



## **KENAI PENINSULA BOROUGH**

### **PLANNING DEPARTMENT**

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**DAVID R. CAREY**  
**BOROUGH MAYOR**

### **MEMORANDUM**

**TO:** Pete Sprague, Assembly President  
Kenai Peninsula Borough Assembly Members

**THRU:** David R. Carey, Borough Mayor *DR Carey*

**FROM:** *MB* Max J. Best, Planning Director

**DATE:** June 17, 2010

**SUBJECT:** Ordinance 2010-24; Adopting the City of Homer Comprehensive Plan as the Official Comprehensive Plan for that portion of the Borough within the boundaries of the City of Homer.

The Planning Commission reviewed the subject ordinance during their regularly scheduled May 24 & June 14, 2010 meetings. A motion passed by unanimous consent to recommend adoption of the ordinance at their regularly scheduled meeting of June 14, 2010.

In the Ordinance, please make the following amendment to the last WHEREAS:

WHEREAS, the KPB Planning Commission at its regularly scheduled meeting of June 14, 2010 recommended adoption.

Draft, unapproved minutes of the subject portion of the meeting are attached.

AGENDA ITEM F. PUBLIC HEARINGS

3. Ordinance 2010-24; Adopting the City of Homer Comprehensive Plan as the Official Comprehensive Plan for that portion of the Borough within the boundaries of the City of Homer.

Staff Report given by Max Best

PC Meeting: 06/14/10

The Kenai Peninsula Borough provides for planning on an area wide basis in accordance with AS 29.40. Additionally as provided in KPB 21.01.025(E), cities requesting extensive comprehensive plan amendments may recommend to the Kenai Peninsula Borough Planning Commission a change to the city comprehensive plan.

The City of Homer's previous comprehensive plan was adopted in 1999, and the adoption of a new plan will help guide the development of the City of Homer. The City of Homer has adopted city Ordinance 09-04(S) recommending approval of a comprehensive plan for that area of the borough within the boundaries of Homer.

Public comments were received, and numerous public hearings were held regarding the draft comprehensive plan.

On April 26, 2010, the Homer City Council adopted Ordinance 09-40(S), approving the 2008 City of Homer Comprehensive Plan and recommended adoption of the plan by the Kenai Peninsula Borough Assembly.

This is the second of two public hearings with the public hearing being continued to this meeting of June 14, 2010.

**STAFF RECOMMENDATION:** Staff recommends to open the public hearing, take testimony and recommend adoption of Ordinance 2010-24; Adopting the City of Homer Comprehensive Plan as the Official Comprehensive Plan for that portion of the Borough within the boundaries of the City of Homer.

END OF STAFF REPORT

Vice Chairman Martin opened the meeting for public comment.

1. Rick Abboud, Homer City Planner  
Mr. Abboud stated that he has worked on this plan for approximately two years with staff working on it longer than that. There has been a lot of hard work and effort done on this plan. He was available to answer questions.

Vice Chairman Martin asked if there were questions for Mr. Abboud. Hearing none the public hearing continued.

Seeing and hearing no one else wishing to speak, Vice Chairman Martin closed the public comment period and opened discussion among the Commission.

**MOTION:** Commissioner Murphy moved, seconded by Commissioner Johnson to recommend adoption of Ordinance 2010-24, adopting the City of Homer Comprehensive Plan as the official comprehensive plan for that portion of the borough within the boundaries of the City of Homer.

Vice Chairman Martin entertained questions for Borough Attorney, Holly Montague.

Commissioner Johnson asked for clarification regarding previous testimony that claimed the City of Homer was operating outside the authority to write a Comprehensive Plan. Ms. Montague replied there were a lot of ways to go about developing a Comprehensive Plan. The Borough retains the Comprehensive Planning authority for all the Cities as well as the Platting Authority. They have delegated land use regulations, land use plan amendments and zoning regulations to most of the cities. The way they have gone about this has been

to use the City in almost a contract type of relationship. The city knows first and foremost what their needs are and knows if there is a plan change needed. There is nothing written in stone that says who has to initiate the rewrite of plans. The Borough has funded the City which allows them to oversee the development of their plan.

