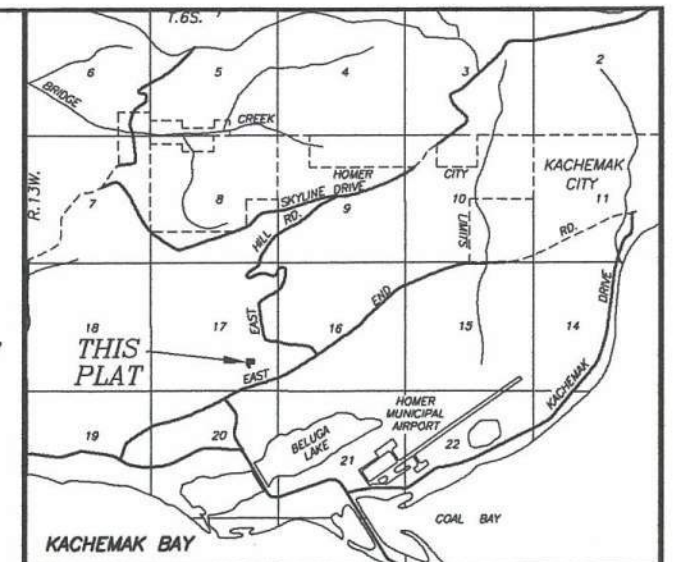


GRAPHIC SCALE

RECEIVED

AUG 29 2019

CITY OF HOMER
PLANNING/ZONING



VICINITY MAP
SCALE: 1" = 1 MILE
U.S.G.S. QUAD. SELDOVIA (C-4 & C-5)

CERTIFICATE OF OWNERSHIP

WE HEREBY CERTIFY THAT WE ARE THE OWNERS OF THE REAL PROPERTY SHOWN AND DESCRIBED HEREON, THAT WE HEREBY ADOPT THIS PLAN OF SUBDIVISION, AND BY OUR FREE CONSENT DEDICATE ALL RIGHTS OF WAY AND PUBLIC AREAS TO PUBLIC USE, AND GRANT ALL EASEMENTS TO THE USE SHOWN HEREON.

PAUL NEAL III, TRUSTEE
DELTA STORAGE AND TRANSFER TRUST
AS THE OWNER OF ECHO TRADING COMPANY, LLC
PO BOX 3368
HOMER, ALASKA 99603
LOT 8-A, AA MATTOX GWEN'S 2019 ADDITION

MARIANNE APLIN
4290 SHIRLEY COURT
HOMER, ALASKA 99603
LOT 14, AA MATTOX 1958 ADDITION UNIT 2 AMENDED

HOMER RECORDING DISTRICT KPB FILE No. 2019-???

AA MATTOX APLIN 2019 REPLAT

A REPLAT OF LOT 8-A
AA MATTOX GWEN'S 2019 REPLAT (HM 2019-???)
AND LOT 14
AA MATTOX 1958 ADDITION UNIT 2 AMENDED (HM 84-08)

LOCATED WITHIN THE SE1/4 SE1/4, SEC 17,
T. 6 S., R. 13 W., SEWARD MERIDIAN, CITY OF HOMER, KENAI
PENINSULA BOROUGH, THIRD JUDICIAL DISTRICT, ALASKA
CONTAINING 2.137 ACRES

OWNERS:
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LOT 14, AA MATTOX 1958 ADDITION UNIT 2 AMENDED:
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4290 SHIRLEY COURT HOMER, ALASKA 99603

GEOVERA, LLC

PO BOX 3235
HOMER ALASKA 99603
(907) 399-4345
EMAIL: scsmith@gci.net

DRAWN BY: SCS DATE: AUGUST 2019 SCALE: 1" = 60'
CHK BY: SCS JOB #19-40 SHEET 1 OF 1

Geovera, LLC

PO Box 3235 • Homer, Alaska 99603 • (907) 399-4345 • scsmith@gci.net

August 29, 2019

City of Homer
Planning Department
Julie Engebretsen, Deputy City Planner
491 E. Pioneer Ave.
Homer, Alaska 99603

RE: AA Mattox Aplin 2019 Replat Preliminary Plat Submittal

Julie,

Please find enclosed (1) full size copy and (2) 11X17 copies of the preliminary plat of AA Mattox Aplin 2019 Replat, and a \$300.00 check for the submittal fee.

This plat moves the north boundary of Lot 14, AA Mattox 1958 Addition Unit 2 Amended 60 feet north. No new lots are created.

No rights-of-way or easements are being dedicated by this plat. Both lots are served by City of Homer water and sewer. No subdivision or construction agreement is required for this plat.

Please let me know if you have any questions. You can reach me at any time at (907) 399-4345. Thanks!

Sincerely,

Stephen C. Smith P.L.S.

RECEIVED
AUG 29 2019
CITY OF HOMER
PLANNING/ZONING

NOTICE OF SUBDIVISION

Public notice is hereby given that a preliminary plat has been received proposing to subdivide or replat property. You are being sent this notice because you are an affected property owner within 500 feet of a proposed subdivision and are invited to comment.

Proposed subdivision under consideration is described as follows:

AA Mattox Aplin 2019 Replat Preliminary Plat

The location of the proposed subdivision affecting you is provided on the attached map. A preliminary plat showing the proposed subdivision may be viewed at the City of Homer Planning and Zoning Office. Subdivision reviews are conducted in accordance with the City of Homer Subdivision Ordinance and the Kenai Peninsula Borough Subdivision Ordinance. A copy of the Ordinance is available from the Planning and Zoning Office. **Comments should be guided by the requirements of those Ordinances.**

A public meeting will be held by the Homer Advisory Planning Commission on Wednesday, October 2, 2019 at 6:30 p.m. at Homer City Hall, Cowles Council Chambers, 491 East Pioneer Avenue, Homer, Alaska.

Anyone wishing to present testimony concerning this matter may do so at the meeting or by submitting a written statement to the Homer Advisory Planning Commission, 491 East Pioneer Avenue, Homer, Alaska 99603, by 4:00 p.m. on the day of the meeting.

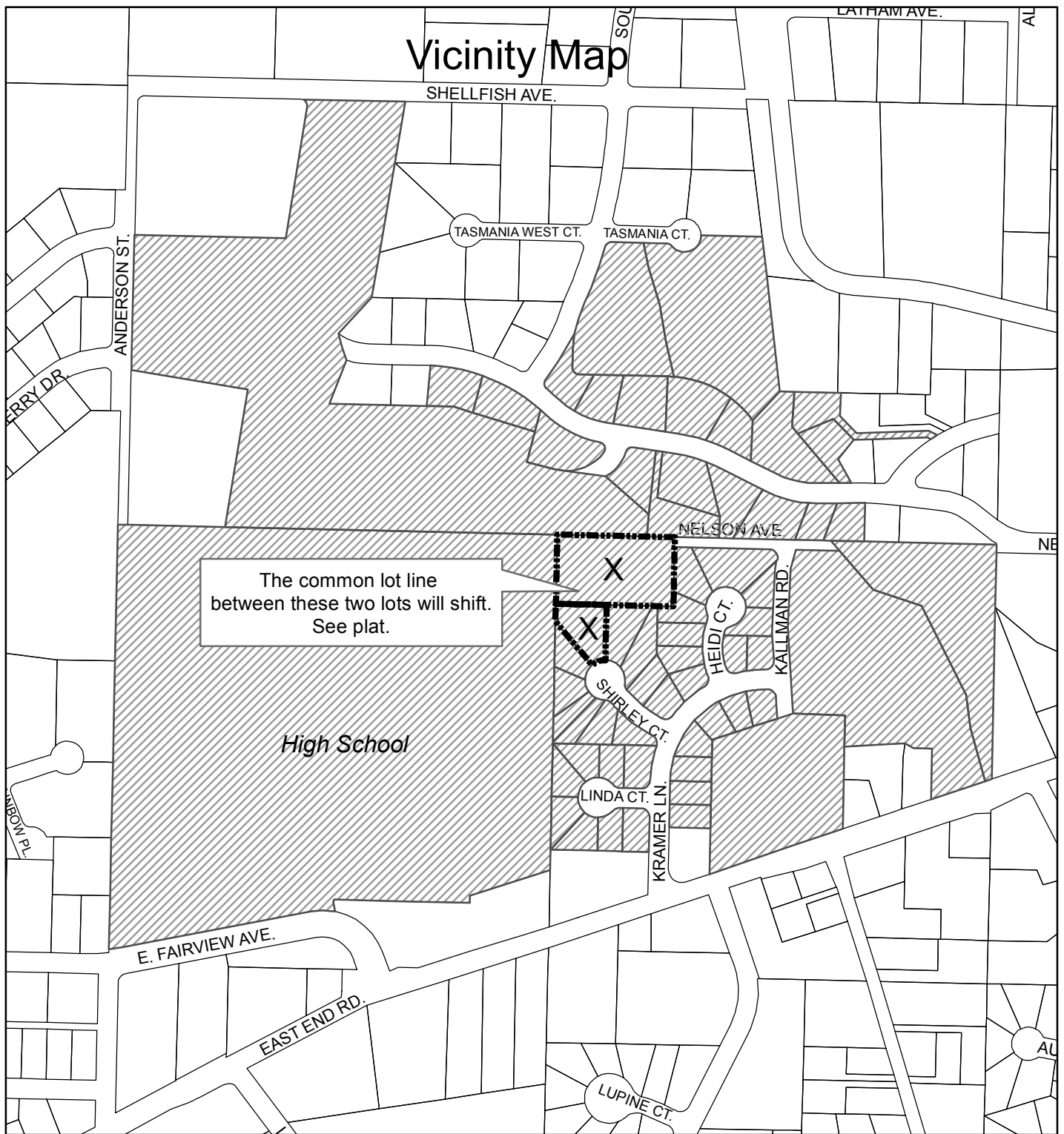
The complete proposal is available for review at the City of Homer Planning and Zoning Office located at Homer City Hall. For additional information, please contact Travis Brown in the Planning and Zoning Office, 235-3106.

NOTICE TO BE SENT TO PROPERTY OWNERS WITHIN 500 FEET OF PROPERTY.

.....

VICINITY MAP ON REVERSE

Vicinity Map



City of Homer
Planning and Zoning Department

9/18/2019

AA Mattox Aplin 2019 Replat Preliminary Plat

Marked lots are w/in 500 feet
and property owners notified.

0 250 500 1,000 Feet



Disclaimer:
It is expressly understood the City of Homer, its council, board, departments, employees and agents are not responsible for any errors or omissions contained herein, or deductions, interpretations or conclusions drawn therefrom.

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FOR: _____
ACKNOWLEDGED BEFORE ME THIS _____
DAY OF _____, 2019.
NOTARY PUBLIC FOR ALASKA
MY COMMISSION EXPIRES: _____

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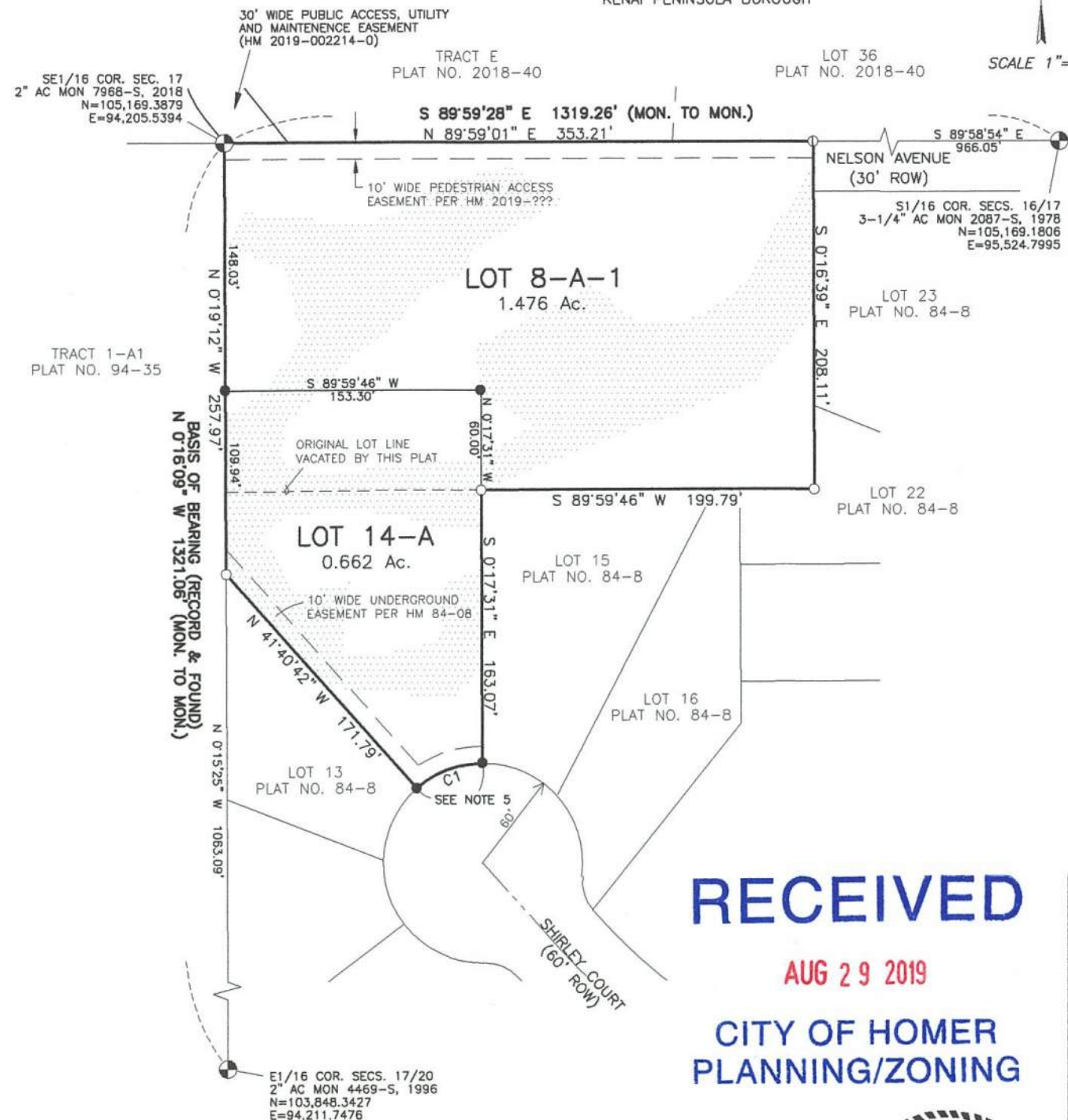
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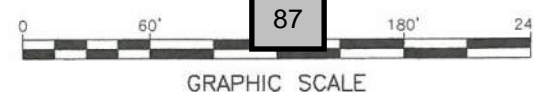
SURVEYOR _____ LICENSE # _____ DATE _____

