

APPEAL RECORD
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Appeal of City Planning Staff Issuance of
Zoning Permit 1020-782

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City of Homer

www.cityofhomer-ak.gov

Office of the City Clerk

491 East Pioneer Avenue
Homer, Alaska 99603

clerk@cityofhomer-ak.gov

(p) 907-235-3130

(f) 907-235-3143

October 22, 2020

Dear Mr. and Mrs. Lowry,

A **Notice of Appeal** has been filed by Frank Griswold regarding the approval of Zoning Permit 1020-782 issued for the property located at 541 Bonanza Avenue, Homer, Alaska. Pursuant to HCC 21.93.020 decision on the appeal of a zoning permit is appealed to the Planning Commission.

I find the Notice of Appeal to be compliant with Homer City Code Sections § 21.93.070 and 21.93.080. Attached is a copy of the appeal.

The appeal record will now be prepared in accordance with HCC §21.93.520 and you will be notified when the record is complete. The appeal will be heard by the Planning Commission within 60 days after the appeal record has been prepared.

If you have any questions about this process please contact the City Clerk's Office.

Regards,

Melissa Jacobsen, MMC
City Clerk

Encl. Appeal submitted by Frank Griswold
HCC 21.93

Cc: Frank Griswold
Scott and Stacy Lowry
City Manager Dumouchel
City Planner Abboud

NOTICE OF APPEAL TO PLANNING COMMISSION RE: ZONING PERMIT
1020-782

Pursuant to HCC 21.93.20(a) and HCC 21.93.050(c), the October 5, 2020 issuance of Zoning Permit 1020-782 is hereby appealed by Frank Griswold whose address is 519 Klondike Avenue. The subject property is located at 541 Bonanza Avenue, Homer Alaska and its legal description is T 6S R 13W SEC 20 Seward Meridian HM 0930033 Glacier View SUB NO 23 Blocks 8 9 & 10 Lot 24A. The owners of the subject property are Scott and Stacy Lowry, 907 Daly Road, Ojai, CA. Mr. Griswold owns several lots in close proximity to the subject lot, including his residence at 519 Klondike Avenue. The subject structure is/was a Connex shipping container which constitutes a nuisance under HCC 21.18.080 and could diminish both the value of Mr. Griswold's real property in the CBD and his enjoyment of that property. Mr. Griswold has objected to the subject structure from the day it was illegally deposited onto the subject lot. Zoning Permit 1020-782 should be vitiated and the subject structure removed.

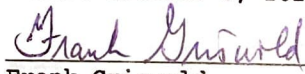
Allegations of Error

1. Planning Technician Travis Brown did not have the authority to issue Zoning Permit 1020-782. HCC 21.70.030(a).
2. Contrary to the caption on Zoning Permit 1020-782, the subject structure does not constitute "New Construction."
3. The subject structure, allegedly a single family residence, is not allowed on the subject lot because the lot already contains a single family dwelling. HCC 21.18.030(j) requires a conditional use permit for more than one building containing a permitted principal use on a lot.
4. The subject structure violates HCC 21.18.080.
5. Application procedures set forth under HCC 21.70.020 were not fully complied with.
6. The proper fee was not paid in violation of HCC 21.70.060.
7. Requirements of the zoning code and other applicable laws and regulations were waived in violation of HCC 21.70.030.

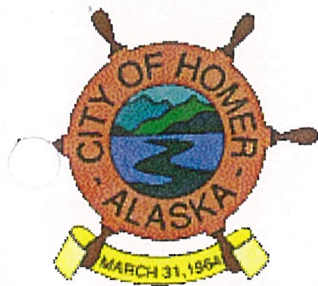
8. Zoning Permit 1020-782 was not obtained prior to commencement of the activity for which it was required in violation of HCC 21.70.010(b).

9. The former driveway was vacated when two lots were combined into one and a new (second) driveway permit was not obtained in violation of HCC 11.08.040(a).

DATED: October 8, 2020



Frank Griswold



City of Homer
Planning & Zoning
491 East Pioneer Avenue
Homer, AK 99603-7624

Residential Zoning Permit New Construction

Department Use Only

Permit: 1020-782

Approved Date: **10/5/2020**

Start Date: **10/05/2020**

End Date: **04/05/2022**

Rcvd by

Paid by

Date Paid:

Check No.

Job Site Information

Address: **541 BONANZA AVE**
City: **HOMER** State: **AK**
Zone: **CBD**
Parcel/Block/Lot: **17710421/BLK 9/LOT 24A**

Owner Information

Name: **LOWRY SCOTT**
Address: **907 DALY RD**
City/State/Zip: **OJAI, CA 93023**
Telephone: **805-509-1757**

Applicant Information

Name: **LOWRY SCOTT**
Address: **907 DALY RD**
City/State/Zip: **OJAI, CA 93023**
Telephone: **805-509-1757**
Land Use:

Contractor Information

Name: **LOWRY SCOTT**
Address: **907 DALY RD**
City/State/Zip: **OJAI, CA 93023**
Telephone: **805-509-1757**
Building Use: **Res - Single Family**

Legal Description: **T 6S R 13W SEC 20 SEWARD MERIDIAN HM 0930033 GLACIER VIEW SUB NO 23 BLOCKS 8 9 & 10 LOT 24A**

This permit shall be displayed in a prominent, readily visible place at the site. If the work is not completed within the above-specified time, application for extension MUST be made to the City of Homer, prior to the end date above. The City assumes no responsibility for the accuracy of any City-held as-built drawings or for the Permittee's interpretation thereof.

This permit is issued with the expressed understanding that the City of Homer assumes no responsibility hereunder with regard to maintenance of private drainage systems that terminate in City ditch lines or drainages, including but not limited to foundation drains; proper location of lot lines or site dimensions. It is the responsibility of the permittee to meet whatever requirements any agency may have which may apply to the project specified in this permit. It is the permittee's responsibility to comply with all continuing obligations imposed by the Code not to damage other property. It is the permittee's responsibility to comply with all other permit terms at his/her expense.

Description of Work:

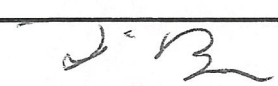
360 square foot single family dwelling.

Estimated Value: 40,000.00

AN ASBUILT SURVEY IS REQUIRED UPON PROJECT COMPLETION ACCORDING TO HOMER CITY CODE 21.70.040

Permit Fees

Description	Work Being Done By	Units	Cost @	Sum
Planning Single Family /Duplex			\$200.00	\$300.00

Signature: 

Date: 10/5/20

Grand Total: **\$300.00**

Construction Type:



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

Zoning Permit Application

Property Owner

Name: Scott & Stacy Lowmy Phone #(s): 805-509-1757 / 299-4070
Mailing Address: 907 Daly Rd City: Ojai State: CA Zip: 93023
Email: SPL8@me.com

Applicant (if different than the property owner)

Name: _____ Phone #(s): _____
Mailing Address: _____ City: _____ State: _____ Zip: _____
Email: _____

Project Property Information

Address: 541 Bonanza Ave KPB Tax ID #: 17710421
Legal Description: lot 24 A Glacier View Sub No. 23
Lot Size: .28 Zoning District: CBD
Describe the use of all existing structures: Existing residential 2BR / 1BA
mobile home/house.

For each proposed structure, describe the use & list the square footage of each floor: _____
Residential 1BR 1BA 360 sq ft

Estimated market value of finished improvements: \$40,000
Water Permit # (City) 3002 Sewer Permit # (City) 3002 Driveway Permit # Existing Approach #1432
Will site be served by a: well or cistern? Y or (N) (circle one) DEC approved septic system? Y or (N) (circle one) NA

For staff use:

Date: 9/11/20 Fee \$ 300 Residential \$200/Commercial \$300. SWP \$200 additional. Late fee 1.5 times.
Received by: TPB Date application accepted as complete 9/11/20
Finance Code 21-2106. Zoning Permit required by HCC 21.70

ite development standards for all projects (applies to all development in the City)

- Drainage design must deposit all runoff into either an engineered drainage system or into a natural drainage. Building setbacks are 15ft. from open ditches and 10 ft. from closed drainage systems.
- All exposed, cleared, filled and disturbed soils must be revegetated within 9 months of initial earthwork or reseeded by the next August 31st.
- Development activities shall not adversely impact other properties by causing damaging alteration of surface water drainage, surface water ponding, slope failure, erosion, siltation, intentional or inadvertent fill or root damage to neighboring trees, or other damaging physical impacts.

All Projects in Any Zoning District (Check all that apply)

- ☒ A **Site Plan** is required for all projects. This "bird's eye view" must show the entire lot and include all of the details found on the site plan checklist. See the attached example site plan.
- ☒ An **As-built survey** is required for all structures upon completion of work
The survey must show the location and dimensions of permitted structures (see HCC 21.70.040)
- ☒ A **Building Elevation** drawing is required for all proposed buildings. Building height from grade to the peak of the roof must be included. See the attached example building elevation drawing.
- ☒ **Lighting standards** apply to all projects (HCC 21.59.030)
 - Outdoor lighting must be installed so that it does not produce light trespass or glare
 - The maximum height for pole lighting is 28 ft. and for building-mounted lighting, it is 15 ft.
 - Outdoor lights installed 15 ft. or higher must be cut-off luminaires
- ☐ A **Wetlands Permit** may be required if your project is within a wetland. If the following map indicates wetlands on your property, then written authorization from the Army Corps of Engineers (ACOE) is required
 - Homer area wetland map source: <https://www.kpb.us/gis-dept/interactive-mapping>
ACOE submission status: _____ ACOE POA #: _____
- ☐ A **Grading/Fill Plan** is required when 3 ft. of fill is placed over 25% of the lot area (HCC 21.50.150)
- ☐ **Slope Development Standards** apply when the project includes any of the following: (HCC 21.44)
 - The average slope of the lot is greater than 15% (A rise of 15 ft. to 100 ft. run)
 - Disturbance takes place within 40 ft. of the top, or 15 ft. of the toe of a steep slope (45%), bluff, coastal bluff or ravine
- ☐ A **Storm Water Plan (SWP)** is required when the project includes any of the following: (HCC 21.50.020)
For projects located in commercial zoning districts, skip this subsection & see SWP section below
 - Creates 25,000 square feet of new impervious surface
 - Increases the total impervious surface coverage to one acre or greater
 - Grading that moves 1,000 cubic yards of material
 - Creates a permanent slope of 3:1 or more that exceeds 10 ft. from toe of slope to top of slope
- ☐ A **Sign Permit** is required for most projects that include advertising signage. Check with Planning Staff to find out if a permit is required for your project.
- ☐ A **Conditional Use Permit (CUP)** may be required under certain circumstances, including but not limited to the following:
 - The project includes a conditionally permitted use, as listed in the specific zoning district section of HCC Title 21
 - Building area exceeds 8,000 (all buildings combined) or 30% of the lot area
 - The project includes more than one building with a primary use
 - The project will generate traffic in excess of 100 vehicle trips per hour or 500 vehicle trips per day
- ☐ A **Coastal Flood Hazard Area Development Permit** is required when the project lies within mapped coastal flood hazard areas. For all projects on coastal properties, check with the Planning Office for current flood area designations.
- ☐ The **Bridge Creek Watershed Protection District** has additional restrictions for property development (see HCC 21.40)

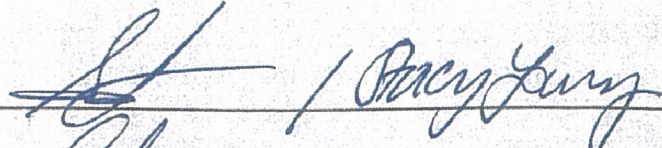
All Projects in Commercial Districts including the Residential Office District when the project is commercial or multifamily residential (3-plex or larger) in nature (check all that apply)

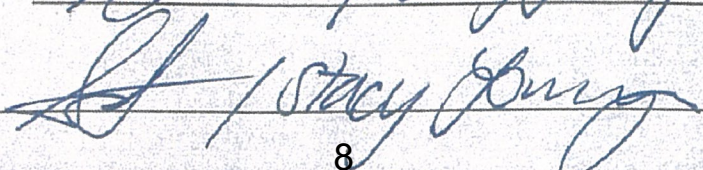
- ☐ **State Fire Marshal** approval is required for all commercial buildings and apartment projects (4-units or more)
Fire Marshal application Status: _____ Permit # _____
- ☒ **Landscaping requirements** apply to all projects (HCC 21.50.030(f))
- Landscaping shall include the retention of native vegetation to the maximum extent possible
 - A minimum buffer of 3 ft. along lot lines and 15 ft. along the top bank of a defined drainage
 - Topsoil addition, seeding, and plantings must be completed within 9 months of completion of project
 - Parking lots with 24 spaces or more have additional standards (see HCC 21.50.030(f)(1)(b))
- ☐ A **Development Activity Plan (DAP)** is required when your project includes any of the following (HCC 21.74):
- Clearing or grading of 10,000 square feet or more
 - 5,000 square feet or more of new impervious coverage. "Impervious" coverage includes all parking areas, driveways, roads, walkways, whether paved or not, and any areas covered by buildings or structures, concrete, or asphalt
 - Grading that moves 1,000 cubic yards of material
 - A temporary or permanent slope of 3:1 or more that exceeds 5 ft. from toe of slope to top of slope
 - Grading activities that will result in the diversion of existing drainage courses, both natural or human-made, from their existing point of entry or exit from the grading site
 - Any land clearing or grading on slopes steeper than 20%, or within 20 feet of wetlands.
- ☐ A **Storm Water Plan (SWP)** is required when your project includes any of the following (HCC 21.50.030):
- Creates 25,000 square feet of new impervious surface
 - Increases the impervious surface coverage to greater than 60% of the lot area
 - Grading of 1 acre or more
 - Grading that moves 10,000 cubic yards of material
 - A temporary or permanent slope of 3:1 or more that exceeds 10 ft. from toe of slope to top of slope
 - Land clearing or grading on slopes steeper than 25%, or within 10 feet of wetlands, streams, or ponds

I/we certify that all the information contained in this application is true and accurate and that I am/we are authorized to act on behalf of the property owner(s). I/we hereby hold harmless the City of Homer, its employees and agents from all suits, actions, or claims arising from any work undertaken.

The permit will be issued with the understanding that the City of Homer assumes no responsibility with regard to maintenance of private drainage systems that terminate in City ditch lines or drainages, including but not limited to foundation drains, proper location of lot lines, or site dimensions. Further, the City assumes no responsibility for the accuracy of any City-held drawings, or for the permittee's interpretation thereof.

I/we understand that the application fee covers the costs associated with processing this application, and that payment of same is nonrefundable and does not assure approval of the site plan. I/we acknowledge that by signing this application I am/we are authorizing employees or agents of the City access for exterior site inspections. This permit must be displayed so that it is readily visible from the nearest street, at the site for which the permit was obtained. If the exterior work is not completed by the permit's expiration date, one reasonable extension may be granted for good cause shown.

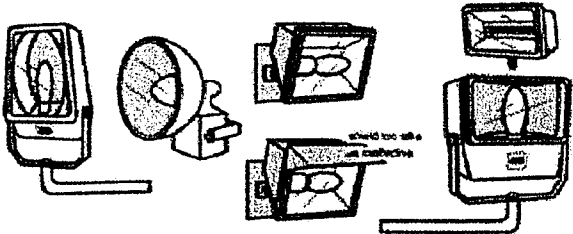
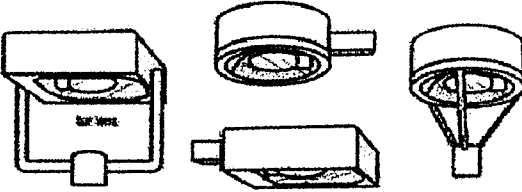
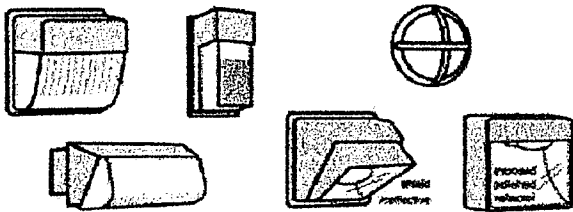
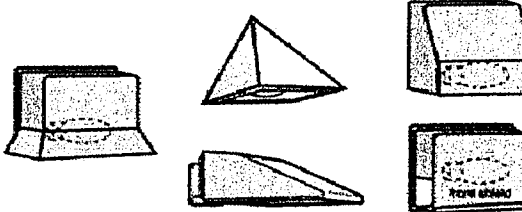
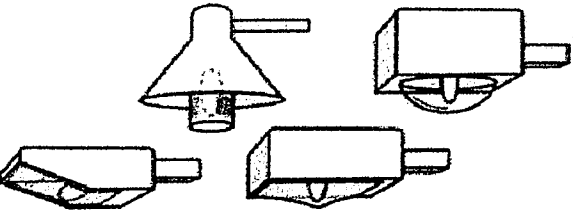
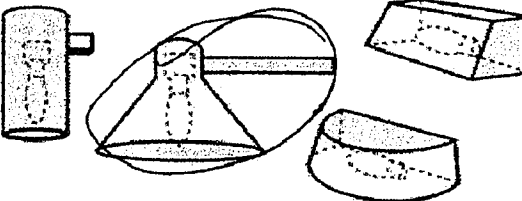
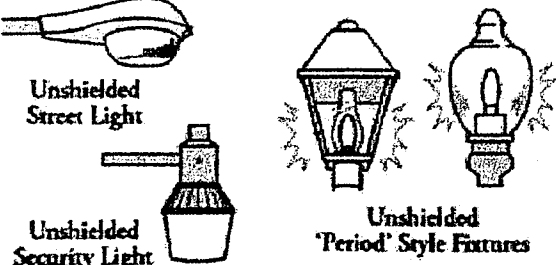
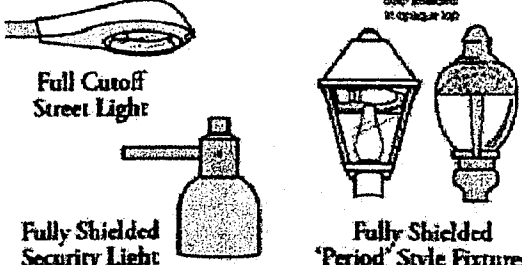
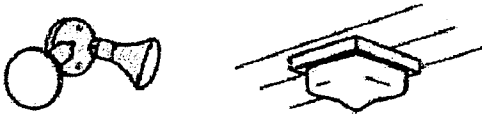
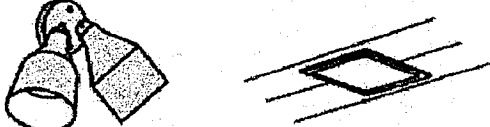
Owner Signature (required):  Date: 9/10/20

Applicant Signature:  Date: 9/10/20

Circle the type(s) of exterior fixtures to be used in your project below

All exterior lighting is subject to level one lighting standards, according to HCC 21.59.030. Lighting standards aim to reduce glare and light trespass and to improve the nighttime visual environment.

☐ Check this box if exterior lighting will not be installed or replaced with your project

UNACCEPTABLE Fixtures that Produce Glare and Light Trespass	ACCEPTABLE Fixtures that Shield the Light Source to Minimize Glare and Light Trespass - Facilitating Better Night Vision
 Unshielded or Poorly-shielded Floodlights	 Full Cutoff Fixtures
 Unshielded Wallpacks & Poorly-shielded Wall Mount Fixtures	 Fully-shielded Wallpack & Wall Mount Fixtures
 Drop-lens & Sag-lens Fixtures with Exposed Bulb/Refractor Lens	 Fully-shielded Fixtures
 Unshielded Street Light Unshielded Security Light Unshielded 'Period' Style Fixtures	 Full Cutoff Street Light Fully Shielded Security Light Fully Shielded 'Period' Style Fixtures
 Unshielded PAR Floodlights Drop-lens Canopy Fixtures	 Shielded/Property Aimed PAR Floodlights Flush Mounted Canopy Fixtures



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

SITE PLAN

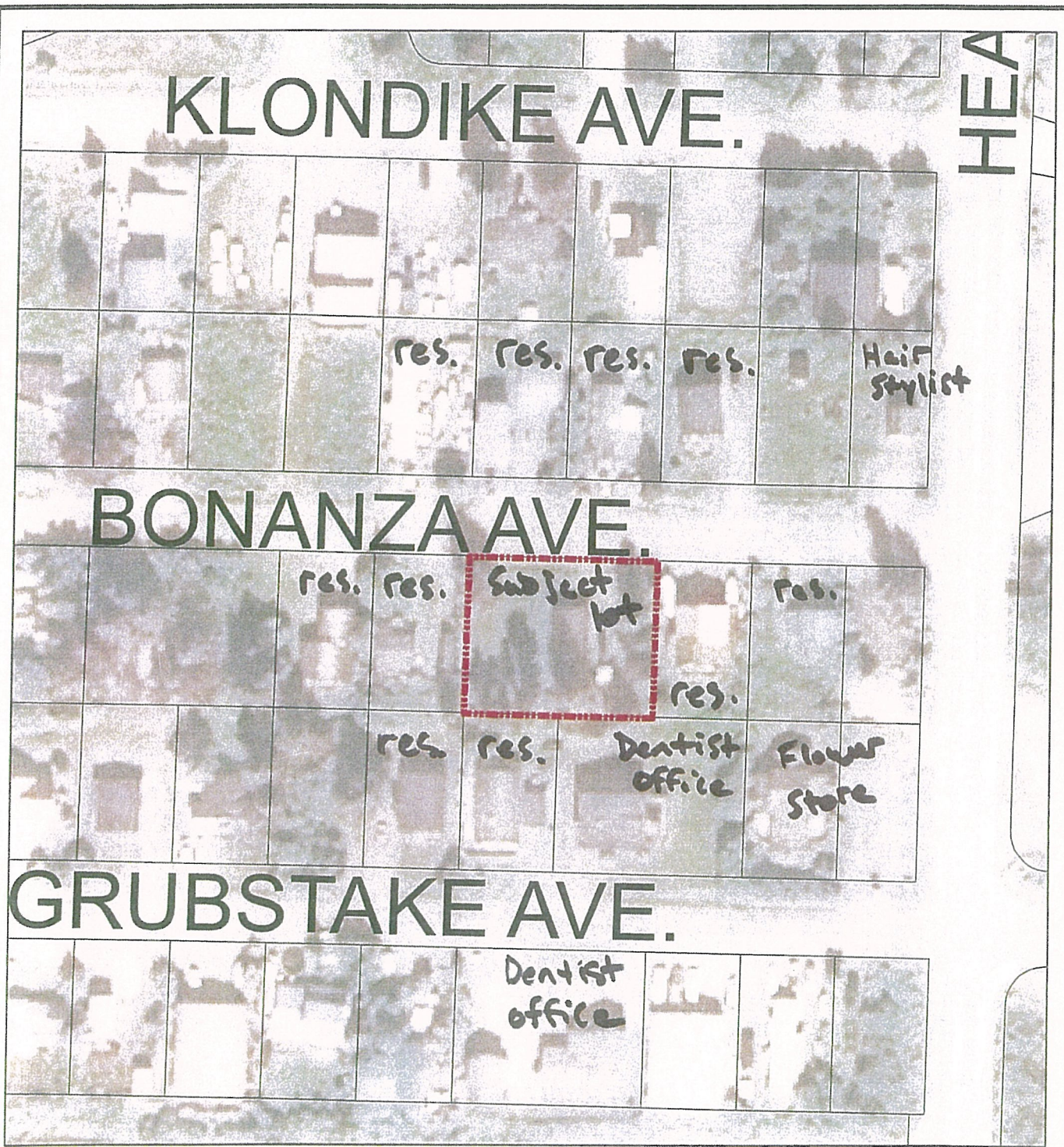
Address: 541 Bonanza Ave

A site plan is a detailed scaled drawing which depicts the current and proposed improvement and uses of a parcel of land.

Drawing your site plan is easier than you might expect. With accurate measurements, pencil, paper and a ruler you can draw a site plan right at home. For more complex projects you may need professional expertise.

Below is a checklist of items that should be on your site plan. For items that do not apply to your project simply indicate N/A over the checkbox.

- ☐ Scale factor. For example, 1" = 20 ft. for smaller lots or 1" = 50 ft. for larger lots.
- ☐ North arrow
- ☐ All property lines and their dimensions
- ☐ All known easements – utility, drainage, driveway, etc.
- ☐ Exterior dimensions of proposed and existing structures, including additions, decks, and stairways.
- ☐ Building setbacks - distance from all structures to nearest property lines. Front property line(s) (property lines abutting a right-of-way) require a 20 ft. setback. Setbacks for other property lines are 5 – 8 ft., depending on the number of stories. Setbacks are measured from the property lines, NOT the road.
- ☐ Site work - Areas affected by excavating, filling, grading, or vegetation removal (with soil disturbance)
 - o label the building location(s) disturbed area
 - o label areas used for driveway/parking/maneuvering
 - o approximate volume of excavated material: _____ cubic yards
 - o approximate volume of filled material: _____ cubic yards
 - o label areas of disturbed soil that will be revegetated naturally or landscaped (indicate areas of seeded grass or plantings such as trees and shrubs)
 - o label limits of undisturbed vegetation
- ☐ Draw and label adjacent roads
- ☐ Label length and width of driveways & parking spaces (standard space is 9' x 19')
- ☐ Drainage – Indicate direction of surface flow, label structures such as ditches, french drains & swales
- ☐ Show wetland boundary if applicable



City of Homer
Planning and Zoning Department

8/18/2020

Neighboring Properties Map

2017 Photo. Property lines
are not exact; use with care.

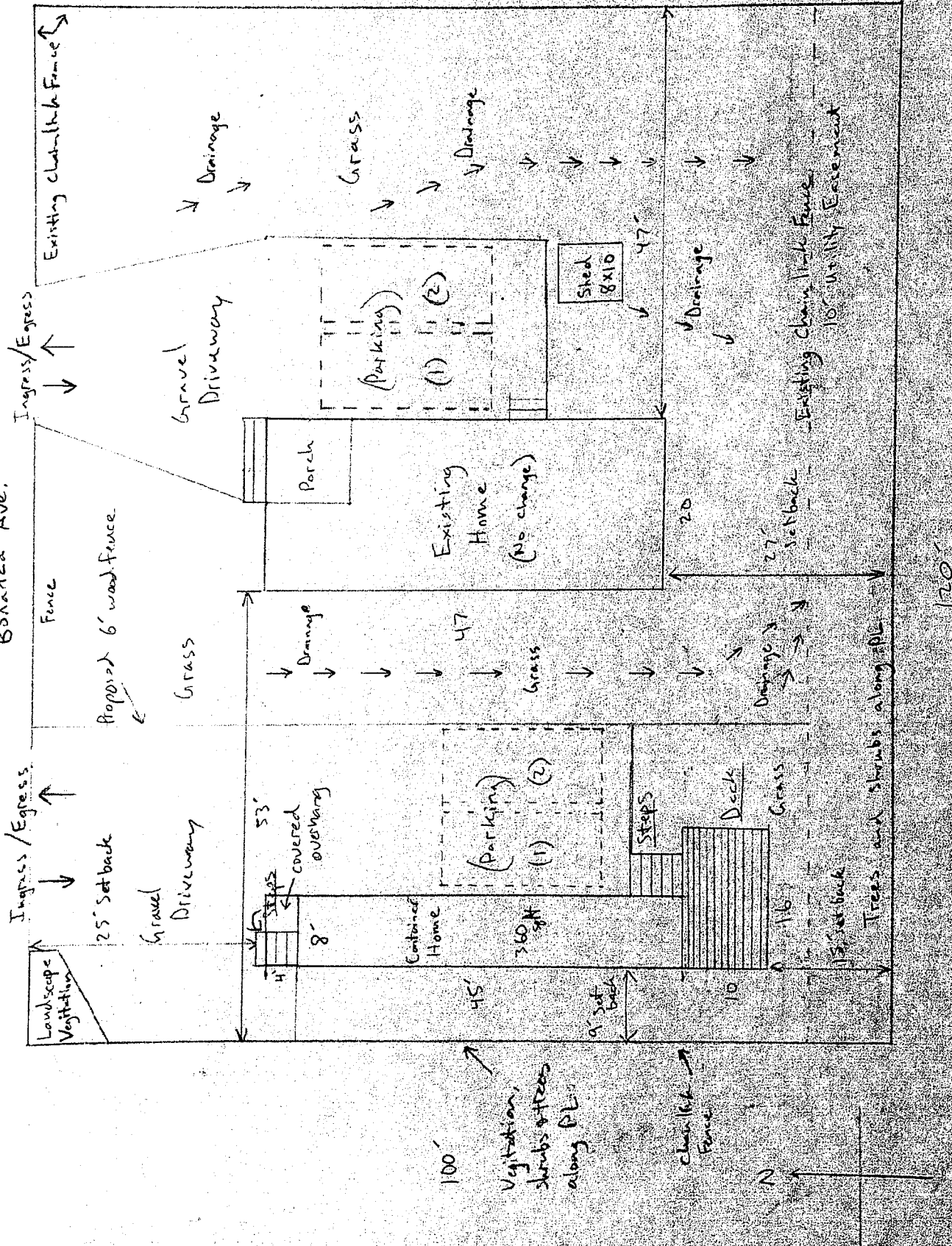
0 75 150 Feet



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.

511 E. 20 Ave. KPB parcel # 17710421

Bonanza Ave.



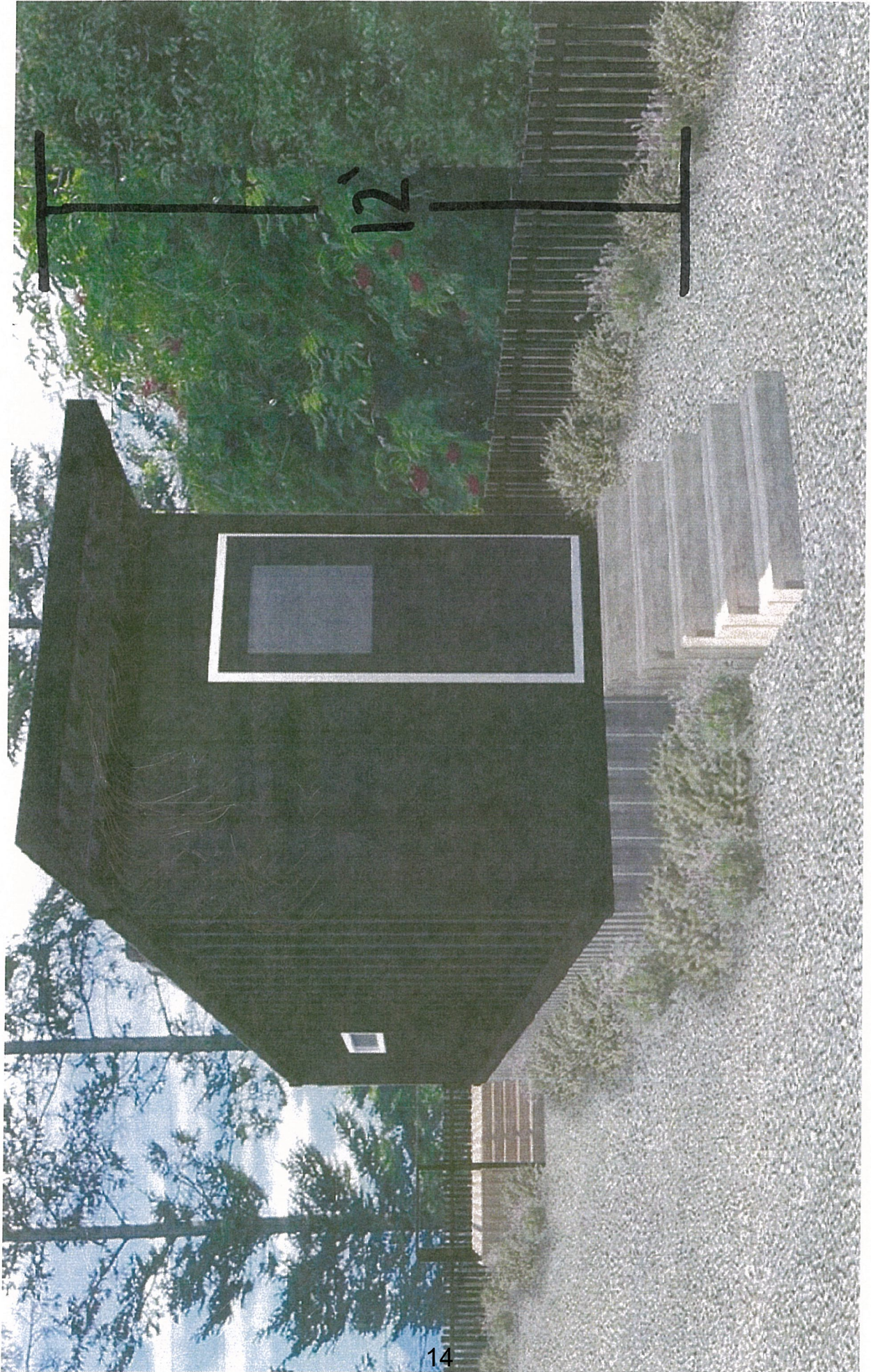
Existing
Home



Container
Here



Looking South from Bonanza Ave.