It is the Borough's money executing their power to adopt that City's Comprehensive Plan. Borough staff is also available to help with the development of the plan. There has been a lot of public process with the writing of the plan with it ultimately being adopted by a Homer Ordinance with the recommendation that the plan be adopted by the Borough Assembly. The Borough Planning Commission is the body that formulates the recommendations regarding comprehensive plans. She was available to answer questions.

Commissioner Johnson asked for clarification regarding a misquote of Alaska Statute 29. Mr. Abboud replied there was an expressed concern that the original draft plan stated that it was the City who had the authority to adopt the plan rather than the Borough Assembly adopting the Plan. He stated an adjustment has been made to the plan. Commissioner Johnson asked if the mix up had been resolved. Mr. Abboud replied yes.

Vice Chairman Martin asked if Street Naming had been delegated to the cities. Ms. Hansen replied the Borough does not have the authority to change street names within the incorporated cities.

Commissioner Johnson asked for a percentage of who were in favor of the Comprehensive Plan adoption. Mr. Abboud replied that the Comprehensive Plan was a complicated document. There was a firm majority of people who understand planning who would vote in favor of the comprehensive plan. He stated they have worked with the community. There are things in the plan for everyone but not everyone is completely satisfied with the plan. There are some people who have a different concept of the plan. Mr. Abboud felt this plan has the overarching community values as best that could be done. There will always be pros and cons and those who may try to delay this for special interest or a particular issue turned around. He felt that was a very small group of people compared to the amount of people who attended meetings and had input.

**VOTE:** The motion passed by unanimous consent.

BRYSON ABSENT	CARLUCCIO YES	COLLINS YES	ECKLUND YES	FOSTER YES	GROSS YES	ISHAM ABSENT
JOHNSON YES	LOCKWOOD ABSENT	MARTIN YES	MURPHY YES	PETERSEN ABSENT	TAURIAINEN ABSENT	8 YES 5 ABSENT

#### AGENDA ITEM F. PUBLIC HEARINGS

#### 4. Ordinance 2010-26; An ordinance adopting the 2010 Update to the Kenai Peninsula Borough All-Hazard Mitigation Plan

Staff Report given by Max Best

PC Meeting: 6/11/10

The entire All-Hazard Mitigation Plan was being brought forward for the Planning Commission recommendation. Previously, there were three sections brought to the commission for review and comment. Those sections were Introduction, Floods and Erosion and the remaining hazards. This constitutes all those sections, the annexes of the six cities, the All Lands All Hands chapter and the Seward Bear Creek Flood Service Area annex.

In October 2004, the Kenai Peninsula Borough (KPB) enacted Ordinance 2004-33, adopting a borough-wide multi-jurisdictional All-Hazard Mitigation Plan (Plan). This Plan was subsequently approved by the Federal Emergency Management Agency (FEMA) on August 17, 2005, and will expire on August 17, 2010. The KPB must have a FEMA-approved plan in place to be eligible for certain types of hazard mitigation funding. An update of the Plan has now been completed and will be submitted to FEMA for approval following assembly adoption.

The purpose of this hazard mitigation planning effort is twofold: first, as a viable tool for reducing community vulnerability to disaster loss and damage; and second, as a prerequisite for receiving certain types of future federal and state hazard mitigation funding.

## AGENDA ITEM F. PUBLIC HEARINGS

4. Ordinance 2010-24; Adopting the City of Homer Comprehensive Plan as the Official Comprehensive Plan for that portion of the Borough within the boundaries of the City of Homer.

Staff report given by Max Best

PC Meeting: 05/24/10

The Kenai Peninsula Borough provides for planning on an area wide basis in accordance with AS 29.40. Additionally as provided in KPB 21.01.025(E), cities requesting extensive comprehensive plan amendments may recommend to the Kenai Peninsula Borough Planning Commission a change to the city comprehensive plan.