BY: _____ AUTHORIZED OFFICIAL
KENAI PENINSULA BOROUGH DATE _____



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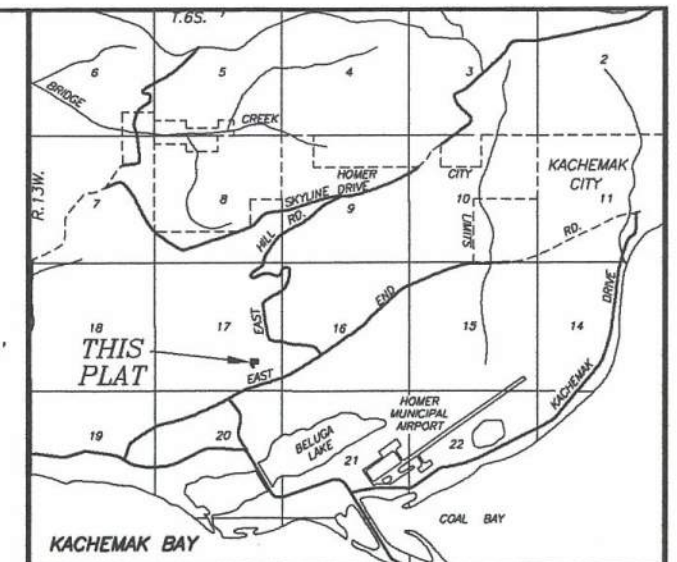
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AUG 29 2019

CITY OF HOMER
PLANNING/ZONING



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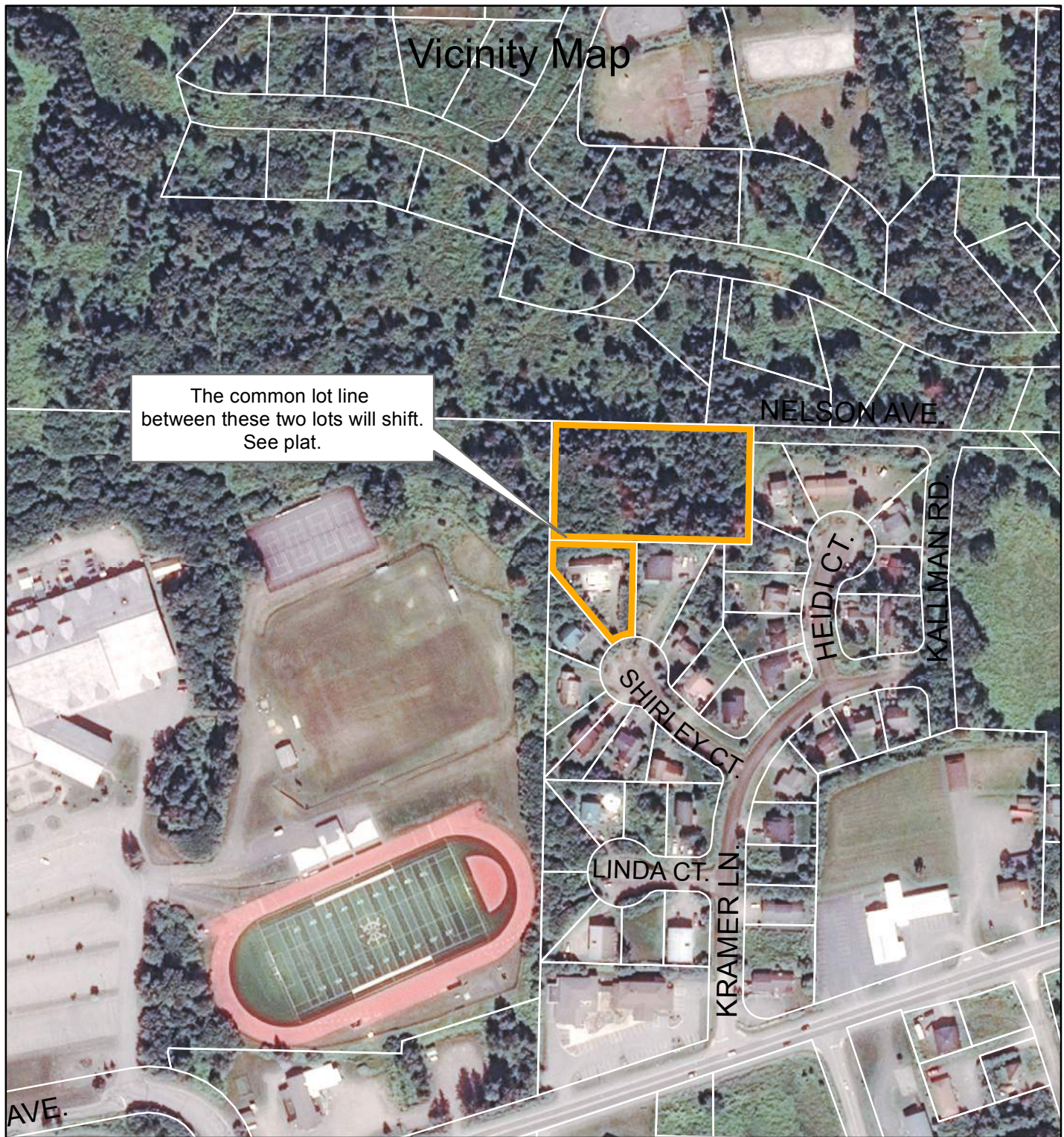
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CHK BY: SCS JOB #19-40 SHEET 1 OF 1



City of Homer
Planning and Zoning Department

9/18/2019

AA Mattox Aplin 2019 Replat Preliminary Plat

Photo dated 2017, does not show
constructed subdivision to the north.

0 250 500 Feet



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not responsible for any errors or omissions
contained herein, or deductions, interpretations
or conclusions drawn therefrom.



City of Homer

www.cityofhomer-ak.gov

Planning

491 East Pioneer Avenue
Homer, Alaska 99603

Planning@ci.homer.ak.us

(p) 907-235-3106

(f) 907-235-3118

Staff Report PL 19-81

TO: Homer Advisory Planning Commission
THROUGH: Rick Abboud AICP, City Planner
FROM: Julie Engebretsen, Deputy City Planner
DATE: October 2, 2019
SUBJECT: Kenai Peninsula Borough Draft Ordinance Adopting KPB 20.80,
Subdivision Private Streets and Gated Subdivision

Introduction

The Kenai Peninsula Borough has introduced an ordinance to allow for gated subdivisions and private roads within the subdivision process. The timeframe for review on this ordinance is fairly quick; currently it is scheduled for KPB Assembly action on October 8th. (This may be postponed.)

Please read through the KPB desk packet of 9/23/19. Scott Huff, Borough Platting Manager will be attending our work session to talk about the ordinance and answer questions.

Planners Abboud and Engebretsen had a teleconference with Mr. Huff and Borough Planner Director Max Best on 9/24/19. Borough staff stated that the City's requirements for construction, and the Borough requirement for an installation agreement would still stand. Additionally, the connections in our adopted plans for road and trails would still be binding, as they are now.

Planning staff has provided the ordinance to the City Fire and Police Departments for their comments.

Analysis

The ordinance would allow private, gated subdivisions. The road to each individual lot would not be a public dedication as is required now. Instead, the Home Owners Association (HOA) would bear all responsibility for the road, and the road would be its own separate parcel, owned collectively by the HOA. There are provisions for blocking public access by gating the private road, if desired. Upon initial reading it appears the ordinance covers emergency access concerns.

Staff was concerned that a developer could avoid building the infrastructure within the development – roads, water, sewer, electricity, etc, and that Homer could end up with a gated

community in an area where an adopted plan shows a through street connection. After speaking with Borough staff, staff learned that the subdivision construction requirements remain unaffected by this ordinance, and that through street connections can still be required based on Homer's adopted plans.

In the limited time staff has had for analysis, it's possible that Homer City Code would need to be amended to address things like setback requirements along the private road. However these are Homer City Code issues, not Kenai Peninsula Borough platting concerns.

Staff Recommendation

1. Use work session to gain enough information to formulate a response to forward to the Kenai Peninsula Borough at the regular meeting.
2. If the ordinance is adopted by the Kenai Peninsula Borough, revisit the topic and interactions with Homer City code in the near future.

Attachments

1. Kenai Peninsula Borough Planning Commission Desk Packet Excerpt 9/23/2019
2. KPB PC Regular meeting packet excerpt 9/23/2019
3. KPB PC Memorandum from 8/26/19 meeting

Kenai Peninsula Borough

Name of Department

MEMORANDUM

TO: KPB Planning Commission
THRU: Max Best – Planning Director 
FROM: Scott Huff – Platting Manger 
DATE: September 18, 2019
RE: Ordinance 2019- 24, Adopting KPB 20.80, Subdivision Private Streets and Gated Subdivisions (Mayor)

At the August 26th Planning Commission meeting, Ordinance 2019- 24 Adopting KPB 20.80 Subdivision Private Streets and Gated Subdivision was introduced. The commissioners requested Staff to gather additional information and reviews.

On September 9th e-mails were sent to the following, with a request to review the proposed ordinance and submit any comments.

- Dil Uhlin – KPB Roads Director
- Dan Nelson – Senior Manager, Office of Emergency Management, KPB
- Chief Roy Browning – KPB CES
- Mary Kay Grenier – KPB Assessing, Title Officer
- Mary Broderick – First American Title
- Chris Hough – Stewart Title of Kenai Peninsula Borough
- Kathy Hemstreet – Kachemak Bay Title Agency

No comments were received.

The ordinance was also sent to the Kenai, Soldotna, Homer, and Seward for review and comments. The City of Soldotna and Homer replied and requested KPB Staff meet with the city Staff and/or attend a city planning commission meeting to explain the ordinance and answer any questions.

KPB staff has continued to review the proposed ordinance. **Staff recommends** the following corrections/edits be made to the ordinance and introduced to the assembly.

Date September 19, 2019

To: Planning Commission

RE: Ordinance 2019-_____, Subdivision Private Streets and
Gated Subdivisions

1. Revise 20.80.020.A to read, 'All provisions of KPB Title 20, excluding 20.30.210, must be met and/or shall apply.'
2. Revise 20.80.020.B by removing, 'and KPB 20.30'.
3. Revise 20.80.020.C by removing, 'with having to backup'.
4. Revise 20.80.020.D to read, 'A homeowners' association (HOA) is required for approval of private streets within a subdivision. All property owners to be served by the private streets must be in the HOA. The HOA shall own and be responsible for the maintenance of the private streets and appurtenances.
5. Remove 20.80.020.H.1.
6. Remove 20.80.020.H.3
7. Revise 20.80.030.A into two items, remove a portion of 20.80.030.C and combine the remaining code back into 20.80.030.A to read as follows.
 - A. The fire and emergency services provider that serves the proposed gated subdivision must approve the fire and emergency services access plan for each gate prior to installation. The fire and emergency services provider, borough assessing department, borough planning department, and law enforcement shall be provided access.
 - B. The entrances to all private streets shall be marked with a sign stating that it is a private street.
8. Remove 20.80.030.F and 20.80.030.H.
9. Replace a portion of 20.80.040.A with 20.70.040 to follow the same requirements for application submittal as required for right of way vacations. This portion will read as follows

Application – Petition required.

A platted right of way may not be vacated, except upon petition by resolution of the governing body from a municipality in which the property is located or by the owners of the majority of land fronting or abutting the right of way to be vacated. The petition shall be filed with the

Page -2-

Date September 19, 2019

To: Planning Commission

RE: Ordinance 2019-_____, Subdivision Private Streets and
Gated Subdivisions

planning commission. The request shall comply with the applicable replat and vacation requirements and procedures in this title, except as provided otherwise in this chapter.

An updated ordinance is attached. Proposed deletions are ~~strike through~~, and proposed additions are [bracketed].

Introduced by: Mayor
Date: 9/3/19
Hearing: 10/8/19
Action:
Vote:

**KENAI PENINSULA BOROUGH
ORDINANCE 2019-**

**AN ORDINANCE ADOPTING KPB 20.80, SUBDIVISION PRIVATE
STREETS AND GATED SUBDIVISIONS**

WHEREAS, privacy, security, and public safety concerns expressed by residents may be addressed by private streets in subdivisions; and

WHEREAS, Goal 6.5 of the 2005 Comprehensive Plan is to maintain the freedom of property owners in the rural areas of the borough to make decisions and control use of their private land; and

WHEREAS, private streets can only be approved through the KPB 20.50 exception process and there are currently no designated standards and requirements, nor established procedures to create subdivisions with private streets and gated access; and

WHEREAS, there is a need for designated standards and requirements and establishment of procedures for creating gated communities; and

WHEREAS, designating standards, requirements and procedures for establishing private streets within subdivisions with gated access will address residents as well as the public's privacy, security, and access concerns; and

WHEREAS, the Kenai Peninsula Borough Road Service Area board at its meeting held on August 13, 2019, recommended unanimous approval of this ordinance; and

WHEREAS, the Kenai Peninsula Borough Planning Commission at its meeting held on August 26, 2019, recommended _____;

NOW, THEREFORE, BE IT ORDAINED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:

SECTION 1. That KPB Chapter 20.80, entitled "Private Streets and Gated Communities" is enacted as follows:

20.80.010. - Purpose.