City of Homer
491 East Pioneer Avenue
Homer AK 99603-7645

907-235-8121

Receipt No: 2.001142

Sep 11, 2020

Scott Lowry

Previous Balance:	.00
PERMIT/CONNECTS/DEPOSITS - Building/zoning permit	300.00
100-0015-4303 Building Permit	
Total:	300.00
Credit Card Check No: 06297D	300.00
Payor: Scott Lowry	
Total Applied:	300.00
Change Tendered:	.00

09/11/2020 9:46 AM
Customer Copy



CITY OF HOMER

PERMIT NO. 3002

WATER / SEWER PERMIT

SERVICE CODE _____

SERVICE ADDRESS 541 Bonanza AvenueAPPLICATION DATE 6-23-2020

ACCOUNT # _____

APPLICANT Scott LowryOWNER SameMAILING ADDRESS 201 E. Oak Street, Ojai CA 93023PHONE NUMBER (HOME) 805-509-1757

(WORK) _____

LOT 24A BLOCK _____ SUBDIVISION Glacier View Sub No. 23KPB PARCEL # 177-104-21CONTRACTOR J.C. Johnson and Son

SIZE OF SERVICE _____

SIZE OF METER _____

DATE CONNECTED _____

ORION # _____

METER READING _____

RT/SEQ # _____

REQUESTED SERVICE: WATER _____

SEWER _____

WATER RATE: Commercial/ResidentialSEWER RATE: Commercial/Residential

Living Units in Apartments _____

Served by mainline lift station Y/N _____

FEES

WATER PERMIT/INSPECTION PERMIT _____

\$ _____

WATER LEASE FEE _____

\$ _____

DEPOSIT _____

\$ _____

CONNECTION FEE _____

\$ _____

SEWER PERMIT/INSPECTION PERMIT _____

\$ 100.00

DEFERRED SERVICE - WATER _____

\$ _____

DEFERRED SERVICE - SEWER _____

\$ _____

CITY ROW PERMIT - MINOR _____

\$ _____

CITY ROW PERMIT - MAJOR _____

\$ _____

DEVELOPMENT PERMIT _____

\$ _____

OTHER _____

\$ _____

SUBTOTAL _____

\$ 100.00

TAX _____

Code 2104

\$ 7.85

TOTAL CHARGES _____

\$ 107.85

DATE PAID _____

\$ _____

AMOUNT PAID _____

\$ 107.85

CODES

2107 T

2102 T (prv also)

2103

2101 T

2108 T

WADEF

SEDEF

2111

2112

122

Received By:JEH

Paid By:Scott Lawry

Date:6-23-2020

PAID VISA \$107.85

Re: 1174537 Con: 04644D

*** READ INSTALLATION INSTRUCTIONS ON SECOND PAGE ***

SIGNATURE _____

*CUSTOMER RESPONSIBLE FOR MONTHLY BILLINGS

COMMENTS Inspection Permit Only

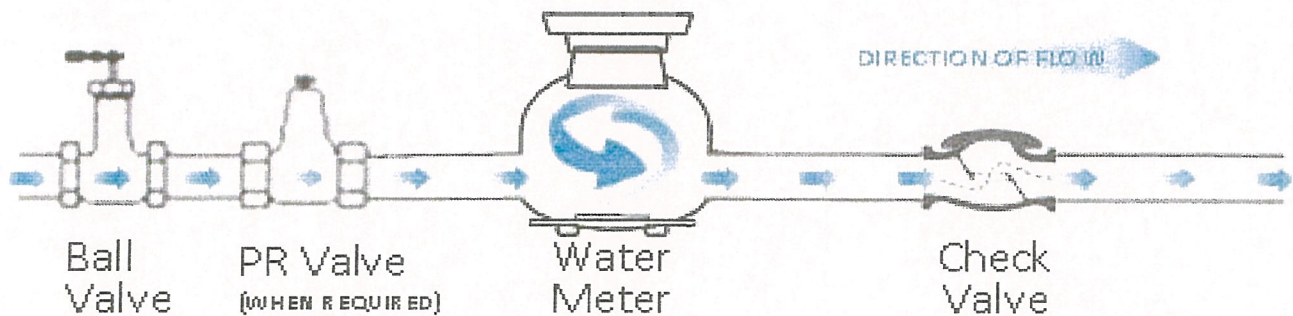
*Customer must be owner or an authorized agent or renter/lessee.

Original - Applicant, Copy : Planning, PW, Finance)

UTILITY INSTALLATION INSTRUCTIONS

1. The Applicant/Owner obtains a water & sewer permit at the Public Works Department.
2. The Applicant/Owner pays for all materials, labor and equipment required for the utility installation
3. Construction materials and practices must conform to Section 13 of the Homer City Code.
4. Work must be performed by a Licensed and Bonded Contractor.
5. Inspections must be performed for all utility installations by Public Works employees.
24 HOUR NOTICE IS REQUIRED BEFORE ALL INSPECTIONS. Call Public Works at 235-3170.
6. The City assumes no responsibility for the accuracy of any City held Asbuilt Drawing or the Permittee's interpretation thereof.

SAMPLE WATER METER INSTALLATION



Meter shall be installed in a horizontal, upright position.

Meter shall be inside a warm, dry, easily accessible place.

Meter shall be installed prior to providing any water service to customer.

The applicant is responsible for purchasing a pressure reducing valve and one way check valve, to be placed in line with all meter installations.

WARNING

IT IS ILLEGAL TO CONNECT RAIN GUTTERS, ROOF DRAINS, DRAIN TILE SYSTEMS, SUMP PUMPS OR OTHER FRESH WATER SOURCES TO THE CITY SEWER SYSTEM.



CITY OF HOMER
APPLICATION & PERMIT TO CONSTRUCT AND MAINTAIN DRIVEWAY
ON PUBLIC RIGHT-OF-WAY

PART 1: To Be Completed by Permittee

Permit No: 1199

Permittee: Kenneth P. & Anna Knudsen

Date: April 2, 1993

Address: Box 271

Phone: 262-5153

Driveway Location: 551 ROMANZA AVE
Street Address

Lot: 24 Block: 9

Sub: Glacier View Sub

KPB Parcel No.: 177-104-07



Residential



Commercial

Field inspection and notice required 24 hours in advance of construction. Call Public Works Department Inspector 235-3170.

The permittee certifies that: (1) he/she is the owner and/or authorized agent of the property, (2) that the conditions, restrictions and regulations of the City will be complied with, (3) that he/she will maintain the driveway in accordance with City standards, and (4) that the minimum clearance between the proposed finished driveway grade and the lowest aerial utility conductor shall not be less than 18 feet.

I have read the above application and know the contents thereof, the same is true and correct. I agree the above work will be done in accordance with all State and City laws and ordinances, and further agree to hold the City harmless from any and all claims of whatever kind or nature which may arise from activities under this permit.

Signed by Permittee Kenneth P. Knudsen \$15.00 fee rec'd by: B
Initials

PART 2: For Public Works Department Use

() No () Yes Culvert Required Minimum CMP Culvert _____
() No () Yes Paving Required Maximum driveway width at culvert _____
() Applicant required to install a culvert if later conditions warrant.

SPECIAL INSTRUCTIONS

Initial inspection by: _____ Date: _____

Permit granted by: _____ Date: _____

Final inspection by: _____ Date: _____

Driveway () Does () Does not meet requirements

Improvements or corrections required: _____

CONSTRUCTION APPROVED BY: _____ Date: _____

Public Works Inspector

PERMIT APPROVED BY: _____ Date: _____

Director of Public Works

DISTRIBUTION: 1. WHITE - Permittee (completed part 1)
2. YELLOW - Inspector (permit granted)
3. PINK - Planning Dept. (address file)
4. GOLDENROD - Inspector (final inspection/and approval)



CITY OF HOMER
APPLICATION & PERMIT TO CONSTRUCT AND MAINTAIN DRIVEWAY
ON PUBLIC RIGHT-OF-WAY

PART 1: To Be Completed by Permittee

Permit No: **1432**

Permittee: Kenneth P & Anna Knudsen

Date: April 2, 1993

Address: 541 Bonanza Box 271

Phone: 262-5153

Driveway Location: 541 Bonanza
 Street Address

Lot: 25 Block: 9
 Sub: Glacier View Sub.

KPB Parcel No.: 177-104-06



Residential



Commercial

Field inspection and notice required 24 hours in advance of construction. Call Public Works Department Inspector 235-3170.

The permittee certifies that: (1) he/she is the owner and/or authorized agent of the property, (2) that the conditions, restrictions and regulations of the City will be complied with, (3) that he/she will maintain the driveway in accordance with City standards, and (4) that the minimum clearance between the proposed finished driveway grade and the lowest aerial utility conductor shall not be less than 18 feet.

I have read the above application and know the contents thereof, the same is true and correct. I agree the above work will be done in accordance with all State and City laws and ordinances, and further agree to hold the City harmless from any and all claims of whatever kind or nature which may arise from activities under this permit.

Signed by Permittee Kenneth P Knudsen \$15.00 fee rec'd by: (initials)
 Initials

PART 2: For Public Works Department Use

() No () Yes Culvert Required Minimum CMP Culvert _____
 () No () Yes Paving Required Maximum driveway width at culvert _____
 () Applicant required to install a culvert if later conditions warrant.

SPECIAL INSTRUCTIONS _____

Initial inspection by: _____ Date: _____

Permit granted by: _____ Date: _____

Final inspection by: _____ Date: _____

Driveway () Does () Does not meet requirements

Improvements or corrections required: _____

CONSTRUCTION APPROVED BY: _____ Date: _____

Public Works Inspector

PERMIT APPROVED BY: _____ Date: _____

Director of Public Works

DISTRIBUTION: 1. WHITE - Permittee (completed part 1)
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SUPPLEMENTS TO THE APPEAL RECORD
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Appeal of City Planning Staff Issuance of
Zoning Permit 1020-782

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Session 20-12, a Regular Meeting of the Planning Commission was called to order by Chair Smith at 6:34 p.m. on September 2, 2020 at Cowles Council Chambers in City Hall located at 491 E. Pioneer Avenue, Homer, Alaska via Zoom Webinar.

PRESENT: COMMISSIONERS HIGHLAND, SMITH, DAVIS, VENUTI AND BENTZ

ABSENT: COMMISSIONERS PETSKA-RUBALCAVA AND BARNWELL (EXCUSED)

STAFF: CITY PLANNER ABBOUD
DEPUTY CITY CLERK KRAUSE

APPROVAL OF THE AGENDA

Chair Smith requested a motion to approve the agenda.

HIGHLAND/VENUTI – 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. Minutes of the August 19, 2020 Planning Commission Regular Meeting
- B. Decisions and Findings for Conditional Use Permit 20-12 for four dwellings on a lot at 3972 Bartlett Street

Chair Smith requested a motion to approve the Consent Agenda.

HIGHLAND/BENTZ – SO MOVED.

There was no discussion.

VOTE. NON-OBJECTION. UNANIMOUS CONSENT.

Motion carried.

VISITORS/PRESENTATIONS

REPORTS

A. Staff Report 20-57, City Planner's Report

City Planner Abboud commented he was in transition from the acting city manager position so there is not much in this report. He noted the Council passed action items mentioned in Staff Report 20-57.

PUBLIC HEARING(S)

A. Staff Report 20-58, Conditional Use Permit 20-14 to allow a second mobile home at 541 Bonanza Avenue

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

City Planner Abboud noted the late laydown from Mr. Griswold and confirmed that all commissioners were able to review this information before the meeting.

Commissioners verbally and visually confirmed that they had reviewed the information.

City Planner Abboud briefly reviewed the laydown for the Commission noting the concerns on access and mobile home park. He stated that there were some valid points brought forward by Mr. Griswold, but the majority did not apply. He further stated that Mr. Griswold brought forward his typical arguments but he has not prevailed on previous attempts.

City Planner Abboud then reviewed Staff Report 20-58 for the commission. He commented on the following:

- Comprehensive Plan Goals and Objectives
- One large lot that was previously two lots, this can be subdivided and no CUP would be required
- Single family connex home was placed on the property without a zoning permit and the options available to address the matter
- Mobile Home Park requirement review and considering the connex as a mobile home
 - o Access for Fire Department
- Compliance with the existing definition of mobile home
- Use of similar structure in other areas of the city
- Discussion needed on when a shipping container is no longer a shipping container
- Requested a correction by the commission to fix the double negative shown in Finding 9, line 4, Requested the Commission to amend the sentence to remove the word "not" before contrary

Scott and Stacy Lowry, applicant and owner, provided a verbal presentation on the proposed project explaining the planning and goals that they wanted to reach by placing the converted connex on the property. They noted that the lot was purchased and prior to them purchasing the lot, the lot line had been vacated to create one larger lot. There is an older mobile home on the property that is currently rented and that tenant has resided on the property prior to them purchasing the property. They intend to use the new structure as a vacation home as they come to Homer every summer since they have family here. They stated that they have photos of the interior and would be happy to share. The Applicant explained that they had future plans to replace the existing mobile home with a new structure. The applicant further explained that they have been working with the planning staff to meet all the requirements of the city.

Chair Smith opened the Public Hearing.

Bob Shavelson, representing his sister who owns the neighboring parcel, commented on being caught off guard with no notice, stated that a connex does not meet the definition of mobile home, commented on the nomenclature issue with the streets and defining this as a mobile home park since it is not one; he believed there would be difficulties in reestablishing the lot line. Mr. Shavelson then commented that the comp plan has some conflicting items as goal number three is to encourage high quality buildings and site development and he opined that a connex was not that. Mr. Shavelson stated he was not going to raise serious objections if the intent of the applicant is to improve the appearance of the lot.

Chair Smith confirmed with the Clerk there were no further members of the public to provide testimony and closed the Public Hearing and requested questions for the City Planner.

Commissioners and City Planner Abboud discussed the following points:

- Review of the section of city code regarding the Central Business District (CBD) 20.18.020, Permitted uses and structures (ii.) One detached dwelling unit, excluding mobile homes, as an accessory building to a principal single-family dwelling on a lot; arguing that this could be used to define this project, to avoid the discussion of mobile homes
- Consideration of a connex as a nuisance
- City does not have a building code
- Confusion of the two mobile homes on one lot
- Bringing a connex into the CBD without permits, setting precedent that it is allowed, and the Commission's intent to limit or decrease the use of mobile homes in the city
- Conditional Use Permit would be after the fact but would bring the action into compliance
- Applicant has not been fined since they are actively working with the Planning Department to bringing the project into compliance.
- Defining this structure as a mobile home is incorrect since it is a connex.
- Staff would recommend or the applicants can consider the pulling the application and bringing it back under the additional dwelling, a CUP would not be required.
- Commissioner perspectives on the connex since that is what it is

- The trend to sustainable, affordable housing by using modular, pre-fab, manufactured homes and tiny homes

There were no further questions for the City Planner and Chair Smith requested questions from the Commission for the Applicant.

Commissioners and the Applicant discussed the following points:

- Basis and reasons for moving a connex into a developed neighborhood
- Sustainable housing, trend for tiny homes, a connex does present a modern appearance, placement on the far eastern edge, the foundation is permanent.
- Consideration that it is a modular home, not a connex, as it is tied into existing water and sewer and will have exterior improvements
- Can subdivide the property back again and keep the structure as a permanent dwelling
- Timeline for the improvements to be completed on the appearance of the connex
- Retrofitting a connex into a dwelling and electrical, plumbing standards since there are standards for mobile homes
- Additional questions could be presented in writing and the applicant would respond with photos and certifications to address those concerns of the Commission

Chair Smith called for additional questions for the applicant, there were none so he redirected the discussion back to the question on evaluating this as an Accessory Dwelling Unit (ADU) rather than for a CUP.

City Planner Abboud noted that it appeared there was agreement among the Commissioners that this structure is not a mobile home and as such it does not appear to be appropriate that the term mobile home park applies. He then reviewed the nuisance standard and noted that it is no longer a shipping container, there are no other standards to apply.

Further discussion ensued on the application of code, renovation of the connex so that it is no longer a shipping container, if they amend to reflect a permitted use then a CUP is not required, clarification on the number of structures on the property, the connex does not meet the definition of mobile home and where a challenge will come from the neighbor by appeal.

City Planner Abboud stated that it should be failed since they are not dealing with a mobile home or mobile home park as it did not meet the definition.

Commissioner Bentz then recognized the city code that addressed nuisance standards HCC 21.18.080 (c.) Commercial vehicles, trailers, shipping containers and other similar equipment used for transporting merchandise shall remain on the premises only as long as required for loading and unloading operations, and shall not be maintained on the premises for storage purposes unless screened from public view. She noted that in the packet there is a photo showing the interior of the connex and did not believe that it was capable of transporting merchandise and provided a description of the interior represented by the photo.

Commissioner Highland also noted that a shipping container is allowed if screened from public view as described in the same section of city code Commissioner Bentz referenced.

Commissioner Bentz additionally stated that a connex could fall under the designated permitted use of mini storage. She observed that the Commission could not show bias against a structure based on the materials used, noting the blue tarps being used on Bonanza Street as roofing materials and the applicants have undergone a level of scrutiny that the Commission does not talk about with people such as the renovated construction with fire alarms and electrical systems.

City Planner Abboud responding to the question of changing it from a mobile home, that since Homer does not have a building code, and until the city adopts building codes, a dwelling can be built out of any material. This is a dwelling and has all the features that is expected in a structure defined as such.

Chair Smith requested a motion.

VENUTI/ HIGHLAND MOVE TO ADOPT STAFF REPORT 20-58 AND APPROVE CUP 20-14 WITH FINDINGS 1-10 AND CONDITIONS 1-7

- 1. ALL DEVELOPMENT MUST BE COMPLETED BY AUGUST 1, 2021. THIS INCLUDES PAINTING, SKIRTING, PORCH CONSTRUCTION AND COMPLETE SITE DEVELOPMENT AS SHOWN ON THE SITE PLAN AND PROJECT ELEVATIONS.*
- 2. THE ZONING PERMIT AND CUP MAY ONLY BE EXTENDED BY THE PLANNING COMMISSION.*
- 3. FAILURE TO COMPLETE DEVELOPMENT BY AUGUST 1, 2021 MAY RESULT IN A ZONING VIOLATION AND FINES UNTIL THE STRUCTURE IS REMOVED OR BROUGHT INTO COMPLIANCE.*
- 4. BOTH MOBILE HOMES SHALL MEET THE REQUIREMENTS OF HCC 21.54.100*
- 5. COVERED STORAGE MEETING REQUIREMENTS OF HCC 21.54.070, NOT LESS THAN 200 CUBIC FEET OF COVERED STORAGE PER UNIT SHALL BE PROVIDED.*
- 6. PLANT OR SCREEN THE EASTERN AND SOUTHERN PROPERTY LINES WITH A FENCE OR COMBINATION EVERGREEN DECIDUOUS PLANTINGS TO PROVIDE EFFECTIVE SCREENING.*
- 7. OUTDOOR LIGHTING MUST BE DOWN LIT PER HCC 21.59.030*

It was noted that there was a typographical error in the staff report numbers, it was stated that it can be corrected by the Clerk.

City Planner Abboud provided clarification that the Commission could fail the motion and the Applicant would apply for a permit under the ADU and it would be handled administratively. He stated that there are three choices for the Commission: Approve the Conditional Use Permit, Approve with more conditions or deny the permit.

The Commission and City Planner Abboud entertained a brief discussion on amending the findings to substantiate the denial of the CUP by amending the cited city code citation from Finding 1, HCC 20.18.020 (m) and replace with Finding 1 HCC 20.18.020(ii) one

detached dwelling unit, excluding mobile homes, as an accessory building to a principal single-family dwelling on a lot and that two the Commission finds that the structure in question, the shipping container was not used for transportation of merchandise and therefore HCC 21.18.080 Nuisance standards, item c, does not apply.

Chair Smith called for a roll call vote.

VOTE. NO, BENTZ, DAVIS, HIGHLAND, VENUTI, SMITH

Motion failed.

Chair Smith thanked the applicants for a very interesting topic and he wanted to make them aware that the Commission was trying to advocate for the them while addressing the concerns presented by Mr. Griswold and being applicable to city code.

Mr. Lowry responded that he was appreciative of the Commission processes and just wanted to do what was easiest for the Commission and city in regards to paperwork and permits. He had noted through the chat option that they could withdraw the permit application if that was easier but it sounds as if it is past that point. He thanked everyone for their time and discussion tonight.

City Planner Abboud clarified that the applicant can contact the planning department to proceed to the next step for their project.

B. Staff Report 20-60, Medical Zoning District

Chair Smith introduced the item by reading of the title.

City Planner Abboud provided a brief summary of the previous actions on the draft ordinance.

There is no applicant as the city is the applicant.

Chair Smith opened the public hearing and seeing no members of the audience coming forward to provide testimony he closed the public hearing and opened the floor to questions from the Commission.

There were no questions from the Commissioners for the City Planner.

Chair Smith Requested a motion.

VENUTI/ BENTZ MOVE TO ADOPT STAFF REPORT 20-60 AND FORWARD THE DRAFT ORDINANCE CREATING A MEDICAL ZONING DISTRICT TO CITY COUNCIL.

There was a brief commentary from Commissioner Highland explaining her reason that she would not be supporting this ordinance was that she did not support the sixty five foot building height.

VOTE. YES. BENTZ, DAVIS, VENUTI, SMITH

VOTE. NO. HIGHLAND

Motion carried.

PLAT CONSIDERATION

- A. Staff Report 20-61, Guy Waddell Subd. No. 3 June's Addn. Lot 1-E 2020 Replat Preliminary Plat

Chair Smith introduced the item by reading of the title.

City Planner Abboud provided a summary of Staff Report 20-61.

There was no applicant or representative present.

Chair Smith opened the floor to public comment on the project. Having no one in the audience come forward to comment on this project he closed the public comment period and opened the floor to questions from the Commission.

The Commission had no questions for the City Planner.

BENTZ/HIGHLAND MOVED TO ADOPT STAFF REPORT 20-61 AND RECOMMEND APPROVAL OF GUY WADDELL SUBDIVISION NUMBER 3 JUNE'S ADDITION LOT 1-E 2020 REPLAT PRELIMINARY PLAT WITH COMMENTS ONE AND TWO:

1. INCLUDE PLAT NOTE STATING "PROPERTY OWNER SHOULD CONTACT THE ARMY CORPS OF ENGINEERS PRIOR TO ANY ONSITE 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. A CITY OF HOMER DEVELOPMENT AGREEMENT OR CONSTRUCTION AGREEMENT IS REQUIRED FOR THE INSTALLATION OF WATER AND SEWER SERVICES.

There was no discussion.

VOTE. NON-OBJECTION. UNANIMOUS CONSENT.

Motion carried.

PENDING BUSINESS

NEW BUSINESS

INFORMATIONAL MATERIALS

A. City Manager's Report for the August 24th City Council Meetings

COMMENTS OF THE AUDIENCE

Bob Shavelson, city resident, commented on the amount of development being done during this time of COVID 19 and did not appreciate Mr. Griswold being called out tonight as some of the tone and content was negative. He did not see any place for that. Mr. Griswold may be a thorn in the side of the city but he is a resident of the city and cares about the community.

COMMENTS OF THE STAFF

Deputy City Clerk Krause thanked the Commission for an interesting meeting, noting that she will be brushing up on city code.

City Planner Abboud commented that it was nice to be back, he found that he can do a lot of work in COVID time and he thought they may look at their worklist and maybe have a worksession in the future. He noted that Julie will be out of the office for approximately two month so it may present challenges.

COMMENTS OF THE COMMISSION

Commissioner Highland commented it was a good meeting and welcomed Rick back.

Commissioner Bentz commented on appreciated the input from the public and is a very important part of the process and that they initially had a few points of confusion with one of the applications but the public comment helps the commission. It made them go back to reread city code and really understand what the decision they were being asked to make is; interesting to read in the City Manager's Report that there is an opportunity for a NEA grant partnership. She mentioned moving forward on the transportation as a priority and to wait until they get the new census information.

Commissioner Davis commented on sharing Commissioner Highland's concern with the 65 foot building height especially as applied in the district without concern for viewshed, he voted in favor as they have worked on this for a long time but he will always side on the effect a tall building will have on someone's viewshed. He agreed that public comment is important and they can just focus on the pertinent comments that apply and ignore the non-relevant comments.

Commissioner Venuti welcomed Rick back and commented on seeing him in action as the Acting City Manager and complemented him on doing a great job. He responded to Mr. Shavelson

remarks regarding talking negatively about anybody although he understands why an individual who has been a pain in the neck for a long time could be considered in a negative manner. His concern is the possibility of litigation from Mr. Griswold if more connex homes catches on, so we have to watch what they do because he seems to be setting policy. Mr. Venuti stated it was a good meeting and complimented Chair Smith on a great job.

Chair Smith echoed the sentiments previously expressed about public comment and hoped that his comments were not perceived as negative, that was not his desire. He appreciated Commissioner Bentz' attention to detail and providing the alternative solution for the commission and applicant tonight. He thanked Rick for his knowledge regarding these matters and providing direction for the Commission. It was a good meeting and believed that they need to ask themselves a couple of questions such as Do we want trailer parks as part of our language and do they want connex as a part of the building possibilities they will need to have some future conversations.

ADJOURN

There being no further business to come before the Commission, the meeting adjourned at 7:45 p.m. The next Regular Meeting is scheduled for Wednesday, September 16, 2020 at 6:30 p.m. All meetings are scheduled to be held virtually by Zoom Webinar from the City Hall Cowles Council Chambers located at 491 E. Pioneer Avenue, Homer, Alaska



RENEE KRAUSE, MMC, DEPUTY CITY CLERK

Approved: October 7, 2020



City of Homer

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Staff Report 20-58

TO: Homer Planning Commission
THROUGH: Rick Abboud, City Planner
FROM: Julie Engebretsen, Deputy City Planner
DATE: September 2, 2020
SUBJECT: Conditional Use Permit (CUP) 20-14

Synopsis The applicant proposes to add a second mobile home to a lot with an existing mobile home. A Conditional Use Permit (CUP) is required per HCC 21.18.030(c).

Applicant: Scott and Stacy Lowry
907 Daly Road
Ojai, CA 93023

Legal Description: LEGAL T 6S R 13W SEC 20 SEWARD MERIDIAN HM 0930033
GLACIER VIEW SUB NO 23 BLOCKS 8 9 & 10 LOT 24A

Parcel ID: 17710421

Size of Existing Lot: 12,017 square feet.
Minimum lot size in the CBD is 6,000 square feet.
Minimum lot size for a mobile home park is 3,000 square feet per unit.

Zoning Designation: Central Business District

Existing Land Use: Residential mobile home

Surrounding Land Use: North: Residential, mobile homes
South: Residential
East: Residential
West: Residential

Comprehensive Plan: Goal 1 Objective C: Maintain high quality residential neighborhoods; promote housing choice by supporting a variety of dwelling options. Promote infill development in all housing districts.

Wetland Status: No wetlands mapped

Flood Plain Status: Zone D, Flood Hazards not determined

BCWPD: Not within the Bridge Creek Watershed Protection District

Utilities: Public utilities service the site.

Public Notice: Notice was sent to 50 property owners of 40 parcels as shown on the KPB tax assessor rolls.

ANALYSIS: The current property is one large lot. At one point it was two lots, but the interior lot line was vacated in 1993 so the current configuration is one large lot. Staff brings this to the Commission's attention because it is possible for the applicant to re-subdivide the lot, and have one mobile home on each lot without a conditional use permit.

The applicant placed a 'connex' single family dwelling on the property on July 20th, 2020. No zoning permit was applied for, so the structure is in violation of city code. Staff contacted the land owner to inform them of the need for a zoning permit and a conditional use permit. The land owner then submitted a conditional use permit. If this CUP is approved, in addition to any CUP conditions, the land owner will need to apply for and receive a zoning permit to bring the structure into compliance.



Photo 1. Existing Mobile Home, and planned shared driveway.



Photo 2. Existing Mobile home and new mobile home. Under the CUP, this driveway access would be eliminated, and a fence erected. Both homes would use the eastern driveway.



Photo 3. East view of structure



Photo 4. South or back side of the dwelling.

Mobile Home Park Review

City code is provided below, with responses italicized. See Right of way Plan Drawing for depiction.

21.54.010 Standards for mobile home parks – General.

This article establishes minimum standards governing mobile home parks. [Ord. 08-29, 2008].

21.54.020 Where allowed.

Mobile home parks will be allowed only in those zoning districts that list mobile home parks as permitted or conditionally permitted. [Ord. 08-29, 2008].

Response: *HCC 21.18.030(c) allows for mobile home parks with an approved conditional use permit.*

21.54.030 Spaces and occupancy.

a. Only one mobile home or duplex mobile home shall occupy a space.

Response: *Only one home occupies each space.*

b. More than one space may be located on a lot, subject to the following: Each space for a mobile home shall contain not less than 3,000 square feet, exclusive of space provided for the common use of tenants, such as roadways, general use structures, guest parking, walkways,

and areas for recreation and landscaping. Spaces designed and rented for duplex mobile homes shall have a minimum of 4,500 square feet. [Ord. 08-29, 2008].

Response: *The property is 12,017 square feet. The western mobile home space is just over 3,000 square feet. The eastern space is just under 4,300 square feet.*

21.54.040 Lot size and setbacks.

a. Minimum Lot Size. Lots used for mobile home parks shall be no smaller than the minimum lot size for the zoning district in which the mobile home park is located.

Response: *The property meets the minimum lot size requirements per HCC 21.18.040 (a)(1), of 6,000 square feet. The property is 12,017 square feet.*

b. Setbacks. In addition to the required setbacks from lot lines and rights-of-way applicable to the zoning district:

1. No mobile home in the park shall be located closer than 15 feet from another mobile home or from a general use building in the park.

Response: *The existing shed is more than 15 feet from the existing mobile home. The mobile homes are more than 15 feet apart.*

2. No building or structure accessory to a mobile home on a mobile home space shall be closer than 10 feet from another mobile home, another accessory building or another mobile home space.

Response: *The existing shed is more than 10 feet from the existing mobile home. The mobile homes are more than 10 feet apart.*

3. Along any vehicular right-of-way within the mobile home park, mobile homes and other buildings shall be set back a minimum of 10 feet from the edge of the right-of-way. [Ord. 08-29, 2008].

Response: *The driveway entrance is the vehicular right of way within the mobile home park.*

21.54.050 Open space and recreation areas.

A minimum of 10 percent of the total area of all lots used for a mobile home park shall be devoted to a common open space for use by residents of the mobile home park. This open space shall not include areas used for vehicle parking or maneuvering, vehicle access, or any area within a mobile home space. The open space may include lawns and other landscaped areas, walkways, paved terraces, and sitting areas. The common open space shall be reasonably secluded from view from streets and shall be maintained in a neat appearance. [Ord. 08-29, 2008].

Response: *The eastern quarter of the lot has a lawn area. Exclusive of the storage shed, there is approximately 3,200 square feet of open space. Ten percent of the total lot area is approximately 1,200 square feet of open area.*

21.54.070 Required improvements.

a. Storage. Not less than 200 cubic feet of covered storage shall be provided for each mobile home space (but not necessarily on each space).

Response: *The existing storage shed may or may not be adequate, depending on the interior headroom of the space, which is currently unknown. The shed is 8 feet by 10 feet, or 80 square feet in area. If there is 5 feet of head room in the shed, then it contains at least 400 cubic feet of covered storage and would meet this requirement the way it is (8 ft. x 10 ft. x 5 ft. = 400 cu. ft.). **See Condition 5:** Covered storage meeting the requirements of HCC 21.54.070, not less than 200 cubic feet of covered storage per unit, shall be provided.*

b. Perimeter. The land used for mobile home park purposes shall be effectively screened, except at entry and exit places, by a wall, fence or other sight-obscuring screening. Such screening shall be of a height adequate to screen the mobile home park from view and shall be maintained in a neat appearance.

Response: *The western lot line is screened by alders. The northern property line along Bonanza Ave will have a six foot wooden fence.*

Condition 7: *Plant or screen the eastern and southern property lines with a fence or combination evergreen and deciduous plantings to provide effective screening.*

c. Water and Sewer. All mobile homes in the park shall be connected to water and sewage systems before they are occupied. Evidence shall be provided with the application for a mobile home park that the park will meet the standards of the Alaska Department of Environmental Conservation. [Ord. 08-29, 2008].

Response: *City water and sewer connections have been made and approved by the Public Works Department.*

21.54.080 Access and parking.

a. Access. Each mobile home space shall be directly accessible by a vehicle from an internal street without the necessity of crossing any other space. Direct vehicular access from public streets to a mobile home space is prohibited.

Response: *The mobile home park has a single point of access onto Bonanza Ave. The portion of the driveway immediately on the property is the internal street.*

b. Parking. A minimum of two parking spaces shall be provided for each mobile home space. An additional common parking area for guests shall be provided with one space for every four mobile homes. [Ord. 08-29, 2008].

Response: *Two spaces per home and one additional guest space are provided for a total of five parking spaces.*

21.54.090 Street standards.

a. Circulation. The internal street system of a mobile home park shall provide convenient circulation by means of minor streets and collector streets. Dead-end streets shall be provided with an adequate turning circle at least 80 feet in diameter.

Response: *The internal street system for the two mobile home terminates in parking for one mobile home space, and driveway access for a second space. There is adequate maneuvering area within the property.*

b. Street Widths. The width of internal streets shall be adequate to accommodate the contemplated traffic load, and no less than the following minimums:

	Minimum Width (in feet)
Collector streets with no parking	28
Minor streets with no parking	22

Response: *The shared driveway access to Bonanza Ave is 22 feet wide.*

c. If utilities are planned to be in or next to streets, additional width may be required by the Commission to accommodate the utilities. [Ord. 08-29, 2008].

Response: *Utilities are already installed within existing public rights of ways and utility easements.*

21.54.100 Standards for mobile homes.

Each mobile home structure, whether located in a mobile home park or on an individual lot, shall meet the following standards:

a. The mobile home shall contain sleeping accommodations, a flush toilet, a tub or shower and kitchen facilities, with plumbing and electrical connections provided for attachment to public utilities or approved private systems.

Response: *Condition: The applicant shall provide evidence that both homes meet the requirements of this section.*

b. The mobile home shall be fully skirted and, if a single-wide unit, shall be tied down with devices that meet State standards. [Ord. 10-01(S) § 4, 2010].

Response: Condition 4: *Both mobile homes shall meet the requirements of HCC 21.54.100.*

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: The structure meets the definition of a mobile home under HCC 21.030 Definitions.

“Mobile home” or “manufactured home” means a structure, transportable in one or more sections: (1) that in the traveling mode is eight feet or more in width or 40 feet or more in length, or when erected on site is 320 square feet or more; and (2) that is built on a permanent chassis and is designed for use as a dwelling with or without a permanent foundation when the plumbing, heating, and electrical systems contained therein are connected to the required utilities. A mobile home shall be construed to remain a mobile home whether or not wheels, axles, hitch or other appurtenances of mobility are removed, and regardless of the nature of the foundation provided. A mobile home shall not be construed to be a recreational vehicle or a factory built dwelling.

“Mobile home park” means one or more lots developed and operated as a unit with individual sites and facilities to accommodate two or more mobile homes.

The structure is considered a mobile home because it is 8 feet wide, 45 feet long, and 360 square feet. It is connected to city water and sewer and is fully equipped as a dwelling unit. It could be picked up via crane and moved again by truck in the future and is therefore transportable in one or more sections.

HCC 21.18.080(c) further discusses shipping containers in the CBD.

HCC 21.18.080(c) Nuisance standards states c. Commercial vehicles, trailers, shipping containers and other similar equipment used for transporting merchandise shall remain on the premises only as long as required for loading and unloading operations, and shall not be maintained on the premises for storage purposes unless screened from public view.

The subject structure is no longer functional as a shipping container as it has been modified with doors and windows. It has further been retrofitted to serve as a residential dwelling.

Finding 1: HCC 21.18.020(m) authorizes mobile homes, and HCC 21.18.030(c) authorizes mobile home parks if approved by a Conditional Use Permit.

