

**MOTION FOR POSTPONEMENT:** Commissioner Ruffner moved, seconded by Commissioner Bentz, to postpone until brought back by staff.

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

## **PUBLIC HEARINGS**

### **AGENDA ITEM F.** PUBLIC HEARING

#### 1. Local Option Zoning District; Fritz Creek Area

Staff Report given by Bruce Wall

PC MEETING: September 23, 2019

**Applicant's Contact:** Craig Cutler

**Legal Description:** Those lots within the boundaries of C & H Estates, according to Plat 80-23, Homer Recording District; specifically,

Lots 1 through 16, C & H Estates, according to Plat 80-23;  
Lots 18 through 26, C & H Estates, according to Plat 80-23;  
Lots 28 through 34, C & H Estates, according to Plat 80-23;  
Lots 37 through 45, C & H Estates, according to Plat 80-23;  
Lot 17C, C & H Estates Bell Addition No. 2, according to Plat 2000-58; and  
Lots 27A and 35A, C & H Estates Four, according to Plat 2005-86.

**Location:** Parcels along Alpenglow Circle, Abbas Court, and Windsor Court; and certain parcels along Glacier View Road S, Taku Avenue W, Taku Avenue E, and Portlock Drive.

**BACKGROUND INFORMATION:** The applicants have submitted a Local Option Zoning District (LOZD) application signed by the record owners of at least six lots within the proposed LOZD as required by KPB 21.44.040B.

On August 8, 2019, a meeting was held, as required by KPB 21.44.040C, at the Kachemak Community Center. The meeting was attended by 25 individuals that own property within the proposed LOZD or within the 300-foot notification area.

The Planning Department has reviewed the proposed LOZD map submitted by the applicant for the proposed district using the criteria contained in KPB 21.44.040A. Based upon land use, location, access, soils, topography, availability of utilities, encumbrances and permits, staff has determined the boundary of the proposed LOZD is appropriate as requested. Although portions of the parcels on the northwesterly side of Glacier View Road S are significantly steeper than is the rest of the proposed LOZD, there are areas that are less steep adjacent to the road. Three of the parcels on the northwesterly side of Glacier View Road S are larger than the five-acre maximum size lot allowed in the R-1 LOZD; however, KPB 21.44.040(E) allows the owner of parcels larger than the maximum allowed lot size to request to be included within the LOZD. The Planning Department has received a request from each of these three parcels to include their property in the LOZD.

**PUBLIC NOTICE:** Public notice of the hearing was mailed on September 4, 2019 to the owners of the 44 parcels within the boundaries of the proposed LOZD and the 40 parcels within 300 feet of the proposed LOZD. Public notice of the application was published in the September 12, 2019 & September 19, 2019 issues of the Homer News.

## **ATTACHMENTS**

- Application with Proposed Boundaries

- Request from Property Owners of Larger Lots
- Aerial Map
- Acreage Map
- Land Use Map
- Slope Map
- Soils Map

#### STAFF RECOMMENDATION

**Staff recommends that the planning commission forward this application to the assembly with the recommendation to approve the creation of the Single-Family Residential District as described in the legal description above, contingent upon staff obtaining the signature support of 60% of the parcel owners within the proposed LOZD.**

#### END OF STAFF REPORT

Chairman Martin asked if anyone from the public wished to comment on this item.

1. Aaron Lang, 40208 Alpenglow Cir, Homer

Mr. Lang read the following.

“My name is Aaron Lang. My family of four has lived in the C&H estates since buying our lot there in April 2009. We have owned and operated our business, Wilderness Birding Adventures, from our property since 2013.

We feel strongly that the restrictions set forth in R-1 zoning are an arbitrary and unnecessary layer of bureaucracy that restricts the use of our property and limits economic potential. Contrary to what we've been told by some, I believe this will actually lower property values. Therefore, we are NOT in favor of forming the Local Option Zoning District, R-1, for the C&H estates.

We are not opposed to small businesses operating in the Portlock Drive area. We bought property in what we thought would be a vibrant and diverse neighborhood, not a restrictive retirement community. Our neighborhood is currently home to several small businesses, all of which benefit the families that run them. Most of the current operations of our own small business would comply with what is outlined in R-1 zoning. However, our plans for the occasional commercial use of our guesthouse would be in non-compliance. No doubt there are other properties in the proposed R-1 area that rent out their homes and guesthouses, with no ill effect on the neighborhood. These homes would all be in non-compliance with the zoning restrictions.

Regarding the restrictions to pets, poultry, and other livestock. We have been, are currently, or plan to be in non-compliance with at least three animal-related regulations set out in R-1. The benefits of raising animals for food, economy, and entertainment cannot be overstated. The benefits to children growing up with animals have been widely demonstrated. It is important to us that our kids grow up with these experiences and the learning opportunities raising animals for food, companionship, and commerce provide.