This chapter provides standards and requirements for the establishment of private streets in subdivisions in the borough. A subdivision with private streets and gated access may be created at the time of subdivision by the owner of the parcel being subdivided or, where streets have been previously dedicated to the public which access lots in different ownerships, by the owners of those parcels in accordance with the provisions of this chapter.

20.80.020. – Requirements.

Private streets in subdivisions shall meet the following requirements:

- A. ~~The general p~~ [P]rovisions of KPB Title 14 and 20 [, excluding 20.30.210 must be met and/or apply] as they relate to development, streets and utilities shall apply, except as otherwise provided for in this chapter.
- B. Private streets shall conform to the same standards regulating the design and construction of streets, street naming and street addressing in KPB 14.06, 14.10, 14.20 and KPB 20.30.
- C. A public vehicular turn around shall be provided to allow vehicles that have been denied entry to the private streets the ability to exit[.] without having to backup.
- D. A homeowners' association (HOA) is required for approval of private streets within a subdivision. All property [owners] to be served by the private streets must be members in or part of the HOA. The HOA shall own and be responsible for the maintenance of the private streets and appurtenances.
- E. Private streets shall be contained within a separate lot owned by the HOA.
- F. The borough shall not pay for or contribute to any cost to construct, improve, or maintain a private street.
- G. The subdivision final plat and HOA documents shall note that borough maintenance shall not be provided on any private streets.
- H. Gated subdivisions and private streets may be approved, provided they meet the following criteria:

- ~~1. Internal streets shall conform to the requirements of KPB 20.30, Subdivision Design Requirements, except as otherwise allowed in this section;~~
- ~~2. Emergency services shall be provided access to deliver services within the private subdivision. Approval by the fire and emergency services provider with jurisdiction in the area of the gated subdivision is required. The fire and emergency services provider must be satisfied that fire and emergency services providers will have safe access into and within the gated subdivision;~~
- ~~3. The requirements of KPB title 20 are met because alternate legal access to adjoining properties is available and that access is constructible in accordance with KPB 20.30, Subdivision Design Requirements and KPB 14.06, Road Standards;~~
- ~~4. There shall be a note on the plat that the streets are not public and are subject to private construction and maintenance;~~
- ~~5. The HOA shall execute a defense and indemnification agreement in favor of the borough in the following form: The HOA shall indemnify, defend, and hold and save the borough, its elected and appointed officers and officials, agents and employees, hereinafter collectively referred to as "agents," harmless from any and all claims, demands, suits, or liability of any nature, kind or character including costs, expenses, and attorneys' fees. The HOA shall be responsible under this clause for any and all legal actions or claims of any character arising from the HOA or the HOA's acts or omissions related to its private streets and gates in any way whatsoever. This defense and indemnification responsibility includes claims alleging acts or omissions of the borough or its agents, which are said to have contributed to the losses, failure, violations, or damages, except for acts or omissions solely attributable to the borough.~~
- ~~6. The HOA and all of the HOA's subcontractors, if any, shall be responsible for the purchase and maintenance of all insurance required by law and any other insurance the HOA deems necessary or appropriate.~~

20.80.030. – Gates

If a gate is installed to prevent public access to a subdivision with private streets the gate shall conform to the following requirements:

- ~~A. Each gate must be approved prior to installation by the fire and emergency services provider that serves the proposed gated subdivision. The entrances to all private streets shall be marked with a sign stating that it is a private street. [The fire and emergency services provider that serves the proposed gated subdivision must~~

approve the fire and emergency services access plan for each gate prior to installation. The fire and emergency services provider, borough assessing department, borough planning department, and law enforcement shall be provided access.]

[B. The entrances to all private streets shall be marked with a sign stating that it is a private street.]

[C.]B. Gates, approach and departure areas shall be designed by a licensed professional civil engineer.

C. — In order to allow access for the provision of emergency services, each security gate designed and installed shall be equipped so that access is by a radio operated controller or keypad. The fire and emergency services provider serving the gated subdivision, borough assessing department, borough planning department, and law enforcement shall be provided either radio controlled or keypad access to the subdivision.

D. Approach and departure areas on both sides of a gated entrance must provide adequate setbacks and proper alignment to allow free and unimpeded passage of emergency vehicles through the entrance area.

E. After installation, all emergency access systems must be approved by the fire and emergency services providers serving the gated subdivision. The HOA must maintain all components of the gate system in a normal operating condition and have them serviced on a regular basis, as needed, to ensure proper gate operation. A proper power supply shall be provided and maintained to all electrical components at all times. Each electrical vehicular gate must be provided with a fail-open device to open during power failures and be equipped for emergency access.

F. — A public vehicular turn around shall be provided to allow vehicles that have been denied entry the ability to exit without having to backup.

G.[F.] No part of the gate system shall be placed in a public right-of-way.

H. — The HOA is responsible for the gate, its signage and its costs, and shall be responsible for any violations of this section.

20.80.040. – Converting to gated subdivision.

- A. A subdivision HOA may seek to convert a subdivision to a gated community with private street(s) and restrict public access by filing a replat and vacation petition with the planning director, which shall be considered a request to vacate public street(s) and/or right of way(s), as well as replat the subdivision. [A platted right of way may not be vacated, except upon petition by resolution of the governing body from a municipality in which the property is located or by the owner of the majority of land fronting or abutting the right of way to be vacated.] The request shall comply with the applicable replat and vacation requirements and procedures in this title, except as provided otherwise in this chapter.
- B. Upon determination by the planning director that the replat application is complete, the request shall be subject to review and approval by the borough planning commission regarding whether the gated subdivision requirements and procedures have been met, as set out in this chapter. The borough planning commission decision is subject to appeal to the hearing officer pursuant to KPB 21.20.
- C. Converting public street to private street – standards.
1. Vacation of the public right-of-way shall be in accordance with the criteria set forth in KPB 20.70.
 2. The proposed gated subdivision shall not cause discontinuity in the existing or proposed public street system or distribute an unacceptable amount of traffic through an existing neighborhood than would otherwise result if public streets were used. Converted private streets may not unduly impair access to public facilities, including schools, parks and libraries. Utilities proposed for vacation must not provide service to customers outside the proposed gated subdivision boundary.
 3. The proposed gated subdivision must not cause discontinuity in the existing or proposed road system to any property owner in the proposed gated subdivision with frontage on the public right-of-way that is to be vacated.
 4. Prior to recording the final plat the property owners abutting the vacated public street shall file with the borough fully executed deeds conveying their interest in the vacated street to the HOA.
 5. Prior to recording the HOA shall accept the road “as-is” in its present condition and shall agree to indemnify, hold harmless, and defend the borough against any claims arising

from the HOA's ownership, maintenance and control of the converted street.

6. HOA shall execute a defense and indemnification agreement in favor of the borough in the following form: The HOA shall indemnify, defend, and hold and save the borough, its elected and appointed officers, officials, agents and employees, hereinafter collectively referred to as "agents", harmless from any and all claims, demands, suits, or liability of any nature, kind or character including costs, expenses, and attorneys' fees. The HOA shall be responsible under this clause for any and all legal actions or claims of any character arising from the HOA or the HOA's acts or omissions related to its private streets and gates in any way whatsoever. This defense and indemnification responsibility includes claims alleging acts or omissions of the borough or its agents, which are said to have contributed to the losses, failure, violations, or damages, except for acts or omissions solely attributable to the borough.

20.80.050. – Converting private streets to public streets in gated subdivision.

- A. The owners of a private street may petition to dedicate the private street through the platting process. The street must meet the design criteria set forth in KPB 20.30 and KPB 14.06.
- B. A civil engineer at the HOA's expense shall determine whether the private streets meet KPB Title 14 and Title 20 standards for street design and construction. If the streets do not meet borough standards the dedication shall be denied.
- C. The borough may also require, at the HOA's expense, the removal of any improvements, access control devices, gates, landscaping or other aesthetic amenities associated with the private street.

20.80.060. – Enforcement.

Violations of this chapter shall be in accordance with KPB 20.10.030 and KPB 21.050.

SECTION 2. That KPB Chapter 20.90, entitled "Definitions is amended as follows:

20.90.010. – Definitions generally.

In this title, unless otherwise provided, or the context otherwise requires, the following definitions shall apply.

...

“Gated subdivision” means a residential subdivision consisting of five (5) or more parcels of land where vehicular and/or pedestrian access by the general public from a public street and street(s) within the gated community and/or public right-of-way(s) is restricted as a result of a barrier that may include, but is limited to gates, security personnel, fences or walls. This definition does not include gates or other barriers limiting access to an individual parcel or lot.

...

“Private street” is defined as a vehicular access way shared by and serving two or more lots, which is not publicly maintained, but maintained by a homeowners’ association. The term “private street” shall be inclusive of alleys. The term “street” also includes the term “street” as used in KPB title 14.

SECTION 3. That this ordinance shall become effective upon its enactment.

ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS _____ DAY OF _____, 2019.

Wayne Ogle, Assembly President

ATTEST:

Johni Blankenship, Borough Clerk

E. UNFINISHED BUSINESS

- 2. Ordinance 2019-24; An Ordinance Adopting KPB 20.80, Subdivision Private Streets and Gated Subdivisions.**


***Postponed from the August 26, 2019 Planning Commission meeting.
Motion on floor.***


Kenai Peninsula Borough

Planning Department

MEMORANDUM

TO: Wayne Ogle, Assembly President
Members, Kenai Peninsula Borough Assembly

THRU: Charlie Pierce, Mayor
Dil Uhlin, Roads Director 

FROM: Max Best, Planning Director 

DATE: August 22, 2019

RE: Ordinance 2019-_____, Adopting KPB 20.80, Subdivision Private Streets and Gated Subdivisions (Mayor)

Goal 6.5 of the 2005 Comprehensive Plan is to maintain the freedom of property owners in the rural areas of the borough to make decisions and control use of their private land. Privacy, security, and public safety concerns expressed by residents may be addressed by private streets in subdivisions. Private streets can only be approved through the KPB 20.50 exception process and there are currently no designated standards and requirements, nor established procedures to create subdivisions with private streets and gated access.

There is a need for standardization, criteria, and establishment of procedures for creating both subdivisions with private streets and gated subdivisions. This ordinance codifies the requirements and procedures for creating these types of subdivisions.

This matter is scheduled to come before the KPB Road Service Area Board's at its August 13, 2019 meeting and the KPB Planning Commission at its August 26, 2019 meeting. The recommendations of both boards will be presented to the assembly prior to the final hearing on this ordinance.

Your consideration of this ordinance is appreciated.

Introduced by: Mayor
Date: 9/3/19
Hearing: 10/8/19
Action:
Vote:

**KENAI PENINSULA BOROUGH
ORDINANCE 2019-**

**AN ORDINANCE ADOPTING KPB 20.80, SUBDIVISION PRIVATE
STREETS AND GATED SUBDIVISIONS**

WHEREAS, privacy, security, and public safety concerns expressed by residents may be addressed by private streets in subdivisions; and

WHEREAS, Goal 6.5 of the 2005 Comprehensive Plan is to maintain the freedom of property owners in the rural areas of the borough to make decisions and control use of their private land; and

WHEREAS, private streets can only be approved through the KPB 20.50 exception process and there are currently no designated standards and requirements, nor established procedures to create subdivisions with private streets and gated access; and

WHEREAS, there is a need for designated standards and requirements and establishment of procedures for creating gated communities; and

WHEREAS, designating standards, requirements and procedures for establishing private streets within subdivisions with gated access will address residents as well as the public's privacy, security, and access concerns; and

WHEREAS, the Kenai Peninsula Borough Road Service Area board at its meeting held on August 13, 2019, recommended unanimous approval of this ordinance; and

WHEREAS, the Kenai Peninsula Borough Planning Commission at its meeting held on August 26, 2019, recommended _____;

NOW, THEREFORE, BE IT ORDAINED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH:

SECTION 1. That KPB Chapter 20.80, entitled "Private Streets and Gated Communities" is enacted as follows:

20.80.010. - Purpose.

This chapter provides standards and requirements for the establishment of private streets in subdivisions in the borough. A subdivision with private streets and gated access may be created at the time of subdivision by the owner of the parcel being subdivided or, where streets have been previously dedicated to the public which access lots in different ownerships, by the owners of those parcels in accordance with the provisions of this chapter.

20.80.020. – Requirements.