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

The purpose of the Central Business District is primarily to provide a centrally located area within the City for general retail shopping, personal and professional services, educational institutions, entertainment establishments, restaurants and other business uses listed in this chapter. The district is meant to accommodate a mixture of residential and nonresidential uses with conflicts being resolved in favor of nonresidential uses. Pedestrian-friendly designs and amenities are encouraged.

Applicant: There are other homes adjacent to this property.

Analysis: The purpose of the Central Business District includes accommodating a mixture of residential and non-residential uses. A mobile home park is a form of residential use.

Finding 2: The proposed use and structures of the mobile home park are 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: We are improving the property and cleaning up the overall appearance. This is a first step to our plans to improve the property.

Analysis: Several uses in the CBD have the potential to have a greater negative impact on property values. A club or drinking establishment could generate noise during hours objectionable to residential uses, and affect the value of the adjoining land as a residential use.

Finding 3: A two unit mobile home park 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: Similar to the surrounding homes and land.

Analysis: The residential use is compatible with the existing surrounding homes. However, the new structure is currently unpainted and generally in an unattractive, incomplete state. Staff recommends the following conditions:

1. All development must be completed by August 1, 2021. This includes painting, skirting, porch construction and complete site development as shown on the site plan and project elevations.
2. The zoning permit and CUP may only be extended by the Planning Commission.
3. Failure to complete development by August 1st may result in a zoning violation and fines until the structure is removed or brought into compliance.

Finding 4: The proposal when completed is compatible with existing uses of surrounding land which include single family homes and mobile homes on individual lots.

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

Finding 5: Existing public, water, sewer, and fire services are adequate to serve the mobile home park.

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: Impact will be very minimal. Also, the guest house is very small and tucked away in the property.

Analysis: Desirable neighborhood character could be described by a portion of the Purpose statement for the district, which includes the accommodation of residential uses. Individual mobile homes as well as mobile home parks are listed permitted and conditionally permitted uses within the district.

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, when conditions 1-7 are met.

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: City utilities, police, fire and road maintenance services are available and adequately serve the lot.

Finding 7: The proposal will not be unduly detrimental to the health, safety or welfare of the surrounding area and the city as a whole when all applicable standards are met as required by city code.

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

Analysis: Utility connection permits have been acquired. If a CUP is granted, a zoning permit must be applied for and approved to bring the property into compliance.

Finding 8: The proposal shall comply with applicable regulations and conditions specified in Title 21.

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

Analysis: Goals of the Land Use Chapter of the Homer Comprehensive Plan include Goal 1 Objective C: Maintain high quality residential neighborhoods; promote housing choice by supporting a variety of dwelling options. Promote infill development in all housing districts. Conditions 1-7 address the current state of the property and require project completion within a specific timeframe. The current incomplete structure does not meet the comprehensive plan goal of a high quality residential neighborhood. With completion of the structure and planned improvements including skirting, painting and a fence, the new structure will be closer to meeting the intent of the Comprehensive Plan.

Finding 9: The proposal when completed in adherence to the conditions set forth by this permit is not contrary to the applicable land use goals and objects of the Comprehensive Plan. The proposal aligns with Goal 1 Objective C and no evidence has been found that it is not contrary to the applicable land use goals and objects of the Comprehensive Plan.

j. The proposal will comply with the applicable provisions of the Community Design Manual (CDM).

Analysis: The outdoor lighting section of the CDM applies.

Condition 7: Outdoor lighting must be down lit per HCC 21.59.030 and the CDM.

Finding 10: Project complies with the applicable provisions of the CDM.

HCC 21.71.040(b). b. In approving a conditional use, the Commission may impose such conditions on the use as may be deemed necessary to ensure the proposal does and will

continue to satisfy the applicable review criteria. Such conditions may include, but are not limited to, one or more of the following:

- 1. Special yards and spaces:** No specific conditions deemed necessary
- 2. Fences and walls:** No specific conditions deemed necessary
- 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.

PUBLIC WORKS COMMENTS: No comments

PUBLIC COMMENTS: None as of the writing of the staff report. Staff expects comments to be provided prior to and at the Commission public hearing.

STAFF COMMENTS/RECOMMENDATIONS:

Conduct a public hearing and consider public testimony. Approve CUP 20-14 with findings 1-10 and the following conditions:

1. All development must be completed by August 1, 2021. This includes painting, skirting, porch construction and complete site development as shown on the site plan and project elevations.
2. The zoning permit and CUP may only be extended by the Planning Commission.
3. Failure to complete development by August 1st may result in a zoning violation and fines until the structure is removed or brought into compliance.
4. Both mobile homes shall meet the requirements of HCC 21.54.100.
5. Covered storage meeting the requirements of HCC 21.54.070, not less than 200 cubic feet of covered storage per unit, shall be provided.
6. Plant or screen the eastern and southern property lines with a fence or combination evergreen and deciduous plantings to provide effective screening.
7. Outdoor lighting must be down lit per HCC 21.59.030 and the CDM.

Attachments

Application

Site Plan 8.14.20 Right of Way

Additional Site Photos

Public Notice

Aerial Photograph



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: Scott & Stacy Lowry Telephone No.: 805-509-1757, 907-299-4070

Address: 907 Daly Rd. Ojai, CA 93023 Email: SRL8@me.com

Property Owner (if different than the applicant):

Name: _____ Telephone No.: _____

Address: _____ Email: _____

PROPERTY INFORMATION:

Address: 541 Bonanza Lot Size: .28 acres KPB Tax ID # 17710421

Legal Description of Property: Residential City/Residential B

For staff use:

Date: _____ Fee submittal: Amount _____

Received by: _____ Date application accepted as complete _____

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			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: _____
- Y/N ☒ Does your site contain wetlands? If yes, Army Corps of Engineers Wetlands Permit is required. Application Status: _____
- Y/N ☒ Is your development in a floodplain? If yes, a Flood Development Permit is required.
- 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: Existing driveway approach
- Y/N ☒ Do you have active City water and sewer permits? Status: Existing

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

- Manufactured home with improvement structure. 470 sq ft
- Used for a home. 840 total

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).

- We intend to add the new structure as a guest house to stay in when we visit and have family members stay while in town.

- a. What code citation authorizes each proposed use and structure by conditional use permit? **21.18.030(c)**
- b. Describe how the proposed uses(s) and structures(s) are compatible with the purpose of the zoning district.
There are other homes adjacent to this property.
- c. How will your proposed project affect adjoining property values?
We are improving the property and cleaning up the overall appearance. This is a first step to our plans to improve the property.
- d. How is your proposal compatible with existing uses of the surrounding land?
Similar to the surrounding homes and land.
- 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?
Impact will be very minimal. Also, the guest house is very small and tucked away in the property.
- 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?
The Comprehensive Plan are online,
Chapter 4, Goal #1 - Increasing supply of housing. and encouraging infill development.
- 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. (2)050.81.15
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. There are other zoning rules that apply to this property.
14. Y/N Other conditions deemed necessary to protect the interest of the community. Similar to the surrounding areas and lots.

PARKING

1. How many parking spaces are required for your development? ~~4~~ 5
- If more than 24 spaces are required see HCC 21.50.030(f)(1)(b).
2. How many spaces are shown on your parking plan? ~~4~~ 5
3. Are you requesting any reductions? NO

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: _____

Date: 8/6/20

Property Owner's signature: _____

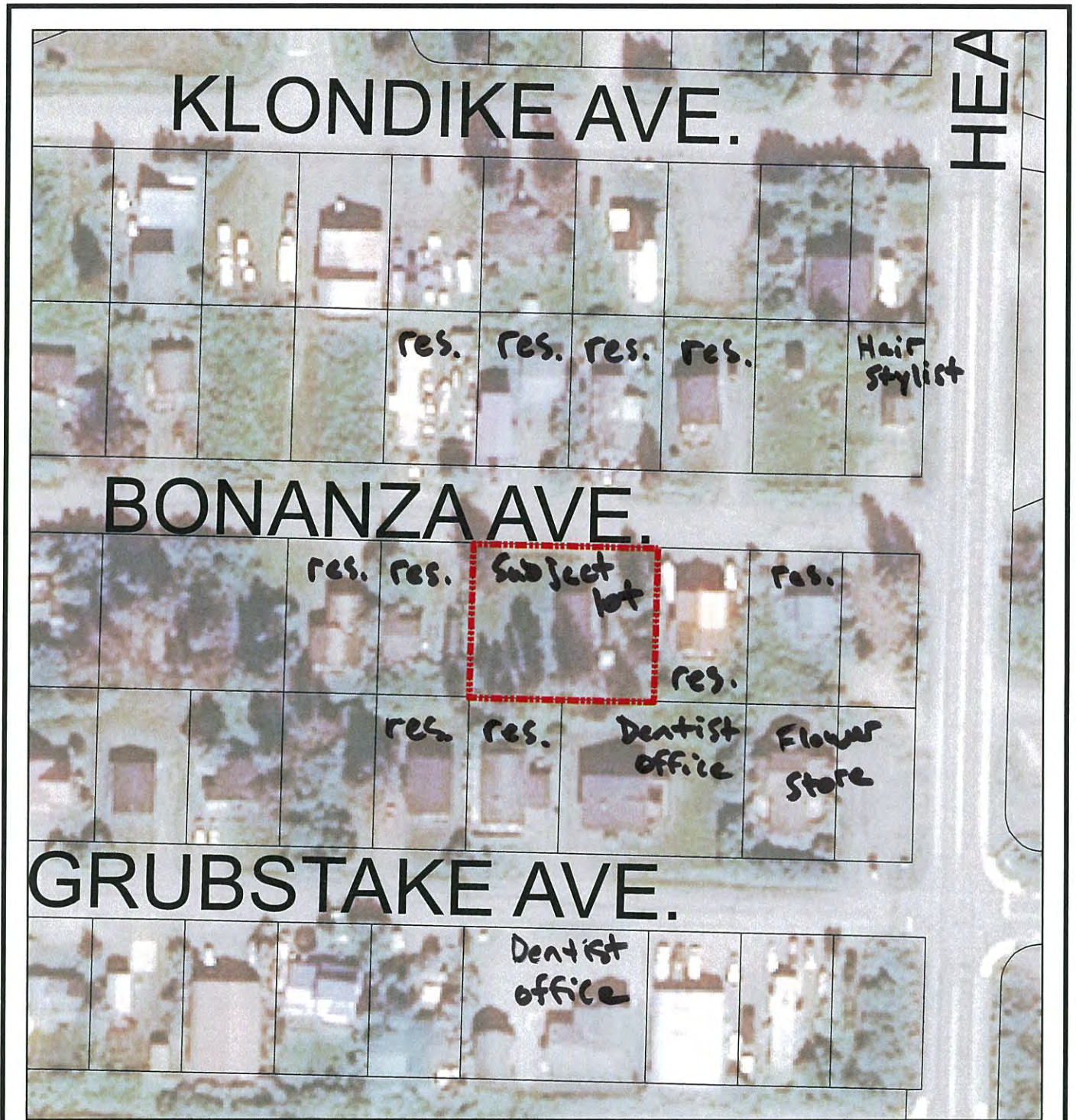
Date: 8/6/20

Looking South from Bonanza Ave.



Looking Southwest from Bonanza Ave.





City of Homer
Planning and Zoning Department

8/18/2020

Neighboring Properties Map

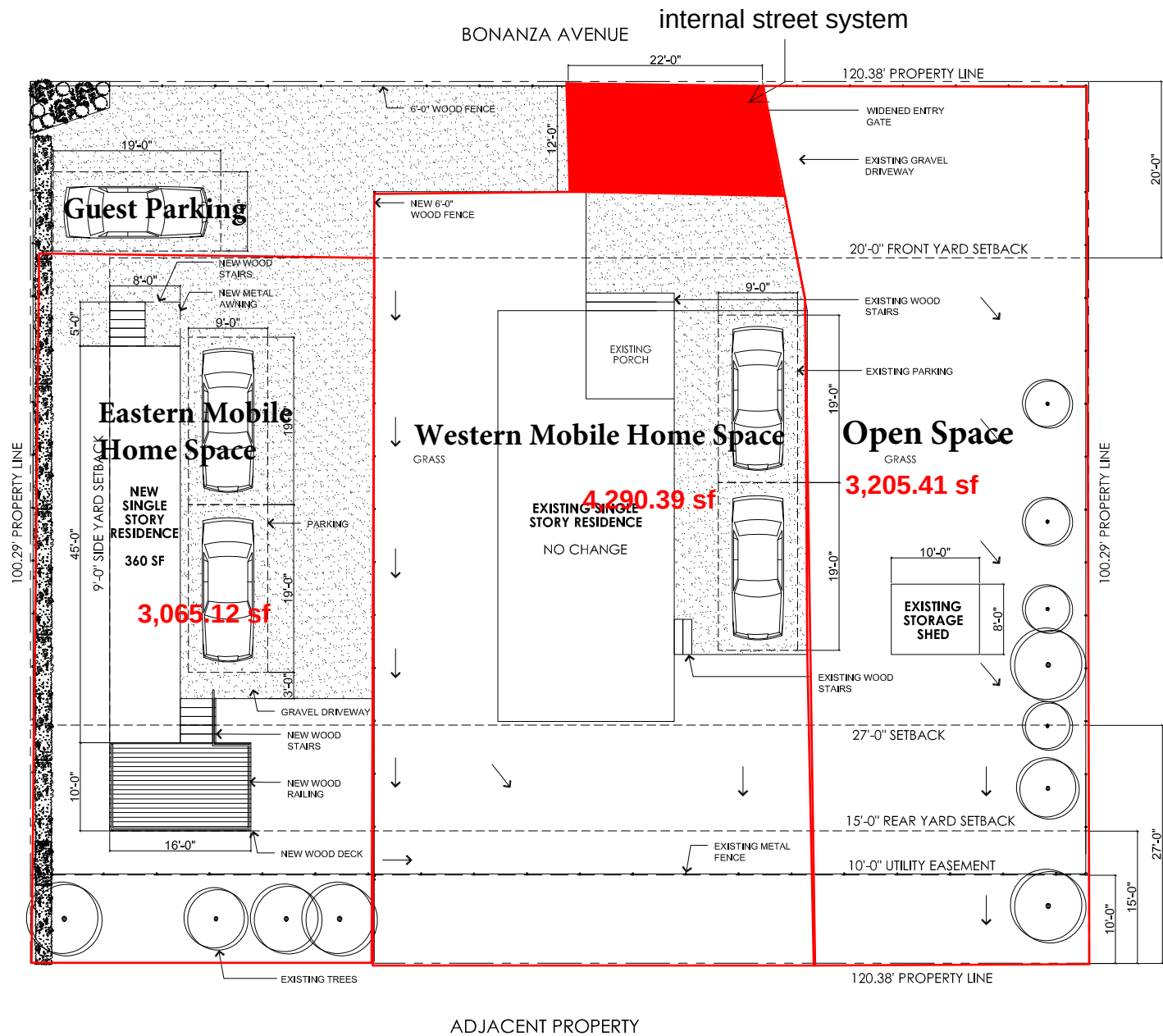
2017 Photo. Property lines
are not exact; use with care.

0 75 150 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.

Right of Way Plan



OWNER:
Scott Lowry
Lowry Construction

CONTRACTOR:
Scott Lowry
Lowry Construction

PROJECT:
542 Bonanza Avenue,
Homer, Alaska 99603

SITE PLAN

SCALE
1" = 15'-0"

2

LOT 24A
12,017 SQ FT
0.28 ACRES

PROPERTY ADDRESS:
541 BONANZA AVE
HOMER, ALASKA, 99603

TOTAL LOT AREA	12,017 SF
EXISTING SINGLE STORY RESIDENCE	430 SF
NEW CONTAINER HOME	360 SF
TOTAL +	790 SF
EXISTING ON-SITE PARKING	2 UNCOVERED SPACES
NEW ON-SITE PARKING	3 UNCOVERED SPACES

- GRAVEL
- GRASS
- TREE
- LOW PLANTING
- LOW PLANTING

- SETBACK LINE
- UTILITY EASEMENT
- PROPERTY LINE
- BUILDING FOOTPRINT
- FENCE
- SITE DRAINAGE, 2% SLOPE MINIMUM

SITE INFORMATION

SCALE
N/A

7

LEGEND

SCALE
N/A

4

LEGEND

SCALE
N/A

1

SITE PLAN

PERMIT: 08/12/2020

A1.0

Additional Photos



Photo 5. Internal picture of mobile home (through window)



Photo 6. South lot line and fence

Additional Photos



Photo 7. Eastern Lot line



Photo 8. Utility connections

PUBLIC HEARING NOTICE

Public notice is hereby given that the City of Homer will hold a public hearing by the Homer Planning Commission on Wednesday, September 2nd, 2020 at 6:30 p.m. via a virtual meeting, on the following matter:

A request for Conditional Use Permit (CUP) 20-14 to allow a mobile home park consisting of two mobile homes at 541 Bonanza Ave., Lot 24A Glacier View Subdivision No. 23, SE ¼, NW ¼ Sec. 20, T. 6 S., R. 13W., S.M., HM 0930033. A CUP is required according to HCC 21.18.030(c) mobile home parks.

Anyone wishing to view the meeting packet, attend the virtual meeting, or participate in the virtual meeting may do so by visiting the Planning Commission Regular Meeting page on the City's online calendar at <https://www.cityofhomer-ak.gov/calendar>. This information will be posted by 5pm on the Friday before the meeting.

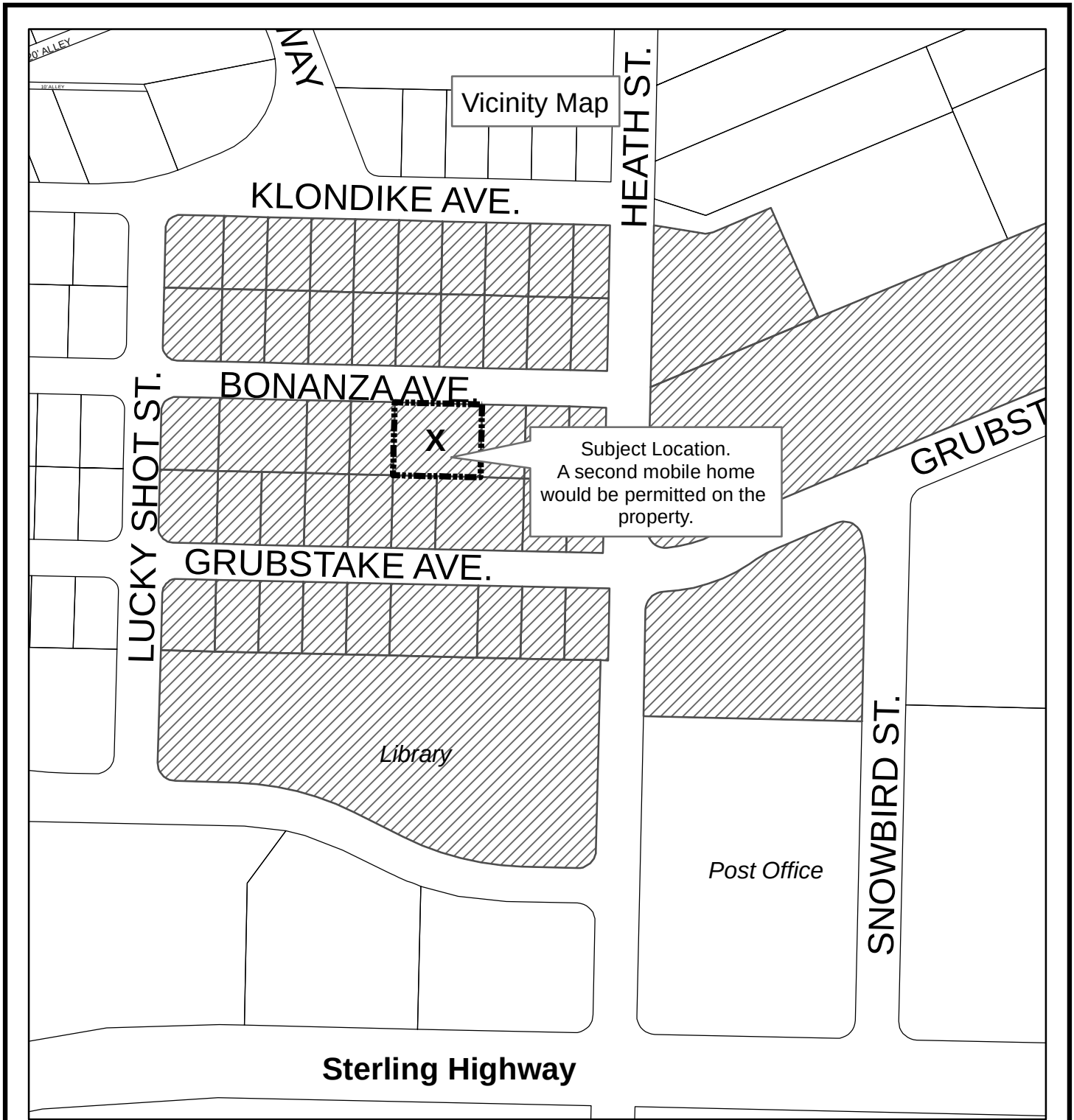
Visit the link above or call the City Clerk's Office to learn how to provide verbal testimony during the meeting via telephone or the Zoom online platform. Written comments can be emailed to planning@ci.homer.ak.us or mailed to Homer City Hall, 491 E. Pioneer Ave., Homer, AK, 99603. They may also be placed in the Homer City Hall drop box at any time. Comments must be received by 4pm on the day of the meeting.

If you have questions or would like additional information about the proposal, please contact Travis Brown with the Planning and Zoning Office at 235-3106. If you have questions about how to participate in the virtual meeting, please contact Renee Krause with the City Clerk's Office at 235-3130.

NOTICE TO BE SENT TO PROPERTY OWNERS WITHIN 300 FEET OF PROPERTY

.....

VICINITY MAP ON REVERSE



City of Homer
Planning and Zoning Department

8/18/2020

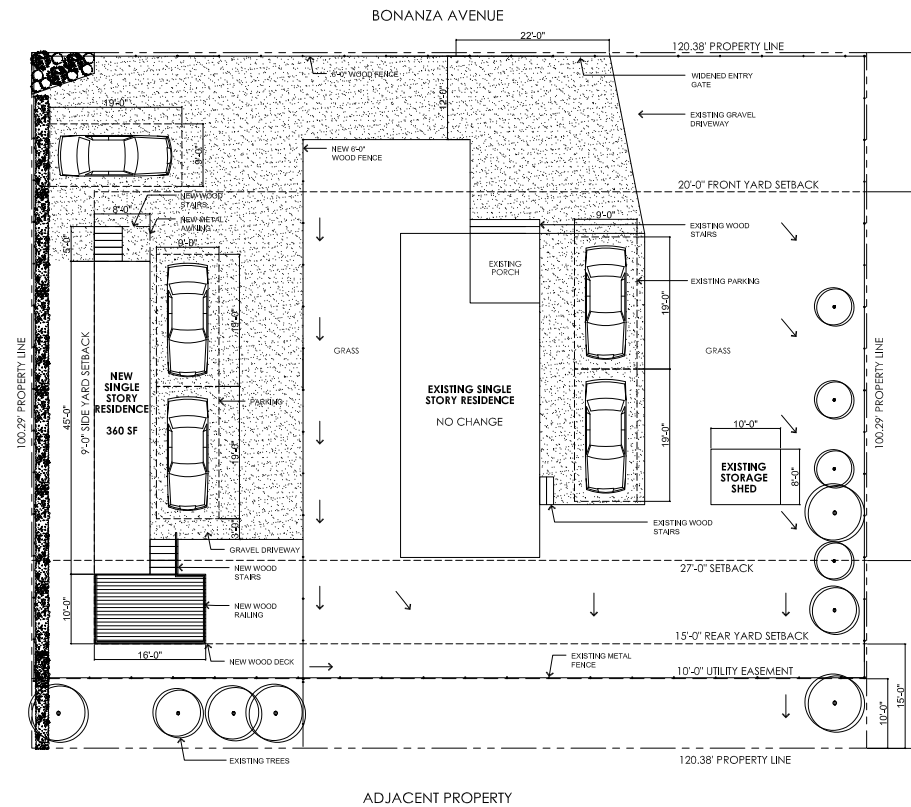
Request for Conditional Use Permit 20-14 541 Bonanza Ave

Marked lots are within 300 feet and
property owners notified.

0 150 300 Feet



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or conclusions drawn therefrom.



OWNER:
Scott Lowry
Lowry Construction

CONTRACTOR:
Scott Lowry
Lowry Construction

PROJECT:
542 Bonanza Avenue,
Homer, Alaska 99603

SITE PLAN

SCALE
1" = 15'-0"

2

LOT 24A
12,017 SQ FT
0.28 ACRES

PROPERTY ADDRESS:
541 BONANZA AVE
HOMER, ALASKA, 99603

TOTAL LOT AREA 12,017 SF

EXISTING SINGLE STORY RESIDENCE 430 SF

NEW CONTAINER HOME 360 SF

TOTAL + 790 SF

EXISTING ON-SITE PARKING 2 UNCOVERED SPACES

NEW ON-SITE PARKING 3 UNCOVERED SPACES

GRAVEL

GRASS



TREE



LOW PLANTING



LOW PLANTING

----- SETBACK LINE

- - - - - UTILITY EASEMENT

----- PROPERTY LINE

----- BUILDING FOOTPRINT

----- FENCE

→ SITE DRAINAGE, 2% SLOPE MINIMUM

SITE INFORMATION

SCALE
N/A

7

LEGEND

SCALE
N/A

4

LEGEND

SCALE
N/A

1

SITE PLAN

PERMIT: 08125000

08/12/2020

08/12/2020

08/12/2020

08/12/2020

08/12/2020

08/12/2020

08/12/2020

08/12/2020

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08/12/2020

08/12/2020

08/12/2020

View is from Bonanza Avenue looking south
toward "New Single Story Residence"





City of Homer
Planning and Zoning Department

8/18/2020

Request for Conditional Use Permit 20-13 541 Bonanza Ave

2017 Photo. Property lines
are not exact; use with care.

0 75 150 Feet



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

From: Frank Griswold <fsgriz@alaska.net>
Sent: Wednesday, September 2, 2020 3:34 PM
To: Department Planning
Cc: Julie Engebretsen
Subject: CUP 20-14

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Dear Commissioners,

1. The subject structure does not and cannot as a matter of law constitute a mobile home. HCC 21.03.040 (not HCC 21.030 as cited in Staff Report 20-58) defines mobile home in significant part as a structure that is **built on a permanent chassis and is designed for use as a dwelling.** The subject Connex was not built on a permanent chassis and was not designed for use as a dwelling. A "chassis" is the base frame of a motor vehicle or other wheeled conveyance. A Connex shipping container is designed to be transported on a trailer towed by a truck and therefore has no permanent chassis. (The truck has a permanent chassis and the trailer has a permanent chassis but the Connex shipping container does not). HCC 21.03.040 states in part as follows: "A mobile home shall be construed to remain a mobile home whether or not wheels, axles, hitch or other appurtenances are removed, and regardless of the nature of the foundation provided." It would follow that a Connex shipping container shall be construed to remain a shipping container whether or not it is modified into a dwelling unit. According to the Manufactured Housing Institute's National Communities Council (MHINCC), manufactured homes are homes built entirely in the factory under a federal building code administered by the U.S. Department of Housing and Urban Development (HUD). The MHINCC distinguishes among several types of factory-built housing: manufactured homes, modular homes, panelized homes, pre-cut homes, and mobile homes. Shipping containers are not designed or manufactured to comply with a nationally recognized model building code for site-built housing and the MHINCC does not consider modified shipping containers to be factory-built housing of any sort. Neither does HCC. Shipping containers are considered a nuisance and prohibited in the CBD. (HCC 21.18.080(c)). Modifying a shipping container does not magically transform it into something else. No matter how much lipstick one puts on a pig, at the end of the day it is still a pig. The fact that the subject structure may no longer be functional as a shipping container is irrelevant. It belongs in the dump, not in the CBD.

2. At page 3 of Staff Report 20-58 it states "Both homes would use the eastern **driveway.**" But HCC 21.54.080 mandates that "each mobile home space shall be directly accessible by a vehicle from an internal street without the necessity of crossing any other space. **Direct vehicular access from public streets to a mobile home space is prohibited.**" HCC 21.03.040 defines street as follows: "Street" means a public thoroughfare including a public street, road or highway of any description that affords a principal means of access to abutting property. **Street does not include alley or driveway.**" (Emphasis added). Furthermore, HCC 21.54.090 states: "The internal street system of a mobile home park shall provide convenient circulation by means of minor streets and collector streets. Dead-end streets shall be provided with an adequate turning circle at least 80 feet in diameter." The proposed mobile home park contains no minor streets or collector streets and therefore cannot be sustained. Applicants recently removed chain link fencing to install a new driveway providing direct vehicular access from Bonanza Avenue to the Connex. This new driveway did not exist prior to the illegal installation of the Connex. There is no evidence in the record that a

driveway permit was issued for the construction of the new driveway and it seems unlikely that it will now be abandoned. The driveway to the east provides direct vehicular access from Bonanza Avenue to the other structure on the subject lot. This direct access from Bonanza to the existing structure would be prohibited in a mobile home park under the provisions of HCC 21.54.080 cited above. There is no evidence in the record that a prerequisite driveway permit was issued for that driveway either.

3. Most building contractors quickly learn that forgiveness is easier to obtain than permission. California *contractor* Scott Lowry and his wife had the Connex placed on the subject lot before obtaining prerequisite zoning permits thereby violating HCC 21.90.090(a)(3), HCC 21.90.090(a)(6), and HCC 21.90.090(a)(7). The applicants are therefore zoning code violators per HCC 21.90.090(c). Every day upon which the act or condition occurs constitutes a separate violation. (HCC 21.90.090(b)). Violators are subject to a fine of not less than \$75 and not more than \$300 for each violation. (HCC 21.90.100). The Applicants would never get away with such flagrant zoning violations in Ojai California; its Planning Department would likely order the immediate removal of the subject structure and/or initiate other measures to enforce its zoning code.

4. The proposed structure is incompatible with the purpose of the CBD. The primary purpose of the CBD is to provide a centrally located area within the City for general retail shopping, personal and professional services, educational institutions, entertainment establishments, restaurants and other listed business uses. The primary purpose of the CBD is not to provide mobile home parks for modified Connex dwellings. The proposed structure would create conflict with nearby non-residential uses including Glacierview Garage located at 519 Klondike Avenue which I have owned and operated for over 40 years. The design of the modified Connex is not pedestrian-friendly. One has to wonder how horrible and/or illegal a CUP proposal would have to be for Planning Staff to recommend its denial.

5. The value of adjoining property will likely be negatively affected greater than that anticipated from other permitted or conditionally **permitted** (vs. **permissible**) uses in the CBD. HCC 21.71.030 mandates that the applicant "must produce evidence sufficient to enable meaningful review of the application." Thus, the applicants have the burden to prove that their proposal will not negatively affect adjoining property values greater than that anticipated ... etc. Applicants have not and likely cannot meet this burden. The review criteria prescribed under HCC 21.71.030(c) is excessively ambiguous, totally subjective, and requires the applicant to prove a negative fact. As recently argued by counsel for the City of Homer, the law rarely requires a party to prove a negative fact. *Hewing v. Alaska Workmen's Compensation Bd*, 512 P.2d 896, 900 n.14 (Alaska 1973). HCC 21.18.030(f) lists railroads as a **permissible** conditional use in the CBD. Even though no CUP application for railroad has ever been applied for or approved in the CBD, is this extremely low bar one of the standards for judging whether a different proposal will negatively affect the value of adjoining property? Or is the standard a use that has already been conditionally **permitted** and currently exists? Can it exist anywhere in the CBD or must it exist in the surrounding neighborhood of the proposed CUP? If a proposed use or structure must simply be less deleterious to adjoining property values than that anticipated from a freight train then the Commission's consideration of HCC 21.71.030(c) is pointless. HCC 21.18.010 mandates that conflicts between residential uses and nonresidential uses are to be resolved in favor of nonresidential uses so the fact that a drinking establishment could adversely affect the value of adjoining residential land is moot because owners of residential CBD properties apparently forfeit all of their constitutional property rights to the owners of nonresidential properties.

6. The proposal is not compatible with uses of surrounding land. None of the **surrounding land** (undefined) contains modified Connex dwellings or mobile home parks. HCC 21.71.020(a)(6) required Applicants to provide a map showing **neighboring lots** (undefined) and a narrative description of the existing uses those neighboring lots but they failed to do so. "Neighboring lots" is not synonymous with "abutting lots" and would arguably include all properties located within 300 feet of the subject property since the Notice of Public Hearing was sent to all (neighboring) property owners within 300 feet. The Commission should not consider this application until HCC 21.71.020(a)(6) is fully complied with. HCC 21.71.020(a)(3) required Applicants to provide the legal description of the subject lot but they did not. The Homer City Clerk rejected my initial Notice of Appeal re: CUP 14-05 because I neglected to include therein the formal legal description of the subject property in addition to its street address and KPB parcel number which were included.

7. Existing fire services may not be adequate to extinguish a meth lab fire in a modified shipping container dwelling. No input from HVFD was sought or received.

8. The fact that mobile homes and mobile home parks are listed as permitted uses and conditionally permitted uses respectively in the CBD is irrelevant since the proposed use is not a mobile home. Being compatible with the purpose of the CBD is a distinct review criteria and compatibility with the purpose of the CBD does not guarantee that the proposal will not cause undue harmful effect upon desirable neighborhood character. If the modified Connex is rented to drug dealers this would clearly cause undue harmful effect upon desirable neighborhood character. Applicants assert that the proposed dwelling is to be used "as a guest house to stay in when we visit and have family members stay while in town" but this would not be binding on Applicants or future owners unless a condition were imposed that the alleged "guest house" not become a rental or put to some other more objectionable use. Note that the Applicants and visiting family members could stay in the existing mobile home instead of in the cramped and unsightly Connex which seems better suited to drug dealers and miscreants. A mild earthquake could easily topple the existing fuel oil tank (conveniently omitted from the Applicants' fanciful conceptual drawing) spilling hundreds of gallons of fuel oil onto the adjacent property. No Commissioner or Planning Department employee would likely support the approval of CUP 20-14 if they lived next door to the subject Connex.

9. Staff's analysis pertaining to HCC 21.71.030(g) fails to address whether the proposal will be unduly detrimental to the health, safety or welfare of the surrounding area or the city as a whole. The fact that city utilities, police, fire and road maintenance services are available and adequately serve the lot may apply to HCC 21.71.030(f) but is irrelevant to HCC 21.71.030(g). HCC 21.71.030(g) is one of the review criteria that must be met before the CUP 20-14 can be approved. Staff circuitously asserts that if all applicable standards required by code are met, including this one, then this review criteria will be met. Such a finding is evasive and inadequate. If Connex shipping containers were not considered nuisances and unduly detrimental to the health, safety and/or welfare of the surrounding area they would not be prohibited in the CBD under HCC 21.18.080(c).