The City of Homer's previous comprehensive plan was adopted in 1999, and the adoption of a new plan will help guide the development of the City of Homer. The City of Homer has adopted city Ordinance 09-04(S) recommending approval of a comprehensive plan for that area of the borough within the boundaries of Homer.

Public comments were received, and numerous public hearings were held regarding the draft comprehensive plan.

On April 26, 2010, the Homer City Council adopted Ordinance 09-40(S), approving the 2008 City of Homer Comprehensive Plan and recommended adoption of the plan by the Kenai Peninsula Borough Assembly.

This is the first of two scheduled public hearings at the Planning Commission level. **Staff recommends** that the public hearing be opened, take public testimony and continue the public hearing to the next scheduled Planning Commission meeting of June 14, 2010.

### END OF STAFF REPORT

Chairman Bryson opened the meeting for public comment.

1. Frank Griswold, 519 Klondike Ave, Homer

Mr. Griswold was assured by the Homer City Clerk that his comments to the council had been forwarded to the Borough. He was disappointed that his written comments were not included in the packet. Mr. Griswold asked that his comments be included in the next PC packet.

Mr. Griswold reviewed his written comments which are as follows:

*"Ordinance 2010-24 proposes to adopt a new Homer Comprehensive Plan allegedly prepared by the City of Homer but AS 29.40.020(b)(1) mandates that this body prepare the Homer Comprehensive Plan, not simply adopt one prepared by an illegally appointed committee and subsequently modified and adopted by the City of Homer. The Homer Comprehensive Plan was updated in 1999 via KPB Ordinance 99-64. The first whereas clause of that ordinance states: "Whereas, the Kenai Peninsula Planning Commission is required to prepare and recommend to the Borough Assembly a comprehensive plan for all areas encompassed by the borough in accordance with AS 29.40."*

*On October 31, 2007 Homer City Manager Walt Wrede wrote a letter to KPB Planning Director Max Best reminding him that "area-wide planning power rests with the Kenai Peninsula Borough." Paradoxically, Mr. Wrede was seeking financial assistance from the borough to compensate the city for expenses incurred preparing a comprehensive plan that the city had no authority to prepare. At the January 22, 2007 Homer City Council meeting, City Manager Wrede stated that Planning Power had been granted by the Borough to the City of Homer and that the City "clearly" has the authority to write its own Comprehensive Plan. (One would have to wonder why the KPB would pay \$50,000 of the preparation costs if this was the City of Homer's responsibility).*

*The City of Homer has been delegated zoning powers by the borough but not planning powers. The City of Homer has the authority to make non-extensive amendments to its land use plan but it does not have the authority to make extensive amendments to its land use plan and it does not have the authority to rewrite its own comprehensive plan. The City of Homer does not even have the authority to determine if and when its comprehensive plan is revised. This is solely the responsibility of the KPB Assembly under AS 29.40.030(b). The KPB Assembly has not reviewed the Homer Comprehensive Plan or determined that it be rewritten or otherwise amended.*

*Because the City of Homer has not been delegated planning authority, it had no authority to enact Ordinance 09-40(S). All previous requests for comp plan revisions have been made by Resolution. Furthermore, Ordinance 09-40(S) was substantially revised after the Homer Advisory Planning Commission reviewed it and made its recommendations. If the City of Homer did have the authority to consider and enact Ordinance 09-40(S), it should have sent it back to the Homer Advisory planning commission for its input on the amendments.*

*Homer City Mayor Hornaday had no authority to appoint a special committee to prepare the comp plan. This was done to cater to vested interests while avoiding the conflict of interest rules that apply to planning commissioners and council members. The foxes were allowed to raid the hen house. Most of these foxes had no planning training and were serving their own financial interests and not the long-term interests of the general public. Members of the general public had no real voice in formulating the new comprehensive plan as only members of the Comprehensive Plan Committee could include policy in the plan. No surveys were conducted to see what the general public wanted in their comprehensive plan. One survey conducted in 1999 indicated widespread community support for preservation of green space within the center of Homer. A 2008 ballot measure funding a new city hall and town plaza was voted down by a 2-1 margin. The Town Center Development Plan promoting dense development in downtown Homer is now obsolete. It too was a product of vested interests. The Town Center Zoning District within the Central Business District is a classic spot zone. Apparently the two major property owners, the City of Homer and CIRI, did not wish to be held to the same zoning standards as the rest of the property owners within the CBD.*

