

Kenai Peninsula Borough Planning Commission

Betty J. Glick Assembly Chambers, Kenai Peninsula Borough George A. Navarre Administration Building

**April 26, 2021
7:30 P.M.
UNAPPROVED MINUTES**

CALL TO ORDER

Chair Martin called the meeting to order at 7:30 p.m.

ROLL CALL

Commissioners Present

Syverine Bentz, Anchor Point/ Ninilchik
 Paulette Bokenko-Carluccio, City of Seldovia
 Jeremy Brantley, Sterling
 Davin Chesser, Northwest Borough
 Cindy Ecklund, City of Seward
 Diane Fikes, City of Kenai
 Pamela Gillham, Ridgeway
 Blair Martin, Kalifornsky Beach
 Virginia Morgan, East Peninsula
 Robert Ruffner, Kasilof/Clam Gulch
 Franco Venuti, City of Homer

With 11 members of an 11-member commission in attendance, a quorum was present.

Staff Present

Melanie Aeschliman, Planning Director
 Sean Kelly, Borough Attorney
 Scott Huff, Platting Manager
 Bryan Taylor, Planner
 Samantha Lopez, River Center Manager
 Ann Shirnberg, Administrative Assistant
 Julie Hindman, Platting Specialist

AGENDA ITEM B. ROLL CALL

AGENDA ITEM C. CONSENT AGENDA

- *3. Plat Granted Administrative Approval
 - a. Echo Section Line Easement Vacation Plat Associated With US Survey #14477
KPB File 2019-138
 - b. WhistleBait Estates Addition No. 1; KPB File 2020-143
- *7 Minutes
 - a. April 12, 2021 Planning Commission Meeting

Chair Martin asked if anyone present wanted to speak to or had concerns about any of the items on the consent or regular agendas. Hearing no one wishing to comment, Chair Martin returned the discussion to the Commission.

MOTION: Commissioner Carluccio moved, seconded by Commissioner Brantley to approve the consent agenda and the regular agenda.

MOTION PASSED: Hearing no discussion or objection, the motion was carried by the following vote.

Yes	11	No	0	Absent	0
Yes	Bentz, Brantley, Carluccio, Chesser, Ecklund, Fikes, Gillham, Martin, Morgan, Ruffner, Venuti				
No					

AGENDA ITEM E. NEW BUSINESS

Chair Martin asked Ms. Shirnberg to read the procedure for public testimony.

AGENDA ITEM E. PUBLIC HEARINGS

1. Vacate a portion of Hough Road, a 60 foot right of way including adjoining utility easements, as dedicated on Stream Hill Park Unit 1, Plat HM 2006-54 and Christensen Tracts No. 3, Plat HM 2003-90. The portion of right-of-way being vacated is unconstructed and located within the W1/2 NE 1/4, Section 16, Township 6 South, Range 13 West, Seward Meridian, Alaska, within the Kenai Peninsula Borough. KPBB File 2021-046V

Staff report given by Scott Huff.

Petitioners: C. Michael Hough and Shila A. Hough of Homer, Alaska.

Purpose as stated in petition: The existing road was not constructed within the existing ROW. The ROW is being re-aligned so that it is centered on the existing road. Only a portion of the existing ROW is being vacated, along with the adjoining 15 foot utility easements. New 15 foot utility easements are being dedicated adjoining both sides of the re-aligned ROW. No utilities are currently within the existing utility easements.

Notification: Public notice appeared in the April 15, 2021 issue of the Homer News as a separate ad. The public hearing notice was published in the April 22, 2021 issue of the Homer News as part of the Commission's tentative agenda.

Fifteen certified mailings were sent to owners of property within 300 feet of the proposed vacation. Four receipts had been returned when the staff report was prepared.

Public hearing notices were sent by regular mail to twenty-eight owners within 600 feet of the proposed vacation.

Seventeen public hearing notices were emailed to agencies and interested parties as shown below;

State of Alaska Dept. of Fish & Game
State of Alaska Dept. of Natural Resources (DNR)
State of Alaska Dept. of Transportation
State of Alaska DNR Forestry
City of Homer
Emergency Service of Homer

Kenai Peninsula Borough Office, Homer
Ninilchik Traditional Council
Alaska Communication Systems (ACS)
ENSTAR Natural Gas
General Communications Inc. (GCI)
Homer Electric Association (HEA)

Public hearing notices were made available to seven KPBB staff/Departments (Addressing, Code Compliance, Planner, Roads Dept., Assessing, River Center, State Parks) via a shared database.

Notices were mailed to the Homer Post Office and Homer Community Library with a request to be posted in public locations.

The notice and maps were posted on the Borough bulletin board and Planning Department public hearing notice web site.

Comments Received:

ACS: Comments not received at the time the staff report was prepared.

ENSTAR: Comments not received at the time the staff report was prepared.

Homer Electric Association: Reviewed the vacation and had no comments.

KPB Addressing: Affected address will need to be reviewed by the City of Homer.

KPB Assessing: No comments.

KPB Planning: No material site or local option zone issues. A review is not required for property inside city limits.

KPB River Center: Within the City of Homer, no comments.

KPB Roads Department: Outside jurisdiction, no comments.

City of Homer Planning Commission: On April 29, 2020 the Homer Planning Commission granted a time extension for the plat that will finalize the right of way vacation, granting a two year time extension.

State Parks: No comments.

Staff Discussion: The proposed vacation is to remedy the alignment issues of Hough Road, a 60 foot right of way. The proposal is to vacate approximately a half with of Hough Road for 390 feet including the adjoining 15 foot utility easements. If approved, a dedication of additional right of way atop the constructed road, including 15 foot utility easements along each side of the new dedication, will be completed by recording a new plat.

The original access is depicted on Christensen Tracts Amended, HM 89-3 as a 50 foot private access easement (HRD Book 185 Page 349). The access easement was also shown on plat Christensen Tracts No. 4, HM 2006-44.

Christensen Tract No. 3, HM 2003-90, dedicated the eastern 30 foot of Hough Road right of way. Stream Hill Park Unit 1, HM 2006-54, dedicated the western 30 feet of Hough Road right of way.

Vacation of the dedicated right of way will not remove the private access easement. If they owners wish to remove the private access easement it will need to be done by separate documents and recorded with the Homer Recording District. If this is completed prior to the recording of the plat, add a plat note with the recording information that terminated the private access easement.

This vacation and the associated plat were originally heard under KPB old code in 2010. The KPB Planning Commission heard the vacation on April 12, 2010. The Planning Commission approved the vacation by unanimous consent. The Homer City Council upheld the Planning Commission decision at their April 26, 2010 meeting. The plat finalizing the vacation was not recorded within one year.

The KPB Plat Committee approved the preliminary plat on April 12, 2010. Various time extensions have been granted for the preliminary plat. The last time extension was granted in 2020, with the consent of the City of Homer Planning Commission. The time extension was granted through June 8, 2022, subject to the plat being recorded prior to April 13, 2021 to be reviewed under old code. The original surveyor retired and a new surveyor has been hired.

Due to design changes, and the requirement to comply with current subdivision standards, the plat will be brought back before the Plat Committee to receive new approval including any exceptions requests.

If approved, plat Christensen Tract 2021 Addition will finalize the proposed right of way vacations. At the time the staff report was prepared a complete submittal has not been received for the plat. Once all required items are received, the plat will be scheduled to be heard by the Plat Committee.