10. The proposal cannot comply with the applicable regulations and conditions specified in the zoning code unless the subject structure is first removed. HCC 21.70.010(a)(1) mandates that a zoning permit shall be obtained from the City Planner for the erection, construction or moving of any building or structure. HCC 21.70.010(b) states: "The zoning permit required by this section shall be obtained **prior to the commencement of any activity for which the permit is required**. Failure to do so is a violation." There is no provision in HCC for issuing after-the fact zoning permits. HCC 21.70.070 states as follows: "Nothing in this chapter shall relieve the applicant of the obligation to obtain a conditional use permit, sign permit, variance, or

other permit or approval required by other provisions of the zoning code. The zoning permit required by this chapter shall be in addition to any other applicable permit or approval requirements. If any such additional permits or approvals are required, they must be obtained **prior** to the issuance of the zoning permit under this chapter. Thus, CUP 20-14 would need to be approved before the issuance of a zoning permit and the structure would have to be removed before that zoning permit could be issued. HCC 21.70.030(c) provides that in granting a zoning permit, no City official or employee has authority to grant a waiver, variance, or deviation from the requirements of the zoning code and other applicable laws and regulations, unless such authority is expressly contained therein. There is no evidence in the record that either driveway permit has been acquired or that the CUP application fee has been paid.

11. The proposal is contrary to many applicable land use goals and objectives of the Homer Comprehensive Plan. Applicants failed to meet their burden of proof that their proposal is not contrary to the applicable goals and objectives of the Comprehensive Plan (once again Applicants were unreasonably required by city code to prove a negative) and Planning Staff ignored several applicable provisions of the Comprehensive Plan with which the proposal clearly does not comport while creatively presenting others in a favorable light. As pointed out on page 1 of Staff Report 20-58, Goal 1, Objective C is to maintain high quality residential neighborhoods. Allowing a Connex shipping container to be occupied as a dwelling unit in the CBD is clearly contrary to the goal of maintaining high quality residential neighborhoods and potentially sets a precedent would generate an influx of additional substandard housing in the CBD. The overly-broad goal of promoting infill development in all housing districts is not a legitimate zoning objective because it would support any and all development thus defeating the purpose for adopting a comprehensive development plan in the first place. "Not all of the goals articulated by the City can be considered legitimate per se. For example, any zoning change which eases restrictions on property use could be said to further the goal of "filling in vacant places." *Griswold v. City of Homer*, 925 P.2d 1015, 1023 n. 9 (Alaska 1996). In any event, the subject lot is already infilled with a single-family dwelling. Furthermore, it is not clear that the Central Business District constitutes a "housing district" which is undefined in HCC 21.03.040. Planning Staff's finding that the proposed structure may at some point "be closer to meeting the intent of the Comprehensive Plan" is not only damnation by faint praise but inadequate to support the prerequisite review criteria i.e., not being contrary to the Comprehensive Plan's applicable land use goals and objectives. Planning Staff's finding that "no evidence has been found that it is **not** contrary to the applicable land use goals and objects [sic] of the Comprehensive Plan," while very true and therefore automatic grounds for denial of the application for CUP 20-14, appears to be a Freudian slip. The photos of the subject Connex that are included in the Commission's packet constitute substantial evidence that the proposal is contrary to the applicable goals and objectives of the Comprehensive Plan. The proposed development is flagrantly contrary to many Chapter 4 land use goals and objectives including protecting community character, maintaining high quality residential neighborhoods, maintaining the quality of Homer's natural environment and scenic beauty, and encouragement of high quality buildings and site development that complement Homer's beautiful natural setting. No matter how much lipstick is applied to it, a Connex shipping container does not constitute a high quality building. Even if no evidence had been found by Planning Staff that the proposal is contrary to the applicable goals and objectives of the Comprehensive Plan, that would not constitute evidence that the proposal is not contrary to the applicable goals and objectives of the Comprehensive Plan. Quasi-judicial findings must be based on substantial evidence and a lack of evidence does not constitute evidence of any kind. (Ask your attorney).

12. Finding #10 of Staff Report 20-58 states that the project will comply with the applicable provisions of the Community Design Manual but erroneously suggests that only the outdoor lighting section of the CDM applies to the application for CUP 20-14. Applicants erroneously state that their project does not trigger a Community Design Review CDM review. Accordingly, they did not complete the design review application form. Downward lighting is required by HCC 21.59.030 but no outdoor lighting plan was submitted by the

Applicants. Because this is an application for CUP, all applicable provisions of the CDM apply, even those provisions that would not otherwise apply. If this were not the case, HCC 21.71.030(j) would be superfluous. The Commission should make a finding of law as to whether other provisions of the CDM (besides outdoor downward lighting) are applicable to the application for CUP 20-14 and therefore prerequisite for its approval. To this end, it would be prudent for the Commission to seek legal advice from an unbiased attorney not affiliated with or influenced by the Planning Department or Administration. That attorney could also advise the Commission whether a modified Connex can constitute a mobile home. Neither Planning Staff nor the Administration has the authority to deny independent legal representation to the Commission if it is requested.

13. Black's Law Dictionary defines testimony as follows: "Evidence given by a competent witness under oath or affirmation; as distinguished from evidence derived from writings, and other sources. Testimony is particular kind of evidence that comes to tribunal through live witnesses speaking under oath of affirmation in presence of tribunal, judicial or quasi-judicial." Thus, those testifying before the quasi-judicial Commission, including the Applicants, should first be sworn in.

14. HCC 21.71.010(c) states that nothing in the zoning code shall be construed to require the granting of a conditional use permit. Staff Report 20-58 was prepared before critical evidence was presented. The Commission should reject the biased, unsubstantiated, circuitous off-point, conclusionary, and blatantly erroneous findings of Staff Report 20-58, except for the Freudian slip, and deny the application for CUP 20-14. In accordance with HCC 21.71.050(b), the Commission has 45 days to issue its Decision and Findings and, within that 45-day period, may deliberate in executive session, with or without legal representation, as many times as it deems necessary. The City Planner is not a member of the Homer Advisory Planning Commission and therefore has no authority to attend the executive sessions or sign the *Commission's* Decision.

Frank Griswold

REPORTS

A. Staff Report 20-57, City Planner's Report

City Planner Abboud commented he was in transition from the acting city manager position so there is not much in this report. He noted the Council passed action items mentioned in Staff Report 20-57.

PUBLIC HEARING(S)

A. Staff Report 20-58, Conditional Use Permit 20-14 to allow a second mobile home at 541 Bonanza Avenue

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

City Planner Abboud noted the late laydown from Mr. Griswold and confirmed that all commissioners were able to review this information before the meeting.

Commissioners verbally and visually confirmed that they had reviewed the information.

City Planner Abboud briefly reviewed the laydown for the Commission noting the concerns on access and mobile home park. He stated that there were some valid points brought forward by Mr. Griswold, but the majority did not apply. He further stated that Mr. Griswold brought forward his typical arguments but he has not prevailed on previous attempts.

City Planner Abboud then reviewed Staff Report 20-58 for the commission. He commented on the following:

- Comprehensive Plan Goals and Objectives
- One large lot that was previously two lots, this can be subdivided and no CUP would be required
- Single family connex home was placed on the property without a zoning permit and the options available to address the matter
- Mobile Home Park requirement review and considering the connex as a mobile home
 - o Access for Fire Department
- Compliance with the existing definition of mobile home
- Use of similar structure in other areas of the city
- Discussion needed on when a shipping container is no longer a shipping container
- Requested a correction by the commission to fix the double negative shown in Finding 9, line 4, Requested the Commission to amend the sentence to remove the word “not” before contrary

Scott and Stacy Lowry, applicant and owner, provided a verbal presentation on the proposed project explaining the planning and goals that they wanted to reach by placing the converted connex on the property. They noted that the lot was purchased and prior to them purchasing the lot, the lot line had been vacated to create one larger lot. There is an older mobile home on the property that is currently rented and that tenant has resided on the property prior to them purchasing the property. They intend to use the new structure as a vacation home as they come to Homer every summer since they have family here. They stated that they have photos of the interior and would be happy to share. The Applicant explained that they had future plans to replace the existing mobile home with a new structure. The applicant further explained that they have been working with the planning staff to meet all the requirements of the city.

Chair Smith opened the Public Hearing.

Bob Shavelson, representing his sister who owns the neighboring parcel, commented on being caught off guard with no notice, stated that a connex does not meet the definition of mobile home, commented on the nomenclature issue with the streets and defining this as a mobile home park since it is not one; he believed there would be difficulties in reestablishing the lot line. Mr. Shavelson then commented that the comp plan has some conflicting items as goal number three is to encourage high quality buildings and site development and he opined that a connex was not that. Mr. Shavelson stated he was not going to raise serious objections if the intent of the applicant is to improve the appearance of the lot.

Chair Smith confirmed with the Clerk there were no further members of the public to provide testimony and closed the Public Hearing and requested questions for the City Planner.

Commissioners and City Planner Abboud discussed the following points:

- Review of the section of city code regarding the Central Business District (CBD) 20.18.020, Permitted uses and structures (ii.) One detached dwelling unit, excluding mobile homes, as an accessory building to a principal single-family dwelling on a lot; arguing that this could be used to define this project, to avoid the discussion of mobile homes
- Consideration of a connex as a nuisance
- City does not have a building code
- Confusion of the two mobile homes on one lot
- Bringing a connex into the CBD without permits, setting precedent that it is allowed, and the Commission's intent to limit or decrease the use of mobile homes in the city
- Conditional Use Permit would be after the fact but would bring the action into compliance
- Applicant has not been fined since they are actively working with the Planning Department to bringing the project into compliance.
- Defining this structure as a mobile home is incorrect since it is a connex.
- Staff would recommend or the applicants can consider the pulling the application and bringing it back under the additional dwelling, a CUP would not be required.
- Commissioner perspectives on the connex since that is what it is

- The trend to sustainable, affordable housing by using modular, pre-fab, manufactured homes and tiny homes

There were no further questions for the City Planner and Chair Smith requested questions from the Commission for the Applicant.

Commissioners and the Applicant discussed the following points:

- Basis and reasons for moving a connex into a developed neighborhood
- Sustainable housing, trend for tiny homes, a connex does present a modern appearance, placement on the far eastern edge, the foundation is permanent.
- Consideration that it is a modular home, not a connex, as it is tied into existing water and sewer and will have exterior improvements
- Can subdivide the property back again and keep the structure as a permanent dwelling
- Timeline for the improvements to be completed on the appearance of the connex
- Retrofitting a connex into a dwelling and electrical, plumbing standards since there are standards for mobile homes
- Additional questions could be presented in writing and the applicant would respond with photos and certifications to address those concerns of the Commission

Chair Smith called for additional questions for the applicant, there were none so he redirected the discussion back to the question on evaluating this as an Accessory Dwelling Unit (ADU) rather than for a CUP.

City Planner Abboud noted that it appeared there was agreement among the Commissioners that this structure is not a mobile home and as such it does not appear to be appropriate that the term mobile home park applies. He then reviewed the nuisance standard and noted that it is no longer a shipping container, there are no other standards to apply.

Further discussion ensued on the application of code, renovation of the connex so that it is no longer a shipping container, if they amend to reflect a permitted use then a CUP is not required, clarification on the number of structures on the property, the connex does not meet the definition of mobile home and where a challenge will come from the neighbor by appeal.

City Planner Abboud stated that it should be failed since they are not dealing with a mobile home or mobile home park as it did not meet the definition.

Commissioner Bentz then recognized the city code that addressed nuisance standards HCC 21.18.080 (c.) Commercial vehicles, trailers, shipping containers and other similar equipment used for transporting merchandise shall remain on the premises only as long as required for loading and unloading operations, and shall not be maintained on the premises for storage purposes unless screened from public view. She noted that in the packet there is a photo showing the interior of the connex and did not believe that it was capable of transporting merchandise and provided a description of the interior represented by the photo.

Commissioner Highland also noted that a shipping container is allowed if screened from public view as described in the same section of city code Commissioner Bentz referenced.

Commissioner Bentz additionally stated that a connex could fall under the designated permitted use of mini storage. She observed that the Commission could not show bias against a structure based on the materials used, noting the blue tarps being used on Bonanza Street as roofing materials and the applicants have undergone a level of scrutiny that the Commission does not talk about with people such as the renovated construction with fire alarms and electrical systems.

City Planner Abboud responding to the question of changing it from a mobile home, that since Homer does not have a building code, and until the city adopts building codes, a dwelling can be built out of any material. This is a dwelling and has all the features that is expected in a structure defined as such.

Chair Smith requested a motion.

VENUTI/ HIGHLAND MOVE TO ADOPT STAFF REPORT 20-58 AND APPROVE CUP 20-14 WITH FINDINGS 1-10 AND CONDITIONS 1-7

- 1. ALL DEVELOPMENT MUST BE COMPLETED BY AUGUST 1, 2021. THIS INCLUDES PAINTING, SKIRTING, PORCH CONSTRUCTION AND COMPLETE SITE DEVELOPMENT AS SHOWN ON THE SITE PLAN AND PROJECT ELEVATIONS.*
- 2. THE ZONING PERMIT AND CUP MAY ONLY BE EXTENDED BY THE PLANNING COMMISSION.*
- 3. FAILURE TO COMPLETE DEVELOPMENT BY AUGUST 1, 2021 MAY RESULT IN A ZONING VIOLATION AND FINES UNTIL THE STRUCTURE IS REMOVED OR BROUGHT INTO COMPLIANCE.*
- 4. BOTH MOBILE HOMES SHALL MEET THE REQUIREMENTS OF HCC 21.54.100*
- 5. COVERED STORAGE MEETING REQUIREMENTS OF HCC 21.54.070, NOT LESS THAN 200 CUBIC FEET OF COVERED STORAGE PER UNIT SHALL BE PROVIDED.*
- 6. PLANT OR SCREEN THE EASTERN AND SOUTHERN PROPERTY LINES WITH A FENCE OR COMBINATION EVERGREEN DECIDUOUS PLANTINGS TO PROVIDE EFFECTIVE SCREENING.*
- 7. OUTDOOR LIGHTING MUST BE DOWN LIT PER HCC 21.59.030*

It was noted that there was a typographical error in the staff report numbers, it was stated that it can be corrected by the Clerk.

City Planner Abboud provided clarification that the Commission could fail the motion and the Applicant would apply for a permit under the ADU and it would be handled administratively. He stated that there are three choices for the Commission: Approve the Conditional Use Permit, Approve with more conditions or deny the permit.

The Commission and City Planner Abboud entertained a brief discussion on amending the findings to substantiate the denial of the CUP by amending the cited city code citation from Finding 1, HCC 20.18.020 (m) and replace with Finding 1 HCC 20.18.020(ii) one

detached dwelling unit, excluding mobile homes, as an accessory building to a principal single-family dwelling on a lot and that two the Commission finds that the structure in question, the shipping container was not used for transportation of merchandise and therefore HCC 21.18.080 Nuisance standards, item c, does not apply.

Chair Smith called for a roll call vote.

VOTE. NO, BENTZ, DAVIS, HIGHLAND, VENUTI, SMITH

Motion failed.

Chair Smith thanked the applicants for a very interesting topic and he wanted to make them aware that the Commission was trying to advocate for the them while addressing the concerns presented by Mr. Griswold and being applicable to city code.

Mr. Lowry responded that he was appreciative of the Commission processes and just wanted to do what was easiest for the Commission and city in regards to paperwork and permits. He had noted through the chat option that they could withdraw the permit application if that was easier but it sounds as if it is past that point. He thanked everyone for their time and discussion tonight.

City Planner Abboud clarified that the applicant can contact the planning department to proceed to the next step for their project.

B. Staff Report 20-60, Medical Zoning District

Chair Smith introduced the item by reading of the title.

City Planner Abboud provided a brief summary of the previous actions on the draft ordinance.

There is no applicant as the city is the applicant.

Chair Smith opened the public hearing and seeing no members of the audience coming forward to provide testimony he closed the public hearing and opened the floor to questions from the Commission.

There were no questions from the Commissioners for the City Planner.

Chair Smith Requested a motion.

VENUTI/ BENTZ MOVE TO ADOPT STAFF REPORT 20-60 AND FORWARD THE DRAFT ORDINANCE CREATING A MEDICAL ZONING DISTRICT TO CITY COUNCIL.



HOMER ADVISORY PLANNING COMMISSION

September 2, 2020

RE: Conditional Use Permit (CUP) 20-14
Address: 541 Bonanza Ave
Legal: LEGAL T 6S R 13W SEC 20 SEWARD MERIDIAN HM 0930033
GLACIER VIEW SUB NO 23 BLOCKS 8 9 & 10 LOT 24A

DECISION

Introduction: Scott and Stacy Lowry (the “Applicants”) applied to the Homer Advisory Planning Commission (the “Commission”) for a Conditional Use Permit (CUP) under Homer City Code HCC 21.18.030(c) for “mobile home parks” at 541 Bonanza Avenue.

The application was scheduled for a public hearing as required by Homer City Code 21.94 before the Commission on September 2, 2020. Notice of the public hearing was published in the local newspaper and sent to 40 property owners of 50 parcels.

The Commission hereby denies the request for Conditional Use Permit 20-14. Five Commissioners were present and voted unanimously to deny the proposal.

Background and Facts:

Evidence Presented: City Planner Abboud confirmed that the Commissioners had time to read the laydown presented by Frank Griswold in opposition to the proposal. The Applicants reviewed their plan to add an additional dwelling to the site to be used as a vacation home.

Public Testimony: Bob Shavelson, representing his sister with a nearby property interest, was concerned that the connex shipping container refurbished into a dwelling does not meet the definition of mobile home and that it conflicts with the goal of encouraging high quality buildings and site development found in the comprehensive plan.

Written Testimony: Frank Griswold provided a written comment in opposition that was provided to the Commission prior to the meeting.

Discussion: A discussion regarding the status of the use of a repurposed Connex container for a dwelling ensued. The Commissioners determined that the proposed second structure was not a mobile home. The Commission also noted that the structure was not used for the transportation of merchandise, so it did not constitute equipment used for the transporting of merchandise as described in HCC 21.18.080 (c).

Findings of Fact: After careful review of the record and consideration of the testimony presented at the hearing, the Commission determines that Conditional Use Permit 20-14 does not satisfy all the review criteria under HCC 21.71.030 and thus denies the conditional use.

Pursuant to HCC 21.71.030 and HCC 21.71.040, a conditional use must satisfy the following criteria:

- a. The applicable code authorizes each proposed use and structure by conditional use permit in that zoning district.
- b. The proposed use(s) and structure(s) are compatible with the purpose of the zoning district in which the lot is located.
- 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.
- d. The proposal is compatible with existing uses of surrounding land.
- e. Public services and facilities are or will be, prior to occupancy, adequate to serve the proposed use and structure.
- 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.
- g. The proposal will not be unduly 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.

- i. The proposal is not contrary to the applicable land use goals and objectives of the Comprehensive Plan.
- j. The proposal will comply with all applicable provisions of the Community Design Manual.

Based on the finding(s) below the proposed conditional use fails to satisfy all the criteria identified in HCC 21.71.030. The Commission hereby denies Conditional Use Permit 20-14 the following finding(s).

Finding 1: The converted dwelling was not designed to meet the standards for a manufactured home (mobile home) determined by the U. S. Department of Housing and Urban Development and does not constitute a mobile home.

Finding 2: The proposal does not satisfy the criteria under HCC 21.71.030 (a) as “Mobile Home Park” is not applicable code in consideration of the proposed structure.

Conclusion

Based on the foregoing findings of fact and law, Conditional Use Permit 20-14 is hereby denied.

Date

Chair, Scott Smith

Date

City Planner, Rick Abboud, AICP

NOTICE OF APPEAL RIGHTS

Pursuant to Homer City Code, Chapter 21.93.060, any person with standing that is affected by this decision may appeal this decision to the Homer Board of Adjustment within thirty (30) days of the date of distribution indicated below. Any decision not appealed within that time shall be final. A notice of appeal shall be in writing, shall contain all the information required by Homer City Code, Section 21.93.080, and shall be filed with the Homer City Clerk, 491 East Pioneer Avenue, Homer, Alaska 99603-7645.

CERTIFICATION OF DISTRIBUTION

I certify that a copy of this Decision was mailed to the below listed recipients on _____, 2020. A copy was also delivered to the City of Homer Planning Department and Homer City Clerk on the same date.

Date

Travis Brown, Planning Technician

Scott & Stacy Lowry
907 Daly Road
Ojai, CA 9323

Michael Gatti
JDO Law
3000 A Street, Suite 300
Anchorage, AK 99503

Rob Dumouchel, City Manager
491 E Pioneer Avenue
Homer, AK 99603



HOMER ADVISORY PLANNING COMMISSION

September 2, 2020

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Address: 541 Bonanza Ave
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The Commission hereby denies the request for Conditional Use Permit 20-14. Five Commissioners were present and voted unanimously to deny the proposal.

Background and Facts:

Evidence Presented: City Planner Abboud confirmed that the Commissioners had time to read the laydown presented by Frank Griswold in opposition to the proposal. The Applicants reviewed their plan to add an additional dwelling to the site to be used as a vacation home.

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Findings of Fact: After careful review of the record and consideration of the testimony presented at the hearing, the Commission determines that Conditional Use Permit 20-14 does not satisfy all the review criteria under HCC 21.71.030 and thus denies the conditional use.

Pursuant to HCC 21.71.030 and HCC 21.71.040, a conditional use must satisfy the following criteria:

- a. The applicable code authorizes each proposed use and structure by conditional use permit in that zoning district.
- b. The proposed use(s) and structure(s) are compatible with the purpose of the zoning district in which the lot is located.
- 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.
- d. The proposal is compatible with existing uses of surrounding land.
- e. Public services and facilities are or will be, prior to occupancy, adequate to serve the proposed use and structure.
- 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.
- g. The proposal will not be unduly 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.

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

j. The proposal will comply with all applicable provisions of the Community Design Manual.

Based on the finding(s) below the proposed conditional use fails to satisfy all the criteria identified in HCC 21.71.030. The Commission hereby denies Conditional Use Permit 20-14 the following finding(s).

Finding 1: The converted dwelling was not designed to meet the standards for a manufactured home (mobile home) determined by the U. S. Department of Housing and Urban Development and does not constitute a mobile home.

Finding 2: The proposal does not satisfy the criteria under HCC 21.71.030 (a) as “Mobile Home Park” is not applicable code in consideration of the proposed structure.

Conclusion

Based on the foregoing findings of fact and law, Conditional Use Permit 20-14 is hereby denied.

Oct 22, 2020
Date


Chair, Scott Smith

10/22/2020
Date


City Planner, Rick Abboud, AICP

NOTICE OF APPEAL RIGHTS

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CERTIFICATION OF DISTRIBUTION

I certify that a copy of this Decision was mailed to the below listed recipients on 10.22, 2020. A copy was also delivered to the City of Homer Planning Department and Homer City Clerk on the same date.

10.22.2020
Date


Rick Abboud, AICP, City Planner

Scott & Stacy Lowry
907 Daly Road
Ojai, CA 9323

Rob Dumouchel, City Manager
491 E Pioneer Avenue
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Michael Gatti
JDO Law
3000 A Street, Suite 300
Anchorage, AK 99503
Frank Griswold
519 Klondike Ave
Homer, AK 99603

Further discussion ensued on the screening requirement and height of screening landscape and the Commissioners expressed that the applicant could work it out with Planning Staff the landscape requirement.

VOTE.(Amendment). YES. BARNWELL, BENTZ, HIGHLAND, PETSKA-RUBALCAVA, SMITH

Chair Smith called for the vote on the main motion as amended.

VOTE. NON-OBJECTION. UNANIMOUS CONSENT.

Motion carried.

Commissioner Venuti was invited back to the meeting.

PLAT CONSIDERATION

PENDING BUSINESS

NEW BUSINESS

- A. Decisions and Findings for Conditional Use Permit 20-14 to allow a second mobile home at 541 Bonanza Avenue.

Chair Smith introduced the item by reading of the title and invited City Planner Abboud to provide some clarification on changes.

City Planner Abboud provided clarification on Finding two to make sure it was tied to the criteria and wanted to make sure the Commission reviewed the document and does not have anything to amend.

Chair Smith requested a motion to adopt the Decisions and Findings as written.

BENTZ/VENUTI MOVED TO ADOPT THE DECISIONS AND FINDINGS FOR CONDITIONAL USE PERMIT 20-14 TO ALLOW A SECOND MOBILE HOME AT 541 BONANZA AVE AND ATTACHED FINDING TWO.

There was no discussion.

VOTE. NON-OBJECTION. UNANIMOUS CONSENT.

Motion carried.

INFORMATIONAL MATERIALS

From: [Frank Griswold](#)
To: [Melissa Jacobsen](#)
Cc: [Betsy Krause](#)
Subject: For the Record Re: Appeal of ZP 1020-782, Non-Renderings Taken by Appellant on December 16, 2020.
Date: Tuesday, December 29, 2020 4:06:26 PM

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From: [Frank Grissold](#)
To: [Melissa Jacobsen](#)
Cc: [Bene Krause](#)
Subject: For Inclusion Into ZP 1020-782 Appeal Record and Packet (Taken by Appellant on 12/30/2020)
Date: Wednesday, December 30, 2020 1:16:22 PM

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.













From: [Frank Griswold](#)
To: [Melissa Jacobsen](#)
Cc: [Betsy Krause](#)
Subject: Additional Photos For Inclusion Into ZP 1020-782 Appeal Record and Packet (Taken by Appellant on 12/30/2020)
Date: Wednesday, December 30, 2020 1:47:21 PM

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.









From: [Rick Abboud](#)
To: [Renee Krause](#)
Cc: [Travis Brown](#)
Subject: FW: Appeal of Issuance of Zoning Permit 1020-782 comment
Date: Wednesday, January 6, 2021 2:21:32 PM

So, far this is all we have.

Rick

From: michelle borland <rmborland@gmail.com>
Sent: Tuesday, January 5, 2021 9:48 AM
To: Department Planning <Planning@ci.homer.ak.us>
Cc: Randy Borland <borlandr@gmail.com>
Subject: Appeal of Issuance of Zoning Permit 1020-782 comment

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Good Morning,

Please accept these comments in regards to the appeal of the issuance of Zoning Permit 1020-782, the converted shipping container at 541 Bonanza Ave in Homer.

My property is at 519 Bonanza Ave, and there is one regular lot separating my property from the property at 541 Bonanza.

I am **opposed to** allowing the converted shipping container. This neighborhood started life as the Barefoot Trailer Park, and in the time that I have owned my small single family home, more and more of the trailers have been phased out and homes have been built. In my opinion, that has been a positive development for this neighborhood in the 20 years I have owned my property.

I do not think that packing additional living spaces into the lots is beneficial to the overall quality of life and long-term property value of the neighborhood. I look forward to a time when there are small businesses and single family homes, not shipping containers packed into city lots.

Thank you for reconsidering the approval of this zoning permit. Again, I am against allowing the shipping container mobile home being allowed in this neighborhood.

If you have any further questions, please contact me at rmborland@gmail.com.

Sincerely,

Michelle Borland
519 Bonanza Ave.
Homer, AK 99603



OATH OF OFFICE

PLANNING COMMISSION

I, Kalie Petska-Rubalcava, having been duly appointed to the Office of Commissioner of the Planning Commission of the City of Homer, Alaska, with a term of office to expire July 1, 2023, in compliance with Title 29, of the Alaska Statutes, and Homer City Code, do hereby prior to assuming the duties of said office effective July 15, 2020 solemnly affirm to defend and support the Constitution of the United States, the Constitution of the State of Alaska, and the Ordinances of the City of Homer, and do pledge to honestly, faithfully, and impartially perform all duties of the office which I am about to enter, according to law, and therein do equal right and justice to all.

In Witness Whereof, I hereunto set my hand this ____ day of
12/30/2020, 2020.

DocuSigned by:
Kalie Petska-Rubalcava
Kalie Petska-Rubalcava

Attest:

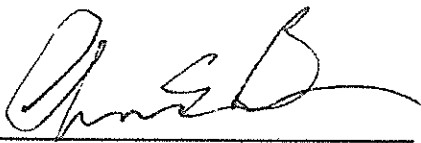
Renee Krause
Renee Krause, MMC, Deputy City Clerk

OATH OF OFFICE

PLANNING COMMISSION

I, Charles Barnwell, having been duly appcinted to the Office of Commissioner of the Planning Commission of the City of Homer, Alaska, with a term of office to expire July 1, 2023, in compliance with Title 29, of the Alaska Statutes, and Homer City Code, do hereby prior to assuming the duties of said office effective July 15, 2020 solemnly affirm to defend and support the Constitution of the United States, the Constitution of the State of Alaska, and the Ordinances of the City of Homer, and do pledge to honestly, faithfully, and impartially perform all duties of the office which I am about to enter, according to law, and therein do equal right and justice to all.

In Witness Whereof, I hereunto set my hand this 14th day of JULY, 2020.


Charles Barnwell

Attest:


Renee Krause, MMC, Deputy City Clerk

From: [Frank Griswold](#)
To: planning@ci.homer.ak.us
Cc: citymanager@cityofhomer-ak.gov
Subject: CUP 20-14
Date: Saturday, October 3, 2020 4:27:16 PM

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Dear Commissioners,

At the September 2, 2020 HAPC meeting it was inappropriate for Chair Smith to redirect the discussion to the Commission's evaluation of the proposed use as an accessory dwelling unit because no public notice had been distributed pertaining to any proposal for accessory dwelling unit. The Commission's discussion should have been limited to whether the proposed second structure met the definitions of HCC 21.18.030(c) and satisfied the prerequisite review criteria prescribed under HCC 21.71.030(a)-(j). Furthermore, the accessory dwelling unit contemplated by the Commission under HCC 21.18.020(ii) is not a conditional use and therefore not initially subject to Commission approval. If City Planner Abboud subsequently determines that the proposed use is permissible under HCC 21.18.020(ii) and that decision is appealed to the Commission, the Commission can no longer function as an impartial quasi-judicial body since it has already made up its collective mind and pre-judged the matter. At page 8 of the minutes it states: "Chair Smith thanked the applicants for a very interesting topic and wanted to make them aware that the Commission was trying to advocate for them while addressing the concerns presented by Mr. Griswold and being applicable to city code." It is not the role of a quasi-judicial body to advocate for any party and it is alarming that Chair Smith does not realize this. At pages 10-11 of the minutes, Commissioner Venuti characterized Mr. Griswold as a pain in the neck for a long time who could be considered in a negative manner. In so doing, Mr. Venuti was attempting to sway the entire Commission in favor of the Applicants. Commissioner Venuti's animosity, bias, and perpetual lack of understanding about proper Commission conduct render him unfit to serve on the Commission. An extensive Commission training session and attorney oversight of Commission conduct is long overdue.

HCC 1.18.020 states in relevant part as follows:

"Partiality" applies only in quasi-judicial proceedings and means:

1. The ability of a member of the quasi-judicial body to make an impartial decision is actually impaired; or
2. The circumstances are such that reasonable persons would conclude the ability of the member to make an impartial decision is impaired and includes, but is not limited to, instances in which:
 - a. The member has a personal bias or prejudice for or against a party to the proceeding including a party's lawyer;
 - b. The member or an immediate family member is a party, material witness to the proceeding or represents a party in the proceeding.

HCC 1.18.048 (Procedure for declaring and ruling on partiality in quasi-judicial matters) states as follows:

a. A City official or the City Manager who has partiality concerning a quasi-judicial matter shall not advise on matter, adjudicate the matter or serve as a member of a body adjudicating the matter.

b. A City official who is a member of a quasi-judicial body and who has or may have partiality concerning a matter to be adjudicated shall disclose the facts concerning the official's possible partiality to the body to the parties to the matter prior to the commencement of proceedings by the body. Any member of the body, and any party to a matter before the body, may raise a question concerning a member's partiality, in which case the member in question shall disclose facts concerning the official's possible partiality in the matter.

c. After such disclosure, the City official may excuse themselves for partiality without a vote of the body, otherwise the body (including a body comprised of City Council members when serving in a quasi-judicial capacity) shall by majority vote rule on whether the member must be excused from participation, which must be the ruling when the body determines the official has partiality concerning the matter.

d. Rule of Necessity. Exceptions to a ruling excusing a member from participation shall be made in cases where:

1. By reason of being excused for partiality the number of members of the Council or other body eligible to vote is reduced to less than the minimum number required to approve the official action;

2. No other body of the City has jurisdiction and authority to take the official action on the matter; and

3. The official action cannot be set aside to a later date, within a reasonable time, when the body could obtain the minimum number of members to take action who are not excused for partiality.

When the body determines this exception applies, then all members, except the applicant when the applicant is a member of the body, shall participate in the official action.

Chair Smith and Commissioner Venuti are blatantly biased and therefore should not participate further in this matter. City Planner Rick Abboud has no authority to sign the Commission's Decision. Frank Griswold and Bob Shavelson actively participated in the September 2, 2020 proceedings and should therefore be included in the distribution of the Commission's Decision. Excluding opposing parties from the Decision's distribution and thereby potentially denying them their appeal rights per HCC 21.93.060 is further evidence of partiality/bias.

Frank Griswold



City of Homer

www.cityofhomer-ak.gov

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: Frank Griswold, Appellant

FROM: Melissa Jacobsen, MMC, City Clerk

DATE: November 10, 2020

SUBJECT: Appeal Record Complete – Appeal of Issuance of Zoning Permit 1020-782

Appeal: To the Planning Commission of the Planning Departments issuance of Residential New Construction Zoning Permit 1020-782 for Residential Zoning Permit at 541 Bonanza Avenue.

Pursuant to Homer City Code Section 21.93.300 the appellant shall be notified by mail when the record is complete.

Copies of the record are available at the City Clerk's office. Please call 235-3130 or email clerk@ci.homer.ak.us if you have questions regarding this appeal record.

The date for the Appeal Hearing has not been set as of the mailing of this notice. The above mentioned parties shall be provided not less than 15 days' written notice of the time and place of the appeal hearing. Other parties who enter a notice of appearance, and neighboring property owners will be notified as well. This process is outlined in HCC 29.93.100(b).