I went to the very informative question and answer meeting hosted by Bruce Wall in Homer earlier this summer. One thing I took away from the meeting was that most of the questions raised by my neighbors were regarding their current property uses that would be in violation of R-1 zoning, uses that would need to be “grandfathered in”. We do understand that there is a mechanism for these to be “grandfathered in” and allowed. However, if a significant portion of residents in the proposed zoning area are currently doing things that would be in violation of R-1 zoning, things that need to be “grandfathered in,” then that should tell us that R-1 zoning is not a good fit for our neighborhood. What about future and as yet unforeseen uses of my property that would be in violation of R-1? Can I predict what opportunities may arise for my family down the road, after the period in which we are allowed to “grandfather in” the uses that nobody finds

offensive to begin with?

The argument has been made by some that R-1 will protect our property values. I disagree. I fail to see how limiting the economic potential of my property will increase its value. How will selling my home, outbuildings, and two acres with a strict set of use limitations increase its appeal to prospective buyers? If C&H estates is the only R-1 zoned area on East End Road, will that really be a selling point?

Our last objection to R-1 zoning concerns fairness. This proposal has been motivated by the potential sale of the "Chocolate Drop" property to Set Free Alaska for use as a drug treatment facility. I was intrigued to learn from Bruce Wall at the last meeting that it is even unclear whether or not R-1 zoning would have restricted this controversial use! The Chocolate Drop property was formerly run as a bed and breakfast. This is a land-use to which we have no objection in our neighborhood. This property was built as, and is clearly best suited for, a bed and breakfast or small lodge and it seems highly unlikely that it could be sold at all if the use of the property were limited in the way that R-1 zoning will dictate. This is not only unfair but unneighborly to the current property owner, who bought the property with the intention of running it as a B&B.

In summary, the application for R-1 status for C&H estates is the efforts of a few very well-intentioned friends and neighbors in reaction to a single proposed controversial land use in our neighborhood. The restrictions that R-1 status would impose go too far and arbitrarily and unnecessarily restrict private property rights and land uses for which there is no community objection. The result would be this: We give up our private property rights, accept mandated lifestyle changes, and reduced economic potential in exchange for an ineffectual defense of a fear of the unknown.

R-1 zoning is inappropriate for our neighborhood and we are strongly opposed to the R-1 zoning option for C&H estates.

Thank you."

2. Scott Meyer, 40210 Alpenglow Cir. Homer

Mr. Meyer and his wife own two lots in the C&H Subdivision. They are in favor of the proposed R-1 local zoning district to protect the residential character of the neighborhood and preserve the values of their properties. The R-1 development standards are not ideal. He thinks some standards are overly restrictive while others are overly generous. The standards can work and be effective in preventing commercial development in the neighborhood, which is a concern. No set of standards will please everyone. The neighborhood has changed substantially since they bought their home 24 years ago. The primary concern is about future commercial development. Several members of the community spent a good portion of the summer trying to prevent the establishment of a commercial drug treatment facility in the neighborhood. In addition, there are properties in the neighborhood that are potentially very attractive to other types of commercial development that could potentially change the characteristics of the neighborhood. They support the proposed zoning and believe the R-1 standards will protect the residential nature of the subdivision.

Commissioner Fikes wanted to know the concerns about commercial development as it pertains to the proposed treatment center. Mr. Meyer said that the treatment center is no longer an issue. The facility is not going in but the issue was with traffic. The single access to the subdivision is from a road off East End Road. Potentially there would have been sixteen residents and their children living at the facility with up to thirteen staff members coming and going each day. It did not seem like an appropriate location. They are in favor of having more drug treatment facilities but in the middle of a residential neighborhood was not a logical location. It would not have been close to emergency services. The administrative headquarters would have been in town. It is no longer an issue. There is a large building that has very little value except as a commercial facility in the neighborhood. The subdivision does have covenants but they are not worded strongly enough to prevent the establishment of a treatment facility. Covenants also require civil action where the

borough will enforce the local option zoning.