KPB 20.70 – Vacation Requirements.

Platting staff comments: Staff reviewed the vacation and all the items required by 20.70 were met, unless otherwise noted below:

- C. In areas where right-of-way is being vacated due to excessive topographic features, a contour map or centerline profile and/or right-of-way cross sectional view may be required by the commission to substantiate the unusable right-of-way and show alternate and dedicated routes to insure ingress and egress to adjacent lands.

Platting Staff Comments: The road is constructed within the proposed right of way dedication. The terrain in the area slopes downward to the south. The right of way has been constructed in manner that it follows the contours and avoids steep slopes. If the City of Homer feels additional width is required they may request additional information.

- D. If the proposed vacation lies within the boundaries of an incorporated city, comments from the city advisory planning commission must be submitted with the petition.

Platting Staff Comments: Staff did not require submittal of new approval. Homer Planning and Zoning and the City Council had previously heard this vacation. The Homer Planning Commission approved a time extension for the plat showing the vacation and dedication on April 29, 2020.

Staff recommendation: *The Planning Commission decision will be sent to the City Council for the ability to veto the decision. The City will also be required to sign the final plat to accept the new right of way dedication.*

20.70.130. Vacation plat—Preparation, approval and recording. Upon approval of the vacation request by the planning commission and no veto by the city council or assembly, the applicant shall have a surveyor prepare and submit a plat including the entire area approved for vacation in conformance with KPB 20.10.080. Only the area approved for vacation by the assembly or council may be included on the plat. The final plat must be recorded within one year of the vacation consent in KPB 20.70.110.

Platting Staff Comments: A plat will be required to complete the right of way vacation and right of way dedication.

Staff recommendation: *Comply with 20.70.130.*

20.70.150. Title to vacated area.

- A. The title to the street or other public area vacated on a plat attaches to the lot or lands bordering on the area in equal proportions, except that if the area was originally dedicated by different persons, original boundary lines shall be adhered to so that the street area which lies on one side of the boundary line shall attach to the abutting property on that side, and the street area which lies on the other side of the boundary line shall attach to the property on that side. The portion of a vacated street which lies within the limits of a platted addition attaches to the lots of the platted addition bordering on the area. If a public square is vacated, the title to it vests in the city if it lies within the city and to the borough if it lies within the borough outside a city. If the property vacated is a lot or tract, title vests in the rightful owner.

Platting Staff Comments: The proposed area being vacated will be attached to current Tract 1 of Christensen Tracts No. 4, which is proposed to be subdivided by the same plat finalizing the vacation.

Staff recommendation: *Comply with 20.70.150.*

20.70.160. Partial vacation allowed. Where the planning commission finds that a right-of-way must be preserved, but determines there is excessive width for all intended uses within the right-of-way, the commission may approve a partial vacation of a right-of-way such that the width is reduced to the maximum necessary for the intended use. Such vacation shall conform to this title for the class of right-of-way involved except where the right-of-way is not intended to be used for vehicular purposes.

Platting Staff Comments: The vacation is a partial vacation that will coincide with a right of way dedication. The final right of way will be 60 feet in width and comply with KPB code.

Staff recommendation: *Complies with 20.70.160.*

20.70.170. Vehicular Access. The planning commission shall not approve the vacation of a right-of-way unless an equal or superior right-of-way for vehicular access exists or will be provided in exchange. Where two or more access points are necessary for large vacant or semi-vacant areas of land, the commission shall consider density, use, projected development, and maintain sufficient rights-of-way to serve potential use.

Platting Staff Comments: The proposed vacation will be recorded on a plat that grants a new portion of the existing constructed right of way. A dedicated right of way will encompass the existing travel way and

vehicular access will not be impacted.

Staff recommendation: *Complies with 20.70.170.*

20.70.190. Utility provisions. All existing and future utility requirements shall be considered when evaluating a vacation request. Rights-of-way which are utilized by a public utility or which logically would be required by a public utility shall not be vacated, unless it can be demonstrated that equal or superior access is or will be available. Where an easement would satisfactorily serve the utility interests, and no other public need for the right-of-way exists, the commission may approve the vacation and require that a public utility easement be granted in place of the right-of-way.

Platting Staff Comments: There are no utilities within the current utility easements running along the portion of Hough Road being vacated. The subdivision plat will grant new 15 foot utility easements along both side of the new Hough Road dedication.

Staff recommendation: *Grant any additional easements requested by the utility companies.*

STAFF RECOMMENDATION: Based on the above means of evaluating public necessity established by KPB 20.70, the merits of the proposed vacations, and staff comments, staff recommends APPROVAL of the vacations as petitioned, subject to:

1. Consent by Homer City Council.
2. Compliance with the requirements for preliminary plats per Chapter 20 of the KPB Code.
3. Grant utility easements requested by the Homer City Council and utility providers.
4. Submittal of a final plat within a timeframe such that the plat can be recorded within one year of vacation consent (KPB 20.70.130).

KPB 20.70.110:

A vacation of a city street, public right-of-way, public area, or public easement located within an incorporated city may not be approved without the consent of the city council.

The Homer City Council shall have 30 calendar days from the date of approval in which to veto the planning commission decision. If no veto is received by the planning director within the specified period, the city or borough shall be considered to have given consent to the vacation.

KPB 20.70.120:

- A. Denial of a vacation petition is a final act for which no further consideration shall be given by the Kenai Peninsula Borough.**
- B. Upon denial by the planning commission, no reapplication or petition concerning the same vacation may be filed within one calendar year of the date of the final denial action except in the case where new evidence or circumstances exist that were not available or present when the original petition was filed.**

KPB 20.70.130:

THE FINAL PLAT MUST BE RECORDED WITHIN ONE YEAR OF THE VACATION CONSENT IN KPB 20.70.110.

END OF STAFF REPORT

Chair Martin opened the item for public comment. Hearing no one wishing to comment, Chair Martin closed public comment and opened discussion among the Commission.

MOTION: Commissioner Carluccio moved, seconded by Commissioner Venuti to approve the vacation as petition based means of evaluating public necessity established by KPB 20.70, subject to staff recommendations and compliance with borough cod.

MOTION PASSED: Hearing no further discussion or objection the motion passed by the following vote:

Yes	11	No	0	Absent	0
Yes	Bentz, Brantley, Carluccio, Chesser, Ecklund, Fikes, Gillham, Martin, Morgan, Ruffner, Venuti				
No					

AGENDA ITEM E. **NEW BUSINESS**

2. A Conditional Use Permit is sought pursuant to KPB 21.18 for highway improvements at MP 57 of the Sterling Highway, east of the intersection with Skilak Lake Road, within the State of Alaska Department of Transportation (ADOT) highway easement. The project proposes permanent repairs that would include the placement of riprap on top of the existing riprap to stabilize the armament at MP 57 of the Sterling Highway within the 50-foot Habitat Protection District (HPD) of the Kenai River, near Cooper Landing, AK.

KPB Planning Commission Resolution 2021-14

Staff report given by Nancy Carver.