Cc: City Manager, City Planner, Scott and Stacy Lowry

PUBLIC HEARING NOTICE

Public notice is hereby given that the City of Homer will hold a public hearing by the Homer Planning Commission on Wednesday, January 6, 2021 at 5:30 p.m. via a virtual meeting, on the following matter:

Memorandum PL 21-01, Appeal of Issuance of Zoning Permit 1020-782 to the Homer Planning Commission. Zoning Permit 1020-782 approved an accessory dwelling unit, a converted shipping container, at 541 Bonanza Ave., Lot 24A, Glacier View Subdivision No. 23., Sec. 20, T. 6 S., R. 13 W., S.M. HM 0930033.

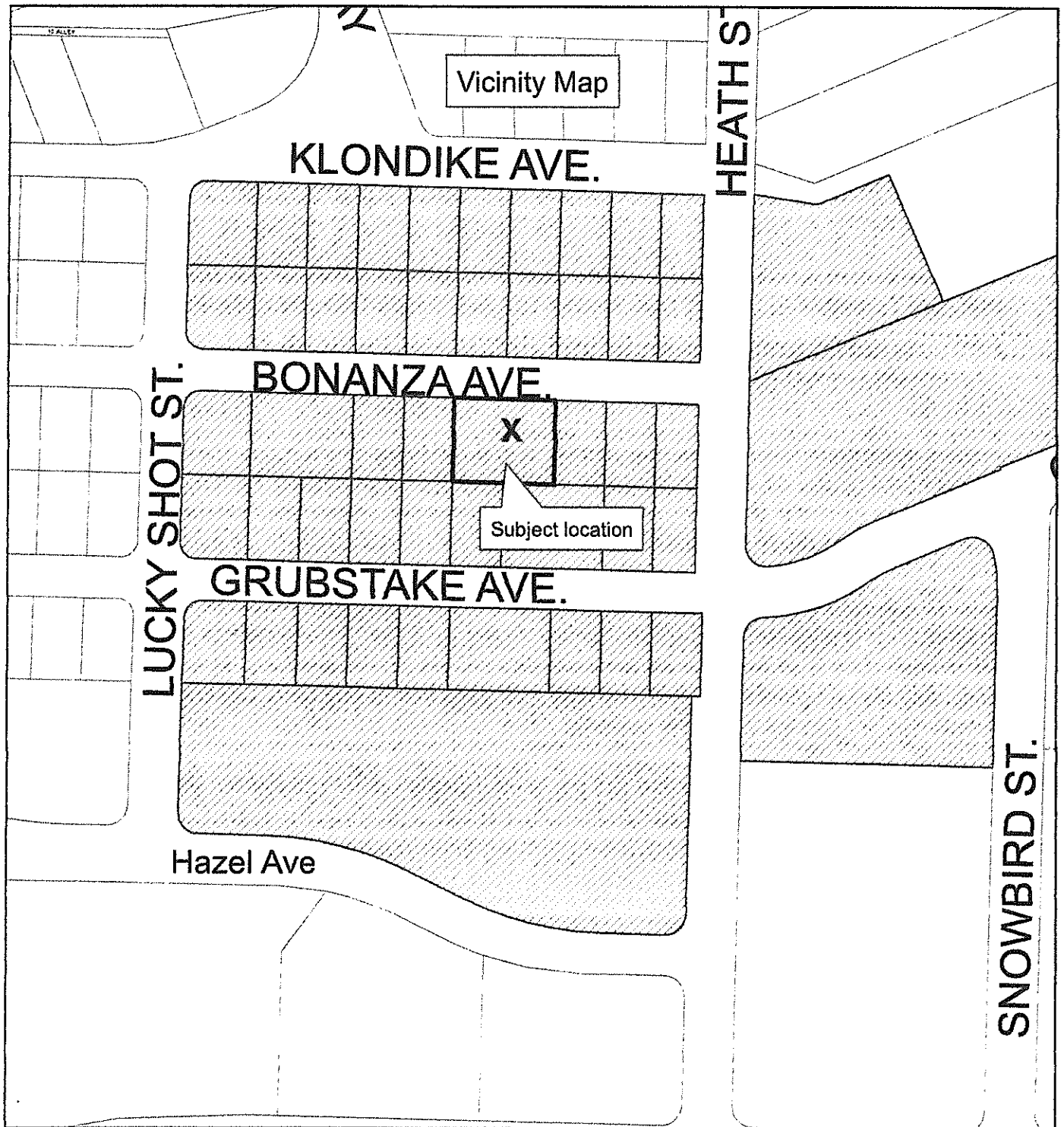
Anyone wishing to view the meeting packet, attend the virtual meeting, or participate in the virtual meeting may do so by visiting the Planning Commission Regular Meeting page on the City's online calendar at <https://www.cityofhomer-ak.gov/calendar>. This information will be posted by 5pm on the Friday before the meeting.

Visit the link above or call the City Clerk's Office to learn how to provide verbal testimony during the meeting via telephone or the Zoom online platform. Written comments can be emailed to planning@ci.homer.ak.us or mailed to Homer City Hall, 491 E. Pioneer Ave., Homer, AK, 99603. They may also be placed in the Homer City Hall drop box at any time. Comments must be received by 4pm on the day of the meeting.

If you have questions or would like additional information about the matter, please contact Rick Abboud with the Planning and Zoning Office at 235-3106. If you have questions about how to participate in the virtual meeting, please contact Renee Krause with the City Clerk's Office at 235-3130.

NOTICE TO BE SENT TO PROPERTY OWNERS WITHIN 300 FEET OF PROPERTY

VICINITY MAP ON REVERSE



City of Homer
Planning and Zoning Department

Appeal of a zoning permit at 541 Bonanza

Marked lots are within 300 feet and
property owners notified.



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.

From: tbrown@ci.homer.ak.us
To: MIacobsen@ci.homer.ak.us
Cc: RAbboud@ci.homer.ak.us
Subject: zoning permit appeal procedures/mailout
Date: Sunday, December 13, 2020 3:31:26 PM
Attachments: [Mailout Notice.docx](#)

Melissa,

I'm out of the office all next week and just wanted to send you some info on this so you know what's coming from Planning and can address anything with Rick/Julie next week if need be.

I plan for our office to take care of the property owner mailout, per HCC 21.93.100(b) & 21.94.030, and assume you are taking care of the rest of the notification procedures. If that's not the case, let one of us know ☺

We plan to mail the attached notice (pending Rick's review) with vicinity map on Tues. Dec. 22. I will be in the office on Monday to finalize it.

Thanks,

Travis Brown
Planning Technician
City of Homer
(907)235-3106

From: Rick Abboud RAbboud@ci.homer.ak.us
Subject: RE: Memorandum PL 21-01
Date: December 30, 2020 at 10:50 AM
To: Frank Griswold fsgriz@alaska.net, Department Planning Planning@ci.homer.ak.us
Cc: Melissa Jacobsen MJacobsen@ci.homer.ak.us

Mr. Griswold,

The notice that you received regarding Memorandum PL 21-01 was sent in error and was in addition to the required notice that the Clerks administer. We did not have the format of the hearing and previously we had used a much simpler process at this level than that which you require (hence, the memo). I am preparing a traditional brief for the hearing. if I am to create a memo, it would just state the format of the hearing (which I am unable to verify at this time).

Sincerely,

Rick Abboud, AICP
City Planner
491 E Pioneer Ave
Homer, AK 99603
(o) 907-235-3106
(f) 907-235-3118

-----Original Message-----

From: Frank Griswold <fsgriz@alaska.net>
Sent: Tuesday, December 29, 2020 5:01 PM
To: Department Planning <Planning@ci.homer.ak.us>
Cc: Melissa Jacobsen <MJacobsen@ci.homer.ak.us>
Subject: Memorandum PL 21-01

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Please email me Memorandum PL 21-01.

Frank



City of Homer

www.cityofhomer-ak.gov

Office of the City Clerk

491 East Pioneer Avenue
Homer, Alaska 99603

clerk@cityofhomer-ak.gov

(p) 907-235-3130

(f) 907-235-3143

NOTICE OF HEARING AND SUPPLEMENTED RECORD

December 9, 2020

To Parties of Record: Frank Griswold, Appellant
Scott and Stacy Lowry, Property Owner

A hearing on the appeal to the Planning Commission regarding Zoning Permit 1020-782 issued to Scott and Stacy Lowry for their property located at 541 Bonanza Avenue, has been set for Wednesday, January 6, 2021 at 5:30 p.m. The hearing will be conducted by Zoom Meeting and pursuant to Homer City Code 21.93.300 this meeting is open to the public.

To join the Zoom meeting on your computer go to www.zoom.us and select Join A Meeting. From there follow the prompts to enter the meeting ID and password below.

Meeting ID: 940 8082 9916 Passcode: 052186

To participate by phone only, you may dial one of the following phone numbers and enter the same meeting ID and passcode, 1-669-900-6833, 1-253-215-8782 or Toll Free 888-788-0099 or 877-853-5247.

Please be advised the Appeal Record is supplemented to include the meeting minutes from the September 2, 2020 Planning Commission meeting, at the request of the appellant. A copy of the minutes are included as a supplement to the record.

Melissa Jacobsen, MMC, City Clerk

From: Frank Griswold fsgriz@alaska.net
Subject: November 10, 2020 Notice of Completed Appeal Record
Date: November 16, 2020 at 10:40 PM
To: Melissa Jacobsen mjacobsen@ci.homer.ak.us
Cc: citymanager@cityofhomer-ak.gov, Rick Abboud rabboud@ci.homer.ak.us

Melissa,

The first paragraph of your November 10, 2020 Notice states as follows: "Appeal: To the Planning Commission of the Planning Departments issuance of Residential New Construction Zoning Permit 1020-782 for Residential Zoning Permit at 541 Bonanza Avenue." Residential New Construction Zoning Permit 1020-782 was not issued for Residential Zoning Permit, it was issued for the construction of a 360 square foot single family dwelling at 541 Bonanza Avenue. [Exc. 5]

The Homer Advisory Planning Commission held a public hearing regarding CUP 20-14 on September 2, 2020, Zoning Permit 1020-782 was issued on October 5, 2020, and the Commission's Decision regarding CUP 20-14 was issued on October 22, 2020; all pertained to the subject structure at 541 Bonanza Avenue. I believe the Record on Appeal regarding my appeal of Zoning Permit 1020-782 is incomplete since the inextricably linked proceedings regarding CUP 20-14 were not included therein. I hereby reiterate my October 20, 2020 request that the City Planner now include a verbatim transcript of the September 2, 2020 Commission proceedings regarding CUP 20-14. Alternatively, I request that a recording of those proceedings plus the minutes and Decision regarding CUP 20-14 be included in the subject Record on Appeal.

Frank Griswold

From: Frank Griswold fsgriz@alaska.net
Subject: Relevant Record ZP 1020-782 Appeal
Date: November 18, 2020 at 9:41 AM
To: Melissa Jacobsen mjacobsen@ci.homer.ak.us
Cc: citymanager@cityofhomer-ak.gov, Rick Abboud rabboud@ci.homer.ak.us

Melissa,

The minutes of the September 2, 2020 HAPC meeting include the following: "City Planner Abboud provided clarification that the Commission could fail the motion and the Applicant would apply for a permit under the ADU [Accessory Dwelling Unit] and it would be handled administratively. He stated that there are three choices for the Commission: Approve the Conditional Use Permit [CUP 20-14], Approve with more conditions or deny the permit." "City Planner Abboud clarified that the applicant can contact the planning department to proceed to the next step for their project." This is unequivocal evidence that the CUP 20-14 proceedings were used by the Planning Department in making the decision currently under appeal. The City Planner had no right to exclude CUP 20-14 proceedings from the appeal record. In accordance with HCC 21.93.300(a), everything that was presented to and considered by the Commission re: CUP 20-14 should have been included in the appeal record for the ZP 1020-782 appeal proceedings.

Frank

From: Frank Griswold fsgriz@alaska.net
Subject: Procedural Matters Re: Appeal of Zoning Permit 1020-782
Date: December 14, 2020 at 10:24 PM
To: Melissa Jacobsen mjacobsen@ci.homer.ak.us



Melissa,

1. As I stated to you previously, the City Planner had no right to exclude CUP 20-14 proceedings from the appeal record. In accordance with HCC 21.93.300(a), **everything** that was presented to and considered by the Commission re: CUP 20-14 should have been included in the appeal record for the ZP 1020-782 appeal proceedings. Please further supplement the appeal record accordingly.
2. What are the deadlines for filing an appeal brief, reply brief, and/or submitting additional evidence?
3. In accordance with HCC 21.93.300 (d), can I submit into evidence a city-prepared CD recording of the September 2, 2020 Commission proceedings re: CUP 20-14?
4. Will those testifying before the Commission be sworn?
5. Will parties have the right to question/cross-examine witnesses?
6. Are City Planner Rick Abboud or Planning Technician Travis Brown parties to this appeal and will they be available at the January 6, 2021 hearing for questioning?
7. Are there any time limits with respect to providing testimony and/or questioning witnesses at the hearing?
8. Will the Planning Department play any role in preparing the Commission's Decision?
9. Will the City Planner or any employee of the Planning Department sign the Commission's Decision?
10. Will a Procedural Notice be provided to the parties in advance of the January 6, 2021 appeal hearing?

Frank

From: Frank Griswold fsgriz@alaska.net
Subject: Re: Procedural Matters Re: Appeal of Zoning Permit 1020-782
Date: December 16, 2020 at 6:19 PM
To: Melissa Jacobsen MJacobsen@ci.homer.ak.us

Melissa,

I would like to question Rick Abboud, Travis Brown, and the Applicants under oath at the January 6, 2021 evidentiary hearing and it is my constitutional right to do so. The fact that HCC 21.93.300 does not provide for calling witnesses or cross-examination is irrelevant; HCC 21.93.310 provides that 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. In all quasi-judicial evidentiary hearings, the applicant, appellant, and all other parties to the case have a constitutional right to present evidence, cross-examine witnesses, and present rebuttal evidence. Persons who are not parties to the case do not have a constitutional or statutory right to present evidence. Black's Law Dictionary defines "testimony" as follows: "Evidence given by a competent witness under oath or affirmation; as distinguished from evidence derived from writings, and other sources. Testimony is particular kind of evidence that comes to tribunal through live witnesses speaking under oath or affirmation in presence of tribunal, judicial or quasi-judicial."

You failed to answer my question as to whether Rick Abboud and/or Travis Brown are parties to this appeal.

HCC 21.93.300(d) provides that 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.** What happens if a full record is not developed in the 50 minutes allotted for the hearing? Who determined that 50 minutes would be allotted and what was the basis in HCC or otherwise for this determination? Who determines when/whether a full record has been developed? What happens if more than 50 minutes is required to develop a full record?

Because there is no legal basis for conducting the January 6, 2021 hearing via teleconference and/or Zoom it is not my responsibility to request a continuance to such a time that it can be attended in person.

Frank

On Dec 16, 2020, at 5:08 PM, Melissa Jacobsen <MJacobsen@ci.homer.ak.us> wrote:

Good evening,

My answers are included below, I included a response to #11 from your follow up email.

-Melissa

From: Frank Griswold <fsgriz@alaska.net>
Sent: Monday, December 14, 2020 10:25 PM
To: Melissa Jacobsen <MJacobsen@ci.homer.ak.us>
Subject: Procedural Matters Re: Appeal of Zoning Permit 1020-782

Decision?

No

10. Will a Procedural Notice be provided to the parties in advance of the January 6, 2021 appeal hearing?

Yes, by December 21st. I will notify you if there are any delays.

11. How do I present photos, recordings, and other documentary evidence at the appeal hearing if it is conducted via teleconference and/or Zoom? Avoiding evidentiary issues may be why the Council declined to authorize Zoom Meeting and teleconference for quasi-judicial Commission hearings where the appeal record is still open (unlike BOA appeal hearings where the appeal record, established below, is closed).

We can work to accommodate the distribution of additional information you wish to present. Zoom allows for screen sharing and that can be accomplished by you or the Clerk at the meeting. Audio can be accommodated as well.

SUBJECT: Procedural matters re: Appeal of Zoning Permit 1020-782

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Melissa,

1. As I stated to you previously, the City Planner had no right to exclude CUP 20-14 proceedings from the appeal record. In accordance with HCC 21.93.300(a), *everything* that was presented to and considered by the Commission re: CUP 20-14 should have been included in the appeal record for the ZP 1020-782 appeal proceedings. Please further supplement the appeal record accordingly.

CUP information will be provided as a supplement.

2. What are the deadlines for filing an appeal brief, reply brief, and/or submitting additional evidence?

Regarding briefs, HCC 21.93.300 reads any person may file a written brief or testimony in an appeal before the commission and doesn't identify deadlines for specific types of briefs. To be included in the packet any briefs or additional information needs to be provided by December 30th. Anything received after that will go to the Commission in as a laydown.

3. In accordance with HCC 21.93.300 (d), can I submit into evidence a city-prepared CD recording of the September 2, 2020 Commission proceedings re: CUP 20-14?

Yes

4. Will those testifying before the Commission be sworn?

I'll confirm this.

5. Will parties have the right to question/cross-examine witnesses?

HCC 21.93.300 doesn't provide for calling witnesses or cross examination. It does allow for public comment.

6. Are City Planner Rick Abboud or Planning Technician Travis Brown parties to this appeal and will they be available at the January 6, 2021 hearing for questioning?

City Planner Abboud will be in attendance on January 6th.

7. Are there any time limits with respect to providing testimony and/or questioning witnesses at the hearing?

50 minutes has been allotted for this hearing. There will be time provided for parties to present oral arguments and for public testimony.

8. Will the Planning Department play any role in preparing the Commission's Decision?

No

9. Will the City Planner or any employee of the Planning Department sign the Commission's

From: Frank Griswold fsgriz@alaska.net
Subject: Fwd: Public Hearing Notice Re: Appeal of Zoning Permit 1020-782
Date: December 27, 2020 at 10:39 PM
To: Renee Krause RKrause@ci.homer.ak.us
Cc: Melissa Jacobsen mjacobsen@ci.homer.ak.us

Begin forwarded message:

From: Frank Griswold <fsgriz@alaska.net>
Subject: **Public Hearing Notice Re: Appeal of Zoning Permit 1020-782**
Date: December 27, 2020 at 10:28:59 PM AKST
To: Melissa Jacobsen <mjacobsen@ci.homer.ak.us>

Melissa,

The recently distributed Public Hearing Notice re: Zoning Permit 1020-782 references Memorandum PL 21-01, Appeal of Issuance of Zoning Permit 1020-782 to the Homer Planning Commission. Who wrote PL 21-01 and why wasn't I, as the Appellant, promptly provided a copy of it? The Public Hearing Notice states that Zoning Permit 1020-782 approved an **accessory dwelling unit, a converted shipping container**, at 541 Bonanza Ave. However, Zoning Permit 1020-782 says nothing about approving an accessory dwelling unit or a converted shipping container. It identifies the Building Use as "Res-Single Family" and under Description of Work it states: "360 square foot single family dwelling." This is why Allegation of Error #3 in my Notice of Appeal challenges the permitting of a second single family dwelling on one lot. Why wasn't my Notice of Appeal, including my 9 allegations of error, included in the Public Hearing Notice sent to the surrounding property owners so that they could better understand what the appeal is about? Why weren't the names and addresses of the surrounding property owners to whom the Public Hearing Notice was sent included in the Public Hearing Notice as has been the city's practice in the past? The Public Hearing Notice deceptively includes a photo-shopped conceptual depiction of the subject structure that is not identified as a conceptual photo-shopped depiction. Four actual photos of the converted Connex were included in Staff Report 20-58; why weren't those actual photos included in the Public Hearing Notice instead of the fanciful and highly prejudicial photo-shopped conceptual depiction?

Planning staff should not be allowed to prepare a Public Hearing Notice regarding matters in which the actions of the City Planner or planning staff are being appealed. I hereby request that this inaccurate, incomplete, and highly prejudicial Public Hearing Notice be rescinded and that an accurate, complete, and impartial Public Hearing Notice be prepared and distributed by the Clerk's Office.

Frank Griswold

From: Frank Griswold fsgriz@alaska.net
Subject: ZP 1020-782 Appeal
Date: December 28, 2020 at 12:27 PM
To: Melissa Jacobsen mjacobsen@ci.homer.ak.us
Cc: Renee Krause RKrause@ci.homer.ak.us



Melissa,

I am still waiting to hear whether Rick Abboud and/or Travis Brown are parties to my appeal of Zoning Permit 1020-782. If they are parties, they are prohibited by HCC 21.93.710(b)(2)(a) from discussing the matter with municipal staff or the Commissioners. If they are not parties to the appeal what are they, agents of the Applicants?

I am still waiting for a response to my 12-17-20 public records request. It was my hope to include some of the records requested in the Commission packet.

i am still waiting for a *Procedural Notice*.

The Public Hearing Notice states: "If you have questions or would like additional information about the matter, please contact Rick Abboud with the Planning and Zoning Office at 235-3106." Regardless of whether Mr. Abboud is a party to the appeal, his actions/non-actions with respect to the issuance of ZP 1020-782 are at issue in this appeal. Accordingly, he should not be providing biased, inaccurate, and self-serving information to the public. As I pointed out earlier, Zoning Permit 1020-782 did not approve "an accessory dwelling unit" or "a converted shipping container," it approved a single family residence. Furthermore, if my Notice of Appeal (including allegations of error), Zoning Permit 1020-782, and an actual photo of the subject structure had been included in the Public Hearing Notice, there would likely be no need for Mr. Abboud or anyone else to provide additional information to the surrounding property owners.

Frank Griswold

From: Frank Griswold fsgriz@alaska.net
Subject: Re: Procedure for Planning Commission Hearing
Date: December 29, 2020 at 12:34 AM
To: Melissa Jacobsen MJacobsen@ci.homer.ak.us

Melissa,

The Proposed Stipulation states that *the parties* may file written briefs in support of their positions but HCC 21.93.300(d) states: "*Any person* may file a written brief or testimony in an appeal before the Commission." HCC 21.93.310 (other procedures) can only be applied where it is not inconsistent with this title, statutes, and the Constitution. Before I could agree to any stipulation regarding parties I would need to know who the parties are, why they are parties, and who made these determinations

The Public Hearing Notice indicates that written comments must be received by 4pm on the day of the meeting; presumably this would include written briefs. What is the difference here between a written brief and a written comment? Why does the Proposed Stipulation stipulate that "Briefs must be filed with the City Clerk" while the Public Hearing Notice states that written comments may be emailed to the Planning Department? Is the filing of a written brief required in order to present oral argument or rebuttal oral argument at the Hearing? Does the 7-page limit on written briefs also apply to written comments? If I were to email 10 pages of written comments to the Planning Department at 3pm on June 6, 2021, would they be accepted into the appeal record?

The Proposed Stipulation limits Appellant to 20 minutes to present testimony, other evidence, and present oral argument. I do not believe this is sufficient time for me to develop a full record as stipulated in HCC 21.93.300(d). This arbitrary time limitation constitutes a violation of due process.

The Proposed Stipulation limits Appellant to 10 minutes to cross-examine witnesses and present rebuttal oral argument. I do not believe this is sufficient time for me to develop a full record as stipulated in HCC 21.93.300(d). This arbitrary time limitation constitutes a violation of due process.

I have requested to question/cross-examine Rick Abboud, Travis Brown, and the Applicants, all under oath. The Proposed Stipulation fails to state whether witnesses will be sworn or whether Rick Abboud, Travis Brown, and/or the Applicants will be available for questioning and/or cross-examination. Why are the Applicants not listed as Appellees? I consider them indispensable parties to this appeal and do not believe a full record can be developed without at least one of them participating in the January 6, 2021 proceedings. Travis Brown issued Zoning Permit 1020-782 and is therefore also an indispensable party. Rick Abboud did not issue Zoning Permit 1020-782, did not file a cross-appeal, and therefore has no standing to be a party to this appeal.

Is there a time limit on Commission questioning of parties? Can the Commission question non-parties? Will those questioned by the Commission be sworn?

In light of Covid, I agree to participate telephonically on January 6, 2021 even though HCC does not provide for telephonic participation at quasi-judicial hearings before the Commission.

Frank Griswold

From: Frank Griswold fsgriz@alaska.net
Subject: Re: Procedure for Planning Commission Hearing
Date: December 29, 2020 at 1:19 AM
To: Melissa Jacobsen MJacobsen@ci.homer.ak.us



Melissa,

Somebody has grossly underestimated how long it could take to hear the appeal of Zoning Permit 1020-782. The Proposed Stipulation doesn't even mention preliminary matters such as ex-parte communications, bias, conflicts of interest, and standing which could easily consume 30 minutes or more. If 10 people show up to testify that could consume another 30 minutes. I should not be asked to forfeit my due process appeal rights in order to squeeze my appeal into a 50-minute time slot. After receiving the Public Hearing Notice I am not even sure what Zoning Permit is at issue. Was a different Zoning Permit 1020-782 issued besides the one dated 10/5/2020 permitting a single family residence? That zoning permit is only one page. A whole lot of confusion would have been avoided had it been included in the Public Hearing Notice instead of the fake "rendering" of the Connex.

Frank

On Dec 28, 2020, at 2:05 PM, Melissa Jacobsen <MJacobsen@ci.homer.ak.us> wrote:

Good afternoon Frank,

The procedure for the upcoming Planning Commission Hearing is attached for your review and signature. I'm out of the office today, but will be available tomorrow, Tuesday the 29th.

Thank you,
Melissa

Melissa Jacobsen, MMC
City Clerk
City of Homer, Alaska
907-235-3130

City of Homer City Clerk's Office

PUBLIC RECORDS LAW DISCLOSURE: Most e-mails from or to this address will be available for public inspection under Alaska public records law.

From: Frank Griswold fsgriz@alaska.net
Subject: Fwd: Memorandum PL 21-01
Date: December 30, 2020 at 11:24 AM
To: Melissa Jacobsen mjacobsen@ci.homer.ak.us
Cc: rdumouchel@ci.homer.ak.us, Rick Abboud rabboud@ci.homer.ak.us

Mr. Abboud's response below is further evidence that the Public Hearing Notice Re: ZP 1020-782 is inaccurate, misleading, and prejudicial. Within the Public Hearing Notice, the public is instructed to contact Rick Abboud with the Planning and Zoning Department "if they have any questions or would like additional information about the matter." Mr. Abboud, allegedly the Appellee in this matter, is not an impartial source of information. Note that the public was not instructed to contact me, the Appellant, if they had questions or would like additional information. Under the direction of Mr. Abboud, the Planning Department has bungled every aspect of this matter at great expense to the city (and me). Zoning Permit 1020-782 is patently illegal on its face; it and Mr. Abboud should be summarily vitiated.

Begin forwarded message:

From: Rick Abboud <RAbboud@ci.homer.ak.us>
Subject: RE: Memorandum PL 21-01
Date: December 30, 2020 at 10:50:26 AM AKST
To: Frank Griswold <fsgriz@alaska.net>, Department Planning <Planning@ci.homer.ak.us>
Cc: Melissa Jacobsen <MJacobsen@ci.homer.ak.us>

Mr. Griswold,

The notice that you received regarding Memorandum PL 21-01 was sent in error and was in addition to the required notice that the Clerks administer. We did not have the format of the hearing and previously we had used a much simpler process at this level than that which you require (hence, the memo). I am preparing a traditional brief for the hearing. If I am to create a memo, it would just state the format of the hearing (which I am unable to verify at this time).

Sincerely,

Rick Abboud, AICP
City Planner
491 E Pioneer Ave
Homer, AK 99603
(o) 907-235-3106
(f) 907-235-3118

-----Original Message-----

From: Frank Griswold <fsgriz@alaska.net>
Sent: Tuesday, December 29, 2020 5:01 PM
To: Department Planning <Planning@ci.homer.ak.us>
Cc: Melissa Jacobsen <MJacobsen@ci.homer.ak.us>
Subject: Memorandum PL 21-01

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Please email me Memorandum PL 21-01.



Kenai Peninsula Borough, Alaska

Assessing Department

[Go Back](#)[Property Search](#)[Print Report](#)[Property Taxes](#)

General Info

Property Owner:
LOWRY SCOTT RYAN
LOWRY STACY ANN
907 DALY RD
OJAI CA 93023-1939

Change of Address

Owner(s)

Property ID 17710421
Address 541 BONANZA AVE
Transfer Date 6/4/2019
Document / Book Page 20190015270
Acreage 0.2800

Tax Authority Group 20 - HOMER CITY

Legal Description

Description

T 6S R 13W SEC 20 Seward Meridian HM 0930033 GLACIER VIEW SUB NO 23 BLOCKS 8 9 & 10 LOT 24A

Value History

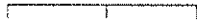
Year	2020	2019	2018	2017	2016	2015	2014	2013	20
Reason	Main Roll Certification	Main Roll Certification	Main Roll Certification	Main Roll Certification	Main Roll Certification	Main Roll Certification	Main Roll Certification	Main Roll Certification	Main Roll Certification
Land Assd	\$40,300	\$40,300	\$39,800	\$38,800	\$42,700	\$42,700	\$42,700	\$42,700	\$42,700
Imp Assd	\$37,800	\$23,000	\$23,100	\$23,500	\$27,800	\$29,200	\$28,700	\$24,500	\$24,500
Total Assd	\$78,100	\$63,300	\$62,900	\$62,300	\$70,500	\$71,900	\$71,400	\$67,200	\$67,200

Extension Details

R01

Type	MHS
Type	UNCONVENTIONAL STRUCTURE
Occupancy	Single family
Occupancy	Single family
Roof Structure	Flat or Shed
Roof Structure	Gable
Roof Cover	Metal
Roof Cover	Metal
Heating	Space heater
Heating	Space heater
Stories	1.0
Stories	1.0

Scale: 5 ft
02



1	Exterior Wall	Wood board & batten
1	Interior Wall	Normal for Class
1	Interior Flooring	Base Allowance

Address 541 BONANZA AVE
Type MHS
Grade F
Year Built 1968
MH Make
Value \$9,500

Sketch Legend

Code	Description	Year	Building	Length	Width	Units	Unit Type	Value
DRIVE	Gravel Driveway	3000	R01	0	0	1	IT	\$2,000
WDDK		2002	R01	10	4	40	SF	\$200
EFP		2002	R01	11	8	88	SF	\$2,500
ADDN	Dwelling Additions	1994	R01	0	0	0		\$22,500
POLEBLDG	General Purpose Bldg Wood Pole Frame	1994	R01	47	10	470	SF	\$1,100

From: Frank Griswold fsgriz@alaska.net
Subject: 541 Bonanza Avenue
Date: September 3, 2020 at 12:22 PM
To: dgardner@ci.homer.ak.us
Bcc: Frank Griswold bcf@bcfaklaw.com



Dan,

In 1993, Driveway Permit 1199 was issued for 551 Bonanza Avenue and Driveway Permit 1432 was issued for 541 Bonanza Avenue. Later, these two lots were subdivided/combined and 551 Bonanza Avenue ceased to exist leaving just the expanded 541 Bonanza Avenue. Is the driveway that serves the mobile home and addition on the eastern portion of this now single lot authorized by either of the 1993 driveway permits and if so, which one? A new driveway was recently installed on the western portion of the combined lot designated 541 Bonanza Avenue. Was this construction authorized by either of the 1993 driveway permits and if so, which one? Are there site plans on file showing which driveway permit applies to which driveway location? As one combined lot, can 541 Bonanza Avenue have two distinct driveways or does some provision of code prohibit this?

Planning Staff Report 20-58 indicates that Public Works recently issued and approved utility connection permits for a second (Connex) structure at 541 Bonanza: "City water and sewer connections have been made and approved by the Public Works Department" (page 6). "Utilities are already installed within existing public rights of ways and utility easements" (page 7). "Utility connection permits have been acquired" (page 11). Presumably, city utilities already serve the mobile home and addition located on the eastern portion of the lot. Can a single CBD lot have multiple utility connections? No zoning permit has been issued for the recently installed Connex. Can city utility connections be approved/acquired/installed prior to the issuance of a zoning permit? Who at Public Works approved the utility connection permits for the recently installed Connex structure at 541 Bonanza Avenue? Where can I find the rules pertaining to the permitting and installation of city utilities?

Frank Griswold

203

CITY OF HOMER
491 E. Pioneer Ave.
Homer, Alaska 99603

BUILDING PERMIT NUMBER 93-5

DATE April 23, 1993

Issued to Kenneth P. and Anna Knudson certifies that the applicant has met the requirements of the City of Homer for the construction/destruction or installation of:

10 x 55 ft. Mobile Home
591
at 551 ~~551~~ Bonanza Avenue 24-A 9 Glacier View Subd. No. 2
Street Lot Block Subdivision

KPB Assessor Number 177-104-07

For a period from 4/23/93 to 4/23/94
This permit may not be transferred or assigned by the original permittee and shall be displayed in a prominent, readily visible place at the site. If the work is not completed within the above specified time, application for an extension MUST be made to the City of Homer.

The City assumes no responsibility for the accuracy of any City held asbuilt drawings or for the permittee's interpretation thereof.

This permit is issued with the expressed understanding that the City of Homer assumes no responsibility hereunder with regard to maintenance of private drainage systems that terminate in City ditch lines or drainages, including but not limited to foundation drains; proper location of lot lines or site dimensions. The permittee, by his signature below, agrees to hold the City harmless from any and all suits, actions, or claims arising from any work undertaken.

The issuance of this permit does not imply that the permittee has met all the requirements of any agency of the State of Alaska or the Kenai Peninsula Borough. It is the responsibility of the permittee to meet whatever requirements any agency may have which may apply to the construction/destruction or installation specified in this permit.

Permit Issued by Steven P. Beahm
Planning & Zoning

Permittee Kenneth P. and Anna Knudson

Address/Phone _____

Plot Plan Required: Yes _____ No X _____

Utilities: Water: Municipal #1099 Private System _____
Sewer: Municipal #1099 Private System _____

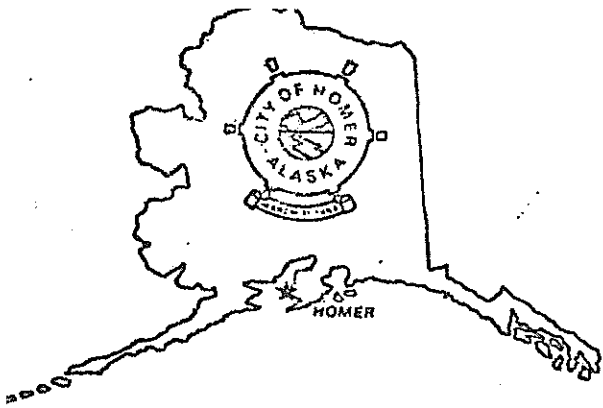
**** PRIVATE SEWER SYSTEM MUST BE APPROVED BY ADEC. ****

Zoning: GBD Building Setback: 20 feet from right-of-way

Driveway Permit No. #1199/#1432 City _____ State _____ Existing _____

Fee from Schedule: 125 Estimated Value: \$5,500

SPECIAL CONDITIONS: Final Plot Approval of Lot 24-A, Glacier View No. 2



CITY OF HOMER

BOX 335
HOMER, ALASKA 99603

BUILDING PERMIT NUMBER 77-359

DATE March 2, 1977

Issued to Pooler Home Builders certifies that the applicant has met the standards and requirements of the City of Homer for the construction of:

three bedroom, one bath, carport home

at Lot 25, Block 9, Glacier View Sub. No.2 177-104-0600

for a period from March 2, 1977 to December 31, 1977

This permit may not be transferred or assigned by the original permittee and shall be displayed in a prominent, readily visible place at the site of the building. If the work is not completed within the above specified time, application for an extension must be made to the City of Homer.

