



Homer City Hall

491 E. Pioneer Avenue

Homer, Alaska 99603

www.cityofhomer-ak.gov

City of Homer Agenda

Planning Commission Worksession

Wednesday, January 20, 2021 at 5:30 PM

Council Chambers via Zoom Webinar

Webinar ID: 922 8932 6299 Password: 121300

Dial (669)900-6833 or (253)215-8782 or Toll Free (877) 853-5247 or (888) 788-0099

CALL TO ORDER, 5:30 P.M.

AGENDA APPROVAL

DISCUSSION TOPIC(S)

- A. Appeal Hearing Process Re: Appeal of Zoning Permit 1020-782
- B. Regular Agenda topics

COMMENTS OF THE AUDIENCE (3 minute time limit)

COMMENTS OF THE COMMISSION

ADJOURNMENT, 6:20 P.M.



City of Homer

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Office of the City Clerk

491 East Pioneer Avenue
Homer, Alaska 99603

clerk@cityofhomer-ak.gov

(p) 907-235-3130

(f) 907-235-3143

Memorandum

TO: HOMER PLANNING COMMISSION

FROM: MELISSA JACOBSEN, MMC, CITY CLERK

DATE: JANUARY 14, 2020

SUBJECT: PROCESS FOR APPEAL OF ZONING PERMIT 1020-782

A Special Meeting of the Planning Commission was held on January 6, 2021 to hear the Appeal of the City Planners Issuance of Zoning Permit 1020-782. Prior to the meeting, JDO, the law firm that represents the City, submitted a proposed process for the hearing and the appellant objected to the proposed process. A motion to continue was requested on behalf of the City by JDO to allow time to come to agreement on a meeting process. At the Special Meeting the Planning Commission approved continuing the hearing to January 27, 2021 at 5:30 p.m. with direction that they be involved in developing a hearing process.

Regarding process related to appeals to the Planning Commission, HCC 21.93.300 d. provides the opportunity for the Commission to accept new testimony and other evidence, including public testimony, and hear oral arguments as necessary to develop a full record upon which to decide an appeal from an act or determination of the City Planner. Any person may file a written brief or testimony in an appeal before the Commission.

Homer City Code is silent regarding requirements for establishing a hearing process. However, defining a process prior to the hearing is good practice so the Commission and the parties know what to expect.

In reviewing past appeal hearing processes, the following items appear to be consistent and seem to fall in line with HCC 21.93.310 Other procedures:

- Calling the meeting to order
- Approving the agenda
- Announcing the hearing subject
- Identifying parties present
- Taking up preliminary issues
- Ruling on preliminary issues
- Hearing oral arguments
- Providing opportunity for Appellant's rebuttal
- Providing opportunity for questions of the Appellant
- Establishing time limits
- Undertaking deliberations independent of the hearing
- Issuing a decision within 60 days of the hearing

Establishing time limits for oral arguments is beneficial so all parties can plan their oral arguments and have an equal amount of time to present. At the hearing the Commission may allow additional time for a party to present their argument if they feel it's necessary, and with the understanding it should be allowed for the other parties as well.

Setting a deadline to receive written briefs and testimony will provide the Commission and parties the opportunity to read the information prior to the hearing.

If the Commission agrees to provide an opportunity for questioning witnesses, a list of requested witnesses should be provided to the City Clerk's Office so they can be requested to attend. The City does not have subpoena powers and can't require participation. All witnesses participating will be sworn in by the Commission's recording Clerk.

Here is a starting outline for a process for the January 27th appeal hearing:

1. Any written brief or testimony to be addressed during the hearing, and list of requested witnesses, must be provided to the City Clerk no later than 4:00 pm on Friday, January 22, 2021 to allow time for delivery to the Planning Commission and parties for review, and to advise witnesses that their presence is requested at the hearing.
2. Open the meeting.
3. Address preliminary matters and rule on each preliminary matter raised. Allot 15 to 20 minutes.
4. Hear oral arguments from Appellant Frank Griswold and Appellee City Planner Abboud. Allot 20 minutes for each party. This time includes time to present arguments, testimony, and other evidence.
5. Open the floor for comments from interested persons. Allot 3 minutes per person.
6. Appellant cross examination of witnesses and rebuttal oral arguments. Allot 10 minutes.
7. Adjourn the hearing.
8. Deliberate and issue a decision by March 29, 2021

Please review the information provided with this memorandum and be prepared to discuss the process and provide feedback to the Clerk, who will then prepare a final process to distribute to the parties.

Attachments:

- HCC 21.93.020 Decisions subject to appeal to Planning Commission, 21.93.100 General appeals procedure, 21.93.300 Appeals to the Planning Commission, and 21.93.310 Other procedures
- Proposed Process submitted by JDO

21.93.020 Decisions subject to appeal to Planning Commission.

The following acts or determinations made under this title by the City Manager, City Planner, or their staff members may, when final, be appealed to the Commission by a person with standing:

- a. Approval or denial of a zoning permit.
- b. Approval or denial of a sign permit.
- c. Approval or denial of any other permit that is within the authority of the City Planner to approve or deny.
- d. An enforcement order issued under HCC 21.90.060.
- e. Any other decision that is expressly made appealable to the Commission by other provisions of the Homer Zoning Code. [Ord. 08-29, 2008].