*The proposed comprehensive plan includes many "wild card" zoning districts for which the applicable regulations have not even been identified. Property owners whose properties are proposed for "pre-zoning" were not notified by mail due to concerns over the \$3,000 cost. But over \$100,000 was paid to Anchorage consultants to work with the illegally appointed comp plan committee. These consultants concentrated on amending the land use plan for the center of town. They had a design contract for the City Hall/Town Plaza project and were paid to prepare campaign propaganda for the 2008 ballot measure that was subsequently declared illegal by APOC. The consultants totally ignored the Homer Spit and that plan is still being formulated. As former Homer City Attorney Gordon Tans once pointed out in a legal brief, no zoning district is meant to be a separate enclave that has no effect on the others. The City's comprehensive plan is, as the name implies, a comprehensive plan for the development of the whole city. In each case, the purpose of the specific zoning district is stated in reference to the community as a whole. The zoning districts are not distinct and independent units that are devoid of effect on each other. To the contrary, the entire city is laid out in an organized manner pursuant to a city-wide comprehensive plan, with the result being one interrelated whole, each part dependent upon and affected by the others. Together all the zoning districts form one functioning community. No comprehensive plan should even be considered until all areas of Homer are included in it.*

*Commissioner Rick Foster has a conflict of interest due to the participation of his wife Dotti Harness who is a staff member of the Homer Planning Department. Furthermore, he is not a city resident and therefore not qualified to represent the City of Homer on the KPB Planning Commission. While Commissioner Foster may be registered to vote within the City of Homer,*

*he actually resides on Gladys Court in Kachemak City. The fact that he owns a triplex on Klondike Avenue (three lots from me) does not make him eligible to serve on the Kenai Peninsula Borough Planning Commission as a Homer resident. Furthermore, Commissioner Foster's property on Klondike Avenue is proposed for rezoning in the new Homer Comprehensive Plan (from CBD to Mixed Use).*

Mr. Griswold asked if he should submit his previous comments that were given to the City of Homer. Chairman Bryson replied that they will request that those are received.

Chairman Bryson asked if there were questions for Mr. Griswold.

Commissioner Foster asked if he was saying that none of the comprehensive plans at the City of Homer have ever been legal even though the separate Spit Plan was an addendum to the original one that was being used. Mr. Griswold replied yes, the code that was being cited is being misquoted.

Commissioner Foster asked if Mr. Griswold was at the two meetings that he attended. He was never part of the Homer Advisory Planning Commission or member of that committee. Commissioner Foster stated he was a private citizen at the time and speaking at two of those sessions. Mr. Griswold replied he has the minutes of all the committee meetings which showed no members of the public present.

There being no further questions, the public hearing continued.

2. Julie Engebretsen, City of Homer Planning Technician

Ms. Engebretsen stated that Rick Abboud, City Planner will attend the next meeting to address the commissioners questions. He is out attending his daughter's graduation. Ms. Engebretsen was available to answer questions the commission had regarding the Comprehensive Plan.

Chairman Bryson asked if there were questions for Ms. Engebretsen.

Commissioner Johnson asked if she attended any of the public meetings. Ms. Engebretsen replied she attended the Homer Advisory Planning Commission meetings but did not attend the Comprehensive Plan committee public meetings. At that time, Beth McKibben was the City Planner and attended those meetings.

Commissioner Johnson asked if she knew if there were members of the public who attended the public meetings. Ms. Engebretsen replied she couldn't answer that but also wasn't sure the Clerk put down attendance of the public on those meetings if they did not speak. She stated she would check with the City Clerk and bring an answer to that question to the next meeting.