Applicant: Alaska Department of Transportation and Public Facilities (ADOT&PF)
Sean Holland, P.E.
4111 Aviation Avenue
Anchorage, AK 99516-6900

Physical Address: ADOT Right-of-Way (ROW) Easement, Cooper Landing, AK

Legal Description: T 05N, R 05W, Section 35, Seward Meridian

KPB Parcel Number: 025-180-03

Background Information

The project is part of the Sterling Highway MP 45-60 project, which includes permanent repairs that include placement of riprap on top of the existing riprap to stabilize the armament. Fill material, top soil, seed, and willow stakes will be used to enhance the bank stabilization and provide a more natural appearance over time. Substantial erosion occurred on the north bank of the Kenai River during the September 2012 flood event and prompted emergency repairs in 2014 that included the placement of approximately 9,100 cubic yards of riprap adjacent to the Kenai River. The work was approved by Resolution 2014-14, at the July 14, 2014 Planning Commission Meeting.

The purpose of the project is to place approximately 1,140 cubic yards of Class III riprap onto the existing riprap to stabilize and strengthen the embankment against further erosion, protecting the Sterling Highway road embankment at MP 57. ADOT&PF proposed to place 4-inches of topsoil, fill material, mulch, compost socks, seeding, and willow stakes to enhance bank stabilization and appear more natural than its current state. Fencing will be constructed to inhibit access to the river near the project that would damage efforts to revegetate the slopes.

Clearing of vegetation throughout the project per KPB Ordinance 21.18.071 within the Habitat Protection District (HPD) of Kenai River has already been approved through the concurrent Sterling Highway MP 45-60 project (Permit #12663), which was approved by Resolution 2020-23 at the August 24, 2020 Planning Commission Meeting.

Project Details within the 50-foot Habitat Protection District

1. Placement of riprap (1,140 CY Class III), and fill material (790 tons Type C) on top of existing riprap.
2. Approximately 250 linear feet of compost socks will be used to stabilize a 4" layer of topsoil (180 CY) and mulch (50 CY) for planting of seed and live stakes.
3. Approximately 1,600 square yards of seedling and willow staking will be used to establish vegetation and roots, producing a more natural visual effect.
4. A planting ratio of 2:1 will be used for every tree removed within the HPD of Kenai River. The proposed willow staking activities are anticipated to meet ordinance requirements.
5. Placement of fence to inhibit access to the river to avoid damage to revegetated slopes.

Findings of fact pursuant to KPB 21.18.081 Conditional Use Permit

1. Portions of this proposed project are within the 50-foot habitat protection district as defined by KPB 21.18.040.
2. Pursuant to KPB 21.18.081(B)(5), the proposed critical infrastructure may be approved as conditional structures within the habitat protection district.
3. Placement of riprap (1,140 CY Class III), and fill material (790 tons Type C) on top of existing riprap.
4. Approximately 250 linear feet of compost socks will be used to stabilize a 4" layer of topsoil (180 CY) and mulch (50 CY) for planting of seed and live stakes.
5. Approximately 1,600 square yards of seedling and willow staking will be used to establish vegetation and roots, producing a more natural visual effect.
6. A planting ratio of 2:1 will be used for every tree removed within the HPD of Kenai River. The proposed willow staking activities are anticipated to meet ordinance requirements.
7. Placement of fence to inhibit access to the river to avoid damage to revegetated slopes.
8. Staff finds the proposed project is consistent with the 2019 Kenai Peninsula Borough Comprehensive Plan and other applicable planning documents and borough code including the Kenai Peninsula Borough Coastal Management Plan.
9. Kenai Peninsula Borough Planning Commission Resolution 2015-35 defines water-dependent as:
...a use or structure located on, in or adjacent to water areas because the use requires access to the waterbody. The definition is applicable to facilities or activities that must be located at or near the shoreline and within the 50-foot buffer. An activity is considered water dependent if it is dependent on the water as part of the intrinsic nature of its operation. Examples of water dependent facilities may include, but are not limited to, piers, boat ramps, and elevated walkways.
10. Access to the site and all construction activities will occur from the ADOT&PF right of way easement of the Sterling Highway and will not affect neighboring parcels.
11. The River Center found the application complete and scheduled a public hearing for April 26, 2021.
12. Pursuant to KPB 21.11.030, public notice was mailed to property owners within a radius of 300 feet of the project on April 8, 2021. One mailing was sent.
13. Pursuant to KPB 21.11.020, public notice was published in the Peninsula Clarion on April 15 and April 22, 2021.
14. Agency review was distributed on April 8, 2021. No comments or objections have been received from resource agencies to date.
15. The applicant is currently in compliance with Borough permits and ordinances.

Pursuant to 21.18.081(D), the following General Standards shall be met before conditional use approval may be granted.

1. ***The use or structure will not cause significant erosion, sedimentation, damage within the habitat protection district, an increase in ground or surface water pollution, and damage to riparian wetlands and riparian ecosystems;***
 - **Condition 1** – A temporary silt fence will be installed prior to ground disturbance and stream work to minimize erosion and sediment discharge to the stream during culvert installation and associated work.
 - **Condition 2** – The permittee shall minimize damage to all vegetation and shall revegetate all disturbed areas with native vegetation.
 - **Condition 3** – Live stake and seed disturbed areas as outlined in “Streambank Revegetation and Protection Guide.”
 - **Condition 4** – All bank cuts, slopes, fills, or other exposed earthworks attributable to this project shall be stabilized to prevent erosion, both during and after construction.
 - **Condition 5** – For each tree removed two seedlings less than 5.5-feet tall of a species native to the region will be planted within the 50-foot HPD.
 - **Finding 4** – Approximately 250 linear feet of compost socks will be used to stabilize a 4" layer of topsoil (180 CY) and mulch (50 CY) for planting of seed and live stakes.
 - **Finding 5** – Approximately 1,600 square yards of seedling and willow staking will be used to establish vegetation and roots, producing a more natural visual effect.

- **Finding 6** – A planting ratio of 2:1 will be used for every tree removed within the HPD of Kenai River. The proposed willow staking activities are anticipated to meet ordinance requirements.
2. ***Granting of the conditional use shall be consistent with the purposes of this chapter, the borough comprehensive plan, other applicable chapters of the borough Code, and other applicable planning documents adopted by the borough;***
- **Finding 1** – Portions of this proposed project are within the 50-foot habitat protection district as defined by KPB 21.18.040.
 - **Finding 2** – Pursuant to KPB 21.18.081(B)(5), proposed critical transportation and utility infrastructure may be approved as conditional structures within the habitat protection district.
 - **Finding 8** – Staff finds the proposed project is consistent with the 2019 Kenai Peninsula Borough Comprehensive Plan and other applicable planning documents and borough code including the Kenai Peninsula Borough Coastal Management Plan.
 - **Finding 11** – The River Center found the application complete and scheduled a public hearing for April 26, 2021.
 - **Finding 12** – Pursuant to KPB 21.11.030, public notice was mailed to property owners within a radius of 300 feet of the project on April 8, 2021. One mailing was sent.
 - **Finding 13** – Pursuant to KPB 21.11.020, public notice was published in the Peninsula Clarion on April 15 and April 22, 2021
 - **Finding 14** – Agency review was distributed on April 8, 2021. No comments or objections have been received from resource agencies to date.
3. ***The development of the use or structure shall not physically damage the adjoining property;***
- **Finding 10** – Access to the site and all construction activities will occur from the ADOT&PF right of way easement of the Sterling Highway and will not affect neighboring parcels.
4. ***The proposed use or structure is water-dependent;***
- **Finding 9** – Kenai Peninsula Borough Planning Commission Resolution 2015-35 defines water-dependent as:
...a use or structure located on, in or adjacent to water areas because the use requires access to the waterbody. The definition is applicable to facilities or activities that must be located at or near the shoreline and within the 50-foot buffer. An activity is considered water dependent if it is dependent on the water as part of the intrinsic nature of its operation. Examples of water dependent facilities may include, but are not limited to, piers, boat ramps, and elevated walkways.
5. ***Applicant's or owner's compliance with other borough permits and ordinance requirements.***
- **Finding 15** – The applicant is currently in compliance with Borough permits and ordinances.