This permit is issued with the expressed understanding that the City of Homer assumes no responsibility hereunder with regard to proper location of lot lines or site dimensions and the permittee, by his signature below, agrees to hold the City harmless from any and all suits, actions, or claims arising from any work undertaken.

The issuance of this permit does not imply that the permittee has met all the requirements of any agency of the State of Alaska or the Kenai Peninsula Borough. It is the responsibility of the permittee to meet whatever requirements any agency may have which may apply to the construction specified in this permit.

Permit Issued By Charles J. Allen
Office of the City Clerk

Permittee Martin J. Pooler

Address S.R. 2nd Eagle River

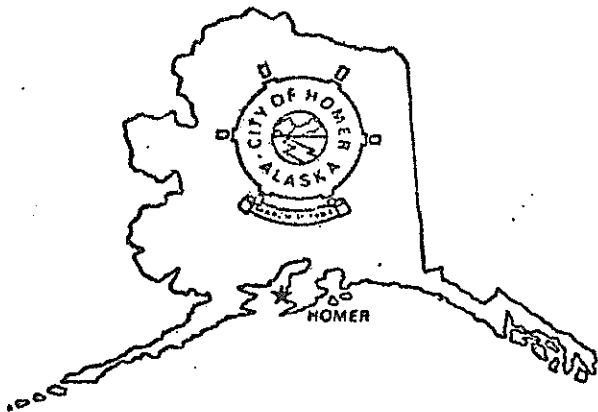
SUBDIVISION Glacier View HOUSE NUMBER 541
177-104-0600 703 E. Bonanza

UTILITIES: WATER: Municipal available Private System _____

SEWER: Municipal available Private System _____
Private sewer systems must be approved by the District Sanitarian.

ZONING Commercial BUILDING SETBACK: 20 feet from dedicated right-of-way

DRIVEWAY PERMIT REQUIRED: YES X NO _____



CITY OF HOMER

BOX 335
HOMER, ALASKA 99603

BUILDING PERMIT NUMBER 77-3-10

DATE March 2, 1977

Issued to Pooler Home Builders certifies that the applicant
has met the standards and requirements of the City of Homer for the construction of:
three bedroom, one bath home, with carport
at Lot 24, Block 9, Glacier View Subdivision 177-104-07
for a period from March 2, 1977 to December 31, 1977

This permit may not be transferred or assigned by the original permittee and shall be displayed in a prominent, readily visible place at the site of the building. If the work is not completed within the above specified time, application for an extension must be made to the City of Homer.

This permit is issued with the expressed understanding that the City of Homer assumes no responsibility hereunder with regard to proper location of lot lines or site dimensions and the permittee, by his signature below, agrees to hold the City harmless from any and all suits, actions, or claims arising from any work undertaken.

The issuance of this permit does not imply that the permittee has met all the requirements of any agency of the State of Alaska or the Kenai Peninsula Borough. It is the responsibility of the permittee to meet whatever requirements any agency may have which may apply to the construction specified in this permit.

Permit Issued By [Signature]
Office of the City Clerk

Permittee Martin Pooler

Address S.R. Box 211 D Eagle River

SUBDIVISION Glacier View No. 2 HOUSE NUMBER 55/ 721 E. Bonanza

UTILITIES: WATER: Municipal available Private System

SEWER: Municipal available Private System
Private sewer systems must be approved by the District Sanitarian.

ZONING Commercial BUILDING SETBACK: 20 feet from dedicated right-of-way

DRIVEWAY PERMIT REQUIRED: YES X NO



CITY OF HOMER WATER/SEWER PERMIT

No 1099

APPLICATION DATE April 23, 1993 ACCOUNT #
*APPLICANT Kenneth P. and Anna nudsen OWNER SAME
MAILING ADDRESS P.O. on 271, Sterling AK 99672
PHONE NUMBER (HOME) 262-5153 (WORK)
SERVICE ADDRESS 541 East onanza
LOT 4-1 BLOCK 209 SUBDIVISION Glacier View No 2
PARCEL NUMBER 177-104-06 CONTRACTOR
BOND # (OR VERIFY \$1,000 CONTRACTOR'S DEPOSIT)
SIZE OF SERVICE 3/4 SIZE OF METER 1/8 METER #
DATE CONNECTED RELAY #
METER READING RT/SEQ #
DEC APPROVAL OF SEPTIC SYSTEM REQUIRED YES N/A NO
REQUESTED SERVICE: WATER X SEWER X
(X) EXTENSION X CONNECTION EXTENSION X CONNECTION
WATER RATE: TYPE Res. MONTHLY SERVICE CHARGE \$22.74
COST PER 1000 GALLONS \$2.94 OUTSIDE CITY SURCHARGE
SEWER RATE: TYPE Res. COST PER 1000 GALLONS \$5.19

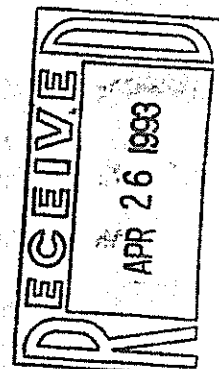
FEES	
WATER PERMIT	\$ 250
METER LEASE FEE	\$ 74
SEWER PERMIT	\$ 200
RENTER/LESSEE DEPOSIT	\$ 75
CONNECTION FEE	\$ 30
CITY R.O.W. PERMIT (MINOR)	\$ 0
CITY/MAJOR	\$ 0
STATE R.O.W. PERMIT (MINOR)	\$ 0
STATE/MAJOR	\$ 0
DEFERRED SERVICE	\$ 0
DEVELOPMENT PERMIT	\$ 0
OTHER	\$ 0
SUBTOTAL	\$ 629
TAX	\$ 27.50
TOTAL CHARGE	\$ 656.50

DATE PAID AMOUNT PAID \$ 656.50

*** READ INSTALLATION INSTRUCTIONS ON THE BACK OF THIS PAGE. ***

SIGNATURE Kenneth P. nudsen
*(CUSTOMER RESPONSIBLE FOR MONTHLY BILLINGS)

COMMENTS Permit issued contingent upon Hot 24-A, Glacier ViewSSubd. No. 2 Final Plat
*CUSTOMER MUST BE OWNER OR AN AUTHORIZED AGENT OR RENTER/LESSEE.
(White Copy Applicant. Orange Copy Planning. Blue Copy Public Works)



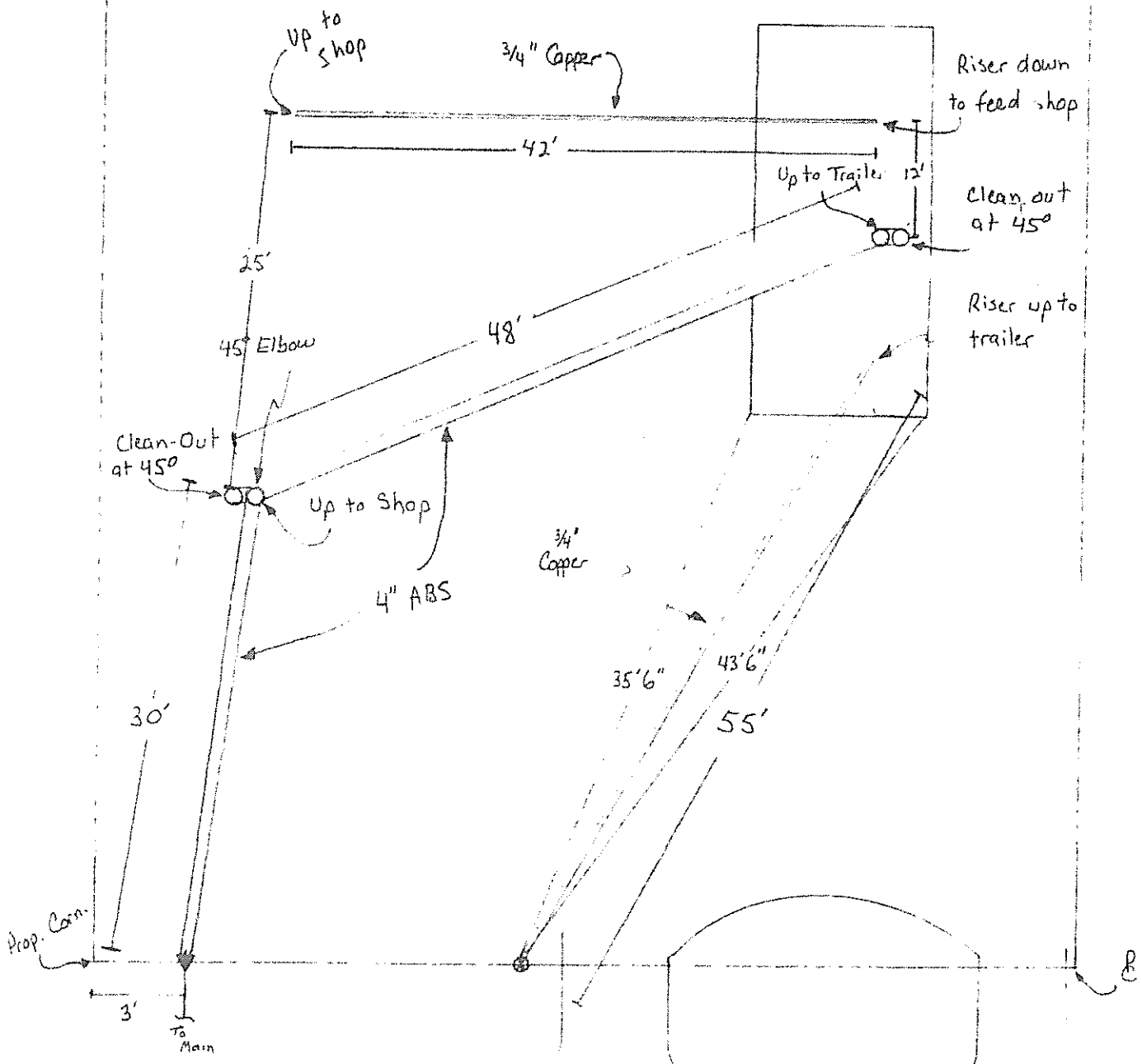
541 Bonanza

PUBLIC WORKS DEPT.	TITLE: <u>Water/Trailer As-Built</u>				PROJECT/W.O. NO. <u>1099</u>
	LOT. <u>24</u>	BLK. <u>9</u>	SUBDV. <u>Glacierview #2</u>	KPB. NO. <u>177-104-0600</u>	FILE NO. _____
	COMP. _____	CHK. _____	REV. _____	PAGE _____ OF _____ PAGES	ADDRESS: <u>541 Bonanza Knudsen</u>
	DATE _____	DATE _____	DATE _____	OWNER _____	CONTRACTOR <u>Roderick</u>
	INSP. _____	DMG <u>5/28/93</u>			

APPROVED AS-BUILT
CITY OF HOMER CITY OF HOMER

SCALE

N. T. S.



Memorandum of Understanding

SUBJECT: Glacier view subdivision no. 2, addition no 22, a combination of lots 24 and 25, block 9, glacier view subdivision no 2. located within the SE 1/4 NW 1/4 section 20, T6S, R13W, S.M., Homer, Alaska.

The final plat will be recorded as Glacier View No. 23.

City of Homer Policy allows only one water service per lot. Lot 24 and Lot 25 each have a water service. The water service to one of the lots must be abandoned before the two lots are resubdivided into one, single parcel.

The owner of the lot agrees to remove the curb box and stem from one of the water services. At the time this work is done The City of Homer will inspect the work. The owner agrees to secure the proper permits required to accomplish this work.

Hermes T. P. Kradler
Property Owner

Anna R. Knudsen

Date _____

Date 4-27-93

State of Alaska

)

) SS.

Third Judicial District)

1

The foregoing instrument was acknowledged before me this date 5/27/93 by Kenneth P. Anderson and Anna, Property Owner.

Judith Mulliken
Notary Public for the State of Alaska
My Commission expires: 6-18-95

Notary Public for the State of Alaska

My Commission expires: 6-18-95

State of Alaska

—

) 55.

Third Judicial District)

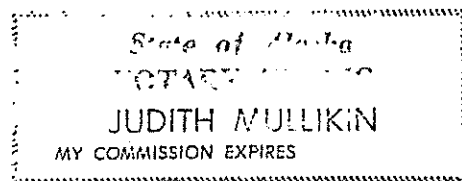
)

The foregoing instrument was acknowledged before me this date June 1, 1993 by Heidi R. DeVan, known to me to be the Director of Public Works, City of Homer Alaska.

Shirley F. Goff
Notary Public for the State of Alaska
My Commission expires: 2/20/95

Notary Public for the State of Alaska

My Commission expires: 2/20/95



From: [Stacy Lowry](#)
To: finance@cityofhomer.ak.gov
Subject: 541 Bonanza Ave
Date: Friday, November 13, 2020 6:50:21 AM
Attachments: [410 E Oak St-payments.pdf](#)
[Stacy & Scott Lowry.pdf](#)

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Hello,

Attached is all the forms to set up the water service in our name (we are the owners), it is currently in our renter's name, Jared Hemphill.

I've also attached a pdf of 2 years of good standing with our current water company.

Let me know what else you need from me, and when our acct is set up.

Thanks,

Stacy

299-4070



CITY OF HOMER

PERMIT NO. 3002

WATER / SEWER PERMIT

SERVICE CODE

SERVICE ADDRESS 541 Bonanza Avenue

APPLICATION DATE 6-23-2020

ACCOUNT #

APPLICANT Scott Lowry

OWNER Same

MAILING ADDRESS 201 E. Oak Street, Ojai CA 93023

PHONE NUMBER (HOME) 805-509-1757

(WORK)

LOT 24A

BLOCK

SUBDIVISION Glacier View Sub No. 23

KPB PARCEL # 177-104-21

CONTRACTOR J.C. Johnson and Son

SIZE OF SERVICE

SIZE OF METER

DATE CONNECTED

ORION #

METER READING

RT/SEQ #

REQUESTED SERVICE: WATER

SEWER

WATER RATE: Commercial/Residential

SEWER RATE: Commercial/Residential

Living Units in Apartments

Served by mainline lift station Y/N

FEES

WATER PERMIT/INSPECTION PERMIT

METER LEASE FEE

DEPOSIT

CONNECTION FEE

SEWER PERMIT/INSPECTION PERMIT

DEFERRED SERVICE - WATER

DEFERRED SERVICE - SEWER

CITY ROW PERMIT - MINOR

CITY ROW PERMIT - MAJOR

DEVELOPMENT PERMIT

OTHER

SUBTOTAL

TAX

TOTAL CHARGES

DATE PAID

AMOUNT PAID

\$

\$

\$

\$

\$ 100.00

\$

\$

\$

\$

\$

\$

\$ 100.00

\$ 7.85

\$ 107.85

\$

\$ 107.85

CODES

2107 T

2102 T (prv also)

2103

2101 T

2108 T

WADEF

SEDEF

2111

2112

122

Received By: JEH

Paid By: Scott Lawry

Date: 6-23-2020

PAID VISA \$107.85

Re: 1174537 Con: 04644D

*** READ INSTALLATION INSTRUCTIONS ON SECOND PAGE

SIGNATURE

*CUSTOMER RESPONSIBLE FOR MONTHLY BILLINGS

COMMENTS Inspection Permit Only

*Customer must be owner or an authorized agent or renter/lessee.

Original - Applicant, Copy : Planning, PW, Finance)

**CITY of HOMER
LANDLORD TENANT UTILITY AGEEMENT**

Owner name Stacy L Scott Lowry
Billing address 907 Daly Rd
Djail, CH 93023
Service address 541 Bonanza Ave Homer, AK 99603
Home Phone _____ Cell Phone 299-4070
E-Mail Address Stacya0@gmail.com

The owner agrees to:

1. Assume responsibility for payment of billing during periods when either no tenant has properly signed a connect order and paid appropriate fees, or tenant has signed a disconnect order, or the tenant's account has become delinquent and is subject to disconnection of service.
2. Assume responsibility for advising tenant that proper application and paying all appropriate fees is required.
3. All service for the specified service address will be charged in accordance with section 14.08.080 and 14.04.040 of the Homer Municipal Code.
4. Owner agrees to sign a disconnect order and provide written notification to cancel this agreement when the property is sold.

The City of Homer reserves the right to:

1. Disconnect the water/sewer services to the above service address and apply any applicable deposits when the owner or tenant is delinquent in payment of billing.
2. Cancel this agreement if the owner is delinquent in payment of billing.

The City of Homer assumes no liability or obligation other than those stated in this agreement. This agreement shall become effective when accepted by the City of Homer. This agreement may be canceled by either the City of Homer or the owner upon written notification to the other party.

IN WITNESS WHEREOF, the parties hereto have caused the agreement to be executed by their duly authorized representatives.

By:  By: _____
(Owner Signature) (Accepted by City of Homer)

Date: Nov. 11, 2020 Date: _____

Canceled by: _____ Date: _____



ESTABLISH SERVICE ORDER

Last Name LOWRY
(As it appears on your ID)

First & Middle Names

Stacy & Scott

Service Address

541 Kananaka Ave

Mailing Address 907 Entry Bl

Ujai, CH 92023

Account #

Misc. Info

Previous Unit Customer

Owner

Rem.

When

of move

in Household

2

Unit

Single Unit

☒ Multi Family

Commercial

of Units

☒ Holding Tank

Seasonal

Lift Station

Out of Town

Spit

Pub. Authority

Other

Phone 299-4070

License # F3619016 DOB 03/24/84
(We must see your ID)

E-mail stacyaqq@gmail.com

Establish Service (2101)

Deposit (2103)

Other

Tax (2104)

TOTAL FEES

DATE FEES PAID

***** SCHEDULE OF RATES *****

Water Customer Charge: \$13 per meter / per month

Multi. Units \$5 per unit / per month

Water per gallon: \$0.0132 per gallon, (\$1.32 / 100 gal)

Sewer Customer Charge: N/C for single unit service

Multi. Units \$5 per unit / per month

Sewer per gallon: \$0.0145 per gallon, (\$1.45 / 100 gal)

Sewer W/Lift Station: \$0.0224 per gallon, (\$2.24 / 100 gal)

DEPOSIT The deposit will be according to meter size and description. The deposit will be refunded, plus interest within forty-five days after the date of disconnection, provided that the deposit and interest shall first be applied to any outstanding balance. On continuing accounts with one year of timely payments, deposit will be refunded, plus interest.

CHARGES All charges will commence on the date the service is turned on. All monthly charges will continue to be billed to the customer who has signed the connect order until a disconnect order is requested. Monthly sewer billings will not be discontinued unless the water service is disconnected. Each reconnect will be charged at the regular fee as listed in the schedule of rates. Monthly service charges are based on the monthly water usage and billed at the end of the month.

AUTHORIZED BY

Stacy Lowry
Signature (Customer responsible for the monthly billings)

DATE: Nov 12, 2020

Printed Name:

Stacy Lowry

City of Homer 491 E. Pioneer Ave., Homer AK 99603 Ph: 235-8121 Ext. 0 / Fax: 235-3140

For use of meter tech:

_____ Establish Service / Connect Water

_____ Meter Read Only

_____ Contact Customer to schedule appt.

_____ Start w/ last Read

Effective Date _____

Service Address _____

Phone Number _____

Parcel Number _____

Relay Number _____

Route _____ Service _____ Size of Meter _____

Meter Reading: _____

E-Mailed: _____ @ _____

Posted to: _____

From: [scott lowry](#)
To: [Travis Brown](#)
Subject: Re: Zoning Permit Issued
Date: Monday, October 5, 2020 6:58:37 PM

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Thank you Travis, we will get this permit posted in the door window as soon as possible. I suppose we can move forward with the wood fence install correct?

From: Travis Brown <tbrown@ci.homer.ak.us>
Date: October 5, 2020 at 5:54:49 PM PDT
To: scott lowry <srl8@me.com>
Subject: Zoning Permit Issued

Scott,

Here is your approved zoning permit. It should be posted onsite for the remainder of construction.

Sincerely,

Travis Brown
Planning Technician
City of Homer
(907)235-3106

<541 Bonanza Ave ZP 2020.pdf>



Kenai Peninsula Borough, Alaska

Assessing Department

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General Info

Property Owner:
 LOWRY SCOTT RYAN
 LOWRY STACY ANN
 907 DALY RD
 OJAI CA 93023-1939

Change of Address

Owner(s)

Property ID 17710421

Address 541 BONANZA AVE

Transfer Date 6/4/2019

Document / Book Page 20190015270

Acreage 0.2800

Tax Authority Group 20 - HOMER CITY

Legal Description

Description

T 6S R 13W SEC 20 Seward Meridian HM 0930033 GLACIER VIEW SUB NO 23 BLOCKS 8 9 & 10 LOT 24A

Value History

Year	2020	2019	2018	2017	2016	2015	2014	2013	2012
Reason	Main Roll Certification	Main Roll Certification	Main Roll Certification	Main Roll Certification	Main Roll Certification	Main Roll Certification	Main Roll Certification	Main Roll Certification	Main Roll Certification
Land Assd	\$40,300	\$40,300	\$39,800	\$38,800	\$42,700	\$42,700	\$42,700	\$42,700	\$42,700
Imp Assd	\$37,800	\$23,000	\$23,100	\$23,500	\$27,800	\$29,200	\$28,700	\$24,500	\$28,700
Total Assd	\$78,100	\$63,300	\$62,900	\$62,300	\$70,500	\$71,900	\$71,400	\$67,200	\$71,400

Extension Details

R01

Attributes

Floor Areas

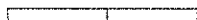
Story

Attribute

Detail

Type	MHS
Type	UNCONVENTIONAL STRUCTURE
Occupancy	Single family
Occupancy	Single family
Roof Structure	Flat or Shed
Roof Structure	Gable
Roof Cover	Metal
Roof Cover	Metal
Heating	Space heater
Heating	Space heater
Stories	1.0
Stories	1.0
Basement	1

Scale: 5 ft
02



1 Exterior Wall Wood board & batten
1 Interior Wall Normal for Class
1 Interior Flooring Base Allowance

Address 541 BONANZA AVE
Type MHS
Grade F
Year Built 1968
MH Make
Value \$9,500

Sketch Legend

Code	Description	Year	Building	Length	Width	Units	Unit Type	Value
DRIVE	Gravel Driveway	3000	R01	0	0	1	IT	\$2,000
WDDK		2002	R01	10	4	40	SF	\$200
EFP		2002	R01	11	8	88	SF	\$2,500
ADDN	<i>Dwelling Additions</i>	1994	R01	0	0	0		\$22,500
POLEBLDG	General Purpose Bldg Wood Pole Frame	1994	R01	47	10	470	SF	\$1,100

Planning Commission Considers Rule Changes

The City of Homer Planning Commission is considering changes to its rules that would solidify a policy about how many meetings a commissioner could miss before losing their seat. Changes also could require fewer members to approve measures.

The Planning Commission is one of the most powerful bodies in city government. It approves and enforces things like zoning issues and conditional-use permits. So if there aren't enough people attending one of its regular meetings, delays happen. During the meeting Wednesday night, only four of the seven members were in attendance.

They also had to postpone a discussion about the city's definition of "discontinued" in its zoning code because Commission Chair Franco Venuti had a perceived conflict of interest with that issue. And the commission must actually approve his perceived conflict, but with only three members left to vote that wasn't even possible.

Changes to the number of required votes to approve items could make things run a little smoother. The commission is considering needing only four votes for variance requests or conditional-use permit approvals. Those items currently need a five-vote majority. During the commission's work session before the meeting, Planning Technician Julie Engebretsen mentioned the delays make life more difficult for applicants.

"I don't ever want to be in this position as staff having to tell an applicant 'I'm sorry, twice in a row we have to delay your conditional use permit for six weeks.' And we also in the past have had to schedule special meetings or work around time frames. And that's really hard on the applicant," she said.

Commissioner Larry Sloan said he thinks a four-vote, simple majority makes sense because the city Planning Department has already done most of the leg-work for an issue.

"Most of the preliminary work is done by the staff. The staff has already reviewed it to make sure it complies with the ordinance... so that being the case, for the most part, all our job is as commissioners is to rubberstamp it," he said.

There will be more discussion about this rule change during the commission's next regular meeting. Another amendment could change the number of unexcused absences allowed before a commissioner is voted off the board.

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Sloan mentioned he would like to see a new rule that allows three consecutive unexcused absences or six missed meetings over the course of a calendar year before someone is possibly removed.

here for more info
about our CAB.

“Really you're not conducting the public's business as well as you should if you've missed more than three. You need to make arrangements to organize your time so that you don't miss any more than three,” he said.

Commissioner Roberta Highland was learning more toward allowing four absences. She said it's difficult to find people willing to fill vacancies.

“And so, to make it more difficult and to tell people if you miss so many then you're off, I think we would be possibly shooting ourselves in the foot,” she said.

“But, there's the other side of it in that there's a responsibility with coming and take one of these seats,” Planning Commission Chair Venuti said. “And I've been involved with this for four years and I've only missed one because I was too sick to attend.... It's a real responsibility and a commitment you have to make.”

Commissioner Jennifer Sonneborn said some flexibility in attendance might be necessary for the future of the group.

“It's a volunteer position... people do it for years and years... the more flexible the commission can be, the more likely they are to keep functioning,” she said.

The rule changes will come up again during the commission's next meeting, which is set for Dec. 4 at 6:30 p.m. A work session is scheduled for 5:30 that evening.

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Facsimile: (907) 563-7322
mgatti@jdolaw.com
mholmquist@jdolaw.com

Attorneys for City of Homer

BEFORE THE HOMER PLANNING COMMISSION

In the Matter of

APPEAL OF ZONING PERMIT 1020-782

CITY OF HOMER'S BRIEF

On September 10, 2020, Scott and Stacy Lowry (the “Applicants”) applied to Homer City Planning (“HCP) for a zoning permit for their property at 541 Bonanza Avenue (the “Property”) in Homer’s Central Business District (“CBD”). [R. 6-14] The property has an existing residential single family home. [R. 6] The Applicants applied for a zoning permit to construct an additional 360 square foot single family dwelling (the “dwelling” or “accessory dwelling”) on the Property. [R. 6] HCC 21.70.010(a)(1) requires a zoning permit for the construction of any building or structure. The Application included a site plan, a map of the property, information about exterior lighting that would be installed on the dwelling, photographs of the property, and a design rendering of the anticipated completed dwelling. [R. 6-14] The Applicants also obtained a water/sewer permit for the dwelling. [R. 16-17]

On October 5, 2020, HCP approved and issued Residential Zoning Permit 1020-782 (the “Permit”). [R. 5] HCP found that the proposed dwelling is permitted in the CBD under HCC 21.18.020(ii) because it is an accessory dwelling unit to a principal single-family dwelling on the Property. HCP charged the Applicants a fee of \$300, comprised of the ordinary permit fee of \$200 for a single family unit and an additional fee of \$100 (1.5 times the ordinary fee per the City’s fee schedule) for commencing construction without a permit. [R. 5, 15]

On October 8, 2020, Frank Griswold filed a notice that he was appealing HCP issuance of the Permit to the Homer Planning Commission (the “Commission”). [R. 3-4] The Homer City Clerk completed the Appeal Record on November 10, 2020. The appeal hearing was initially scheduled for January 6, 2021. However, at that hearing the Commission granted the City’s Motion to Continue Appeal Hearing and scheduled a new hearing for January 27, 2021.

ARGUMENT

HCP’s grant of the Permit was in accord with the Homer Zoning Code and appropriate in all respects. HCC 21.18.020(ii) expressly allows the construction of an accessory dwelling unit on a property with an existing principal single-family dwelling. This is precisely the purpose for which Applicants sought the Permit. The detailed application contained all required information for HCP to decide whether to grant the Permit. Griswold’s “Allegations of Error” are factually and legally meritless. The City’s response to each of Griswold’s “Allegations of Error” is provided below:

1. HCP's Planning Technician was Authorized by HCC 21.90.020(b) to Grant the Permit

HCC 21.90.020(b) states:

b. If appointed by the City Manager, the City Planner shall have all functions and may exercise all powers necessary to administer and enforce the zoning code. Assistants to the City Planner may exercise the administration and enforcement functions and powers of the City Planner under the City Planner's supervision.

This provision clearly authorizes any assistant under the supervision of the City Planner, including Planning Technician Travis Brown, to exercise the administrative function of issuing zoning permits under HCC 21.70. Griswold's assertion that Mr. Brown did not have this authority is incorrect.

2. The Inclusion of the Phrase "New Construction" on the Permit is Irrelevant to the Legality of the Permit

The Permit is titled "Residential Zoning Permit New Construction." [R. 5] Griswold apparently disagrees with describing the dwelling as a "new construction." The phrase "new construction" is not defined in the Zoning Code. As a matter of practice, HCP uses the phrase "new construction" to describe improvements that are not part of an existing structure regardless of other improvements on the lot or the materials used in the structure. Nothing in the Zoning Code prohibits this practice. Moreover, the inclusion of the phrase "new construction" is irrelevant to the underlying legality of the permit. HCC 21.18.020(ii) expressly allows the detached accessory dwelling unit that is the subject of the Permit. Whether the Permit refers to the dwelling as "new construction" is an irrelevant semantic issue.

3. No Conditional Use Permit is Required

HCC 21.18.020 states, in relevant part:

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

...

- ii. One detached dwelling unit, excluding mobile homes, as an accessory building to a principal single-family dwelling on a lot.

By contrast, HCC 21.18.030 describes the uses for which a conditional use permit (“CUP”) is required. Generally, a CUP is required where there is “[m]ore than one building containing a permitted principal use on a lot.” HCC 21.18.030(j). Read together, the intent of these provisions is to prescribe a general rule that a CUP is required for multiple buildings containing a permitted principal use on lot, but to carve out an exception where no CUP is required for a detached accessory dwelling unit to a principal single-family dwelling.

The history of HCC 21.18.020(ii) clearly establishes that this was the City Council’s intent. It was adopted in 2011 as part of Homer Ordinance 11-44(S). The ordinance states “[t]he Homer Advisory Planning Commission wishes to allow the placement of an accessory dwelling unit on a lot in the...Central Business zoning district[] without the burden of obtaining a conditional use permit if no other regulation requires such...” Homer Ord. 11-44(S). The City Council’s express intent in adopting HCC 21.18.020(ii) contradicts Griswold’s argument that a CUP is required under these circumstances.

4. The Accessory Dwelling is Not a Nuisance Under HCC 21.18.080

Griswold's assertion that the accessory dwelling violates HCC 21.18.080 is meritless. Griswold appears to be referring to HCC 21.18.080(c). It provides:

c. Commercial vehicles, trailers, shipping containers and other similar equipment used for transporting merchandise shall remain on the premises only as long as required for loading and unloading operations, and shall not be maintained on the premises for storage purposes unless screen from public view.

The accessory dwelling is a converted shipping container. [R. 13-14] While it may have been used for transporting merchandise in the past, it is certainly not used for that purpose on the Property. It has been converted to an accessory dwelling¹ with a water and sewer connection. HCO has viewed the interior of the accessory dwelling and it is fully provisioned as a dwelling including sleeping, cooking, and sanitation facilities. The accessory dwelling is not a nuisance under HCC 21.18.080(c) because (1) it was not used for transporting merchandise to the Property; (2) it was not used for storage purposes at the Property; and (3) it is a "dwelling" or "dwelling unit" under the Zoning Code because it is arranged for residential occupancy and includes facilities for sleeping, cooking, and sanitation.²

Even if the accessory dwelling could be considered a nuisance and in violation of HCC 21.18.080, that would not be a basis for invalidating the Permit. HCP has discretionary enforcement authority to address such violations. HCC 21.90.020(c)(4).

¹ See HCC 21.03.040 (defining "Dwelling" or "Dwelling Unit" as "any building or portion thereof designed or arranged for residential occupancy by not more than one family and includes facilities for sleeping, cooking, and sanitation and "Building" as "any structure used or intended for supporting or sheltering any use or occupancy").

² *Id.*

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The Alaska Supreme Court held that discretionary enforcement decisions are not subject to review.³ Accordingly, HCP's exercise of its discretionary authority not to enforce the alleged violation of HCC 21.18.080 is not reviewable and is not a basis for invalidating the Permit.

5. The Application Was Not Deficient

The Applicants provided all information requested on the City's Zoning Permit Application. [R. 6-8] The City Planner has the discretion to determine whether a zoning permit application is incomplete. HCC 21.70.030(b). In this case, HCP found no errors or omissions in the application and exercised its discretion to review and grant the application. It is impossible to respond to Griswold's argument regarding compliance with HCC 21.70.020 because he does not identify the procedure he believes was "not fully complied with." To the extent any information was omitted, it was not material and did not hinder HCP's review of the application.

6. The Applicants Paid the Appropriate Fee

HCC 21.70.060 requires an applicant for a zoning permit to pay a fee according to the fee schedule established by the Homer City Council. HCC 21.70.060. Per the fee schedule, the fee for a zoning permit for a single family home or duplex is \$200.⁴ The fee when the applicant commences the permitted activity without a permit is "assessed at the regular rate multiplied by one and one half (1.5) for Residential..."⁵ In this case, the

³ See *Yankee v. City and Borough of Juneau*, 407 P.3d 460 (Alaska 2017).

⁴ See City of Homer Fee Schedule, https://www.cityofhomer-ak.gov/sites/default/files/fileattachments/city_clerk039s_office/page/7514/2020_07_fee_schedule.pdf, p. 16.

⁵ *Id.*, p. 12 (n.1).

{01103252}

Applicants paid a \$300 application fee, comprised of the ordinary \$200 zoning permit fee and an additional \$100 penalty for commencing activities prior to obtaining a permit. [R. 5, 15] The applicants paid precisely the correct fee pursuant to the fee schedule. Griswold's assertion to the contrary is incorrect.

7. HCP Did Not Waive Any Zoning Code Requirements

HCP followed HCC 21.70 and all other applicable laws and regulations to review and grant the Permit. HCP did not waive any such provisions. It is impossible to respond to Griswold's argument because he does not specify which provisions he believes were not complied with.