Private streets in subdivisions shall meet the following requirements:

- A. The general provisions of KPB Title 14 and 20 as they relate to development, streets and utilities shall apply, except as otherwise provided for in this chapter.
- B. Private streets shall conform to the same standards regulating the design and construction of streets, street naming and street addressing in KPB 14.06, 14.10, 14.20 and KPB 20.30.
- C. A public vehicular turn around shall be provided to allow vehicles that have been denied entry to the private streets the ability to exit without having to backup.
- D. A homeowners' association (HOA) is required for approval of private streets within a subdivision. All property to be served by the private streets must be members in or part of the HOA. The HOA shall own and be responsible for the maintenance of the private streets and appurtenances.
- E. Private streets shall be contained within a separate lot owned by the HOA.
- F. The borough shall not pay for or contribute to any cost to construct, improve, or maintain a private street.
- G. The subdivision final plat and HOA documents shall note that borough maintenance shall not be provided on any private streets.
- H. Gated subdivisions and private streets may be approved, provided they meet the following criteria:

1. Internal streets shall conform to the requirements of KPB 20.30, Subdivision Design Requirements, except as otherwise allowed in this section;
2. Emergency services shall be provided access to deliver services within the private subdivision. Approval by the fire and emergency services provider with jurisdiction in the area of the gated subdivision is required. The fire and emergency services provider must be satisfied that fire and emergency services providers will have safe access into and within the gated subdivision;
3. The requirements of KPB title 20 are met because alternate legal access to adjoining properties is available and that access is constructible in accordance with KPB 20.30, Subdivision Design Requirements and KPB 14.06, Road Standards;
4. There shall be a note on the plat that the streets are not public and are subject to private construction and maintenance;
5. The HOA shall execute a defense and indemnification agreement in favor of the borough in the following form: The HOA shall indemnify, defend, and hold and save the borough, its elected and appointed officers and officials, agents and employees, hereinafter collectively referred to as “agents,” harmless from any and all claims, demands, suits, or liability of any nature, kind or character including costs, expenses, and attorneys’ fees. The HOA shall be responsible under this clause for any and all legal actions or claims of any character arising from the HOA or the HOA’s acts or omissions related to its private streets and gates in any way whatsoever. This defense and indemnification responsibility includes claims alleging acts or omissions of the borough or its agents, which are said to have contributed to the losses, failure, violations, or damages, except for acts or omissions solely attributable to the borough.
6. The HOA and all of the HOA’s subcontractors, if any, shall be responsible for the purchase and maintenance of all insurance required by law and any other insurance the HOA deems necessary or appropriate.

20.80.030. – Gates

If a gate is installed to prevent public access to a subdivision with private streets the gate shall conform to the following requirements:

- A. Each gate must be approved prior to installation by the fire and emergency services provider that serves the proposed gated subdivision. The entrances to all private streets shall be marked with a sign stating that it is a private street.

- B. Gates, approach and departure areas shall be designed by a licensed professional civil engineer.
- C. In order to allow access for the provision of emergency services, each security gate designed and installed shall be equipped so that access is by a radio operated controller or keypad. The fire and emergency services provider serving the gated subdivision, borough assessing department, borough planning department, and law enforcement shall be provided either radio controlled or keypad access to the subdivision.
- D. Approach and departure areas on both sides of a gated entrance must provide adequate setbacks and proper alignment to allow free and unimpeded passage of emergency vehicles through the entrance area.
- E. After installation, all emergency access systems must be approved by the fire and emergency services providers serving the gated subdivision. The HOA must maintain all components of the gate system in a normal operating condition and have them serviced on a regular basis, as needed, to ensure proper gate operation. A proper power supply shall be provided and maintained to all electrical components at all times. Each electrical vehicular gate must be provided with a fail-open device to open during power failures and be equipped for emergency access.
- F. A public vehicular turn around shall be provided to allow vehicles that have been denied entry the ability to exit without having to backup.
- G. No part of the gate system shall be placed in a public right-of-way.
- H. The HOA is responsible for the gate, its signage and its costs, and shall be responsible for any violations of this section.

20.80.040. – Converting to gated subdivision.

- A. A subdivision HOA may seek to convert a subdivision to a gated community with private street(s) and restrict public access by filing a replat and vacation petition with the planning director, which shall be considered a request to vacate public street(s) and/or right-of-way(s), as well as replat the subdivision. The request shall comply with the applicable replat and vacation requirements and procedures in this title, except as provided otherwise in this chapter.

B. Upon determination by the planning director that the replat application is complete, the request shall be subject to review and approval by the borough planning commission regarding whether the gated subdivision requirements and procedures have been met, as set out in this chapter. The borough planning commission decision is subject to appeal to the hearing officer pursuant to KPB 21.20.

C. Converting public street to private street – standards.

1. Vacation of the public right-of-way shall be in accordance with the criteria set forth in KPB 20.70.
2. The proposed gated subdivision shall not cause discontinuity in the existing or proposed public street system or distribute an unacceptable amount of traffic through an existing neighborhood than would otherwise result if public streets were used. Converted private streets may not unduly impair access to public facilities, including schools, parks and libraries. Utilities proposed for vacation must not provide service to customers outside the proposed gated subdivision boundary.
3. The proposed gated subdivision must not cause discontinuity in the existing or proposed road system to any property owner in the proposed gated subdivision with frontage on the public right-of-way that is to be vacated.
4. Prior to recording the final plat the property owners abutting the vacated public street shall file with the borough fully executed deeds conveying their interest in the vacated street to the HOA.
5. Prior to recording the HOA shall accept the road “as-is” in its present condition and shall agree to indemnify, hold harmless, and defend the borough against any claims arising from the HOA’s ownership, maintenance and control of the converted street.
6. HOA shall execute a defense and indemnification agreement in favor of the borough in the following form: The HOA shall indemnify, defend, and hold and save the borough, its elected and appointed officers, officials, agents and employees, hereinafter collectively referred to as “agents”, harmless from any and all claims, demands, suits, or liability of any nature, kind or character including costs, expenses, and attorneys’ fees. The HOA shall be responsible under this clause for any and all legal actions or claims of any character arising from the HOA or the HOA’s acts or omissions related to its private streets and gates in any way whatsoever. This

defense and indemnification responsibility includes claims alleging acts or omissions of the borough or its agents, which are said to have contributed to the losses, failure, violations, or damages, except for acts or omissions solely attributable to the borough.

20.80.050. – Converting private streets to public streets in gated subdivision.

- A. The owners of a private street may petition to dedicate the private street through the platting process. The street must meet the design criteria set forth in KPB 20.30 and KPB 14.06.
- B. A civil engineer at the HOA's expense shall determine whether the private streets meet KPB Title 14 and Title 20 standards for street design and construction. If the streets do not meet borough standards the dedication shall be denied.
- C. The borough may also require, at the HOA's expense, the removal of any improvements, access control devices, gates, landscaping or other aesthetic amenities associated with the private street.

20.80.060. – Enforcement.

Violations of this chapter shall be in accordance with KPB 20.10.030 and KPB 21.050,

SECTION 2. That KPB Chapter 20.90, entitled "Definitions is amended as follows:

20.90.010. – Definitions generally.

In this title, unless otherwise provided, or the context otherwise requires, the following definitions shall apply.

...

"Gated subdivision" means a residential subdivision consisting of five (5) or more parcels of land where vehicular and/or pedestrian access by the general public from a public street and street(s) within the gated community and/or public right-of-way(s) is restricted as a result of a barrier that may include, but is limited to gates, security personnel, fences or walls. This definition does not include gates or other barriers limiting access to an individual parcel or lot.

...

“Private street” is defined as a vehicular access way shared by and serving two or more lots, which is not publicly maintained, but maintained by a homeowners’ association. The term “private street” shall be inclusive of alleys. The term “street” also includes the term “street” as used in KPB title 14.

SECTION 3. That this ordinance shall become effective upon its enactment.

**ENACTED BY THE ASSEMBLY OF THE KENAI PENINSULA BOROUGH THIS
_____ DAY OF _____, 2019.**

Wayne Ogle, Assembly President

ATTEST:

Johni Blankenship, Borough Clerk

Commissioner Venuti wanted to know if Ms. Wade had the opportunity to read the letter from the Kachemak Bay Conservation Society. Ms. Wade read it briefly right before the meeting. Commissioner Venuti wanted to know what she thought of the recommendations and if they were feasible to add into the plan. Ms. Wade felt that they could and did not see anything that contradicted the values that have been shared through this process.

Commissioner Ecklund wanted to discuss the process for the plan. She wanted to know if it could be brought back after some of the suggestions are made so they can review it. She felt they did not need the whole plan again but would like to see the changes. She also wanted to know if they had to make motions for each recommendation or if some could be grouped. Mr. Wall said that they could instruct staff to make some changes and bring it back and then they will have a new draft to review and adopt.

Chairman Martin said that he would like it to be time specific on when to review the plan.

Commissioner Ruffner wanted to try to summarize the wishes of the Commission for Ms. Wade. Update the census tables for the agriculture data from 2012 to 2017; incorporate the five recommendations from the Kachemak Bay Conservation Society, and a specific timeline for review instead of periodic update.

Chairman Martin noted from his agriculture perspective that the cannabis statistics are significant even if the benefits are not local relatively speaking. Commissioner Carluccio noted that we do get sales tax. Mr. Wall said the sales tax does go to the Borough.

Commissioner Ruffner wanted to know if staff needed more information. Mr. Wall felt that what was given was sufficient direction. He does have concerns about item one on the Kachemak Bay Conservation Society list. It deals directly with the Hazard Mitigation Plan. That is something that the Commission has already forwarded to the Assembly. He would recommend items two through five on the list.

Commissioner Ecklund noted that Kachemak Bay Conservation Society amendments do not get specific enough for alternative energy or the solar and wind farmland use. She would like to see more about alternative energy.

Ms. Wade said there were two things she did not hear Commissioner Ruffner cover in his summary and the alternative energy was one. The other was related to it, the educational and training opportunities tied to growth industries. Tying it back to those alternative energy and others discussed. Commissioner Ruffner wanted to clarify that those suggestions would also be looked at. Ms. Wade confirmed.

Commissioner Ruffner asked if staff wanted to the postponement to be date certain or brought back by staff. Mr. Best asked what Ms. Wade's ability would be to have the changes made. Ms. Wade said she would like to have the changes made within the next two weeks. After hearing the public input and with it already being a two-year process, she felt sooner was better. Mr. Best said that brought back by staff would be best.

MOTION: Commissioner Ruffner moved, seconded by Commissioner Ecklund, to postpone the review of the Comprehensive Plan until brought back by staff.

MOTION PASSED: seeing and hearing no objection or discussion, the motion passed by unanimous consent.

AGENDA ITEM F. PUBLIC HEARINGS

2. Ordinance 2019-___; Adopting KPB 20.80, Subdivision Private Streets and Gated Subdivisions.

Staff Report Given by Max Best

PC Meeting: 8/26/19

This ordinance is to allow people to have gated or private subdivisions within the Borough. If all of the requirements of the Borough Platting code are met, a road can be vacated and made into a tract of land creating a gated private community.

Some requirements are that Title 14 and 20, as they relate to development, would need to apply. Utility requirements, road width, etc. would have to apply in case the tract is dedicated as a public right-of-way and ceases being private.

There are requirements to get to and through the gates. There must be a turnaround before the gate and adequate access. All of the requirements go through fire and emergency services to determine that they could access the subdivision if needed. They would have a clicker or code that would allow them access to the subdivision.

This was created by staff to address those subdivisions that may potentially want private roads. This can be difficult but doable. There are situations where "to and through" the subdivision is not needed. Example would be a small cul-de-sac that accesses land that does not require streets to go around or through the subdivision. It would work in that situation.

END OF STAFF REPORT

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

MOTION: Commissioner Venuti moved, seconded by Commissioner Carluccio, to forward to the Assembly a recommendation to approve Ordinance 2019-___; an ordinance adopting KPB 20.80, Subdivision private streets and gated subdivisions.

Commissioner Whitney wanted to know if an existing subdivision could do this if the ordinance is adopted. Mr. Best said they could but the right-of-way would have to be vacated. One hundred percent of the property owners that about the right-of-way would have to be a part of the process. It will take everyone in the area to agree to it.

Commissioner Ecklund noted that this is a brand new section of Borough Code. She did not think there was anything existing about gated communities or private streets in the code. Mr. Best said this is new. It can be done under existing code but it requires numerous exceptions to the code. Commissioner Ecklund wanted to know if there was a specific instance that had caused this to be drafted. Mr. Best said perhaps.

Commissioner Carluccio wanted to know if staff looked at other Boroughs or States that have gated communities to see how it worked for them. Mr. Best said they did a lot of research on how it worked in other municipalities. There are a lot of them in California, etc. The biggest concern was providing emergency services to people and making sure there is a way to adequately respond to people. It cannot just be a trail that emergency vehicles cannot use. Commissioner Carluccio followed up by asking if it would all have to be privately owned land, that there would be no easements or trails. Mr. Best said it would be a tract of land that is owned by all the abutting landowners. If it is done at the time of subdivision, it would be a tract owned by the Home Owners Association and the Association would own, operate, and maintain the road. Utility easements would be associated with it and building setbacks in case the Borough takes over the right-of-way. It has to meet all of title 14 and 20 for the Borough to take it. Non-conforming structures or things in the right-of-way would not allow the Borough to take the road. It must be built to Borough standards and met all the requirements the Borough has in place. Commissioner Carluccio asked if the best way to do this is to start with a tract of land and then subdivide to build the gated community. Mr. Best said this is generally for that situation. It will be difficult but possible for existing subdivisions to become a gated community.

Commissioner Venuti wanted to know if a local option zone could be a gated community and about emergency vehicle access. Mr. Best said that he did not know any reasons why a local option zone could not be a gated community. The Borough would have access anytime staff needed. Gates would have to

be approved by emergency service providers. There would be a code, a lock that can be cut, and a way to access the subdivision if needed even if the power is out. Emergency services would have free access and this ordinance reserves access for the Planning Department. Widths and heights of gates will be worked out with Emergency Services. Commissioner Venuti wanted to know if a how property rights will be handled. Mr. Best said that an HOA would have to own it and the Borough would not have property rights associated with the roadway. The HOA would also maintain the road.

Commissioner Ecklund is concerned about not having building setbacks incorporated into the ordinance due to safety standards for fires, etc. Mr. Best noted that building set backs are a provision of Chapter 20 so it would have to be in place.