Permit Conditions

1. A temporary silt fence will be installed prior to ground disturbance and stream work to minimize erosion and sediment discharge to the stream during culvert installation and associated work.
2. The permittee shall minimize damage to all vegetation and shall revegetate all disturbed areas with native vegetation. Construction techniques and best management practices (BMP's) shall be utilized to ensure that land disturbing activities do not result in runoff or sedimentation to all streams.
3. Live stake and seed disturbed areas as outlined in "Streambank Revegetation and Protection Guide."
4. All bank cuts, slopes, fills, or other exposed earthworks attributable to this project shall be stabilized to prevent erosion, both during and after construction.
5. For each tree removed, two seedlings less than 5.5-feet tall of a species native to the region will be planted within the 50-foot HPD.
6. The River Center shall be notified at least 3 days prior to the start of the project.

7. If changes to the approved project described above are proposed prior to or during its siting, construction, or operation, the permittee is required to notify the River Center to determine if additional approval is required.
8. The permittee shall be held responsible for the actions of the contractors, agents, or others who perform work to accomplish the approved plan.
9. The construction or installation phase of this Conditional Use Permit must be completed within one calendar year from the date of the permit's issuance, or the Conditional Use Permit shall expire unless the Planning Commission finds that more time is necessary to effectuate the purposes of this chapter, in which case the commission may extend the deadline for a maximum of six years from the date of issuance. Prior to its expiration date and upon written request, the Planning Director may grant a Conditional Use Permit extension for 12 months (KPB 21.18.081 (H)).
10. In addition to the penalties provided by KPB 21.18.110, and pursuant to KPB 21.50, the permit may be revoked if the permittee fails to comply with the provisions of this chapter or the terms and conditions of a permit issued under this chapter. The Borough Clerk shall provide at least 15 day's written notice to the permittee of a revocation hearing before the hearing officer (KPB 21.18.082).
11. The permittee shall comply with the terms, conditions and requirements of the Kenai Peninsula Borough Code of Ordinances Chapter 21.18, and any regulations adopted pursuant to this chapter.
12. The permittee is responsible for abiding by all other federal, state, and local laws, regulations, and permitting requirements applicable to the project (KPB 21.18.081 (G)).

Attachments

Multi-agency application
Draft Resolution

Staff Recommendation

Based on the findings, staff finds that the proposed project meets the five general standards of KPB 21.18.081. The Planning Commission could consider additional permit conditions to mitigate for some of the habitat loss if it chooses.

Staff recommends the Planning Commission grant a Conditional Use Permit for the proposed project details subject to adopted conditions as set forth in 2021-14.

Note: An appeal of a decision of the Planning Commission may be filed to the Hearing Officer, in accordance with the requirements of the Kenai Peninsula Borough Code of Ordinances, Chapter 21.20.250. An appeal must be filed with the Borough Clerk within 15 days of date of the notice of the decision using the proper forms and be accompanied by the filing and records preparation fee.

END OF STAFF REPORT

Chair Martin opened the item for public comment.

Sean Holland, DOT & PF; P.O. Box 196900, Anchorage, AK 99519: Mr. Holland is the engineer on this project and made himself available for questions.

Commissioner Ecklund asked Mr. Holland if this project gave consideration on moving this section of the highway further north, further away from the river. Mr. Holland replied the plans are to widen this section of highway to bring it up to current standards. The will be widening the lanes to a full 12 feet as well as adding 4-foot shoulders on both sides. He noted that this section of highway is hemmed, with the mountains to the north and by the river to the south. The plan is to hold and reinforce the south edge of the highway and then widen the north side of the highway to the north.

Hearing no one else wishing to comment, Chair Martin closed public comment and opened discussion among the Commission.

MOTION: Commissioner Ecklund moved, seconded by Commissioner Venuti to approve PC Resolution 2021-14, issuing a conditional use permit to the Alaska Department of Transportation & Public Facilities.

Commissioner Morgan asked staff if this item had gone before the Cooper Landing APC. She did not see any minutes from their meeting in the packet and wondered if they had any comments on this project. Mr. Taylor responded that the APC had been briefed by the DOT on both of these projects. He was not aware if the APC had submitted any comments on these briefings. If comments had been submitted they would have been included in the meeting packet.

MOTION PASSED: Hearing no further discussion or objection the motion passed by the following vote:

Yes	11	No	0	Absent	0
Yes	Bentz, Brantley, Carluccio, Chesser, Ecklund, Fikes, Gillham, Martin, Morgan, Ruffner, Venuti				
No					

AGENDA E. NEW BUSINESS

3. A Conditional Use Permit is sought pursuant to KPB 21.18 for highway improvements at MP 58 of the Sterling Highway, east of the intersection with Skilak Lake Road, within the State of Alaska Department of Transportation (ADOT) highway easement. The project is to stabilize and strengthen the embankment against further erosion at MP 58 of the Sterling Highway within the 50-foot Habitat Protection District (HPD) of the Kenai River, near Cooper Landing, AK.

KPB Planning Commission 2021-15

Staff report given by Nancy Carver.

Applicant: Alaska Department of Transportation and Public Facilities (ADOT&PF)
 Sean Holland, P.E.
 4111 Aviation Avenue
 Anchorage, AK 99516-6900

Physical Address: ADOT Right-of-Way (ROW) Easement, Cooper Landing, AK

Legal Description: T 05N, R 05W, Section 35, Seward Meridian

KPB Parcel Number: 025-180-03

Background Information

The project is part of the Sterling Highway MP 45-60 project, which includes placement of material fill along the existing bank, above ordinary high water. On top of the stabilization material, 4 inches of topsoil, seed, willow staking, and compost socks will be placed to enhance bank stabilization. It is anticipated that when the vegetation grows, the bank would also appear more natural than its current state.

Clearing of vegetation throughout the project per KPB Ordinance 21.18.071 within the Habitat Protection District (HPD) of Kenai River has already been approved through the concurrent Sterling Highway MP 45-60 project (Permit #12663), which was approved by Resolution 2020-23 at the August 24, 2020 Planning Commission Meeting.

Project Details within the 50-foot Habitat Protection District

6. A planting ratio of 2:1 will be used for every tree removed within the HPD of Kenai River. The proposed willow staking activities are anticipated to meet ordinance requirements.
7. Approximately 1,420 linear feet of compost socks will be used to stabilize a 4" layer of topsoil (310 CY) and mulch (330 CY) for planting of seed and live stakes.
8. Approximately 2,760 square yards seedling and willow staking will be used to establish vegetation and roots, producing a more natural visual effect.