21.93.100 General appeals procedure.

- a. All appeals must be heard within 60 days after the appeal record has been prepared. The body or officer hearing the appeal may for good cause shown extend the time for hearing. The decision on appeal must be rendered within 60 days after the appeal hearing.
- b. The appellant, the applicant for the action or determination that is the subject of the appeal, the owner of the property that is the subject of the action or determination, and all parties who have entered an appearance shall be provided not less than 15 days' written notice of the time and place of the appeal hearing. Neighboring property owners shall be notified as set forth in HCC 21.94.030.
- c. When an appellant chooses to appeal to a hearing officer, the City Clerk shall identify the hearing officer in the notice of hearing. All parties shall have 10 days from the date of the notice to object to the hearing officer based upon conflicts of interest, personal bias or ex parte contacts. Failure to file an objection to the hearing officer within the 10 days shall waive any objection to the hearing officer.
- d. An electronic recording shall be kept of the entire proceeding. Written minutes shall be prepared. The electronic recording shall be preserved for one year unless required for further appeals. No recording or minutes shall be kept of deliberations that are not open to the public. [Ord. 17-07(S-3)(A) § 9, 2017; Ord. 10-41(A) § 1, 2010; Ord. 08-29, 2008].

21.93.300 Appeals to the Planning Commission.

- a. Within 30 days after receipt of a timely notice of appeal to the Planning Commission, the City Planner will prepare an appeal record consisting of all relevant documents submitted to or used by the Planning Department in making the decision under appeal, including any staff reports, correspondence, applications, or other documents. The appeal record shall be paginated. The appellant shall be notified by mail when the appeal record is complete. Any person may obtain a copy of the appeal record from the Planning Department upon payment of the costs of reproduction.
- b. An appeal hearing shall be scheduled within the time specified in HCC 21.93.100. The hearing will be open to the public.
- c. The Commission may prescribe rules of procedure for additional public notification in cases where the Commission determines its decision would have a substantial effect on the surrounding neighborhood.
- d. The Commission may accept new testimony and other evidence, including public testimony, and hear oral arguments as necessary to develop a full record upon which to decide an appeal from an act or determination of the City Planner. Any person may file a written brief or testimony in an appeal before the Commission.
- e. The Commission may undertake deliberations immediately upon the conclusion of the hearing on appeal or may take the matter under advisement and meet at such other time as is convenient for deliberations until a decision is rendered. Deliberations need not be public and may be in consultation with an attorney acting as legal counsel to the Commission.

f. The Commission may affirm or reverse the decision of the City Planner in whole or in part. A majority vote of the fully constituted Commission is required to reverse or modify the action or determination appealed from. For the purpose of this section the fully constituted Commission shall not include those members who do not participate in the proceedings due to a conflict of interest or disqualifying ex parte contacts, disqualifying partiality, or other disqualification for cause. A decision affirming, reversing, or modifying the decision appealed from shall be in a form that finally disposes of the case on appeal, except where the case is remanded for further proceedings.

g. The Commission may seek the assistance of legal counsel, City staff, or parties in the preparation of a decision or proposed findings of fact. [Ord. 10-41(A) § 3, 2010; Ord. 08-29, 2008].

21.93.310 Other procedures.

If no specific procedure is prescribed by the code, the Planning Commission may proceed in an administrative appeal in any lawful manner not inconsistent with this title, statutes, and the Constitution. [Ord. 08-29, 2008].

Article III. Board of Adjustment Appeal Procedures

**PROPOSED STIPULATION REGARDING PROCEDURE FOR PLANNING
COMMISSION HEARING**

Pursuant to HCC 21.93.300-310, Appellant Frank Griswold and Appellee the City of Homer hereby stipulate and agree to the following procedure for the Homer Advisory Planning Commission's (the "Commission") consideration of the appeal of Homer's grant of Zoning Permit 1020-782.

The parties may file written briefs in support of their positions. Briefs may not exceed 7 pages exclusive of exhibits. Briefs must be filed with the City Clerk on or before December 30, 2020.

An appeal hearing will be held on January 6, 2021. Due to the COVID-19 pandemic the hearing shall be conducted via video conference or teleconference. The parties may testify, call witnesses, submit evidence, and present oral argument. The hearing shall be subject to the following order and time limitations:

1. Appellant: 20 minutes to present testimony, other evidence, and oral argument;
2. Appellee: 20 minutes to present testimony, other evidence, and oral argument;
3. Interested persons: 3 minutes each;
4. Appellant: 10 minutes to cross-examine witnesses and present rebuttal oral argument.

The hearing need not be conducted according to technical rules relating to evidence and witnesses. The rules of privilege are effective to the same extent that they are recognized in a civil action. Irrelevant and unduly repetitious evidence shall be

excluded. The Commission may question each of parties listed above. The Commission may deliberate and render a decision as provided in HCC 21.93.300(e)-(g).

Appellant Frank Griswold

Appellee the City of Homer
Rick Abboud – Homer City Planner