Commissioner Whitney wanted to know if the Borough would be compensated for giving up a right-of-way in established subdivisions that form a gated community and turn the road into a private road. Mr. Best responded that if a municipality purchased land for a right-of-way they could be compensated during the vacation process. The Borough gets the right-of-ways mostly through dedicated fee land with no cost. Commissioner Whitney noted that the Borough may have been improving it and have money invested into the road. Mr. Best thought that the Roads Department would be willing to give up the maintenance on the road over what it costs to continue maintenance and improvements. Mr. Best noted that it was a good question that was not fully considered.

Commissioner Ruffner noted that when reading the proposal it is generally following all the subdivision requirements and Title 14 for road construction. That seems reasonable in the sense that it could wind up coming back to the Borough and it needs to be safe. The issue he sees is once a certain sized parcel is turned into a gated community the through traffic to get to future development seems to be a challenge. He wanted to know if there was any thought put into size limitations. There are block length requirements, but he wanted to know if there was something in this ordinance that talks about size. Mr. Best said that it must meet Chapter 20 requirements including the "to and through". It is not for every piece of property. There is no size requirement because many larger parcels require "to and through" easements or right-of-way dedications. Commissioner Ruffner noted that the exception to block length is given generously and he could see that becoming an issue.

Chairman Martin wanted to know if there would be any legal complications if the Borough owns a parcel inside a gated community after tax foreclosure. Mr. Best said that was discussed and it was determined that the borough would not be obligated to pay Home Owner fees for tax foreclosed properties. The Borough currently does not have those obligations for property acquired during tax foreclosure.

Commissioner Whitney wanted to know if the property owners in the gated community would still have to pay the road service mill rate. Mr. Best said they would. Commissioner Whitney said the owners would be doubling their cost because they would also pay the maintenance through the Home Owners Association. Mr. Best said that was correct.

Chairman Martin noted he likes to encourage more parks and open space within subdivisions. Currently there is no economic incentive for a developer to do that and the Borough does not want to own those parks. He wanted to know if this would help encourage that. Mr. Best said the developer or owners could designate a lot within the subdivision as an open space and the Home Owners Association can own it and utilize it as a park. This could possibly advance that type of situation. Chairman Martin noted they would still have to pay property tax on it. Mr. Best said they would.

Commissioner Ruffner said he did not have any issues if a developer wants to develop a gated community if it does not interfere with future development of the larger lands that are still out there. The Borough is still entitled to some State lands and the State is still entitled to some Federal lands. This is a big piece of code to introduce and vote on in the same meeting. He does not know if the public knows that this is out there. Everything he has heard sounds reasonable but is reluctant to vote on it.

Commissioner Ecklund wanted some clarification about section line easements that go through a parcel that wants to be a gated community. She wanted to know if the gate would go on the far side of the section

line easement so that public access is not blocked. Mr. Huff said that public access easements would have to stay open from point A to point B. The easement could pass through a subdivision but the public would not have the right to get onto the private access road. Commissioner Ecklund wanted to know if the property was to be gated if a pedestrian gate would have to be allowed on either side to allow people to walk through the section line easement. Mr. Huff stated that a legally a pedestrian or section line easement cannot be blocked. The gate would be on the road and the public could continue to use the section line easement to pass through the subdivision. Commissioner Ecklund followed up by stating that the owners could not put up a fence around the whole property from both sides of the gate and block the whole subdivision off if there is a section line easement through it. Mr. Huff said a fence could be put up on their property but the section line easement cannot be blocked.

Commissioner Whitney felt that many questions of had been raised and many answers were not available right now. He felt that there needed to be more research and clarification on what the parameters, rules and regulations would be for somebody to do this. Mr. Best asked Commissioner Whitney what specific questions he would like answered. Commissioner Whitney wanted to know what would happen to the street in an already formed subdivision. If that road has been built and maintained by the Borough who will pay for that investment.

Commissioner Fikes asked if there were any gated communities in the Borough at this time. Mr. Best said there are some. Commissioner Fikes asked how they are operated. Mr. Best said it is similar to this ordinance. Kenai River Keys is one and the emergency service providers have clickers to get access and a gate that can be clipped and opened at any time. It has been a private subdivision with private roads since about 1972.

Commissioner Ruffner he would like some more thought on size limitations and tie it to block length. Maybe two time the block length or something similar would be a limitation. It can get more complicated than that when looking at the surrounding lands. A block length could be met but forcing the only other access into a wetland that cannot be developed. He would like to see some rules that limit size and feasibility for construction around the subdivision. Mr. Best said that they could look into it more. The ordinance is being introduced to the Assembly on September 3 and will be heard on October 8. The Planning Commission will have a meeting between those dated so more information can be given to the Commission before they vote.

MOTION: Commissioner Ruffner moved, seconded by Commissioner Carluccio to postpone until brought back by staff.

Commissioner Ecklund wanted to ask about the management of the new ordinance. She wanted to know the Planning Commissioner or Assembly will be making the decisions on private subdivisions. Mr. Best said it would be the Planning Commission and their decision would not be forwarded to the Assembly.

Commissioner Fikes said if this were coming back, she would like to see or hear some feedback from Emergency Services if there have been any complaints or issues. In addition, if the utility companies have had problems with access, or complaints from people that live in a current gated community regarding services. Mr. Best said that there have been no complaints that the Borough is aware of because they make the subdivision must be access available. Kenai Keys has had a special assessment done and had gas put into the community. During a flood event, the gate is locked open so that people can come and go to escape any flood issues. Commissioner Fikes was concerned about seasonal people or those that are on the slope. If an emergency arises when they are not there, where would the protection and responsibility lie, with the Borough or Home Owners Association?

Commissioner Ecklund said this brings to mind when a staff report says that the different groups say no comment or no objection. She wanted to know if that could be included in a staff report for this item. It may be helpful to know that others have reviewed it.

MOTION PASSED: Seeing and hearing no objection or discussion, the motion passed by unanimous consent.

↑
At 9:07 p.m. Chairman Martin called for five minute break.

Chairman Martin called the meeting back to order at 9:13.

Chairman Martin asked for the Planning Commission's consent to move item I1 to be next on the agenda. There was no opposition.

SPECIAL CONSIDERATIONS

AGENDA ITEM I. SPECIAL CONSIDERATIONS

1. Building Setback Exception
Carver Subdivision Part 3 Lot 8 Block 6
KPB File 2019-098; Resolution 2019-29
Location: On Carver Drive and Gene Avenue, Ridgeway area

Staff Report given by Scott Huff

PC Meeting: 8/26/19

Petitioner: Paul J. Flanagan of Kenai, Alaska.

Submittal (summarized): The owner recently obtained an as-built of the property that revealed 6.2 foot encroachment into the building setback of a bedroom/garage addition. The owner purchased the property in the summer of 2004 and hired a contractor to build the addition in the fall so that he could have the extra bedroom for his three children before winter. Unbeknownst to the owner, the contractor built the addition in the building setback. Both Carver Drive and Gene Avenue have had extensive work recently done to them (Fall 2017). The roadwork was done in the area of the property (44290 Gene Ave). Both have been raised, widened, draining improvements (including all new culverts installed), trees removed, plus new easier sloped grades at the corner of Gene and Carver.

Staff Discussion: The encroaching structure for which the exception is being sought is shown on the as-built survey dated August 9, 2019. The as-built survey indicates the structure encroaches 6.2 feet into the building setback of Carver Drive which is a 60 foot wide right of way. The portion of the Carver Drive right-of-way adjoining Lot 8 Block 6 is straight, with bends shortly before and after. Lot 8 Block 6 is located on the corner of Carver Drive and Gene Avenue. The Carver Drive and Gene Avenue intersection is approximately 100 feet from the encroachment.

KPB GIS mapping indicates Carver Drive has a gentle slope adjacent to Lot 8 Block 6, with an approximately 8% uphill grade sloping to the southeast. KPB GIS 4-foot contours indicate the encroaching structure is approximately four feet below the constructed road level of Carver Drive.

KPB GIS mapping indicates Lot 8 Block 6 is not within a mapped flood hazard zone and is not within the Anadromous Habitat Protection District.

Sight distance does not appear to be impacted by the encroaching structure.

Per KPB GIS mapping, Carver Drive is constructed and maintained by the KPB Road Service Area. KPB RSA reviewed the building setback exception request and has no objection to the request.

Findings:

1. The parent plat, Carver Subdivision Part 3, KN 77-73, granted a 20-foot building setback from all street rights-of-way.
2. KPB GIS 4-foot contours indicate Carver Drive adjacent to Lot 8 Block 6 has a gentle slope.
3. Per Kenai Watershed Forum 2013 Cook Inlet Wetlands Mapping, Carver Drive is not affected by low wet areas.
4. The as-built survey dated August 9, 2019 shows the structure encroaches 6.2 feet into the building setback.

MEMORANDUM

TO: Wayne Ogle, Assembly President
Members, Kenai Peninsula Borough Assembly

THRU: Charlie Pierce, Mayor
Dil Uhlin, Roads Director

FROM: Max Best, Planning Director

DATE: August 22, 2019

RE: Ordinance 2019-_____, Adopting KPB 20.80, Subdivision Private Streets
and Gated Subdivisions (Mayor)

Goal 6.5 of the 2005 Comprehensive Plan is to maintain the freedom of property owners in the rural areas of the borough to make decisions and control use of their private land. Privacy, security, and public safety concerns expressed by residents may be addressed by private streets in subdivisions. Private streets can only be approved through the KPB 20.50 exception process and there are currently no designated standards and requirements, nor established procedures to create subdivisions with private streets and gated access.

There is a need for standardization, criteria, and establishment of procedures for creating both subdivisions with private streets and gated subdivisions. This ordinance codifies the requirements and procedures for creating these types of subdivisions.

This matter is scheduled to come before the KPB Road Service Area Board's at its August 13, 2019 meeting and the KPB Planning Commission at its August 26, 2019 meeting. The recommendations of both boards will be presented to the assembly prior to the final hearing on this ordinance.

Your consideration of this ordinance is appreciated.



City of Homer

www.cityofhomer-ak.gov

Office of the City Manager

491 East Pioneer Avenue
Homer, Alaska 99603

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(p) 907-235-8121 x2222

(f) 907-235-3148

Memorandum

TO: Mayor Castner and Homer City Council
FROM: Katie Koester, City Manager
DATE: September 4, 2019
SUBJECT: September 9 City Manager Report

City of Homer Water System Receives Ursa Minor Status from State of Alaska

Superintendent Cook received notice in August that the City of Homer Water System achieved Ursa Minor status in Water System Excellence for 2018 due to the outstanding work done to maintain compliance with operating training, certification, and drinking water program regulations. This recognition reflects the City of Homer Water Treatment staff's commitment to quality and the pride they take in their work. Superintendent Cook already has his sights set on the City attaining Ursa Major status next year.

PWSRCAC Solicits Input from Communities on Project Planning

The Prince William Sound Regional Citizens Advisory Council (PWSRCAC) sent the attached correspondence soliciting input from member communities on projects that support their mission of promoting the environmentally safe operation of the Valdez Marine Terminal and associated tankers. As part of this effort, the PWSRCAC Board of Directors will be working to update the strategic plan for the next 5 years. If members have input on new projects they would like to make PWSRCAC aware of, please discuss the idea at the regular meeting and I will work on filling out the new project template before the September 20th deadline.

50 years of Kachemak Bay State Park

I met with Friends of Kachemak Bay State Parks board member Robert Archibald to discuss how the City could recognize and celebrate the 50 year anniversary of the largest state park in Alaska. There is a celebration planned for May 9th to commemorate the official creation of Kachemak Bay State Park, but the group would also like to display banners recognizing the anniversary. This may be a good time to look at directing PARCAC to work on new banners (some could be themed around the park) pending Council approval of a project, especially since the City's summer, winter and holiday banners are in disrepair.

Industry Appreciation Day Honors Former Mayor Zak

On August 24th in Kenai, Mayor Castner and I had the opportunity to attend Industry Appreciation Day, a community picnic and informational event hosted by the Kenai Peninsula Economic Development District (KPEDD) and City of Kenai. This event celebrates the industries and companies that define the economy of the Kenai Peninsula: oil and gas, commercial fishing, tourism, and health care. The event is free and draws around 3,000 people every year. This year was extra special as Former City of Homer Mayor Bryan Zak was awarded the Spirit of Industry Appreciation Day Award for his multifaceted work on behalf of local business.

both as Mayor, a small business owner, and with the Small Businesses Development Center. Seldovia Village Tribe Health and Wellness was also recognized for Outstanding Business in Health Care.



Tide Gauge at the Load and Launch Ramp

Port Maintenance staff are completing the installation of a tide gauge at the Load and Launch ramp, second pile from the end of the outer float. A tide gauge is a long ruler attached to a piling that is calibrated to show the water level (real time) in the harbor. The gauge is visible through all stages of the tide. Staff will be working to match the tide gauge with the actual tide level published by NOAA for the Homer harbor. Harbormaster Hawkins sees the tide gauge as being a useful tool for staff,

educational for the public, and a great reference tool in case of a tsunami evacuation situation. Prior to any tsunami event, there is always an extreme change in the water level. The question everyone will be wanting to know is “has the water level dropped?” To answer this question, Harbor staff and Police Dispatch can look at the tide gauge using the Load and Launch ramp camera to zoom in on the gauge reading. At some point, the City may want to build an informational sign to mount in the overview station above the ramp to share information about the tides in Kachemak Bay. Port and Harbor staff tell boaters all the time “it’s all about the tides in Kachemak Bay,” so this simple tool helps make that point clearer.