8. The Technical Violation of HCC 21.70.010(b) is Not a Basis for Denying the Permit

HCC 21.70.010(b) states "[t]he zoning permit required by this section shall be obtained prior to the commencement of any activity for which the permit is required. Failure to do so is a violation." It was a technical violation for the Applicants to commence the permitted activity before obtaining a permit. However, HCP has the discretionary enforcement authority to address such violations and there is no requirement for HCP to prescribe any particular penalty (or any penalty at all) for a violation. HCC 21.90.020(c)(4). In accord with its ordinary practice and the Homer Fee Schedule, HCP charged the Applicants an additional \$100 fee due to this technical violation. [R. 5; 15] HCP determined that this fee, in light of the Applicants' diligent work to make a lawful improvement to the Property, was a satisfactory means of

addressing the violation. This discretionary enforcement decision is not subject to review and the fact that a violation occurred does not invalidate the Permit.

9. A Zoning Permit Appeal is not the Proper Venue to Address Driveway Permitting

Griswold appeals the approval of a zoning permit by the City Planner under HCC 21.93.020(a). Prior to the issuance of a zoning permit, an applicant must obtain any other necessary permits under the Zoning Code (HCC Title 21). HCC 21.70.070. HCC 11.08 regulates driveway permits and is not part of the Zoning Code. The Homer Public Works Department processes and reviews driveway permit applications. HCP is not involved in driveway permitting.

Whether a new driveway permit is required for the Property is irrelevant to this appeal of a zoning permit issued under HCC 21.70. That issue is within the sole discretion of the Homer Public Works Department. Accordingly, driveway permitting is not a basis to challenge the issuance of the Permit. Even if it were, Griswold's argument is meritless. The Applicants submitted driveway permits for the Property with the application. [R. 18-19] Contrary to Griswold's assertion, HCC 11.08.040(a) does not require a new driveway permit when two existing lots are combined into a single lot.

CONCLUSION

HCP properly issued the Permit. The proposal to construct an accessory dwelling on the Property is allowed under the Homer Zoning Code. The accessory dwelling is not a nuisance under HCC 21.18.080. HCP appropriately followed all applicable Zoning Code requirements in considering the application and issuing the Permit. Griswold's

remaining arguments are meritless. Accordingly, the Commission should uphold HCP's decision to issue the Permit.

DATED this 25th day of January, 2021, at Anchorage, Alaska.

JERMAIN DUNNAGAN & OWENS, P.C.
Attorneys for Appellee
City of Homer

By: s/Michael R. Gatti/
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Alaska Bar No. 8306033
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{01103252}



ON APPEAL TO THE HOMER PLANNING COMMISSION

FRANK GRISWOLD,

Appellant,

v.

TRAVIS BROWN, SCOTT LOWRY,
AND STACY LOWRY,

Appellees.

_____/ Appeal of Zoning Permit 1020-782

APPELLANT'S BRIEF

1. City Planner Rick Abboud is not a legitimate a party to this appeal and has no authority to represent any entity of the City of Homer in this matter

City Planner Rick Abboud did not file an appeal or cross-appeal. He has no ownership interest in the subject property or neighboring property and is not otherwise aggrieved by Planning Technician Travis Brown's issuance of Zoning Permit 1020-782. Accordingly, he has no authority to represent Mr. Brown or the Lowrys in this matter. HCC 21.93.050(b) provides that the City Manager or City Planner or any governmental official, agency, or unit have standing to appeal an appealable action or determination of the City Planner to the Commission but it does not authorize the City Planner to participate as a party in administrative appeals filed by others and it does not give him standing to appeal an action or determination of his staff.

Alaska Statutes and Homer City Code mandate that all parties to a zoning appeal must be "aggrieved." The fact that Mr. Abboud may experience disappointment or hurt feelings when an action or determination of his staff is appealed does not make him an aggrieved person or otherwise give him standing to participate in that appeal. The City Planner should be objective and impartial and not an advocate for those who apply for zoning permits. HCC 1.18.048(a) states: "A City official or the City Manager who has partiality concerning a quasi-judicial matter shall not advise on [the] matter, adjudicate the matter or serve as a member of a body adjudicating the matter." Homer Personnel Regulation 8.7.3 states: "No employee shall use the implied authority of their position to unduly influence the decision of others or promote a personal interest in the community."

A corporation is an artificial entity created by law that cannot represent itself. AS 22.20.040 provides that a corporation, either public or private, shall appear by an attorney in all cases unless an exception has been explicitly made by law. Mr. Abboud is not an attorney and therefore cannot legally represent the Planning Department or any other entity of the City of Homer in any quasi-judicial proceeding. Individuals may represent themselves pro se but this exception does not apply to corporations. A non-lawyer (officer, agent or employee)

cannot represent a corporation in any judicial or quasi-judicial matter. See *Stone Street Partners LLC vs. The City of Chicago Dept. of Administrative Hearings*, 2014 IL App(1st) 123654 (Illinois, 2014). Any non-lawyer who represents others in a quasi-judicial proceeding engages in the unauthorized practice of law.

If City Planner Abboud is deemed to be a legitimate party to this appeal, HCC 21.93.710(a)(2)(a) prohibits ex parte communications between him and Planning Commissioners. HCC 21.93.710(c): "If before an appeal commences, a member of the Commission or Board receives an ex parte communication of a type that could not properly be received while an appeal is pending, the member shall disclose the communication in the manner prescribed in subsection (d) of this section at the first meeting of the Commission or Board at which the appeal is addressed."

2. The role of the Homer City Attorneys in this matter is not clear.

Appellant received no entry of appearance regarding this matter from JDO. JDO has not specifically indicated which entity of the City of Homer it is representing. There was no JDO logo on the proposed appeal procedures submitted by JDO. JDO has not indicated whether it will be be "assisting" in the preparation

of the Commission's decision. One has to wonder why the Administration is represented by legal counsel while the Commission is apparently not. Depriving the lay Commissioners of impartial legal counsel encourages them to rely on the biased advice of legal counsel for the Administration i.e., JDO which, in turn, is highly prejudicial to the Appellant.

3. The original Public Notice mailed to neighboring property owners was inaccurate and biased

The original Public Notice includes a biased computer generated rendering of the subject structure provided by the Applicant instead of an actual photo. This Public Notice falsely claims ZP 1020-782 is for an accessory dwelling unit and refers to Memorandum PL 21-01 which does not exist. Recipients of this public notice were instructed to contact City Planner Rick Abboud if they have questions or would like more information about the matter; Mr. Abboud claims to be a party to this appeal and was not positioned to provide impartial answers and/or information to the neighboring property owners or general public. The original Public Notice contained no certification of service or list of property owners served. The second public notice pertaining to the January 27, 2021 appeal hearing, if mailed at all, may not have been timely provided to neighboring property owners or otherwise have complied with HCC 21.94.030.

4. Commission Chair Scott Smith is not an impartial adjudicator and should be disqualified from participation in this matter

HCC 1.18.040(a) states: "A City official or the City Manager who has partiality concerning a quasi-judicial matter shall not advise on matter, adjudicate the matter or serve as a member of a body adjudicating the matter. HCC 1.18.020 states in relative part as follows: "Partiality" applies only in quasi-judicial proceedings and means:

1. The ability of a member of the quasi-judicial body to make an impartial decision is actually impaired; or
2. The circumstances are such that reasonable persons would conclude the ability of the member to make an impartial decision is impaired and includes, but is not limited to, instances in which:
 - a. The member has a personal bias or prejudice for or against a party to the proceeding including a party's lawyer;
 - b. The member or an immediate family member is a party, material witness to the proceeding or represents a party in the proceeding.

HCC 1.18.048 Procedure for declaring and ruling on partiality in quasi-judicial matters:

- "a. A City official or the City Manager who has partiality concerning a quasi-judicial matter shall not advise on matter, adjudicate the matter or serve as a member of a body adjudicating the matter.
- b. A City official who is a member of a quasi-judicial body and who has or may have partiality concerning a matter to be adjudicated shall disclose the facts concerning the official's possible partiality to the body to the parties to the matter prior to the commencement of proceedings by the body. Any member of the body, and any party to a matter before the body, may raise a question concerning a member's partiality, in which case the member in question shall disclose facts concerning the official's possible partiality in the matter.

c. After such disclosure, the City official may excuse themselves for partiality without a vote of the body, otherwise the body (including a body comprised of City Council members when serving in a quasi-judicial capacity) shall by majority vote rule on whether the member must be excused from participation, which must be the ruling when the body determines the official has partiality concerning the matter.

d. Rule of Necessity. Exceptions to a ruling excusing a member from participation shall be made in cases where:

1. By reason of being excused for partiality the number of members of the Council or other body eligible to vote is reduced to less than the minimum number required to approve the official action;

2. No other body of the City has jurisdiction and authority to take the official action on the matter; and

3. The official action cannot be set aside to a later date, within a reasonable time, when the body could obtain the minimum number of members to take action who are not excused for partiality.

When the body determines this exception applies, then all members, except the applicant when the applicant is a member of the body, shall participate in the official action."

At the conclusion of the September 2, 2020 Commission meeting, Chair Smith addressed the applicants for CUP 20-14 (an unrelated, distinct proceeding) as follows: "I think you can see that we're trying to advocate for you, and balancing our lay down from Mr. Griswold with code and your desires was an interesting process. So we'll trust that you get back with the city planner and are able to move forward." Chair Smith clearly revealed his implicit bias in favor of development. An impartial adjudicator advocates for no party in a quasi-judicial proceeding and cares not whether the application under

consideration moves forward. An impartial adjudicator sets his personal feelings aside and makes his decision based solely on the evidence. Implicit bias, by definition, pertains to attitudes and stereotypes that affect one's understanding, actions, and decisions in an unconscious manner. Nonetheless, it constitutes a bias/partiality that is prohibited under HCC 1.18.040(a) and HCC 1.18.020. The application to serve on the Homer Planning Commission asks: "Have you ever developed real property other than a personal residence"? [See Exhibit 4 attached hereto]. This inquiry inappropriately selects for Commissioners like Chair Smith who favor development thus fostering and perpetuating implicit and overt pro-development bias.

5. Planning Technician Travis Brown did not have the authority to issue Zoning Permit 1020-782

Planning Technician Travis Brown issued Zoning Permit 1020-782 [R. 5] but he did not have the legal authority to do so. HCC 21.70.030(a) states: "The City Planner will review the application to determine whether the proposed building or structure, and intended use, comply with the zoning code and other applicable provisions of the City Code, and to determine whether all permits and approvals required by applicable Federal, State, or local law or regulation have been obtained.

The City Planner may also refer the application to other City officials for review, comment or approval for compliance with applicable City Code. If the application meets all of the requirements, **the City Planner will issue a written zoning permit.**" (Emphasis added). Thus, while Planning Technician Travis Brown had the authority to review the application for Zoning Permit 1020-782 for compliance with applicable code, he did not have the authority to issue the permit; this would have been solely the duty of the City Planner. HCC 21.70.030(c) states: "[i]n granting a zoning permit, no City official or employee has authority to grant a waiver, variance, or deviation from the requirements of the zoning code and other applicable laws and regulations, unless such authority is expressly contained therein. Any zoning permit that attempts to do so may be revoked by the City Manager as void. The applicant, owner, lessee, and occupant of the lot bear continuing responsibility for compliance with the zoning code and all other applicable laws and regulations."

6. Contrary to the caption on Zoning Permit 1020-782, the subject structure does not constitute "New Construction"

At the top of Zoning Permit 1020-782 it states: "Residential Zoning Permit New Construction." [R. 5] The subject structure is a rusty old converted connex shipping container

transported to Homer from Kenai [R. 13; SR. 14] but Zoning Permit 1020-782 does not identify it as such. It appears that Planning Staff was attempting to obfuscate the fact that Zoning Permit 1020-782 pertained to an old, rusty, converted connex shipping container and was being issued after-the-fact in violation of HCC 21.70.010(b).

7. Zoning Permit 1020-782 was not obtained prior to commencement of the activity for which it was required in violation of HCC 21.70.010(b)

Staff Report 20-58 regarding CUP 20-14 states: "The current property is one large lot. At one point it was two lots, but the interior lot line was vacated in 1993 so the current configuration is one large lot. Staff brings this to the Commission's attention because it is possible for the applicant to re-subdivide the lot, and have one mobile home on each lot without a conditional use permit. The applicant placed a "connex" single family dwelling on the property on July 20, 2020. No zoning permit was applied for, so the structure is in violation of city code. . . ." [SR. 13] HCC 21.70.010(b) states: "The zoning permit required by this section shall be obtained prior to the commencement of any activity for which the permit is required. Failure to do so is a violation." The Commissioners swore an Oath of Office to defend and support the Ordinances of the City of Homer, including HCC 21.71.010(b) and

Appellant's Brief/Page 9

HCC 21.70.030(c) which states: "In granting a zoning permit, no City official or employee has authority to grant a waiver, variance, or deviation from the requirements of the zoning code and other applicable laws and regulations, unless such authority is expressly contained therein. Any zoning permit that attempts to do so may be revoked by the City Manager as void. The applicant, owner, lessee, and occupant of the lot bear continuing responsibility for compliance with the zoning code and all other applicable laws and regulations." HCC 21.70.090 states: "No person shall use or occupy a building or structure that has been erected, constructed, enlarged, altered, repaired, moved, improved, or converted after January 1, 2000, without a properly issued and unrevoked zoning permit required by this chapter." The subject connex was occupied by tenants long before the illegal issuance of Zoning Permit 1020-782 on October 5, 2020.

8. The subject structure constitutes a single family residence which is not allowed on the subject lot because the lot already contains a single family dwelling

Applicants described the use of the existing structure as "existing residential 2 BR/1BA mobile home/house" and the use of the proposed structure as "residential 1BR 1BA 360 sq. ft."

[R. 6] Zoning Permit 1020-782 identifies the structure permitted as a "360 square foot single family dwelling." [R. 5] The

subject lot already contains a single family (mobile home) dwelling. [R. 13] HCC 21.18.030(j) requires a conditional use permit for more than one building containing a permitted principal use on a lot. HCC 21.71.070 states: "Nothing in this chapter shall relieve the applicant of the obligation to obtain a conditional use permit, sign permit, variance, or other permit or approval required by other provisions of the zoning code. The zoning permit required by this chapter shall be in addition to any other applicable permit or approval requirements. ***If any such additional permits or approvals are required, they must be obtained prior to the issuance of the zoning permit under this chapter.***" (Emphasis added).

9. The subject structure violates nuisance standards prescribed in HCC 21.18.080

HCC 21.18.080(c) states: "Commercial vehicles, trailers, shipping containers and other similar equipment used for transporting merchandise shall remain on the premises only as long as required for loading and unloading operations, and shall not be maintained on the premises for storage purposes unless screened from public view." The subject connex violates HCC 21.18.080(c) which states: "Commercial vehicles, trailers, shipping containers and other similar equipment used for transporting merchandise shall remain on the premises only as

long as required for loading and unloading operations, and shall not be maintained on the premises for storage purposes unless screened from public view." At the September 2, 2020 Homer Planning Commission meeting, the Commission entertained a motion to find that the structure in question was not used for transportation of merchandise and therefore HCC 21.18.080 Nuisance standards, item c, does not apply. This motion failed unanimously. [SR. 7] Nonetheless, the Commission's ensuing Decision denying CUP 20-14 states as follows: "The Commission also noted that the structure was not used for the transportation of merchandise, so it did not constitute equipment used for the transportation of merchandise described in HCC 21.18.080(c)." [SR. 52] The subject connex was originally constructed to be a shipping container designed for the transportation of merchandise and, regardless of what use it is later capable of or put to including conversion to a dwelling unit, it remains a shipping container subject to the nuisance standards of HCC 21.18.080(c). When a connex or other type of shipping container is being used for the transportation of merchandise, it does not constitute a nuisance or require screening from public view provided it only remains on the premises long enough for loading and unloading operations to take place. If it lingers on the premises, it is arguably being

maintained for storage purposes. This terminology is somewhat ambiguous as it could mean the connex itself is being stored, it could mean the connex is being used to store things inside, or it could mean both. The intent, however, is clear: shipping containers not engaged in the loading or unloading of merchandize are considered a nuisance in the CBD and must therefore be screened from public view. Even if a permanently or semi-permanently situated shipping container contains nothing, it constitutes a nuisance. The exterior is the objectionable part and its interior contents are, for the most part, irrelevant. Thus, any connex shipping container parked for an extended period of time on any parcel in the CBD must be screened from public view. The two unsightly shipping containers that have been parked/stored on Al Waddell's CBD property across from the Post Office for decades are clearly not in the process of being loaded or unloaded so they are subject to the nuisance standards of HCC 21.18.080(c). [SR. 73-76] Installing cooking facilities etc. inside and calling them dwelling units would not alter the fact that they are stored shipping containers which therefore require screening from public view. The fact that these two derelict shipping containers may no longer be suitable or capable of transporting merchandize is irrelevant; if anything, this makes them even more of an eyesore and a public

nuisance. HCC 21.18.020(o) allows Ministorage in the CBD as a permitted use but if that storage takes place within a permanently stored connex shipping container, that connex would need to be screened from public view pursuant to the nuisance standards set forth in HCC 21.18.080(c).

10. The subject structure does not constitute a detached Accessory Dwelling Unit (ADU)

Zoning Permit 1020-782 was clearly intended to permit a (second) single family dwelling on the subject lot, not a detached accessory dwelling unit. However, the original Public Hearing Notice, submitted into the record as a laydown, states:

"Public notice is hereby given that the City of Homer will hold a public hearing by the Homer Planning Commission on Wednesday, January 6, 2021 at 5:30 p.m. via a virtual meeting, on the following matter: **Memorandum PL 21, Appeal of issuance of Zoning Permit 1020-782 to the Homer Planning Commission. Zoning Permit 1020-782 approved an accessory dwelling unit, a converted shipping container, at 541 Bonanza Ave., Lot 24A, Glacier View Subdivision No. 23., Sec. 20, T.6S., R.13 W., S.M. HM 0930033.**"

During its discussions on September 2, 2020 regarding CUP 20-14, the Commission considered whether the converted connex might qualify as a detached accessory dwelling unit (ADU). [SR. 6-7] HCC 21.18.020(ii) permits one detached dwelling unit, excluding

mobile homes, as an accessory building to a single family dwelling on a lot. Definitions per HCC 21.03.040:

"Dwelling" or "dwelling unit" means any building or portion thereof designed or arranged for residential occupancy by not more than one family and includes facilities for sleeping, cooking, and sanitation.

"Dwelling, single family" means a detached dwelling unit designed **for residential occupancy by one family**.

"Accessory building" means an **incidental** and subordinate building customarily **incidental** to and located on the same lot by [sic] the principal use or building, such as a detached garage **incidental** to a residential building.

Definitions otherwise:

Incidental means accompanying but not a major part of something.

Subordinate means less in rank or position - of lesser importance.

The subject connex is a stand-alone rental unit that is totally independent of the other rental unit on the lot. It has separate utilities, a separate driveway, and is physically separated from the mobile home portion of the lot by a 100-foot-long fence. [SR 61-62] The converted connex is smaller than the mobile home structure but it is neither subordinate to nor incidental to it, as would be the case if it were a detached garage or greenhouse etc. Applicant's testimony is recorded as follows in the September 2, 2020 Commission minutes: "There is an older mobile home on the property that is currently rented and that tenant has resided on the property prior to them purchasing the

property. They intend to use the new structure as a vacation home as they come to Homer every summer since they have family here. . . . The Applicant explained that they had future plans to replace the existing mobile home with a new structure." [SR. 4] Scott and Stacy Lowry are not related to the tenant of the existing mobile home, a former classmate of Stacy Lowry presumably named Jared Hemphill, [laydown] or to the new unidentified tenants of the connex. The tenants of the connex are not related to the tenant of the existing mobile home. Accordingly, the requirement for an accessory dwelling unit that the two dwelling units be designed for residential occupancy by one family is clearly not met.

11. Application procedures set forth under HCC 21.70.020 were not fully complied with

HCC 21.70.020(b) requires that the application include the following highlighted missing information:

1. The name, residence address, and mailing address of the applicant, the owner of the lot, and *any lessee of the lot.*

4. *The zoning code use classification under which the permit is sought.*

5. *If construction or a new or changed use under a zoning permit will change the quantity or location of required off-street parking, a survey, plat, or plan, drawn to a scale of not less*

than one inch equals 20 feet showing the actual dimensions of the lot, the exact location of the buildings and structures erected or to be erected thereon, adjacent street rights-of-way, utility easements and facilities, building setbacks, drainage, parking lot ingress and egress points, driveways, parking lot aisles, and the number and location of off-street parking spaces and loading spaces. Where off-site parking will be provided to meet a requirement for off-street parking, a similar survey, plat or plan also shall be provided for the off-site parking, accompanied by the document required by HCC 21.55.060(d). A site plan prepared according to Chapter 21.73 HCC may be substituted for the survey, plat, or plan required by this subsection.

7. Copies of any building permits or other permits required by applicable Federal, State or local law or regulations. The 1993 Memorandum of Understanding regarding 541 Bonanza states in relevant part as follows: "City of Homer Policy allows only one water service per lot. Lot 24 and Lot 25 each have a water service. The water service to one of the lots must be abandoned before the two lots are resubdivided into one, single parcel. The owner of the lot agrees to remove the curb box and stem from one of the water services. At the time this work is done, the City of Homer will inspect the work. The owner agrees to secure the proper permits required to accomplish this work." [laydown]

On September 2, 2020 Scott Lowry testified to the Commission that there were already two sewer systems on the lot. There is no evidence in the record that any permits were obtained to remove any curb box or water stem. The connex and the mobile home are now connected to separate water services i.e., there are two water services illegally serving one lot.

12. A new (second) driveway permit was not obtained thus violating HCC 11.08.040(a)

The former driveway at 541 Bonanza Avenue was vacated when two lots were combined into one after which the driveway that formerly served 551 Bonanza became the driveway for the entire lot now designated 541 Bonanza. Driveway permit 1199 originally applied to 551 Bonanza while Driveway Permit 1432 applied to 541 Bonanza. Following subdivision, Driveway Permit 1199 applied to the combined lot which was arbitrarily designated 541 Bonanza and Driveway Permit 1432 was thereafter void. The site of that abandoned driveway was recently de-fenced, graveled, and graded but no new driveway permit was ever obtained authorizing this construction. This violates HCC 11.08.040(a) which states: "Any owner of abutting property desiring to gain access, or to enlarge or change the location of an existing access, to a road or street right-of-way shall do so only in strict accordance with the provisions of a permit issued by the City. Written

application must be made to secure such a permit from the City through the City Planner. Each application for a permit shall be accompanied by a fee in the amount determined by Council resolution and set forth in the City of Homer fee schedule." HCC 11.08.070(d)states: "No alteration shall be made without securing a permit." HCC 11.08.120(b) states: "There shall not be more than two driveways for any one property. Additional drives [sic] should not be requested unless there is a clear necessity for them. Additional driveways must be approved by the Director of Public Works." After the second driveway was vacated following the subdivision that combined two lots into one, the construction of an additional driveway was never approved by the Director of Public Works.

For all of the reasons above, Zoning Permit 1020-782 cannot be sustained.

DATED: January 25, 2021.

By: 
Frank Griswold

Michael R. Gatti
Max D. Holmquist
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Attorneys the City of Homer

BEFORE THE HOMER PLANNING COMMISSION

In the Matter of

APPEAL OF ZONING PERMIT 1020-782

ENTRY OF APPEARANCE

COMES NOW, Jermain Dunnagan & Owens, P.C., and enters their appearance on behalf of Appellee, the City of Homer. Copies of all pleadings and other documents, excluding service of process, are to be served at 3000 A Street, Suite 300, Anchorage, AK 99503.

DATED this 25th day of January, 2021, at Anchorage, Alaska.

JERMAIN DUNNAGAN & OWENS, P.C.
Attorneys for the City of Homer

By: /s/ Michael R. Gatti
Michael R. Gatti
Alaska Bar No. 8306033
Max D. Holmquist
Alaska Bar No. 0911057

LAW OFFICES OF
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From: [Frank Griswold](#)
To: [Melissa Jacobsen](#)
Subject: Appeal of ZP 1020-782 - List of Requested Witnesses
Date: Friday, January 15, 2021 2:02:33 PM

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Melissa,

I hereby request that the following witnesses be made available for questioning at the January 27, 2021 appeal hearing:

Travis Brown, Dan Gardner, Rick Abboud, Stacy Lowry, Scott Lowry.

Frank Griswold

Michael R. Gatti
Max D. Holmquist
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Attorneys the City of Homer

BEFORE THE HOMER PLANNING COMMISSION

In the Matter of

APPEAL OF ZONING PERMIT 1020-782

CITY OF HOMER'S WITNESS LIST

Appellee, the City of Homer (the "City") by and through its counsel, Jermain, Dunnagan & Owens, P.C., hereby provides its list of witnesses who may testify at the Appeal Hearing.

1. Rick Abboud
2. Travis Brown
3. Any other individuals identified by Appellant or necessary for rebuttal purposes.

DATED this 25th day of January, 2021, at Anchorage, Alaska.

JERMAIN DUNNAGAN & OWENS, P.C.
Attorneys for the City of Homer

By: /s/ Michael R. Gatti
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{01103054}

PROCEDURE FOR PLANNING COMMISSION HEARING**

Pursuant to HCC 21.93.300-310, the following procedure has been established for the Homer Planning Commission's consideration of the appeal of Homer's grant of Zoning Permit 1020-782.

An appeal hearing will be held on January 27, 2021. Due to the COVID-19 pandemic the hearing will be conducted by Zoom Meeting and pursuant to Homer City Code 21.93.300 this meeting is open to the public. ****This hearing was continued to March 11, 2021 at 5:30 p.m. by the Planning Commission at the January 27th meeting to allow for notice to be mailed to property owners within 300 feet of the site that is subject of the proposed action.**

To join the Zoom meeting on your computer go to www.zoom.us and select Join A Meeting. From there follow the prompts to enter the following meeting ID and password:

Meeting ID: 940 8082 9916 Passcode: 052186

To participate by phone only, you may dial one of the following phone numbers and enter the same meeting ID and passcode, 1-669-900-6833, 1-253-215-8782 or Toll Free 888-788-0099 or 877-853-5247.

The parties may file written briefs in support of their positions. Briefs must be filed with the City Clerk by 4:30 p.m. Monday, January 25, 2021.

At the hearing the parties may testify, call witnesses, submit evidence, and present oral argument. A list of witnesses must be provided to the City Clerk no later than 4:30 p.m. on Monday, January 25, 2021 so they may be requested to attend.

The hearing shall be subject to the following order and time limitations:

1. Open the hearing and identify all persons in attendance;
2. Address preliminary matters and rule on each preliminary matter raised: 20 minutes;
3. Appellant: 30 minutes to present testimony, other evidence, question witnesses, and oral argument;
4. Appellee: 30 minutes to present testimony, other evidence, question witnesses, and oral argument;
5. Open the floor for comments from interested persons: 10 minutes each;
6. Appellant: 10 minutes to cross-examine witnesses and present rebuttal oral argument;
7. Adjourn.

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).



City of Homer

www.cityofhomer-ak.gov

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 27, 2020

SUBJECT: ADDRESSING POTENTIAL PRELIMINARY MATTERS OF ZONING PERMIT
1020-782

I apologize that I am unable to attend the appeal hearing tonight, I have been called away unexpectedly because of a family matter.

This memo addresses potential preliminary matters that were brought forward by the Appellant at the January 6th Special Meeting and in their brief submitted January 25th, that relate to the City Clerk's office.

1. Commissioner Petska-Rubalcava's Oath of Office, brought up on January 6th-

Deputy Clerk Krause assisted with research regarding the oath of office in Homer City Code and Alaska Statutes Title 29 and found –

Homer City Code (HCC) 4.01.110 Oath of Office - Oaths of office shall be administered for City offices including Councilmen and Mayor, which shall affirm in writing that they will honestly, faithfully and impartially perform their duties. These oaths will be kept on file at City Hall by the City Clerk. [Ord. [95-1\(S\)](#), 1995; Ord. [82-6](#) § 21, 1982].

Alaska Statutes 29.20.600 Oaths of office. Before taking office a municipal official shall affirm in writing that the duties of the office will be honestly, faithfully, and impartially performed by the official.

When Commissioner Petska-Rubalcava's appointment to the Commission was confirmed at the Council's Special meeting of July 1, 2020 she should have been provided an Oath of Office to sign. Unfortunately that did not happen and remained undiscovered until the Appellant submitted a Public Records Request for Commissioner's Oaths of Office. Upon this discovery Ms. Petska-Rubalcava was provided an oath to sign. The language in the document provided to her by the Clerk for the Planning Commission read in a manner that she was signing prior to taking office. This situation is not the Commissioner's fault, she proceeded as requested by Clerk's office staff.

2. Public Notice mailed to neighboring property owners, item 3 in the Appellants brief-

Prior to the January 6th Special Meeting the Planning Department mailed out a notice to property owners. A second public notice was not sent out pertaining to the January 27th rescheduled date, only the parties were noticed by the Clerk's Office.

Homer City Code 21.93.100 General Appeals Procedure reads- *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](#).*

I interpreted this section of code to pertain to Board of Adjustment hearings.

The hearing was continued 20 days. This second meeting has been noticed in the newspaper and on the City of Homer website.

If the Commission determines there is a notice error, the only resolution I can suggest is a second continuance to allow for the Clerk's Office to mail notice to owners of record on the Borough Assessor's records of real property within a 300-foot periphery of the site that is the subject of the proposed action. The hearing would need to be continued to a date on or after February 16, 2021.

3. Witnesses –

I contacted the requested witnesses and they responded as follows:

- City Planner Abboud and Planning Technician Brown have agreed to participate.
- Public Works Superintendent Dan Gardner declined to participate due to his lack of involvement in this matter.
- Property owner's Scott and Stacy Lowry declined the request to be questioned, but will be in attendance.

As I mentioned in previous correspondence, the City doesn't have subpoena power that would require those called to be questioned.

ON APPEAL TO THE HOMER PLANNING COMMISSION

FRANK GRISWOLD,

Appellant,

v.

TRAVIS BROWN, SCOTT LOWRY,
AND STACY LOWRY,

Appellees.

_____/ Appeal of Zoning Permit 1020-782

APPELLANT'S REPLY BRIEF

This Commission is being hoodwinked. The Lowrys applied for a zoning permit to construct a 360 square foot single family dwelling; they did not apply for an accessory dwelling unit and they did not receive a zoning permit for an accessory dwelling unit. HCC 21.70.020(b) requires that the application for zoning permit include the zoning code use classification under which the permit is sought. Accessory dwelling unit is not mentioned on the application or zoning permit. The water/sewer permit for the modified connex was illegally issued; one lot cannot have two water/sewer services. This is why the Memorandum of Understanding required the former owner to remove one such service when in 1993 he combined two lots into one. At page 2, Appellees claim that "HCP found that the proposed dwelling is permitted in the CBD under HCC 21.18.020(ii) because it is an

accessory dwelling unit to a principal single-family dwelling on the Property." Note that there is no reference to the record for this claim and here is why: No such finding was ever made and the converted connex does not constitute an accessory dwelling unit. There is also no evidence in the record that Planning Technician was being supervised by City Planner Rick Abboud when he issued Zoning Permit 1020-782. In any event, HCC 21.70.030(a) takes precedent over HCC 21.90.020(b) because it is more specific. The longstanding rule in Alaska is that "if two statutes conflict, then the specific controls over the general." *Allen v. Alaska Oil and Gas Conserv. Com'n.*, 147 P.3d 664 at 668 (Alaska 2006). Furthermore, where there is a conflict in land use codes, the more restrictive code governs. *Bluett v. County of Cook*, 19 Ill. App. 2d 172, 153 N.E.2d 305 (1958); *City of Richiawn v. McMakin*, 313 Ky. 265, 230 S.W.2d 902 (1950); *Szilvasy v. Saviers*, 70 Ohio App. 34, 44 N.E.2d 732 (1942). HCC 21.70.030(a) specifically states that the City Planner will review the application to determine whether the proposal complies with the zoning code and other applicable provisions of HCC and determine whether all permits, including driveway permits and water/sewer permits, and all approvals required by applicable Federal, State, or local regulation have been obtained. HCC 21.70.030(a) authorizes the City Planner to refer

the application to other city officials for review, comment, or approval for compliance with HCC but ultimately only the City Planner can issue the zoning permit. Planning Technician Travis Brown is a city employee but he is not a city official. HCC 1.18.020 defines "city official" as follows: "City official" means a person who holds elective office under the ordinances of the City, or who is a member of a board or commission whose appointment is subject to confirmation by the City Council." HCC 1.10.010 addresses indemnification from liability and distinguishes between city employees and city officials.

It was inappropriate and deceitful for HCP to categorize the subject structure as "new construction" on the zoning permit when, in fact, it is an old converted connex shipping container.

I never stated or implied that a CUP is required for a detached accessory dwelling unit. I maintained that the subject structure is, as indicated on the application and ensuing zoning permit, a single family dwelling and not a detached accessory dwelling unit. A second single family dwelling on the subject lot would clearly require a CUP per HCC 21.18.030(j). As I stated in my brief, the two totally independent structures on the lot are not occupied by a single family and the converted connex is not incidental to or subordinate to the mobile home.

No provision of HCC 21.18.080(c) requires a shipping container to have been used for transporting merchandise to the Property or to be storing items inside to be considered a nuisance requiring screening from public view. HCP has discretionary enforcement authority but it does not have the authority to approve a zoning permit that violates city code. That is what the City Planner's review under HCC 21.70.030(a) is designed to prevent. I appealed the issuance of Zoning Permit 1020-782, not some non-existent enforcement order.

The procedures not fully complied with on the Application form are clearly delineated in my brief. If simultaneous briefing were not city policy, Appellees could have responded to my brief instead of my less developed Points on Appeal. The information omitted from the application was extremely material and severely hindered HCP's review of the application.

Applicants' failure to obtain the prerequisite zoning permit prior to craning in the converted annex cannot be dismissed as a mere technical violation. Neither HCP nor the Commission has the discretion to waive HCC 21.70.010(b). HCC 21.70.030(c) states as follows: "In granting a zoning permit, no City official or employee has authority to grant a waiver, variance, or deviation from the requirements of the zoning code and other applicable laws and regulations, unless such authority

is expressly contained therein. Any zoning permit that attempts to do so may be revoked by the City Manager as void. The applicant, owner, lessee, and occupant of the lot bear continuing responsibility for compliance with the zoning code and all other applicable laws and regulations." Most Commissioners swore an Oath of Office to defend and support the Ordinances of the City of Homer, not the fee schedule. The additional \$100 fee for after-the-fact zoning permits was enacted by Resolution, not by Ordinance, and provides no deterrent whatsoever to violating HCC 21.70.010(b). In fact, limiting a potential violator's liability to such a de minimus amount encourages violations.