3. Craig Cutler, 40130 Portlock Dr., Homer

Mr. Cutler is the applicant for the R-1 zoning option for their subdivision. He and Joanne Cutler were the first lot owners in the subdivision. The covenants were attached to all the deeds in the subdivision. The purchaser of any lots agreed to the covenants. There is no perfect win-win situation. It is a residential area and is not a commercial zone. Some of the covenants are weak. Set Free Alaska is a drug treatment facility and not a rehab. When the director of Set Free Alaska stated his intentions for acquiring the property, Mr. Cutler began investigating the organization. The current owner of the property said that he was not aware that there were covenants. Mr. Cutler let him know at an Opiate Task Force public meeting that the property has covenants. The director would be intentionally violating them. Mr. Cutler had an attorney draft a fax to the director and he withdrew the offer to purchase the property. There was a misunderstanding and he thinks there is a lot of misunderstanding between the residents in the subdivision. Some have been there a long time while others are very new. He has encouraged everyone to study the code and go over any questions or concerns with the planner. He has been president of the homeowners association, which needs to be reorganized. The HOA does not allow businesses as R-1 will. If the R-1 is adopted, they should be brought into harmony with one another. Those that see this as a threat do have the grandfather provision.

Commissioner Ecklund said that an HOA was mentioned and wanted to know if the HOA covers all of the lots that are included in the request. Mr. Cutler said yes. The HOA is a renewable entity. The first run was 25 years and then expired. It renews automatically ever ten years thereafter the covenants do as well. The HOA has not been reformed but there has been a lot of talk about it. The neighborhood is a cooperative neighborhood. Many thought the covenants expired. People have been informed that it not the case and are trying to cooperate. He does not see a better option than having borough protection as another layer. There are three lots in the subdivision that could be used as gravel pits. That would cause a lot of traffic and be an industrial use in their residential neighborhood. Commissioner Ecklund asked him to answer about the HOA. Mr. Cutler said it does not exist right now. Commissioner Ecklund asked what the smallest lot size was within the proposed area. Mr. Cutler thought it was about 1.2 acres. Commissioner Ecklund asked if there were many that size or if most were larger. Mr. Wall noted that page 51 of the packet had the acreage on the lots. Commissioner Ecklund asked if the group had considered a Rural Residential zone instead of an R-1. Mr. Cutler said there had been discussion in the neighborhood and discussions with the planner in regards to the differences and which would fit their situation, environment and lifestyles.

4. Ron Schmidt, Sparks, NV

Mr. Schmidt is the consultant for the property for four years. His clients purchased the property and effective next Tuesday he will be 50% owner and general manager of the property. The property was built in the 1980's and has been ran as a bed and breakfast since that time, The Chocolate Drop on Taku Avenue. The property was built as a bed and breakfast in the 1980's and has been in establishment since that time. He wanted to make sure that it was documented that this piece of property would be a non-conforming property with the proposed zoning. If anything happens that causes the property to be unable to operate for a year the value of the property would substantially fall. In the summer of 2015, his client called and said he wanted to buy some property in the Homer - Soldotna area. The Chocolate Drop Inn is a ten bedroom, nine bath, bed and breakfast. After closing in 2016, they began the process of working with the State Fire Marshall to install a new sprinkler system. After years of discussion, they received the approval from the Fire Marshall to design and install the new sprinkler system. They received the approval from the State Fire Marshall in August 2019 to open as a bed and breakfast. They are now faced with this zoning proposal. His clients have spent over \$300,000 in three and a half years on improvements for this property. This property is why they are here. The neighborhood protested a legitimate organization. Today's fair housing laws would make it hard to saying no to a rehab organization moving in.

Commissioner Ruffner asked if the intention was to use the property as a rehab facility or as a bed

and breakfast. Mr. Schmidt said it was always planned to be a bed and breakfast. His clients were going to open it as a bed and breakfast. Free Alaska made an unsolicited offer. They asked to look at the property and Mr. Schmidt's clients did not know at the time who the organization was or the intentions for the property. They looked it over and made an offer. It would have been a good facility for a rehab center. The money that was coming in for the project for Free Alaska was State of Alaska funds. There was 1.5 million dollars to invest into the purchase of the property and to ready and furnish the facility for clients and staff. The administration offices would not be at that property. The unsolicited offer fell through after the events of the summer from the cooperative neighborhood. One partner does not feel comfortable coming back to Homer, Alaska and being in that neighborhood. Commissioner Ruffner understood the previous offer was off the table but as an owner was it an option for the future. Mr. Schmidt said no, Free Alaska is a non-profit and they have made their choice. The organization had conversations with his clients and they felt that they were treated unfairly by the neighborhood. They were abused and they would not come into the neighborhood.