Findings of fact pursuant to KPB 21.18.081 Conditional Use Permit

16. Portions of this proposed project are within the 50-foot habitat protection district as defined by KPB 21.18.040.
17. Pursuant to KPB 21.18.081(B)(5), the proposed critical infrastructure may be approved as conditional structures within the habitat protection district.
18. A planting ratio of 2:1 will be used for every tree removed within the HPD of Kenai River the proposed willow staking activities are anticipated to meet ordinance requirements.
19. Approximately 1,420 linear feet of compost socks will be used to stabilize a 4" layer of topsoil (310 CY) and mulch (330 CY) for planting of seed and live stakes.
20. Approximately 2,760 square yards of seedling and willow staking will be used to establish vegetation and roots, producing a more natural visual effect.
21. Staff finds the proposed project is consistent with the 2019 Kenai Peninsula Borough Comprehensive Plan and other applicable planning documents and borough code including the Kenai Peninsula Borough Coastal Management Plan.
22. Kenai Peninsula Borough Planning Commission Resolution 2015-35 defines water-dependent as:
...a use or structure located on, in or adjacent to water areas because the use requires access to the waterbody. The definition is applicable to facilities or activities that must be located at or near the shoreline and within the 50-foot buffer. An activity is considered water dependent if it is dependent on the water as part of the intrinsic nature of its operation. Examples of water dependent facilities may include, but are not limited to, piers, boat ramps, and elevated walkways.
23. Access to the site and all construction activities will occur from the ADOT&PF right of way easement of the Sterling Highway and will not affect neighboring parcels.
24. The River Center found the application complete and scheduled a public hearing for April 26, 2021.
25. Pursuant to KPB 21.11.030, public notice was mailed to property owners within a radius of 300 feet of the project on April 8, 2021. One mailing was sent.
26. Pursuant to KPB 21.11.020, public notice was published in the Peninsula Clarion on April 15 and April 22, 2021.
27. Agency review was distributed on April 8, 2021. No comments or objections have been received from resource agencies to date.
28. The applicant is currently in compliance with Borough permits and ordinances.

Pursuant to 21.18.081(D), the following General Standards shall be met before conditional use approval may be granted.

6. ***The use or structure will not cause significant erosion, sedimentation, damage within the habitat protection district, an increase in ground or surface water pollution, and damage to riparian wetlands and riparian ecosystems;***
 - **Condition 1** – A temporary silt fence will be installed prior to ground disturbance and stream work to minimize erosion and sediment discharge to the stream during culvert installation and associated work.
 - **Condition 2** – The permittee shall minimize damage to all vegetation and shall revegetate all disturbed areas with native vegetation.
 - **Condition 3** – Live stake and seed disturbed areas as outlined in “Streambank Revegetation and Protection Guide.”
 - **Condition 4** – All bank cuts, slopes, fills, or other exposed earthworks attributable to this project shall be stabilized to prevent erosion, both during and after construction.
 - **Condition 5** – For each tree removed two seedlings less than 5.5-feet tall of a species native to the region will be planted within the 50-foot HPD.
 - **Finding 3** – A planting ratio of 2:1 will be used for every tree removed within the HPD of Kenai River the proposed willow staking activities are anticipated to meet ordinance requirements.
 - **Finding 4** – Approximately 1,420 linear feet of compost socks will be used to stabilize a 4" layer of topsoil (310 CY) and mulch (330 CY) for planting of seed and live stakes.
 - **Finding 5** – Approximately 2,760 square yards of seedling and willow staking will be used to establish vegetation and roots, producing a more natural visual effect.

7. ***Granting of the conditional use shall be consistent with the purposes of this chapter, the borough comprehensive plan, other applicable chapters of the borough Code, and other applicable planning documents adopted by the borough;***

- **Finding 1** – Portions of this proposed project are within the 50-foot habitat protection district as defined by KPB 21.18.040.
- **Finding 2** – Pursuant to KPB 21.18.081(B)(5), proposed critical transportation and utility infrastructure may be approved as conditional structures within the habitat protection district.
- **Finding 6** – Staff finds the proposed project is consistent with the 2019 Kenai Peninsula Borough Comprehensive Plan and other applicable planning documents and borough code including the Kenai Peninsula Borough Coastal Management Plan.
- **Finding 8** – Access to the site and all construction activities will occur from the DOT&PF right of way easement of the Sterling Highway and will not affect neighboring parcels.
- **Finding 9** – The River Center found the application complete and scheduled a public hearing for April 26, 2021.
- **Finding 10** – Pursuant to KPB 21.11.030, public notice was mailed to property owners within a radius of 300 feet of the project on April 8, 2021. One mailing was sent.
- **Finding 11** – Pursuant to KPB 21.11.020, public notice was published in the Peninsula Clarion on April 15 and April 22, 2021
- **Finding 12** – Agency review was distributed on April 8, 2021. No comments or objections have been received from resource agencies to date.

8. ***The development of the use or structure shall not physically damage the adjoining property;***

- **Finding 8** – Access to the site and all construction activities will occur from the ADOT&PF right of way easement of the Sterling Highway and will not affect neighboring parcels.

9. ***The proposed use or structure is water-dependent;***

- **Finding 7** – Kenai Peninsula Borough Planning Commission Resolution 2015-35 defines water-dependent as:
...a use or structure located on, in or adjacent to water areas because the use requires access to the waterbody. The definition is applicable to facilities or activities that must be located at or near the shoreline and within the 50-foot buffer. An activity is considered water dependent if it is dependent on the water as part of the intrinsic nature of its operation. Examples of water dependent facilities may include, but are not limited to, piers, boat ramps, and elevated walkways.

10. ***Applicant's or owner's compliance with other borough permits and ordinance requirements.***

- **Finding 14** – The applicant is currently in compliance with Borough permits and ordinances.

Permit Conditions

1. A temporary silt fence will be installed prior to ground disturbance and stream work to minimize erosion and sediment discharge to the stream during culvert installation and associated work.
2. The permittee shall minimize damage to all vegetation and shall revegetate all disturbed areas with native vegetation. Construction techniques and best management practices (BMP's) shall be utilized to ensure that land disturbing activities do not result in runoff or sedimentation to all streams.
3. Live stake and seed disturbed areas as outlined in "Streambank Revegetation and Protection Guide."
4. All bank cuts, slopes, fills, or other exposed earthworks attributable to this project shall be stabilized to prevent erosion, both during and after construction.
5. For each tree removed, two seedlings less than 5.5-feet tall of a species native to the region will be planted within the 50-foot HPD.
6. The River Center shall be notified at least 3 days prior to the start of the project.
7. If changes to the approved project described above are proposed prior to or during its siting, construction, or operation, the permittee is required to notify the River Center to determine if additional approval is required.

8. The permittee shall be held responsible for the actions of the contractors, agents, or others who perform work to accomplish the approved plan.
9. The construction or installation phase of this Conditional Use Permit must be completed within one calendar year from the date of the permit's issuance, or the Conditional Use Permit shall expire unless the Planning Commission finds that more time is necessary to effectuate the purposes of this chapter, in which case the commission may extend the deadline for a maximum of six years from the date of issuance. Prior to its expiration date and upon written request, the Planning Director may grant a Conditional Use Permit extension for 12 months (KPB 21.18.081 (H)).
10. In addition to the penalties provided by KPB 21.18.110, and pursuant to KPB 21.50, the permit may be revoked if the permittee fails to comply with the provisions of this chapter or the terms and conditions of a permit issued under this chapter. The Borough Clerk shall provide at least 15 day's written notice to the permittee of a revocation hearing before the hearing officer (KPB 21.18.082).
11. The permittee shall comply with the terms, conditions and requirements of the Kenai Peninsula Borough Code of Ordinances Chapter 21.18, and any regulations adopted pursuant to this chapter.
12. The permittee is responsible for abiding by all other federal, state, and local laws, regulations, and permitting requirements applicable to the project (KPB 21.18.081 (G)).