Commissioner Foster asked if she felt the current Homer Comprehensive Plan was a useable and progressive document. Ms. Engebretsen replied yes.

Seeing and hearing no one else wishing to speak, Chairman Bryson closed the public comment period and opened discussion among the Commission.

Commissioner Carluccio asked for clarification regarding the statute that the testifier cited indicating that the Kenai Peninsula Borough was supposed to be doing the Comprehensive Plan. Mr. Best believed that it says that the municipality may delegate its powers for planning, platting and land use regulations to the cities who request it. He stated they have not requested their planning powers at this time. It doesn't necessarily mean that they can't prepare a comprehensive plan for that portion of the city. Mr. Best will bring a formal interpretation regarding this issue.

Chairman Bryson asked if it was Mr. Best's understanding that the Borough retains the authority to approve comprehensive plans for the city. Mr. Best replied yes.

Chairman Bryson asked about Commissioner Foster's authority to sit on the Borough Planning Commission. Mr. Best believed that there was an accusation as to his residence. It does specify where he resides and

votes which is a prerequisite for him being a planning commissioner. He stated that Commissioner Foster was a voting member of the City of Homer and has a residence there.

Chairman Bryson stated this was clarified a few years ago. Commissioner Foster asked if he should recuse himself because his wife was a Homer City Planning Technician. Chairman Bryson replied that it could have the appearance of a conflict but his opinion would be that it wouldn't eliminate him from voting on this plan.

Commissioner Isham asked if Legal representation could be in attendance at the next meeting for questions. Mr. Best replied he would make that request.

Commissioner Johnson stated that the Planning Commission has done comprehensive plans for other areas in the Borough. He understands that it works best when government is closest to home as possible. It works very well if the local community has input and comments.

**MOTION:** Commissioner Carluccio moved, seconded by Commissioner Tauriainen to continue the public hearing to the next Planning Commission meeting of June 14, 2010.

Commissioner Tauriainen concurred with Commissioner Johnson in that he believed that government was best handled locally. It was always good if the Code was written like that and asked that the Code be evaluated to make sure of that.

**VOTE:** The motion passed by unanimous consent.

BRYSON YES	CARLUCCIO YES	COLLINS YES	ECKLUND YES	FOSTER YES	GROSS ABSENT	ISHAM YES
JOHNSON YES	LOCKWOOD YES	MARTIN YES	MURPHY YES	PETERSEN YES	TAURIAINEN YES	12 YES 1 ABSENT

AGENDA ITEM G.      ANDROMOUS STREAM HABITAT PROTECTION (KPB 21.18) - None

AGENDA ITEM H.      VACATIONS NOT REQUIRING A PUBLIC HEARING - None

AGENDA ITEM I.      SPECIAL CONSIDERATIONS

AGENDA ITEM J.      SUBDIVISION PLAT PUBLIC HEARINGS

Chairman Johnson reported the Plat Committee reviewed and conditionally approved 10 preliminary plats and postponed action on one preliminary plat.

AGENDA ITEM K.      COASTAL MANAGEMENT PROGRAM CONSIDERATIONS - None

AGENDA ITEM L.      OTHER/NEW BUSINESS

AGENDA ITEM M.      ASSEMBLY COMMENTS

No Assembly person present.

AGENDA ITEM N.      DIRECTOR'S COMMENTS

Mr. Best reported the following Assembly action of May 18, 2010.

1.      **POSTPONED AS AMENDED:** Ordinance 2010-21; Amending KPB Chapter 21.18 Regarding Prohibited Uses and Structures, Conditional Use Permits, and Prior Existing Uses and Structures in the Anadromous Stream Habitat Protection District
2.      **APPROVED:** Petition to Vacate a Portion of Buck Avenue, a 60-Foot Right-of-Way and Associated Utility Easements Adjacent to Lot 6 Block 3, Dedicated by Hanille Subdivision Amended (Plat KN 93-