HCP was required to investigate driveway permits. HCC 21.70.030(a) requires the City Planner to review the application to determine whether the proposal complies with the zoning code **and other applicable provisions of HCC** and determine whether all permits (including driveway permits) and all approvals required by applicable Federal, State, or local regulation have been obtained.

HCC 21.90.090 lists the following as violations of Title 21:

A structure, alteration of a structure, or use of land or a structure that conflicts with a provision of the Homer Zoning Code, or a regulation or a permit issued under the Homer Zoning Code.

To use or occupy a structure, land or water other than as allowed by the Homer Zoning Code, regulations, or a permit issued under the Homer Zoning Code.

To erect, construct, reconstruct, enlarge, move, repair or alter a structure or part thereof other than as allowed by the Homer Zoning Code, a regulation or a permit issued under the Homer Zoning Code.

To develop, occupy or use any land or structure contrary to or in violation of the terms of this title or the terms of any permit issued under this title.

To develop, occupy or use any land or structure in any manner for which a permit is required under the Homer Zoning Code without such a permit or after a required permit has been suspended or revoked.

To knowingly act in any manner declared by the Homer Zoning Code to be prohibited, unlawful, a violation, or an offense.

To cause another to commit a violation of this title.

Each act or condition in violation of this title, and every day upon which the act or condition occurs, is a separate violation.

A violator is a person who:

1. Commits or causes a violation of this title; or
2. Occupies, maintains, keeps, alters, constructs or establishes a structure, or use of land or a structure, in violation of the Homer Zoning Code, a regulation or a permit; or
3. Owns, controls or has the right to control land or a structure where the land or structure is used, occupied, maintained, kept, altered, constructed or established in violation of the Homer Zoning Code, a regulation or a permit."

The Commission should neither advocate for nor coddle zoning violators. Zoning Permit 1020-782 should be invalidated.

DATED: January 27, 2021.

By: Frank Griswold
Frank Griswold

ON APPEAL TO THE HOMER PLANNING COMMISSION

FRANK GRISWOLD,

Appellant,

v.

TRAVIS BROWN, SCOTT LOWRY,
AND STACY LOWRY,

Appellees.

_____/ Appeal of Zoning Permit 1020-782

**MOTION FOR APPOINTMENT OF LEGAL COUNSEL TO REPRESENT THE
PLANNING COMMISSION**

Appellant Frank Griswold hereby moves that the Planning Commission be represented by impartial, independent legal counsel for all future proceedings concerning this matter. During the January 27, 2021 appeal hearing, the Commission displayed widespread ignorance about applicable appeal procedures and at one point confused Board of Adjustment appeal procedures with Commission appeal procedures. The Commission allowed the attorney representing the Planning Department/Administration, Max Holmquist, to give the Commission legal advice as to whether Chair Smith and Commissioner Venuti should be disqualified from participation due to bias despite the fact that no provision of HCC 21.18.048 allows a party or his legal counsel to comment on or otherwise influence the Commission's determination as to whether a Commissioner's ability to make an



Originally filed
w/ clerk 1-28-21
first filing misplaced

impartial decision is impaired. Couching legal advice with "I am not your attorney but ..." does not make it otherwise. Attorney Max Holmquist does not represent the Commission as a whole or its members individually and should not be dispensing partisan legal advice to the Commission. The lay Commission is repeatedly forced to seek and adopt legal advice proffered by Mr. Holmquist because the Commission has no attorney of its own. This is highly prejudicial to the Appellant and will continue to be so at the upcoming continued appeal hearing(s) unless independent, impartial, legal counsel is appointed to represent the floundering Commission, no disrespect intended. At some point the Commission will need to go into deliberations and then prepare findings of fact and issue a formal decision. It would be both helpful and prudent for the Commission to deliberate in consultation with an impartial attorney as allowed by HCC 21.93.300(e) and have the assistance of impartial legal counsel in the preparation of the ensuing decision and findings of fact as allowed by HCC 21.93.300(g).

DATED: January 28, 2021.

By: Frank Griswold
Frank Griswold

ON APPEAL TO THE HOMER PLANNING COMMISSION

FRANK GRISWOLD,

Appellant,

v.

TRAVIS BROWN, SCOTT LOWRY,
AND STACY LOWRY,

Appellees.

_____/ Appeal of Zoning Permit 1020-782

Evidence

The Commission's recently adopted "Procedure for Planning Commission Hearing" expressly states that **at the hearing** the parties may submit evidence. In accordance with this Procedure and because the March 11, 2021 appeal hearing is being conducted in a virtual (Zoom) meeting where the physical introduction of written evidence is not feasible, Appellant Frank Griswold hereby submits this evidence prior to the hearing.

HCC 21.93.300(d) underscores the importance of developing a full record. The Procedure sets unreasonably short time limits for presenting testimony, other evidence, questioning witnesses, oral argument, cross-examination, and rebuttal oral argument. While time limits may be appropriate for Board of Adjustment proceedings where the record is closed, the Commission is acting as a trial court where the record is still being established.

The Commission does not have the authority to set arbitrary time limits on the presentation of that evidence or otherwise suppress the introduction of evidence to thwart the development of a full record.

In a parallel but unrelated appeal before the Homer Board of Adjustment, one of the first orders of business was "Identification of the Parties." This procedure should be followed in this appeal as well. The Commission's Procedure states: "The Commission may question each of [the] parties listed above." However, the Procedure merely cites "Appellant" and "Appellee" above without naming the associated parties. There are multiple Appellees in this appeal, including property owners Stacy Lowry and Scott Lowry. The Procedure fails to acknowledge that pursuant to HCC 21.93.300(d) members of the general public have the right to submit written briefs or testimony and sets no deadline for the filing of those written briefs or testimony.

Among others, I requested that Dan Gardner and the Lowrys be made available for questioning as witnesses. This should not require any subpoenas. A subpoena is a writ ordering a person to attend a tribunal; it is not something needed to require a person already in attendance to respond to direct questioning and/or cross-examination. In proceedings covered by the Alaska Evidence/Page 2

Administrative Procedures Act, subpoenas are governed by AS 44.62.430. AS 44.62.430(a) provides that before the hearing begins, the agency shall issue subpoenas at the request of a party, in accordance with ALASKA R. CIV. P. 45(g). AS 42.62.590 allows the superior court in the judicial district where the hearing is being held to use the court's contempt powers to enforce a hearing officer's subpoena or other lawful order. The agency prepares a written certification setting out the details of the alleged subpoena violation. The person seeking to compel the subpoena initiates the enforcement proceeding by filing a petition requesting enforcement of the subpoena and including the written certification. The court will then issue an order to show cause why the person failing to honor the subpoena should not be held in contempt. Anyone who is competent can be compelled by the Commission to give evidence in this matter. The Commission and/or Administration can compel Public Works Supervisor Dan Gardner, who has knowledge about matters relevant to this appeal, to attend the March 11, 2021 hearing as a witness without the need for a subpoena. At the September 2, 2020 Commission meeting when they were not under oath to tell the truth, both Stacy and Scott Lowry were eager to testify to the Commission and respond to its questions regarding CUP 20-14. However, at the January 27, 2021 continued appeal hearing

regarding Zoning Permit 1020-782, the Lowrys indicated that they did not intend to respond to questioning. The Lowrys gave their implied consent to respond to questioning when they submitted their application for Zoning Permit 1020-782. The Commission should compel them to respond to material questions regarding their application and if they refuse to do so they should be held in contempt by the Commission and sanctioned appropriately. Alaska Rule of Evidence 512(d) permits a negative inference to be drawn against a party who asserts the Fifth Amendment in a civil (non-criminal) action.

The representation role of the Homer City Attorneys is impermissibly ambiguous, prejudicial, and contrary to their prescribed duties thereby creating a potential conflict of interest. The City Attorney(s) should be required to disclose which party or parties they are representing. City Planner Rick Abboud is not a legitimate appellee because he is not a captioned party, would not be aggrieved by the invalidation/denial of Zoning Permit 1020-782, and did not file an appeal or cross appeal. Boroughs and cities are not individual legal entities recognized in the U. S. Constitution, but states are. The Kenai Peninsula Borough derives its zoning powers from the State of Alaska and the City of Homer derives its zoning powers from the KPB and the Homer Planning Commission derives its

powers from the City of Homer. *Governmental Entity* means any (a) multinational, federal, national, provincial, territorial, state, regional, municipal, local or other government, **governmental or public department**, central bank, court, **tribunal**, arbitral body, **commission**, **administrative agency**, **board**, bureau or agency, domestic or foreign, (b) subdivision, agent, **commission**, **board**, or **authority of any of the foregoing**, or (c) quasi-governmental or private body exercising any regulatory, expropriation or taxing authority under, or for the account of, any of the foregoing, in each case, that has jurisdiction or authority with respect to the applicable Party. Thus, the Homer Planning Commission, the Planning Department/Administration, and the Homer Board of Adjustment are all distinct, legally recognizable entities of the City of Homer. Different agencies within a government entity should be considered separate clients when they have opposing positions in matters in controversy. Josephson & Pierce, To whom Does the Government Lawyer Owe the Duty of Loyalty When Clients Are in Conflict, 29 Howard Law J. 540; Stern & Gressman, *Supreme Court Practice* (5th Ed. 1978), at 768. HCC 2.16.010 addresses the City Attorneys' duty of loyalty as follows: "The City Attorney shall act as legal advisor to and be attorney and counsel for the Council and shall be solely responsible to the City

Council." HCC 2.16.010(a) states: "He [referring to the City Attorney] shall advise any officer or department head of the City in matters relating to his official duties when so requested and shall file with the City Clerk a copy of all written opinions given by him." This is qualified by HCC 2.16.010(e) which states: "He shall at all times cooperate with the City Manager and shall provide such information and reports and perform such duties as are requested by the City Manager ***so long as they are not inconsistent with the duties of his office as provided in this section.***" Advocating for the City Planner and/or for the City Administration in an appeal before the Commission is clearly inconsistent with the duties of the City Attorney prescribed in HCC 2.16.010.

When the application for Zoning Permit 1020-782 was submitted, no public notice was provided to surrounding property owners. In this particular case the city's failure to so notify the surrounding property owners is essentially moot in light of the fact that this appeal was nonetheless filed. However, the public interest exception to the mootness doctrine applies because of the negative due process implications for future zoning permit appeals. Whenever a zoning permit is issued, all property owners within a 300-foot perimeter of the subject lot should be notified so that they may exercise their appeal

rights. The requirement that recipients of a zoning permit post it in a visible location is rarely complied with and never enforced and therefore does not provide a valid substitution for written public notification.

This Commission is being hoodwinked. The Lowrys applied for a zoning permit to construct a 360 square foot single family dwelling; they did not apply for an accessory dwelling unit and they did not receive a zoning permit for an accessory dwelling unit. HCC 21.70.020(b) requires that the application for zoning permit include the zoning code use classification under which the permit is sought. Accessory dwelling unit is not mentioned on the application or zoning permit. The water/sewer permit for the modified connex was illegally issued; one lot cannot have two water/sewer services. This is why the Memorandum of Understanding required the former owner to remove one such service when in 1993 he combined two lots into one. At page 2, the City Attorneys claim that "HCP found that the proposed dwelling is permitted in the CBD under HCC 21.18.020(ii) because it is an accessory dwelling unit to a principal single-family dwelling on the Property." Note that no reference to the record was provided for this claim and here is why: No such finding was ever made and the converted connex does not constitute an accessory dwelling unit. The City Attorneys posit that HCC

21.90.020(b) authorized Mr. brown to issue the permit but it did not. There is also no evidence in the record that Planning Technician Travis Brown was being supervised by City Planner Rick Abboud when he issued Zoning Permit 1020-782. Furthermore, HCC 21.70.030(a) takes precedent over HCC 21.90.020(b) because it is more specific. The longstanding rule in Alaska is that "if two statutes conflict, then the specific controls over the general." *Allen v. Alaska Oil and Gas Conserv. Com'n.*, 147 P.3d 664 at 668 (Alaska 2006). Furthermore, where there is a conflict in land use codes, the more restrictive code governs. *Bluett v. County of Cook*, 19 Ill. App. 2d 172, 153 N.E.2d 305 (1958); *City of Richiawn v. McMakin*, 313 Ky. 265, 230 S.W.2d 902 (1950); *Szilvasy v. Saviers*, 70 Ohio App. 34, 44 N.E.2d 732 (1942). HCC 21.70.030(a) specifically states that the City Planner will review the application to determine whether the proposal complies with the zoning code and other applicable provisions of HCC and determine whether all permits, including driveway permits and water/sewer permits, and all approvals required by applicable Federal, State, or local regulation have been obtained. HCC 21.70.030(a) authorizes the City Planner to refer the application to other city officials for review, comment, or approval for compliance with HCC but ultimately only the City Planner can issue the zoning permit. Planning Technician Travis

Brown is a city employee but he is not a city official. HCC 1.18.020 defines "city official" as follows: "City official" means a person who holds elective office under the ordinances of the City, or who is a member of a board or commission whose appointment is subject to confirmation by the City Council." HCC 1.10.010 addresses indemnification from liability and distinguishes between city employees and city officials.

It was inappropriate and deceitful for HCP to categorize the subject structure as "new construction" on the zoning permit when, in fact, it is an old converted connex shipping container. I never stated or implied that a CUP is required for a detached accessory dwelling unit; I maintained that the subject structure is, as indicated on the application and ensuing zoning permit, a single family dwelling and not a detached accessory dwelling unit. A second single family dwelling on the subject lot would clearly require a CUP per HCC 21.18.030(j). As I stated in my brief, the two totally independent structures on the lot are not occupied by a single family and the converted connex is not incidental to or subordinate to the mobile home.

No provision of HCC 21.18.080(c) requires a shipping container to have been used for transporting merchandize to the Property or to be storing items inside to be considered a nuisance requiring screening from public view. HCP has

discretionary enforcement authority but it does not have the authority to approve a zoning permit that violates city code. That is what the City Planner's review under HCC 21.70.030(a) is designed to prevent. I appealed the issuance of Zoning Permit 1020-782, not some non-existent enforcement order.

The procedures not fully complied with on the Application form are clearly delineated in my brief. If simultaneous briefing were not city policy, Appellees could have responded to my brief instead of my less developed Points on Appeal. The information omitted from the application was extremely material and severely hindered HCP's review of the application.

Applicants' failure to obtain the prerequisite zoning permit prior to craning in the converted connex cannot be dismissed as a mere technical violation. Neither HCP nor the Commission has the discretion to waive HCC 21.70.010(b). HCC 21.70.030(c) states as follows: "In granting a zoning permit, no City official or employee has authority to grant a waiver, variance, or deviation from the requirements of the zoning code and other applicable laws and regulations, unless such authority is expressly contained therein. Any zoning permit that attempts to do so may be revoked by the City Manager as void. The applicant, owner, lessee, and occupant of the lot bear continuing responsibility for compliance with the zoning code

and all other applicable laws and regulations." Most Commissioners swore an Oath of Office to defend and support the Ordinances of the City of Homer, not the fee schedule. The additional \$100 fee for after-the-fact zoning permits was enacted by Resolution, not by Ordinance, and provides no deterrent whatsoever to violating HCC 21.70.010(b). In fact, limiting a potential violator's liability to such a de minimus amount encourages violations.

HCP was required to investigate driveway permits. HCC 21.70.030(a) requires the City Planner to review the application to determine whether the proposal complies with the zoning code **and other applicable provisions of HCC** and determine whether all permits, including driveway permits, and all approvals required by applicable Federal, State, or local regulation have been obtained.

HCC 21.90.090 lists the following as violations of Title 21:

A structure, alteration of a structure, or use of land or a structure that conflicts with a provision of the Homer Zoning Code, or a regulation or a permit issued under the Homer Zoning Code.

To use or occupy a structure, land or water other than as allowed by the Homer Zoning Code, regulations, or a permit issued under the Homer Zoning Code.

To erect, construct, reconstruct, enlarge, move, repair or alter a structure or part thereof other than as allowed by the Homer

Zoning Code, a regulation or a permit issued under the Homer Zoning Code.

To develop, occupy or use any land or structure contrary to or in violation of the terms of this title or the terms of any permit issued under this title.

To develop, occupy or use any land or structure in any manner for which a permit is required under the Homer Zoning Code without such a permit or after a required permit has been suspended or revoked.

To knowingly act in any manner declared by the Homer Zoning Code to be prohibited, unlawful, a violation, or an offense.

To cause another to commit a violation of this title.

Each act or condition in violation of this title, and every day upon which the act or condition occurs, is a separate violation.

A violator is a person who:

1. Commits or causes a violation of this title; or
2. Occupies, maintains, keeps, alters, constructs or establishes a structure, or use of land or a structure, in violation of the Homer Zoning Code, a regulation or a permit; or
3. Owns, controls or has the right to control land or a structure where the land or structure is used, occupied, maintained, kept, altered, constructed or established in violation of the Homer Zoning Code, a regulation or a permit."

The Commission should neither advocate for nor coddle zoning violators. Zoning Permit 1020-782 should be invalidated.

DATED: March 9, 2021.

By: s/Frank Griswold/
Frank Griswold

From: [Frank Griswold](#)
To: [Melissa Jacobsen](#)
Cc: [Renee Krause](#)
Subject: Notice to Surrounding Property Owners of March 11, 2021 Appeal Hearing Re: Zoning Permit 1020-782
Date: Wednesday, March 10, 2021 12:36:48 AM

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Melissa,

Please email me a copy of the notice of the March 11, 2021 public hearing which was required under HCC 21.94.020 to be published last week in a paper of general circulation within the City. Please also email me a copy of the notice of the March 11, 2021 hearing mailed to surrounding property owners as required under HCC 21.94.030, plus the Clerk's Affidavit of Distribution and the mailing list of those surrounding property owners. HCC 21.94.030 stipulates that a copy of the newspaper notification, or notice containing at least the same information required under HCC 21.94.020(b)(1-4), shall be mailed to owners of record on the Borough Assessor's records of real property within a 300-foot periphery of the site that is the subject of the proposed action. HCC 21.94.020(b)(2) requires "[a] legal or common description of the property involved and a street address" while HCC 21.94.020(b)(4) requires "[a] statement that the complete proposal is available for review, specifying the particular City office where the proposal may be examined."

1. Does the subject notice presumably published last week in the local newspaper contain all of the information required under HCC 21.94.020(b)(1-4)? If not, why not?

2. Does the copy of the newspaper notification or Notice of Hearing that the Clerk's Office presumably mailed to surrounding property owners regarding the March 11, 2021 appeal hearing contain a legal or common description of the subject property (besides the street address)? If not, why not?

3. Does the copy of the newspaper notification or Notice of Hearing that the Clerk's Office presumably mailed to surrounding property owners regarding the March 11, 2021 appeal hearing contain a statement that the complete proposal is available for review, specifying the particular City office where the proposal may be examined? If not, why not?

Thank you for your prompt reply.

Frank

From: [Frank Griswold](#)
To: [Melissa Jacobsen](#)
Subject: March 11, 2021 Appeal Hearing Re: Zoning Permit 1020-782
Date: Wednesday, March 10, 2021 12:20:47 PM

CAUTION: This email originated from outside your organization. Exercise caution when opening attachments or clicking links, especially from unknown senders.

Melissa,

In your Memorandum to the Commission dated January 27, 2020 [sic] you stated: "The hearing was continued 20 days. **This second meeting has been noticed in the newspaper** and on the City of Homer website." The third meeting is now scheduled for March 11, 2021. I was unable to find any notice of this meeting in the March 4, 2021 edition of the Homer News. Was the March 11, 2021 Commission appeal hearing advertised in the Homer News or other local newspaper? If not, why was the second meeting so noticed but not the third? HCC 21.93.300(d) provides that "Any person may file a written brief or testimony in an appeal before the Commission." Furthermore, the Procedure adopted by the Commission provides, under item 5, that the floor will be opened for comments from interested persons with a time limit of 10 minutes each. This sounds very much like a public hearing for which the notification procedure under HCC 21.94.020 (advertising the week before in a local newspaper) is required.

The Agenda for the March 11, 2021 Planning Commission Special Meeting does not provide for any comments from interested persons limited to 10 minutes each; it only provides for Comments of the Audience limited to 3 minutes each at the end of the meeting. The members of the general public were not provided with the Commission's Procedure so how would they know they have a right to comment for up to 10 minutes during the March 11, 2021 appeal hearing and/or submit written briefs or written testimony at or prior to the appeal hearing?

The Notice of (the March 11, 2021) Hearing you mailed to Parties of Record identifies City Planner Rick Abboud as a Party of Record. Why is Mr. Abboud considered a party to this appeal? Why are Scott and Stacy Lowry only identified as property owners and not as Appellees? Why is Travis Brown considered neither a party nor Appellee? Why didn't you date that Notice of Hearing? Please bring these concerns, questions, and your responses to them to the immediate attention of the Commission and Parties, whoever they are. Please do the same for the questions I asked in my previous email regarding notice to surrounding property owners.

Thank you.

Frank

Michael R. Gatti, Esq.
Max D. Holmquist, Esq.
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mholmquist@jdolaw.com

Attorneys for City of Homer

BEFORE THE HOMER PLANNING COMMISSION

In the Matter of

APPEAL OF ZONING PERMIT 1020-782

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MOTION TO STRIKE

Appellee the City of Homer (the “City”), by and through its attorneys, Jermain, Dunnagan & Owens, P.C., hereby moves to strike from the record Appellant’s Reply Brief and Appellant’s pleading entitled “Evidence.” The Homer Planning Commission’s (the “Commission”) Procedure for Planning Commission Hearing (“Procedural Order”) applicable to this matter limits the parties to a single written brief to be filed by January 25, 2021. Appellant Frank Griswold’s Reply Brief and “Evidence” clearly do not comply with the Procedural Order. The Commission should strike them from the record and not consider them for any purpose.

The Procedural Order states: “The parties may file written briefs in support of their positions. Briefs must be filed with the City Clerk by 4:30 p.m. Monday, January 25, 2021.” The City and Griswold filed written briefs with the City Clerk on January 25,

2021.¹ In accord with the Procedural Order, the City did not respond in writing to Griswold's brief. Griswold, however, did not comply with the Procedural Order. Rather, he filed his Reply Brief on January 27, 2021. At the January 27, 2021 hearing, the City objected to Griswold's Reply Brief and moved to strike it from the record.

On March 9, 2021, Griswold filed a pleading entitled "Evidence." Griswold asserts that because the Procedural Order allows the parties to submit evidence at the hearing, the Commission should accept this filing. This is incorrect for two reasons. First, Griswold's pleading does not contain any evidence. Rather, it is simply additional briefing on procedural and substantive issues related to this appeal. It appears that Griswold is attempting to circumvent the Procedural Order's briefing limitation and deadline by calling his late-filed additional briefing "evidence." Second, the Procedural Order only allows the submission of evidence during the hearing. The City intends to comply with the Procedural Order by only presenting evidence during the hearing within the prescribed 30-minute period. The Commission should require Griswold to do the same.

The Commission should not allow Griswold to disregard the Procedural Order by presenting additional untimely briefing. That would allow Griswold to have three bites at the proverbial apple, despite the fact that the Procedural Order only allows one. If the Commission allows and considers this briefing, the City will be unfairly prejudiced because it followed the Procedural Order and did not file additional briefing. Accordingly, the City respectfully requests that the Commission strike Griswold's Reply

¹ See City of Homer's Brief, filed January 25, 2021; Appellant's Brief, filed January 25, 2021.

Brief and “Evidence” pleading from the record and that it not consider those pleadings for any purpose.

DATED this 11th day of March, 2021, at Anchorage, Alaska.

JERMAIN DUNNAGAN & OWENS, P.C.
Attorneys for Appellee
City of Homer

By: s/Michael R. Gatti/
Michael R. Gatti
Alaska Bar No. 8306033
Max D. Holmquist
Alaska Bar No. 0911057

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MOTION TO STRIKE
Appeal of Zoning Permit 1020-782

Page 3 of 3

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Attorneys for City of Homer

BEFORE THE HOMER PLANNING COMMISSION

In the Matter of

APPEAL OF ZONING PERMIT 1020-782

[PROPOSED] ORDER GRANTING MOTION TO STRIKE

The Homer Planning Commission, having reviewed the City of Homer's Motion to Strike and any opposition thereto, hereby GRANTS the same. Appellant Frank Griswold's "Reply Brief" filed January 27, 2021 and pleading entitled "Evidence" filed March 9, 2021 are stricken from the record and will not be considered for any purpose.

DATED: _____

SCOTT SMITH
CHAIR – HOMER PLANNING
COMMISSION

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CLERK'S AFFIDAVIT OF DISTRIBUTION

I, Renee Krause, Deputy City Clerk for the City of Homer, Alaska, do hereby certify that the Notice of Appeal Hearing Scheduled was mailed on February 16, 2021 to the appellant, the property owner subject to the action, as well as property owners within a 300-foot periphery of the site that is the subject of the proposed action, in accordance with HCC 21.93.100(b) and 21.94.300(a).

Copies of said notice and mailing list are attached.

IN TESTIMONY WHEREOF, I have hereunto set my hand and seal of said City of Homer this 11th day of March, 2021.

Renee Krause

Renee Krause, MMC, Deputy City Clerk





City of Homer

www.cityofhomer-ak.gov

Office of the City Clerk

491 East Pioneer Avenue
Homer, Alaska 99603

clerk@cityofhomer-ak.gov

(p) 907-235-3130

(f) 907-235-3143

NOTICE OF HEARING

To Parties of Record: Frank Griswold, Appellant
Scott and Stacy Lowry, Property Owner
Rick Abboud, City Planner

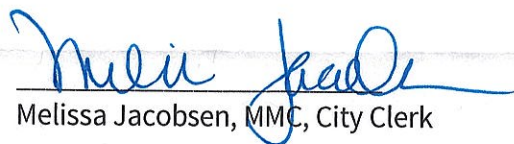
The hearing on the appeal to the Planning Commission regarding Zoning Permit 1020-782 issued to Scott and Stacy Lowry for their property located at 541 Bonanza Avenue, was continued and will be held on Thursday, March 11, 2021 at 5:30 p.m. The hearing will be conducted by Zoom Meeting and pursuant to Homer City Code 21.93.300 this meeting is open to the public.

To join the Zoom meeting on your computer go to www.zoom.us and select Join A Meeting. From there follow the prompts to enter the meeting ID and password below.

Meeting ID: 940 8082 9916 Passcode: 052186

To participate by phone only, you may dial one of the following phone numbers and enter the same meeting ID and passcode, 1-669-900-6833, 1-253-215-8782 or Toll Free 888-788-0099 or 877-853-5247.

Pursuant to Homer City Code Section 21.94.030 property owners within a 300-foot periphery of the site that is the subject of the proposed action shall be noticed.


Melissa Jacobsen, MMC, City Clerk

Cc: Attorney Gatti, City Manager

MAILING LABEL LISTING

PARCEL_ID	OWNER	ADDRESS	CITY	STAT	ZIPCODE
17710404	BAYES MICHELLE M	62243 SKYLINE DR	HOMER	AK	99603
17710717	BOOTSTRAP ENTERPRISES LLC	PO BOX 1962	HOMER	AK	99603
17710215	CARR TIMOTHY C DECLARATION OF TRUST	3236 LAKE ST	HOMER	AK	99603
17710410	CAVE JESSE AND LINDA FAMILY TRUST	903 N SLICK ROCK CREEK RD	OTIS	OR	97368
17710723	DERRY DAVID M	PO BOX 2882	KENAI	AK	99611
17710716	DERRY SEAN M & DERRY RYAN D	PO BOX 2882	KENAI	AK	99611
17710411	FINNEY PAUL G & SUANNE Y	1588 HILLSIDE PL	HOMER	AK	99603
17710214	GILLIAM ANTHONY J & BETH A	552 BONANZA AVE	HOMER	AK	99603
17710202	GLIDDEN AARON	495 KLONDIKE AVE	HOMER	AK	99603
17710201	GRISWOLD FRANK	519 KLONDIKE AVE	HOMER	AK	99603
17710219	GUSTAFSON JARL	PO BOX 952	HOMER	AK	99603
17710219	GUSTAFSON KATHLEEN	PO BOX 952	HOMER	AK	99603
17710206	HAMILTON ANNIE	PO BOX 2118	HOMER	AK	99603
17710206	HAMILTON TIM	PO BOX 2118	HOMER	AK	99603
17710408	HATELY JOAN C	2518 LOUSSAC DR	ANCHORAGE	AK	99517
17710408	HATELY WILLIAM	2518 LOUSSAC DR	ANCHORAGE	AK	99517
17711025	HEATH STREET INVESTMENTS LLC	127 W PIONEER AVE	HOMER	AK	99603
17710725	HODGDON PAUL R & LUELLA J	PO BOX 1150	HOMER	AK	99603
17712032	HOMER ELECTRIC ASSN INC	3977 LAKE ST	HOMER	AK	99603
17710422	LANDFIELD KEN	PO BOX 2013	HOMER	AK	99603
17710211	LANGMAN REBECCA J	584 BONANZA AVE	HOMER	AK	99603
17710409	LEE GRANT A	573 BONANZA AVE	HOMER	AK	99603
17710417	LINDBERG KRISTINE	PO BOX 84	HOMER	AK	99603
17710421	LOWRY SCOTT RYAN	907 DALY RD	OJAI	CA	93023
17710421	LOWRY STACY ANN	210 E OAK ST	OJAI	CA	93023
17710416	MILLER SHEVAWN	PO BOX 798	HOMER	AK	99603
17710418	MONTGOMERY MARY E	508 GRUBSTAKE AVE	HOMER	AK	99603
17710423	MUNGER HOMER PROPERTY LLC	12900 OLD SEWARD HWY	ANCHORAGE	AK	99515
17710722	MURPHY MEGAN	1429 E 2000 NORTH RD	WHITE HEATH	IL	61884
17710405	SHAVELSON PAM	PO BOX 1498	HOMER	AK	99603
17710721	SIMS SHELBY D	527 GRUBSTAKE AVE	HOMER	AK	99603
17710210	SMITH THOMAS & CONNIE	583 KLONDIKE AVE	HOMER	AK	99603
17710216	STOUT FRED A	530 BONANZA AVE	HOMER	AK	99603
17710220	TALLON TANA C & SHAWN C	5250 TWILIGHT DR	RAPID CITY	SD	57703
17710738	TOOTHKEEPER LLC	PO BOX 3616	HOMER	AK	99603
17710401	WADDINGTON PETER	PO BOX 797	HOMER	AK	99603
17710415	WEEKS LINDA LEE	542 GRUBSTAKE AVE	HOMER	AK	99603
17710419	WEISER DYLAN	480 GRUBSTAKE AVE	HOMER	AK	99603
17710422	WOHLGEMUTH SUSAN	312 LEE DR	HOMER	AK	99603

ON APPEAL TO THE HOMER PLANNING COMMISSION

FRANK GRISWOLD,

Appellant,

v.

TRAVIS BROWN, SCOTT LOWRY,
AND STACY LOWRY,

Appellees.

_____/ Appeal of Zoning Permit 1020-782

APPELLANT'S REPLY TO CITY'S MOTION TO STRIKE EVIDENCE

The Commission's recently adopted Procedure does not expressly limit the parties' submission of evidence to a single written brief filed by January 25, 2021. Furthermore, the filing of written briefs is purely optional. The Procedure states: "At the hearing the parties may testify, call witnesses, **submit evidence**, and present oral argument." Neither the Procedure nor HCC differentiates between written briefs and written evidence. On February 24, 2021 I emailed City Clerk Melissa Jacobsen as follows:

"All parties had the opportunity to submit written briefs prior to the January 6, 2021 hearing but no briefs were submitted. When the Commission continued the January 6, 2021 hearing to allow the Commission to develop hearing procedures, the briefing deadlines were extended to just before the January 27, 2021 hearing. Further extending the briefing deadlines to just before the March 11, 2021 hearing would now be consistent with the Commission's previous course of action. Note that there is no page limit on written briefs and HCC does not expressly prohibit

the filing of reply briefs. The March 11, 2021 hearing is an **evidentiary** hearing and no timely submitted evidence should be refused; due process requires that I too have a right to be heard and treated fairly. HCC 21.93.300(d) underscores the importance of developing a full record and provides that neighboring property owners and "any person may file a written brief or testimony in an appeal before the Commission." If I refile my Reply Brief as written testimony would that be acceptable? I previously asked the Clerk's Office to explain the difference between a written brief and written testimony but received no response."

HCC 21.93.530(b), which applies to Board of Adjustment procedures, expressly provides for the filing of reply briefs. In appeals before the Board, the record is closed but in appeals before the planning Commission the record is open which is all the more reason to encourage the introduction of evidence. When time allows, there is no reason to suppress the introduction of reply briefs or other evidence; doing so would be contrary to the intent of HCC 21.93.300(d). The City Attorneys missed the deadline to file an opening brief for the January 6, 2021 hearing so they requested a continuance on other grounds which was granted. Thereafter, the Commission extended the briefing deadline to January 25, 2021. The January 27, 2021 hearing was continued to March 11, 2021 and there is no valid reason for not extending the briefing deadline again.

Like the City Clerk, the City Attorneys cannot explain the difference between written briefing and written evidence. They

indicate that they intend to present evidence at the virtual hearing but that is presumably non-written evidence. My right to submit written evidence at the **evidentiary** hearing should not be infringed simply because of a virus. Technically speaking, the Commission does not have the authority to conduct virtual meetings because the City Council failed to include quasi-judicial Commission meetings in the emergency legislation it recently enacted authorizing Zoom Meetings. If tonight's meeting were non-virtual, I could simply hand my written evidence to the City Clerk for the Commission's consideration. Furthermore, if the Commission had not imposed such unreasonably short time limits on the presentation on testimony, **other evidence**, questioning of witnesses, and oral argument, I may have had time to present my written evidence orally. Note that the Procedure characterizes **testimony** to be evidence by following it with "**other evidence**." So whether I read my evidence to the Commission at the hearing or submit it in written form prior to the hearing, it constitutes timely filed evidence. Quasi-judicial bodies should never suppress material evidence merely for the sake of expediency. In the landmark case of *Brady v. Maryland*, 373 U.S. 83 (1963), the Supreme Court declared that, regardless of the good faith or bad faith of the prosecution, the suppression of evidence favorable to the accused violates

due process where the evidence is material to either guilt or penalty.

DATED: March 11, 2021.

By: s/Frank Griswold/
Frank Griswold