Attachments

Multi-agency application
Draft Resolution

Staff Recommendation

Based on the findings, staff finds that the proposed project meets the five general standards of KPB 21.18.081. The Planning Commission could consider additional permit conditions to mitigate for some of the habitat loss if it chooses.

Staff recommends the Planning Commission grant a Conditional Use Permit for the proposed project details subject to adopted conditions as set forth in 2021-15.

Note: An appeal of a decision of the Planning Commission may be filed to the Hearing Officer, in accordance with the requirements of the Kenai Peninsula Borough Code of Ordinances, Chapter 21.20.250. An appeal must be filed with the Borough Clerk within 15 days of date of the notice of the decision using the proper forms and be accompanied by the filing and records preparation fee.

END OF STAFF REPORT

Chair Martin opened the item for public comment.

Sean Holland, DOT & PF; P.O. Box 196900, Anchorage, AK 99519: Mr. Holland is the engineer on this project and made himself available for questions. Mr. Holland noted that this project will be approximately 1000 feet and will stay above the ordinary high water mark. Currently DOT is not proposing to add any additional riprap but will rely on a fiber matrix to reinforce and tie up the soil in the area.

Hearing no one else wishing to comment, Chair Martin closed public comment and opened discussion among the Commission.

MOTION: Commissioner Venuti moved, seconded by Commissioner Morgan to approve PC Resolution 2021-15, issuing a conditional use permit to the Alaska Department of Transportation & Public Facilities.

MOTION PASSED: Hearing no further discussion or objection the motion passed by the following vote:

Yes	11	No	0	Absent	0
Yes	Bentz, Brantley, Carluccio, Chesser, Ecklund, Fikes, Gillham, Martin, Morgan, Ruffner, Venuti				
No					

AGENDA ITEM E. PUBLIC HEARINGS

- 4. Ordinance 2021-17: An Ordinance amending KPB 21.06 Floodplain Management to adopt flood depths for three neighborhoods in the Seward Mapped Flood Data Area and to incorporate the Seward Mapped Flood Data Area into the Minimum National Flood Insurance Standards.

Staff report given by Samantha Lopez.

Since 1988, the borough has participated in the National Flood Insurance Program (NFIP), making federal disaster assistance, federal hazard mitigation grants, federal subsidized mortgages, and individual homeowner insurance available within the borough. The Federal Emergency Management Agency (FEMA) oversees the NFIP and provides participating communities with the minimum regulations and regulatory flood maps for each community to enforce.

The borough established the Seward Mapped Flood Data Area (SMFDA) in 2009 to regulate areas of known riverine and alluvial flood hazards outside the FEMA regulatory maps. The SMFDA was scheduled to sunset when FEMA provided an updated flood insurance study with new regulatory flood maps for the service area. In 2013, FEMA mapped some of the service area, but not many areas of known flood hazard, so the SMFDA was kept as a minimum regulatory tool to continue to protect residents against flood hazards.

The SMFDA was designed to be a short-term regulatory tool, and was based on anecdotal flooding evidence from three floods of record in 1986, 1995, and 2006. In 2020, the SBCFSA contracted with Alaska Water Resources Engineering to create hydraulic and hydrologic models for three neighborhoods in the SMFDA, providing flood hazard boundaries and flood depths for the 100-year flood event. These additional data provide the flood protection elevation necessary to regulate development within the SMFDA to the minimum NFIP standards.

This ordinance will integrate development within the SMFDA into the same minimum NFIP standards as the FEMA flood hazard areas. The ordinance will also clarify and define the different flood protection elevation standards based on minimum NFIP regulations.

At its April 5, 2021 regular meeting, the SBCFSA Board of Directors recommended approval of this ordinance.

END OF STAFF REPORT

Chair Martin opened the item for public comment. Hearing no one wishing to comment, Chair Martin closed public comment and opened discussion among the Commission.

MOTION: Commissioner Ecklund moved, seconded by Commissioner Gillham to forward to the assembly a recommendation to approve Ordinance 2021-17: Amending KPB 21.06 Floodplain Management to adopt flood depths for three neighborhoods in the Seward Mapped Flood Data Area and to incorporate the Seward Mapped Flood Data Area into the Minimum National Flood Insurance Standards.

MOTION PASSED: Hearing no further discussion or objection the motion passed by the following vote:

Yes	11	No	0	Absent	0
Yes	Bentz, Brantley, Carluccio, Chesser, Ecklund, Fikes, Gillham, Martin, Morgan, Ruffner, Venuti				
No					

AGENDA ITEM E. PUBLIC HEARINGS

- 5. Resolution 2021-12: Recommending Adoption of the City of Soldotna All Hazard Mitigation Plan 2019 Update as Part of the Kenai Peninsula Borough Hazard Mitigation Plan.

Staff report given by Bryan Taylor.

The KPB is part of a multi-jurisdictional team that works to keep the hazard mitigation plans of several communities within the borough up-to-date. The City of Soldotna has recently completed an update to its All Hazard Mitigation Plan and is requesting that the Kenai Peninsula Borough adopt the updated plan. Keeping this plan updated is required in order to be eligible for certain types of non-emergency disaster funding, including funding for mitigation projects.

Adopting the city’s updated plan furthers goals outlined within the borough’s 2019 Comprehensive Plan to maintain preparedness to respond and recover from natural and human-caused emergencies among the borough’s communities.

END OF STAFF REPORT

Chair Martin opened the item for public comment.

John Czarnezki, Director of Economic Development & Planning - City of Soldotna; 177 N. Birch St., Soldotna AK 99669: Mr. Czarnezki made himself available for questions. He noted the most of the modifications to the plan were minor. They updated some data and modified some action items that had been accomplished. He stated that all the major goals of the plan remain pretty much the same.

Hearing no one wishing to comment, Chair Martin closed public comment and opened discussion among the Commission.

MOTION: Commissioner Carluccio moved, seconded by Commissioner Brantley to approve PC Resolution 2021-12, recommending adoption of the City of Soldotna All Hazard Mitigation Plan 2019 Update as part of the Kenai Peninsula Borough Hazard Mitigation Plan.

MOTION PASSED: Hearing no further discussion or objection the motion passed by the following vote:

Yes	11	No	0	Absent	0
Yes	Bentz, Brantley, Carluccio, Chesser, Ecklund, Fikes, Gillham, Martin, Morgan, Ruffner, Venuti				
No					

AGENDA ITEM E. PUBLIC HEARINGS

- 6. Resolution 2021-13, Establishing the Appeal Procedure for Appeals of the Planning Director’s Decision on Reconsideration to Uphold a Prior Decision Approving a Nonconforming Use Application within C&H Estates LOZD

Staff report given by Sean Kelley.

Three appeals have been filed appealing the KPB Planning Director’s Decision to uphold, on reconsideration, the decision issued April 7, 2020 by KPB Planning Director Max Best to approve a nonconforming use application for a bed and breakfast and event center that was requested for KPB parcel #174-410-26; Lot 26, C&H Estates, according to Plat 80-23, Homer Recording District. Borough code does not provide an appeal procedure for appeals of staff decisions.

This resolution would establish a procedure for the parties and planning commission to follow for these three consolidated appeals (this “appeal”).