Peninsula Manager’s Meeting

On August 23rd, I traveled to Kenai to meet with fellow Peninsula City Managers and discuss regional issues. We were scheduled to meet in Seward since the last meeting was hosted by Homer, but the fires and road closures kept us on the south side of the fire. Topics covered included area capital projects, managing a leadership team, Borough issues impacting municipalities, spruce bark beetle mitigation, regional and local tourism marketing, and the upcoming census. We had a special meeting with Economic Development Administration specialist Shirley Kelly on disaster funding following the November 2018 earthquake and how the communities can align regionally to improve communication and other disaster preparedness measures. I will be participating in a follow up teleconference to keep exploring this topic. The more Peninsula communities can work together towards common goals, the more opportunities and efficiencies we will find. I always enjoy these quarterly meetings for the concrete takeaways and good ideas we can share. We noted that 3 of the 5 Peninsula Managers are graduates of the Kenai Peninsula Borough School Districts, which is one way municipalities are supporting Alaska Grown.

Alaska LNG Draft Environmental Impact Statement Open for Comment

The Alaska Gasline Development Stakeholders group is soliciting comments and support for the Alaska LNG Draft Environmental Impact Statement (EIS) that was released by the Federal Energy Regulatory Commission (FERC) in June. The deadline to comment is October 3, 2019 by 5:00 PM Eastern Time. This is part of a permitting process that began in September 2014, and will hopefully culminate with a final authorization from FERC to be issued in June 2020.

the Alaska LNG Project. Attached are talking points and key messages provided by the Stakeholders group to help inform comments to FERC on the draft EIS. This attachment also outlines how to submit comments. Following the close of the comment period, FERC will respond to comments and revise the draft EIS. Their schedule shows issuance of a final EIS in March 2020 with a determination on whether to approve the project along with issuance to construct and operate the project in June 2020. Public meetings on this project are detailed below:

Alaska Public Meetings

Nikiski – September 11, 2019 5:00 – 8:00 P.M. Nikiski Recreation Center, Mile 23.4 Kenai Spur Highway

Anchorage – Thursday, September 12, 2019 5:00 – 8:00 PM Dena'ina Center Khutna 1

Please let me know if Council would like to officially submit comments on behalf of the City to the FERC on this topic and I will schedule something for next Council meeting.

Workman's Compensation

In the last City Manager's report, I commented on the Borough's success with reducing workman's compensation claims as presented by Mayor Pierce at AML's 2019 Summer Legislative Conference. Councilmember Smith has since asked about running a risk analysis report for the City. In December of 2018 we asked AMLJIA to do a 10 year loss analysis (letter attached). At that time, "foreign body in eye" was identified as a claim type higher than other similarly situated organizations and we instituted additional training measures and reminders to use personal protection equipment (PPE) as a result. We also discussed the importance of using ice cleats and I authorized departments to use their equipment budgets to purchase ice cleats for any employee who needs them. At the Port, this looks like a specialized work boot with retractable cleats however the City's go-to is an inexpensive pair of cleats that easily slip over outdoor shoes. Since the December 2018 loss analysis when the City determined increased training in specific areas by certain departments could be beneficial, the City has had zero incidents resulting from inadequate PPE and the City's claims for 2019 are low. If staff see a trend that shows either specific categories of claims or lack of PPE, that will be addressed with additional training. Staff already look at each claim individually and determines what, if any, measures will be taken to avoid this type of accident in the future. I have attached an analysis of the cost of City of Homer workman's compensation claims, paid by AMLJIA as a point of information. I have also attached a chart that lists claims by type. The City institutes comprehensive safety training requirements for staff both when they are hired and on an annual basis depending on the type of work they do. Most of these courses are online and I would be happy to provide Councilmembers access to them. I am open to further direction from Council on how you would like to invest in the safety of our employees.

Direct and Indirect Vulnerabilities from the State of Alaska and Funding Cuts

During last week's Department Head meeting, I asked Leadership to brainstorm on ways the City's budget is directly and indirectly vulnerable to impacts from the State. Governor Dunleavy has stated there will be two more years of budget cuts, so as the City moves into a biennial budget, we all need to be ready for how City of Homer could be directly impacted by those upcoming measures.

Enc:

Letter of Congratulations from ADEC for Ursa Minor Status of City of Homer Water System

PWSRCAC Project Planning Request Letter

Alaska LNG Project Draft Environmental Impact Statement Points to Consider and Key Messages

Direct and Indirect Vulnerabilities from the State of Alaska and Funding Cuts

AMLJIA 10 year loss analysis and workman's compensation claims analyses



THE STATE
of ALASKA
GOVERNOR MICHAEL J. DUNLEAVY

Department of Environmental
Conservation

DIVISION OF WATER
Operator Training & Certification Program

P.O. Box 111800
Juneau, Alaska 99811
Main: 907.465.1139
Fax: 907.465.5177
dec.opcert@alaska.gov

August 23, 2019

Todd Cook
City of Homer
3575 Heath Street
Homer, AK 99603

Dear Mr. Cook,

On behalf of the Department of Environmental Conservation (DEC) we want to congratulate the City of Homer Water System (PWSID 240456) on achieving Ursa Minor status in Water System Excellence for 2018! The work your system has done to be in compliance with Operator Training & Certification and Drinking Water Program regulations has not gone unnoticed.

The Water System Excellence award program is new this year and is a coordinated effort on the parts of Operator Training & Certification and the Drinking Water Program.

Water System Excellence is comprised of two tiers, Ursa Major and Ursa Minor. Both the Water Treatment and Water Distribution systems are evaluated.

Ursa Major: System(s) maintained 4 quarters of Operator Training & Certification compliance and incurred no Drinking Water violations during the year.

Ursa Minor level: System(s) maintained either 4 quarters of Operator Training & Certification compliance and incurred only 1 Drinking Water violation during the year, OR 3 quarters of Operator Training & Certification compliance and incurred no Drinking Water violations during the year.

While DEC focuses on assisting system owners and operators with achieving and maintaining compliance, the responsibility for complying with the regulations lies with the system. Your demonstrated expertise and dedication to safety and health is a great benefit to your community.

Thank you for your ongoing efforts to provide safe drinking water to those served by your water system.

Sincerely,

Cindy Christian
Drinking Water Program Manager

&

Martin Suzuki
Acting Operator Certification Program Manager

August 29, 2019

Ken Castner
City of Homer
491 Pioneer Ave
Homer, AK 99603

mayor@ci.homer.ak.us; citymanager@cityofhomer-ak.gov

SUBJECT: PWSRCAC Project Planning Request – Due Date September 20, 2019

Dear MayorCastner;

The Prince William Sound Regional Citizens' Advisory Council (PWSRCAC) is seeking your ideas on projects that support our mission of promoting environmentally safe operation of the Valdez Marine Terminal and associated tankers. PWSRCAC is an independent non-profit corporation whose work is guided by the Oil Pollution Act of 1990 and our contract with Alyeska Pipeline Service Company. Our mandate includes but is not limited to:

- monitoring the environmental impacts of the terminal facilities and the tankers that use them;
- reviewing respective oil spill prevention and response contingency plans;
- monitoring drills and exercises;
- studying wind, water currents and other environmental factors;
- reviewing new technological developments or changed circumstances;
- broadly representing our constituents in the region affected by the Exxon Valdez oil spill of 1989; and,
- providing advice and recommendations to industry and regulators on any findings coming from the above-mentioned tasks.

The PWSRCAC Board of Directors has adopted a Strategic Plan intended to provide a five-year framework to guide the development of our annual work plan and budget. This plan builds upon the extensive foundations and work that we have accomplished over the past 30 years. Past work and research products can be found here:

<http://www.pwsrcac.org/programs/>.

There are many avenues in which we strive to achieve our mission. One is to foster partnerships and collaboration among industry, government agencies and citizens. We have learned that such partnerships and collaborations lead to good policies, better response capabilities, safer transportation of oil, and improved environmental protection.

Our Board of Directors is working to update the Strategic Plan to cover the years 2020 through 2025 and we invite your suggestions for projects that would support our mission. **Please submit suggestions no later than September 20, 2019.** Please provide the following information for any proposed projects:

- 1) Project name and brief description;
- 2) Why the new project is important to our organization, mission and/or our constituents;

- 3) What would be accomplished as a result of successfully completing the new project;
- 4) The probability of successfully completing the new project; and
- 5) Estimated cost.

A new project briefing template is attached to help you through this process for submitting conceptual, idea-based projects. If your proposal involves a more complex, data-driven project, we will need the additional information contained in the attached new project proposal template. Also attached is a contact list of our staff along with a brief description of the work of our five technical committees. You are encouraged to contact staff if you have questions about how your new project might support our organization, mission and constituents, or if you have any other questions regarding this process.

Our technical committees and the Board of Directors will evaluate current projects and proposed new projects based on the above criteria, and a five-year project schedule will be developed. We appreciate you taking the time to provide suggestions to help us achieve our goals on behalf of the citizens we represent. Joint projects help to generate a cooperative spirit of shared problem solving, leading to common ground and continuous improvements in the safety of oil transportation. Please do not hesitate to contact me if you have any questions regarding this request. Thank you, in advance, for providing your ideas and suggestions.

Sincerely,

Donna Schantz
Executive Director

Cc: Robert Archibald

Enclosures:

- a) New Project Briefing Template
- b) New Project Proposal Template
- c) PWSRCAC Staff Contact List

Alaska LNG Project Draft Environmental Impact Statement

Points to Consider and Key Messages

Points to consider in providing comments:

- Support the recommendation that the Alaska LNG Project, as proposed by the Alaska Gasline Development Corporation, in Nikiski, Alaska be selected as the preferred alternative for the siting of the LNG plant and marine terminal.
- In Alaska the project will reduce greenhouse gas emissions through the use of natural gas versus burning of wood and coal.
- Through potential sales of natural gas to Asian countries this will reduce greenhouse gas and provide a cleaner energy source to a significant portion of the total world population. Asia population is equivalent to 59.76% of the total world population.
- The DEIS states project construction would result in economic benefits throughout Alaska from worker spending, purchases of materials, supplies and taxes.
- Support the recommendation and the interest expressed by the National Park Service (NPS) and Environmental Protection Agency to install an interconnection to provide natural gas deliveries to Denali National Park and Preserve (DNPP) and the Denali Borough. NPS will convert existing operations and bus fleet to natural gas thereby reducing air emissions within DNPP.
- Construction of a gas pipeline will supply Alaskans with gas and improve air quality.
- The project will provide Alaskans and Alaska companies with economic opportunities.
- The DEIS finds that with the implementation of best management practices, impacts to wildlife will not be significant.
- The DEIS notes impacts to recreation areas during construction would be temporary and minor.
- DEIS finds the extent of impacts to subsistence activities would vary by community but overall the impacts would be not be significant.
- The DEIS concludes most project impacts would not be significant and would be reduced to minor impacts with the implementation of proposed avoidance, minimization and mitigation measures.
- AGDC has responded to public concerns surrounding the development of the gas pipeline and liquefaction facilities.
- AGDC's in water activities will follow mitigation measures to minimize impacts to marine mammals and their behavior developed in conjunction with stakeholders, National Marine Fisheries Service and U.S. Fish and Wildlife Service.
- Establishment of Local Subsistence Implementation Councils to identify community issues and concerns will help to ensure impacts to subsistence activities are minimal.

Employment

- Construction jobs – Total over eight years equals 29,100 with the peak employment during the project's 4th year at 7,620 jobs. (Table 4.11.2-5, page 4-606)

- Operations jobs – 980 with jobs concentrated in the Kenai Peninsula Borough, Municipality of Anchorage and North Slope Borough. Gas treatment plant employing 170 personnel; Mainline pipeline, compressor and meter stations employing 225 workers; the Liquefaction Plant employing 240 workers in Nikiski with 345 personnel for operation and maintenance in Anchorage. Projected total annual wages \$385 million. (page 4-599, page 4-605)
- Increased employment opportunities in most industries with particular growth expected in the oil and gas, mining support services, construction, transportation, professional, scientific and technical services. (page 4-604)

Gas for Alaskans

- In state delivery of natural gas will improve air quality conditions throughout the state. (Air Quality, Volume 3, page 4-877)
- Connection to the Interior Gas Utility will provide assurance of a long-term, economic energy supply for Fairbanks and North Pole residents, commercial and industrial users.
- The potential for smaller communities along the pipeline to bring affordable, reliable natural gas to residential, commercial and industrial users.
- Interconnection of the main gas pipeline to the existing Southcentral pipeline infrastructure/network will provide assurance of long-term, economic energy supplies for residential, commercial and industrial users.
- Additional in-state natural gas to support new resource development projects.

Value Add to Alaska Economy

- \$7.1 billion of materials and services will be purchased in Alaska. (Table 4.11.2-4, page 4-602, page 4-605)
- Alaska LNG Project will create jobs and provide significant economic opportunity for businesses currently operating in Alaska. Trucking, marine pilots, tug operators, construction companies, equipment suppliers along with hotels, car rental and in state air carriers. (page 4-604)
- The Alaska Railroad would realize significant economic opportunity in transportation of project related supplies from the Port of Seward to Fairbanks. (page 4-658, pages 4-674 to 4-675)
- Ports in Southcentral Alaska – Seward, Whittier, Anchorage, Beluga, and Nikiski – will see increased revenues and new jobs as the primary points of entry for offloading equipment and materials. (page 4-660, pages 4-663 to 4-666, pages 4-676 to 4-680)
- Dutch Harbor will serve as the staging area for major sealift modules providing the community with economic benefits. (page 4-662, page 4-667)

General

- Liquefaction Facility will be located in an area that has served as an industrial area for the past 50+ years.
- Gas pipeline will follow existing the Trans-Alaska Pipeline corridor and the George Parks Highway Right-of Way. From Prudhoe Bay to Beluga, the pipeline route is the same one permitted by the U.S. Army Corps of Engineers, in June 2019, for Alaska Stand Alone Pipeline (ASAP). (TAPS 2-59)

Where to provide public testimony

FERC will be holding eight community meetings around the state the week of September 9, 2019. BLM will hold public hearings and solicit public testimony at these eight meetings plus two additionally meetings in communities that could be affected. A complete list of the location of the public meetings is at www.alaska-Ing.com.