Commissioner Ruffner noted that if it continues to operate as a bed and breakfast they would fall under the prior existing use provisions. He wanted to confirm the grandfathering of the bed and breakfast could still go in under an R-1. Mr. Schmidt said he has worked 28 years in the government and he knows tiny things can get stuck and make things happen with unintended consequences. His understanding is that the day the Assembly hears this they will have to prove that it is a legitimate operation and that it is a non-conforming use. It will be up to staff to determine if it falls under this or not. If staff says it does fall into a nonconforming use and for any reason there are twelve months that the property does not operate as a bed and breakfast it can lose its status. As an example, there is a fire and it is not operational for a year staff can say that it no longer complies. The building today, if sold as a single-family house would not sell. Three bedrooms face the patio and do not access the house. Five of the units are downstairs and are separated into a two-bedroom apartment and a three-bedroom apartment.

5. Kate Meyer, 40210 Alpenglow, Homer

Ms. Meyer wanted to read a letter presented by Lindsey and Eddie who are her next door neighbors.

"Eddie Vraspir and Lindsay Martin are the joint owners of 40175 Alpenglow Circle. We cannot be at the meeting tonight because Eddie is ill. We are both interested in seeing this zoning approved for our neighborhood. Although no one likes being told what to do, especially in Alaska, we feel the regulations are reasonable and meet the existing uses of the neighborhood. This step is merely a technicality to protect ourselves and our neighbors from unwanted industrial development of a well-established, residential neighborhood. Our household is concerned with development that can impact long-term property values. We are not concerned with home-offices or activities that are currently happening. We would like to see those continue, as we care about our neighbors and their livelihoods.

Please consider us in full support of this measure. To any neighbors who attend the meeting, we thank you for being here in person. Thank you for caring about our little neck of the woods. Even if we have differing opinions, we appreciate living next to you and being a community. We hope to see you walking the loop this fall. All our best, Lindsey and Eddie."

Ms. Meyer wanted to add that the Chocolate Drop is not the primary concern for many of the neighbors. There is another property in the neighborhood that is a very large barn. It was built two years ago and is not well suited for residential development. Many are concerned about an auto repair shop or pot club going into that building which would not be a great neighbor for any of them. After talking with Lindsey and Eddie and other neighbors, it is a concern.

Commissioner Ruffner wanted to know about the large barn and if anyone has talked to the owners. Ms. Meyer said it is someone that does not live in the neighborhood. She has met almost everyone in the neighborhood and is friends with many. She has not met two property owners. The

owner of that building is one of them.

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

**MOTION:** Commissioner Venuti moved, seconded by Commissioner Carluccio, to forward the application to the assembly with the recommendation to approve the creation of the Single-Family Residential District as described in the staff report, contingent upon staff obtaining the signature support of 60% of the parcel owners within the proposed local option zoning district.

Commissioner Venuti wanted to know if the R-1 local option zoning would permit owner occupied businesses. Mr. Wall said there is a provision in the code for home occupations. They do need to meet certain standards. They cannot create too much traffic or do retail sales except for incidental to their business. It is designed for people to be able to work out of their home but using the property for principle commercial use would not be allowed.

Commissioner Carluccio asked if some of the businesses that are not conforming could lose their status if they do not operate for a year. Mr. Wall said that is what the code says. If they cease operations for 365 days, they will lose their status. Commissioner Carluccio asked if there were any provisions mentioned for example in case of a fire and they had to rebuild and it took longer than a year. Mr. Wall asked for a moment to look at the code.

Commissioner Ecklund had a question about losing the nonconforming allowance as well. She wanted to know if the property was sold if the new owner loses the nonconforming allowance. Mr. Wall said the status stays with the property and is not based on ownership.

In response to Commissioner Carluccio, Mr. Wall said he was not able to find any provision in the code that gives any flexibility for the 365 days.

Commissioner Ecklund asked if there were currently any animals in the area that would be prohibited in R-1. Mr. Wall said he was not aware of any. He drove through the neighborhood. He did get an email from someone within the community asking about their chickens. They have more than allowed but they would be grandfathered in. Otherwise, he is not aware of any animal concerns or issues.

Commissioner Ruffner said it was the Planning Commission's job is to review the code and see if the applicant complies with the provisions of the code. Staff is recommending that they comply. Commissioner Ruffner said he is in support of this because it follows the code. He dislikes LOZs when they are used as a sword to stick it to one particular interest. From what he gained from public testimony this may have started out that way but now the drug facility is off the table. There is an unknown with the large building and it is unclear what is happening with it. He will support because it is following the code.

Commissioner Carluccio is dismayed that there is not some provision in the code that gives some flexibility if there is a major disaster. It is not enough to vote no and she would support the motion.

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

### **SPECIAL CONSIDERATIONS**

#### **AGENDA ITEM I. SPECIAL CONSIDERATIONS**

1. Plat Note Restriction Removal  
Alder Slopes Subdivision Castle Heights Addition  
KPB File 2019-108; KPBPC Resolution 2019-31  
Location: On Absher Court, off East End Road, Fritz Creek area