Mr. Kelley noted he has advised the Planning Director on this matter and will be representing the Administration/Planning Director during this appeal. Therefore, to avoid any actual or perceived conflicts of interest and ethical concerns, he will not be able to provide procedural or substantive advice to the Planning Commission regarding this appeal. If the Planning Commission desires legal advice during this appeal, that request should be made by the commission prior to the appeal hearing in order to allow time to timely accommodate such a request.

This resolution provides a possible procedure for this appeal. Interested parties may submit their own proposed procedure and/or propose alternatives to the procedure proposed by this resolution.

Mr. Kelley noted that the applicant's lawyers Molloy Schmidt sent in a comment on the proposed hearing procedures and noted that the resolution does not set a deadline for written statements and comments. Mr. Kelley encouraged the commission to consider this request.

END OF STAFF REPORT

Commissioner Fikes asked Mr. Kelley if the date for the hearing had been set. Mr. Kelley replied a notice was sent out with the proposed dated of May 24, 2021 with a start time of 6:30 pm. Mr. Kelley suggested bumping the Plat Committee to an earlier start time and conduct the hearing between the plat committee and planning commission meetings. He then noted in the resolution the hearing date and time was left blank to allow the commission to discuss what day and time would work best.

Mr. Kelley informed the commission that there was a fourth appellant associated with this appeal, Don Pitcher, which was not identified in resolution. Mr. Kelley recommended amending the resolution adding him to the list of appellants.

Commissioner Ecklund asked Mr. Kelley if she was correct in understanding that code does not address hearing process for appeals of Planning Director decisions. Mr. Kelley replied she was correct and noted staff have realized code does not address the hearing procedure of any kind of staff decision. KPB 21.20 only addresses the appeal process of Planning Commission decisions. The resolution before the commission tonight will set a process for this specific appeal. Staff will need work on a change to code that will address the appeal process of staff decisions. Commissioner Ecklund then asked Mr. Kelley if the process laid out in the resolution before them follows along the lines of the established appeal process for Planning Commission decisions. Mr. Kelley replied KPB 21.20 was used for guidance. This appeal situation is unique in that there are four appellants and Planning Director is technically the respondent; there is also the applicant who has due process interests at stake in the matter as well. Another difference is KPB 21.20 appeals are on the record and the parties may submit no new evidence unless there is good cause. Because there is nothing in code that states decisions made by the planning director are on the record, the commission may want to address if new evidence will be allowed.

Chair Martin then opened the item for public comment.

Kristine Schmidt, Molloy Schmidt LLC, 110 South Willow Street, Suite 101, Kenai AK: Ms. Schmidt represents the applicants, TLR Adventures LLC, in this matter. She referred the commission to the letter dated 4/14/21 sent from her office to the planning commission requesting some amendments to the resolution being considered. Their main concern is that they receive the same amount of time to present their case as the appellants. There are four appellants and together they will be allotted 40 minutes and the applicant has only been allotted 10 minutes. They believe the applicant should receive equal time, allowing them either 10 minutes to respond after each appellant or 40 minutes after all the appellants have spoken. They would also like a hard deadline for the submittal of written statements and comments. They would suggest 10 days before the appeal hearing date for comments and materials and 7 days before the appeal hearing date to respond to the comments and materials. They also believe the Planning Commission should not accept any late submissions.

Ron Schmitt, P.O. Box 2052, N. Mankato, MN 56002: Mr. Schmitt is the general manager for TLR Adventures. He noted their legal counsel, Ms. Schmidt, had brought up most of their concerns in her letter to the commission. He stated this whole matter has been going on for a very long time. TLR Adventures purchased this property 2016. They spent over \$300,000 to renovate the property. They have met all KPB Borough code and State of Alaska requirements. They are the only B&B on the Kenai Peninsula that meets all the State of Alaska fire marshal codes. They have been involved in a tremendous process over the last 2 years trying to maintain their business and work with the neighbors. They submitted their appeal to the planning department of the denial of their non-conforming use in February or March of 2020. He has been involved in this appeal process for 14 months now and he believes the landowner's property rights have been tremendously violated during that time. He would ask that the commission resolve this issue and do

so quickly.

Craig Cutler, 40130 Portlock Drive, Homer AK, 99603: Mr. Cutler is a homeowner in the C&H local option zone and is one of the appellants. Mr. Cutler noted he had sent a letter to the Planning Commission stating that he was not opposed to the hearing process as laid out in the resolution.

Scott Meyer, 40210 Alpenglow Circle, Homer, AK 99603: Mr. Meyer is a homeowner in the C&H local option zone and is one of the appellants. Mr. Myer stated he had reviewed the resolution and has no objection to it. He also reviewed the proposed amendments in the Molloy Schmidt letter and he is fine with suggestions to the speaking order and establishing deadline for submitting comments and materials. He does not support awarding the applicant the same amount of time to speak as the combined time of the appellants; whether it be 10 minutes after each appellant or 40 minutes at one time. The hearing process established in this resolution could be used as a precedent for future hearings. He noted that in the future what if appeals have eight or nine appellants, the applicant could have an hour and a half to present their case. This would make for long hearings. For matters in their subdivision, each landowner gets one vote per lot, which he believes is fair and equitable. The applicant should be allotted 10 minutes, the same as each appellant.

Hearing no one else wishing to comment, Chair Martin closed public comment and opened discussion among the Commission.

MAIN MOTION: Commissioner Carluccio moved, seconded by Commissioner Ecklund to approve PC Resolution 2021-13, establishing the appeal procedure for appeals of the Planning Director’s decision on reconsideration to uphold a prior decision approving a nonconforming use application within C&H Estates LOZD.

Commissioner Fikes asked Mr. Kelley if code allows for the appeal of a director’s decision. Mr. Kelley stated that code does allow the applicant or LOZ residents to appeal the director’s decision. What is missing in code is the hearing procedures for those appeals.

Commissioner Venuti noted that Mr. Kelley would be representing the Planning Director and Molloy Schmidt will be representing the applicant and he believed that the commission should have a lawyer advising them. Since Mr. Kelley will not be available, he wanted to know who would be providing counsel for the commission. Mr. Kelley replied he would speak to Borough Attorney Thompson regarding this matter. Since none of the other lawyers in his office have been involved with this matter one of them could provide counsel. There is also the option for the commission to obtain outside counsel should the need arise.

Commissioner Brantley noted the director’s decision was issued in April of 2020 and asked when the requests for appeal received were. Mr. Taylor replied the notice sent to the landowners with the most recent director’s decision was mailed out March of this year, which opened the most recent appeal period. Mr. Kelley then noted this matter has a somewhat tortured history, which makes things confusing. He informed the commission the history related to this matter would be reviewed at the hearing. Mr. Kelley then informed the commission that the appellants met the appeal deadline on this matter.

AMENDMENT A: Commissioner Carluccio moved, seconded by Commissioner Ecklund to add Don Pitcher as the fourth appellant in the consolidated appeal and has a 10-minute opening presentation.

AMENDMENT A MOTION PASSED: Hearing no further discussion or objection the motion passed by the following vote:

Yes	11	No	0	Absent	0
Yes	Bentz, Brantley, Carluccio, Chesser, Ecklund, Fikes, Gillham, Martin, Morgan, Ruffner, Venuti				
No					

AMENDMENT B: Commissioner Ecklund moved, seconded by Commissioner Gillham to set the hearing date and time for the hearing to May 24, 2021 at 6:30 P.M.