How can I offer comments on the Draft Environmental Impact Statement?

To be properly recorded, FERC asks you carefully follow these instructions:

1. File your comments electronically using the eComment feature on the Commission's website (www.ferc.gov) under the link to Documents and Filings. This is an easy method for submitting text only comments.
2. File your comments electronically using the eFiling feature on the Commission's website (www.ferc.gov) under the link to Documents and Filings. With eFiling, you can provide comments in a variety of formats by attaching them as a file with your submission. New eFiling users must first create an account by clicking on "eRegister. If you are filing a comment on a particular project, please select "Comment on a Filing" as the filing type.
3. File a paper copy of your comments by mailing them to the following address. Be sure to reference the Project docket number (CP17-178-000) with your submission: Kimberly D. Bose, Secretary, Federal Energy Regulatory Commission, 888 First Street NE, Room 1A, Washington, D.C. 20426.
4. In lieu of sending written or electronic comments, attend one of the eight public comment meetings being held around Alaska.

Direct and Indirect Vulnerabilities from the State of Alaska and Funding Cuts

September 4th, 2019

Prepared by Katie Koester, City Manager

Direct Vulnerabilities

Airport

- State could continue to increase the base lease amount for the land underneath the Terminal. 2019 amount is \$27,000 which is scheduled to increase to at least \$35,000 by 2022 and beyond.
- State could close the Homer Airport, which would force the City to look into management of the tarmac and associated operations.

Fire

- State could discontinue Code Blue grant funding. The Code Blue Project was started in 1999 in an effort to identify, prioritize and seek funding for essential equipment for rural emergency medical services in Alaska. Our most recent award from Code Blue helped pay for the ambulance.

Library

- State could cancel the Public Libraries Assistance Grant, which has a value of \$7,000.
- State (Alaska Library Network) could discontinue database subscriptions the City needs, transferring a \$500-\$5,000 expense to the City.
- State could reduce CE grants, which total \$1,250-\$2,500.
- State could reduce or cancel the OWL network and Live Homework Help.

Port& Harbor

- State could discontinue Municipal Harbor Grant. This program was created to provide a 50/50 matching grant to assist municipalities with the continued maintenance and cost burdens associated with harbors.

Police

- State could discontinue the Special Services contract that provides logistical support to the troopers, which has a value of \$36,000.
- State could discontinue funding maintenance of Alaska's Land Mobile Radio System (ALMR) with a \$25-40,000 expense passed on to the City.
- State has discontinued contributing towards Police Office Academy training, this increased our 2019 training expenses by \$13,000 expense. Previously, all academy training costs were covered by the Alaska Police Standards Council.
- State could discontinue or alter the Community Jail Contract, which currently provides the City \$450,000.

Public Works

- State could take back over winter maintenance of Pioneer Avenue. We currently receive \$34,000 from DOT and provide a much higher level of service to our downtown businesses that DOT would be able to.
- State could increase the cost of permits and fees.

City-wide

- State could decrease PERS on behalf payments (1%=60,000).
- Future funding for Community Assistance Program is in question. The amount for 2019 is down from 2018 at \$168,000.

Indirect Vulnerabilities

Fire

- State could stop performing fire investigations.
- State could stop responding to fire marshal complaints/improper treatment leaving enforcement to local municipalities.

Library

- State cuts to school funding could increase the school district's reliance on the Library to offer educational opportunities and services such as afterschool or during-school programs.

Public Works

- State could pressure the City to take over State-maintained roads.

Port and Harbor

- State could reduce Alaska Marine Highway ferry service to Homer. This would negatively impact residents' transportation needs and Homer's tourism economy.
- Concerns regarding the priority of maintaining Homer Spit Road fall in the face of mounting and expensive erosion issues.

City-wide

- Impact on the local economy of economic uncertainty, reduced investment, closure of public facilities/services.
- City staff interact daily with State employees and need their cooperation and assistance to do their jobs. As State departments decrease capacity, routine tasks can become more difficult and time consuming.

MEMORANDUM

DATE: December 21, 2018
TO: Katie Koester, City Manager
FROM: Tony Blodgett, CSP, Risk Control Specialist
SUBJECT: Loss Analysis (Fiscal Years 2009-2019)



The Alaska Municipal League Joint Insurance Association (AMLJIA) was asked to look into loss trends that may negatively affect the City of Homer (City). I had the opportunity to speak with you to develop parameters for the analysis. During my analysis, I identified a possible trend. Generally, though because the City's incidents within the data pool were few compared to the average of the pool as a whole, I was unable to definitively identify any other trends.

I looked back 10 fiscal years for a combined total and percentage, with a focus on Major Cause Categories to identify possible trends. During the analysis, there were three Major Cause Categories that were viewed as possible areas the city should continue to focus its efforts, "Strain or injured by," "Miscellaneous (Foreign Body in Eye)" and "Falls, Slips, and Trips."

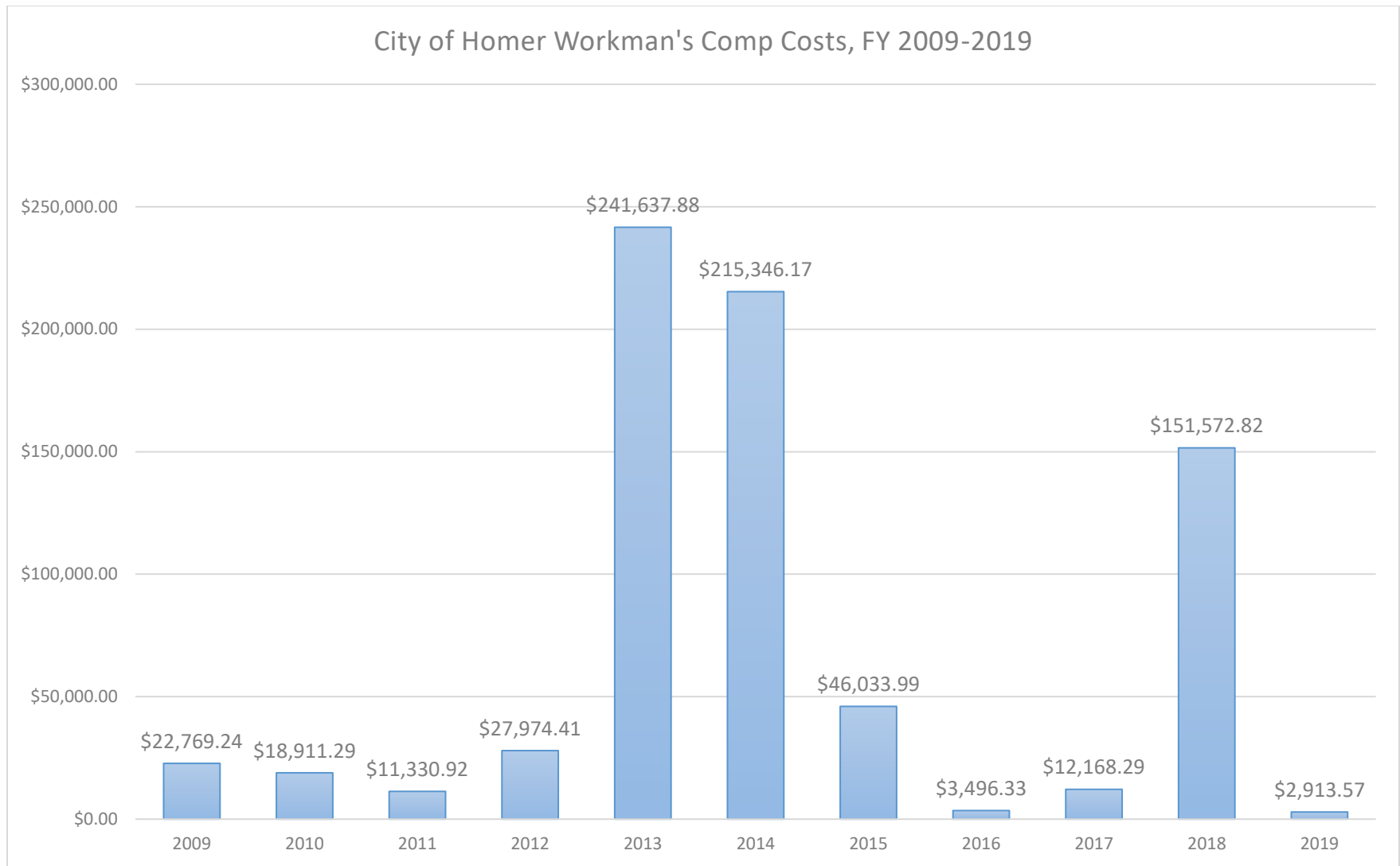
The City accounts for 2.4% of the pool's payroll. Comparing your losses, in the "Strain or Injured by" category, there were 17 (1.8% of pool) compared to 912 total incidents. In the "Fall, Slip or Trip" category, there were 15 (1.3% of pool) compared to 1,091 total incidents. Lastly, the city experienced six (17% of pool) in the "Foreign Body in Eye" category compared to 35 total incidents. The majority of these incidents occurred primarily in the public works department and harbor and port operations. I will discuss this finding further.

As I alluded to above, objectively, the data shows no specific trends for the City of Homer when compared to the entire pool, however, the indicated percentage of "Foreign Body in Eye," is concerning. You may want to suggest that public works and harbor employees wear personal protective equipment (safety glasses). While the City may have had streak of bad luck in the eye department, it is enough of an anomaly to warrant further attention and comment. Under the current workers' compensation schedule, loss of an eye would cost at least the minimum of 25 percent of the whole person or \$44,250. That's not to mention the hardships for the employee. Loss of both eyes would be considerably worse.

I recommend that you and city officials, department heads, supervisors, and individual employees continue to keep safety and risk management at the forefront of your thoughts when conducting your work or job tasks. Although there are no trends, a singular accident, such as the loss of vision or body part cannot only have substantial direct costs (workers' compensation costs or medical bills), but can also have indirect costs (loss of morale, stress, inability of other employee affected by incident to focus on tasks, etc.). I congratulate you and the City on your proactive interest in protecting your employees and the City's finances.

If there are any questions regarding this report, please contact me at (800) 337-3682.

| Description | | | | | | | | | | | | | Total injuries per category from 2009-2020 |
|--|-----------|-----------|----------|----------|----------|-----------|----------|----------|-----------|----------|----------|----------|--|
| | 2009 | 2010 | 2011 | 2012 | 2013 | 2014 | 2015 | 2016 | 2017 | 2018 | 2019 | 2020 | |
| Burns | | | 1 | | 1 | 1 | 1 | | 2 | | | | 6 |
| Caught Under or Between something | | | | | | | | | | 1 | | | 1 |
| FRACTURE/DISLOCATE | 1 | | | | | | | | | | | | 1 |
| Injured During Training | 1 | | | | | 1 | | | | | | | 2 |
| FOREIGN BODY IN EYE/POKE/SCRATCH | 1 | 1 | | | | 1 | | 1 | 1 | | 1 | 1 | 7 |
| EXIT/ENTER | | 1 | | | | | | | | | | | 1 |
| SLIPPED/TRIPPED DID NOT FALL | | 1 | | | | | | | | | | | 1 |
| XXBITE/SCRATCH BY ANIMAL OR INSECT | | | 1 | | | | | | | | | | 1 |
| NEEDLE STICK | | | 1 | | | | | | | | | | 1 |
| EXPOSURE TO CHEMICALS/GASES/FUMES | | | 1 | | 1 | | | | | | | | 2 |
| MENTAL STRESS | | | | 1 | | | | | | | | | 1 |
| INJURED TRYING TO CONTROL PERSON | | | | | 2 | | | | | | | | 2 |
| MOTOR VEHICLE ACCIDENT | | | | | 1 | 3 | | | | 1 | | | 5 |
| Cut, Puncture, Scrape Injured By | 1 | | 1 | | 1 | | | 2 | 1 | 1 | 1 | | 8 |
| Fall, Slip, or Trip | 2 | 2 | 2 | 1 | 2 | 1 | 2 | | 1 | | | | 13 |
| Absorption, Ingestion or Inhalation, NOC | 1 | | | | | | | | | | | | 1 |
| Rubbed or Abraded BY | | | | 1 | | | | | | | | | 1 |
| Strain or Injury | 6 | 4 | 2 | 1 | 1 | 3 | 2 | | 3 | 3 | 4 | 2 | 31 |
| Striking Against or Stepping On | | 1 | | | | | | | 1 | 1 | | | 3 |
| Struck Or Injured By | | 1 | | 1 | | | | 1 | 1 | 2 | 1 | | 7 |
| Unknown/not provided | | | | | | | 1 | | | | | | 1 |
| Total injuries for the year | 13 | 11 | 9 | 5 | 9 | 10 | 6 | 4 | 10 | 9 | 7 | 3 | |





City of Homer

www.cityofhomer-ak.gov

Office of the City Manager

491 East Pioneer Avenue
Homer, Alaska 99603

citymanager@cityofhomer-ak.gov
(p) 907-235-8121 x2222
(f) 907-235-3148

Memorandum

TO: Mayor Castner and Homer City Council
FROM: Katie Koester, City Manager
DATE: September 18, 2019
SUBJECT: City Manager Report for September 23

HVFD Hiring Update

HVFD has been advertising for two Assistant Chief positions: Emergency Medical Services (EMS) and Fire Operations. HVFD received over 15 applications for the Assistant Chief of Fire operations. Three candidates were interviewed and all of them presented with good credentials and impressive resumes that would have served the department well. Chief Kirko was fortunate to have the opportunity to closely work with one of the candidates to get a better insight in to what they could offer the City and fire Department. It is with great pleasure to announce the promotion of Dan Miotke to position of Assistant Chief. Please congratulate and thank Assistant Chief Miotke for stepping up to serve his community in this leadership capacity when you see him.

Interviews for the EMS Assistant Chief will commence at the end of the month with the goal of final section by the end of November. The interview process is rigorous and takes some time as we ask a lot of the candidates to ensure a good fit.

Homer Spit Land Donation from The Nature Conservancy (TNC)

In May 2001, former Mayor Cushing requested The Nature Conservancy (TNC) purchase the Sprague Resources Corporation's 2.62 acre parcel located on the western (seaward) side of the Homer Spit as part of the City's Capital Improvement Program (CIP). According to the letter written by Mayor Cushing, *"the purchase of Spit property has been a long standing goal, approved by the Council, and is within our current CIP. This program states in part, 'the intent is to preserve the natural ecosystem and protect future ecotourism activities that are emerging as a major industry in Homer...In order to protect this valuable resource, it is necessary for the public to acquire the property.'"* This summer, staff received a letter from TNC wishing to finish Mayor Cushing's request by transferring the property at no cost to the City of Homer. This acquisition is of great benefit to the Homer community, further protecting the beautiful view sheds and recreational opportunities on the Spit while also, as said by Mayor Cushing, "helping to assure balanced development for generations to come." Staff will continue to work with TNC to acquire the space, which will continue its current use as open public recreation space and bring an Ordinance to City Council per HCC 18.06, Municipal Property Acquisition.

Enc:

September Employee Anniversaries
TNC City of Homer Land Donation letter
Statutory Warranty Deed



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(f) 907-235-3148

Memorandum

TO: Mayor Castner and Homer City Council
FROM: Katie Koester
DATE: September 23, 2019
SUBJECT: September Employee Anniversaries

I would like to take the time to thank the following employees for the dedication, commitment and service they have provided the City and taxpayers of Homer over the years.

| | | | |
|------------------|--------|----|-------|
| Aaron Glidden, | Port | 15 | Years |
| Ryan Browning, | Police | 9 | Years |
| Mike Lowe, | Port | 8 | Years |
| Nick Poolos, | Admin | 8 | Years |
| Tracie Whitaker, | Police | 5 | Years |
| Lisa Linegar, | Police | 4 | Years |
| Tamara Fletcher, | Port | 3 | Years |

July 30, 2019

Katie Koester
City Manager
City of Homer, Alaska
491 E. Pioneer Avenue
Homer, Alaska 99603

Dear Ms. Koester,

In 2001, The Nature Conservancy (TNC) purchased a 2.62-acre parcel on the western (seaward) side of the Homer Spit from Sprague Resources Corporation, a Seattle, Washington-based realty firm. At that time, TNC and the City of Homer collaborated to transfer ownership of this parcel to the City of Homer as part of the 2001 City of Homer Capital Improvement Program. Our collective intent was to support preservation of natural ecologic processes and ecotourism on the Homer Spit, as indicated in the attached memorandum from former Mayor of Homer Jack Cushing dated May 14, 2001 (Attachment A). Our original intent for long term management of the parcel, which remains today, is to keep it in its natural state, preclude any further subdivision of the parcel itself and restrict development activities other than non-motorized recreation and wildlife viewing.

Time passed, administrations changed, and the transfer of ownership was postponed for many years. However, the importance of protecting erosion-prone intertidal areas on the Homer Spit is as critical now as it was in 2001, and TNC would like to complete this transaction by conveying the parcel to the City of Homer at no cost.

The Sprague Resources parcel (identified in Attachment B: Location Map) will add to seven contiguous parcels owned by the City of Homer on the western side of the Homer Spit and contribute to over 400 acres of city-owned lands on the Homer Spit.

After almost two decades, the Nature Conservancy is excited to complete this project. We understand that the City of Homer will need to pass an ordinance to accept the property. If there is anything TNC can do to assist you or your staff in this process, please let us know.

Sincerely,



Adrianna Muir, Ph.D.
Conservation Director
The Nature Conservancy, Alaska



Office of the Mayor
Jack Cushing

(907) 235-8121
Fax 235-3140

Homer City Hall 491 E. Pioneer Avenue • Homer, Alaska 99603-7624

May 14, 2001

Randy Hagenstein, Associate State Director
The Nature Conservancy, Alaska Chapter
421 W. 1st Ave.; Suite 200
Anchorage, AK 99501

SUBJECT: Sprague Resources Corporation property on Homer Spit

Dear Randy:

I am requesting that The Nature Conservancy acquire for the City of Homer approximately 2.62 acres located on the Homer Spit in Homer, Alaska, known as the Sprague Resources Corporation Tract. The purchase of Spit property has been a long standing goal, approved by the Council, and is within our current Capital Improvement Program (CIP). This program states in part, "The intent is to preserve the natural ecosystem and protect future eco-tourism activities that are emerging as a major industry in Homer. . . . In order to protect this valuable resource, it is necessary for the public to acquire the property."

This specific property is included in the area detailed by this CIP priority and is immediately adjacent to 100 plus acres the city has recently acquired or already owned, and designated for protection. It would be the City of Homer's intention to accept conveyance of this property from The Nature Conservancy and designate it similarly as part of the City's Conservation District. Acquisition of the property from the Conservancy is contingent upon final approval by the Homer City Council.

I understand that the Conservancy intends to purchase the property with funds from the North American Wetland Conservation Act grant and that the City will bear no expenses associated with purchase of the property from Sprague Resources Corporation or conveyance from the Conservancy to the City.

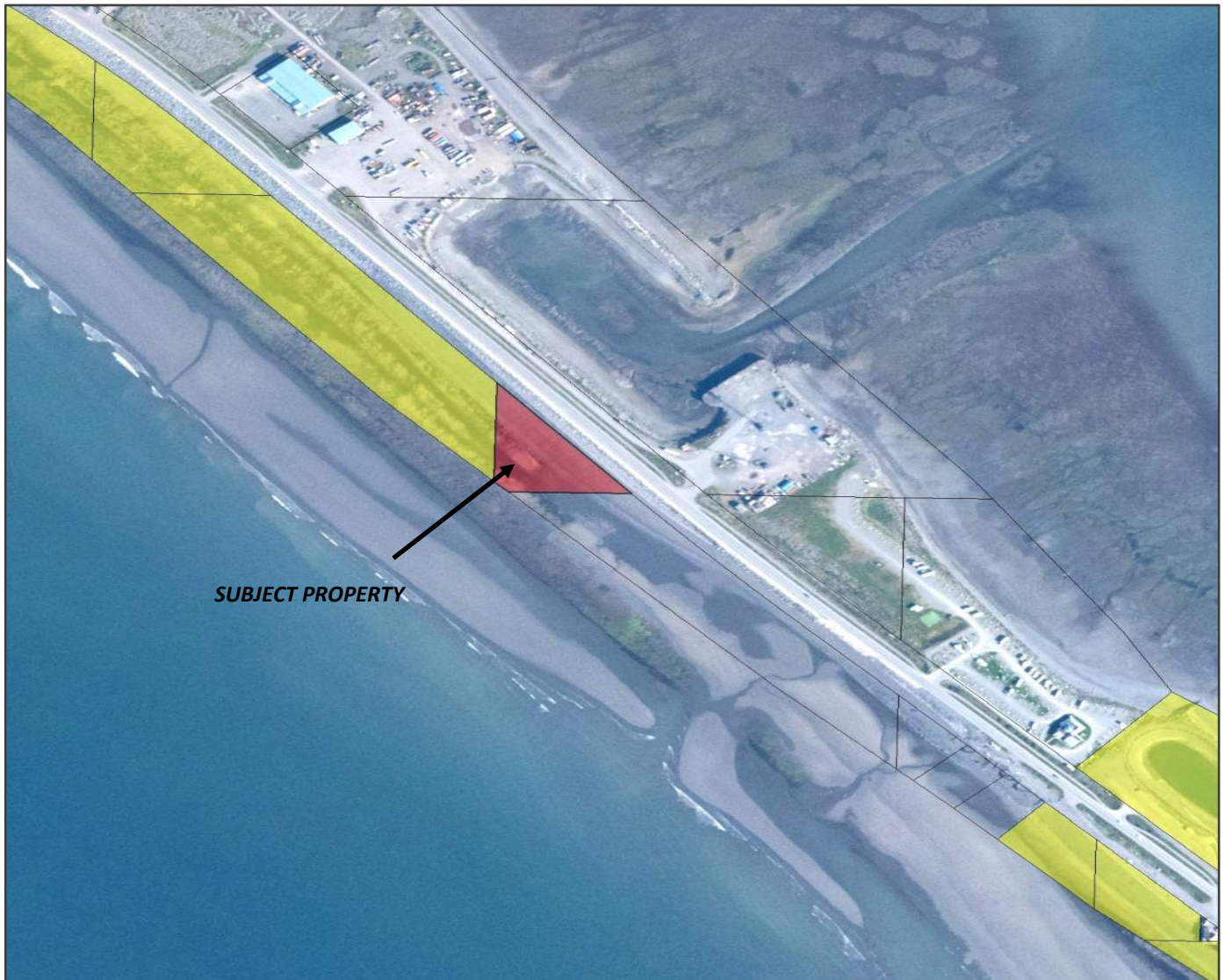
We appreciate the Conservancy's willingness to purchase the property and hold it prior to conveyance to the City of Homer and will work with your staff to ensure timely transfer of the property to the City. Thanks for your foresight in helping to assure balanced development for generations to come.

Yours truly,

Jack Cushing
Mayor, City of Homer

"WHERE THE LAND ENDS AND THE SEA BEGINS"

THE NATURE CONSERVANCY HOMER SPIT PARCEL



PARCEL INFORMATION

LEGAL DESCRIPTION: T 6S R 13W SEC 35 SEWARD MERIDIAN HM THAT PORTION OF GOVT LOT 3 LYING SOUTHWEST OF THE HOMER SPIT RD

KPB Parcel ID: 18103007

Area (Acres): 2.62

KPB Assessed Value (2018): \$4,000



137



384

22252

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:
The Nature Conservancy
217 Pine Street, St 1100
Seattle, WA 98101

) FOR REGULAR TAX NOTICES
) The Nature Conservancy
) PO Box 3231
) Homer, AK 99603

BK 00314 PG 0768

Statutory Warranty Deed

The Grantor, SPRAGUE RESOURCES CORPORATION, A Washington Corporation, pursuant to *Sec. 34.15.030, Alaska Statutes, for and in consideration of the sum of Ten Dollars (\$10.00), lawful money of the United States of America, and other valuable consideration in hand paid, the receipt and sufficiency of which is hereby acknowledged, does hereby grant, convey and warrant to Grantee, THE NATURE CONSERVANCY, a District of Columbia non - profit corporation, the following described real property, together with all tenements, hereditaments and appurtenances located in the Kenai Peninsula Borough, State of Alaska:

That portion of Government Lot 3 lying southwest of the Homer Spit Road, Section 35, Township 6 South, Range 13 West, Seward Meridian, in the Homer Recording District, Third Judicial District, State of Alaska.

SUBJECT to:

1. Reservations and exceptions as contained in U.S. Patent, and/or in acts authorizing the issuance thereof:
2. Taxes due for the year and subsequent years.
3. Rights of the Public and or governmental agencies in and to that portion of said premises lying below the mean high water mark of Kachemak Bay and any questions of right of access to Kachemak Bay in the event said lands do not in fact abut the Kachemak Bay.
4. Any prohibition or limitation on the use, occupancy or improvement of the land resulting from the rights of the public or riparian owners to use any waters which may cover the land or to use any portion of the land which is now or may formerly have been covered by water.

TO HAVE AND TO HOLD the said property, with its appurtenances, unto the Grantee, its heirs and assigns forever.

BK 00314 PG 0769

Grantor covenants and warrants that he is lawfully seized and possessed of the real property aforesaid and has the full right, power and authority to execute this conveyance, and that said real property is free and clear of all liens, claims or encumbrances, except as shown above, and that he will defend the title to the real property conveyed herein and quiet enjoyment thereof against the lawful claims and demands of all persons.

DATED this 22 day of May, 2001.

GRANTOR:

SPRAGUE RESOURCES CORPORATION, A Washington Corporation

By: [Signature]
GEORGE S. SCHUCHART, JR.
Its President

STATE OF WASHINGTON)
COUNTY OF KING) ss.
)

The foregoing instrument was acknowledged before me this 22ND day of MAY, 2001, by GEORGE S. SCHUCHART, JR., known or identified to me to be the PRESIDENT of the corporation that executed the above instrument on behalf of the corporation and acknowledged to me that such corporation executed the same.



My Commission expires: 1-24-02

Arlene E. Fredericks
Notary Public

002248
RECORDER
RECORDING DISTRICT

2001 MAY 31 A 9:12
REQUESTED BY KBT



Planning Department

144 N. Binkley Street, Soldotna, Alaska 99669 • (907) 714-2200 • (907) 714-2378 Fax

Charlie Pierce
Borough Mayor

September 25, 2019

NOTICE OF DECISION TIME EXTENSION REQUEST

Re: Chamberlain and Watson Subdivision 2017 Replat Preliminary Design
KPB File Number: 2017-056

In accordance with KPB 20.25.110, the Planning Director approved the time extension request for Chamberlain and Watson Subdivision 2017 Replat Preliminary Design plat approval is now valid through June 12, 2021.

For additional information please contact the Planning Department, 907-714-2200 (1-800-478-4441 toll free within the Kenai Peninsula Borough).