AMENDMENT B MOTION PASSED: Hearing no further discussion or objection the motion passed by the following vote:

Yes	11	No	0	Absent	0
Yes	Bentz, Brantley, Carluccio, Chesser, Ecklund, Fikes, Gillham, Martin, Morgan, Ruffner, Venuti				
No					

AMENDMENT C: Commissioner Ecklund moved, seconded by Commissioner Brantley to set the deadline for the submission written statements, documents as laid out in code for Planning Commission & Assembly appeals.

Mr. Kelley suggested the commission make a motion to amend Section 5 of the resolution establishing a date certain. He noted the appeal process established under KPB 21.20 relates to appeals that are on the record, which allows for opening statements and preparation of the record, but not the submission of new evidence. He did not believe that this section of code is a good reference for this matter. This particular appeal is not on the record. Commissioner Ecklund then stated she would follow the recommendation in the Molloy Schmidt letter regarding submission timeframes, since the appellants who spoke tonight stated they had no issues with their recommendations.

As the maker of the motion, Commissioner Ecklund amended the motion and Commission Brantley as the second agreed, to the following:

AMENDMENT MOTION C1: Written statements and comments should be received no later than 10 days before the hearing date for appellant/applicant/interested parties and 7 days before the appeal hearing date for comments for the appellants/applicant/interested parties to respond to the comments.

Commissioner Bentz noted that in her experience with the back and forth of comments in appeals, she wondered if the commission could just have the 10 day period to submit statements and comments and not the 7 day period to respond to the statement and comments. They could use their rebuttal time at the hearing to respond to comments. Also what would the other commissioners think about allowing the applicant as well the appellants the opportunity for rebuttal at the hearing.

Commissioner Ecklund stated that after rereading the Molloy Schmidt recommendation again she feels the same way as Commissioner Bentz. She would agree that the 7-day response period could be dropped and the appellants/applicant can make the rebuttals at the hearing.

As the maker of the motion, Commissioner Ecklund amended the motion and Commission Brantley as the second agreed, to the following:

AMENDMENT MOTION C2: Amend Section 5 of the resolution to require written statements and comments from the appellants/applicant/interested parties be received no later than 10 days before the date of the hearing and late submissions will not be accept.

AMENDMENT MOTION C2 PASSED: Hearing no further discussion or objection the motion passed by the following vote:

Yes	11	No	0	Absent	0
Yes	Bentz, Brantley, Carluccio, Chesser, Ecklund, Fikes, Gillham, Martin, Morgan, Ruffner, Venuti				
No					

Commissioner Carluccio asked that the commission discuss the length of time allotted to applicant for his opening presentation. While she does not agree with the Molloy Schmidt proposal, she does think perhaps he should be given more time for his opening presentation. She noted as an example, the public hearing process in place allows the applicant to have more time than the other public testifiers.

Commissioner Ecklund agreed with Commissioner Carluccio and suggested that perhaps each appellant be given 5 minutes for his or her opening presentation and the applicant be given 20 minutes. She then

noted that in this case she is not exactly sure how to set the times for the presentations and asked other commissioners to weigh in.

Commissioner Bentz proposed having the applicant go first with a 10-minute presentation. The planning director could go second with a 10-minute presentation, since it is her decision that is being appealed. The appellants could go after the director with each one having a 10 minutes presentation. She believe that having the applicant and staff go first, with each having 10 minutes, would make the time allotment a little more equitable..

Commissioner Carluccio noted that if the commission adds more minutes for the presentations the hearing will go longer than the hour allotted for the hearing. It also does not allow anytime for questions.

Commissioner Ecklund agreed with Commissioner Carluccio and said that perhaps the meeting start time should be moved to 6:00 pm. She then noted that adding time to the Planning Director's presentation would put the opening presentation time right at an hour.

Commissioner Brantley noted Section 2, #7 allows for interested parties 3-minutes per person to comment. If there are many "other interested parties" that will put the hearing over the 1-hour allotted time.

Commissioner Bentz noted that with moving the hearing start time to 6:00 pm there will still not be enough time for the hearing. She thought it would be best to set hearing procedure first and then go back and adjust the start time if needed.

Commissioner Ecklund noted since the resolution states that the planning director & borough attorney get a 7-minute opening presentation, why not limit the applicant and appellants to the same 7-minute presentation.

Commissioner Brantley liked Commissioner Ecklund's idea of limiting opening presentations to 7 minutes for all parties. He also suggested removing item #7 from Section 2 of the resolution and not allow other interested parties time to comment.

AMENDMENT D: Commissioner Brantley moved, seconded by Commissioner Carluccio to remove item #7 from Section 2, allowing other interested parties 3 minutes each to comment, from the resolution.

Commissioner Ecklund asked staff if this was appropriate, since other interested parties are allowed to speak at other types of public hearings. Mr. Taylor replied it appeared the commission was attempting to identify which parties have standing in this matter. Determining who has standing will provide direction with decisions such as to who gets a copy of the appeal packet before the hearing. Commissioner Ecklund then asked if other interested parties were allow to speak at appeal hearings with the Assembly or with a Hearing Officer. Mr. Taylor replied KPB 21.20 provides guidance as to who has standing in those types of appeals. Since code does not address the hearing process for the appeal of a director's decision, the commission will need to determine who has standing in this matter. Commissioner Ecklund replied that she understands that this is a different type of an appeal, but noted that code does layout procedures for other types of appeals. She wondered if the commission should use those procedures as guidance in making this determination. Mr. Kelley stated that KPB 21.20 does lay out the process for the appeal of a Planning Commission's decision and states that a party would have to file an entry of an appearance. If a party does not enter an appearance, they would not have standing. Commissioner Ecklund then stated for this hearing they could determine that those who have standing are the one who filed an appeal and in that case, she agrees that #7 of Section 2 be removed.

Commissioner Ecklund proposed allotting the planning director/borough attorney, the applicant and all four appellants a 7-minute opening presentation, which will put the opening presentation time at 42 minutes. Allowing each appellant a 3-minute rebuttal will add another 12 minutes. Right there is 54 minutes, which leaves only 6 minutes for closing statements and discussion. She still believes that a starting time of 6:00 pm would be better.

Commissioner Venuti wondered why this hearing was limited to only one meeting. When issues like this

have been heard by the City of Homer, the hearing could be held over several meetings. This hearing may take longer than an hour and half.

AMENDMENT D MOTION PASSED: Hearing no further discussion or objection the motion passed by the following vote:

Yes	11	No	0	Absent	0
Yes	Bentz, Brantley, Carluccio, Chesser, Ecklund, Fikes, Gillham, Martin, Morgan, Ruffner, Venuti				
No					

AMENDMENT E: Commissioner Brantley moved, seconded by Commissioner Ecklund to give a 7-minute opening presentation to each of the appellants and the applicant.

Commissioner Carluccio noted that her earlier question about giving applicant more time for their opening presentation had not been addressed.

Commissioner Fikes noted that they have already added another appellant, which has added more time to the hearing.

Commissioner Carluccio then proposed leaving the applicant's time for the opening presentation at 10 minutes and limit appellant's time to 7 minutes each.

Commissioner Brantley asked what the other commissioners think about leaving the applicants' opening presentation time at 10 minutes.

Commissioner Ecklund stated that typically, in PC meetings it is the applicant bringing something forward and they are allowed more time. In this situation, it is the appellants who are bringing this matter forward. The appellants are allotted more time here and she believes that falls in line with the commission's general practice. She is fine with leaving the applicant's opening presentation at 7 minutes.

Commissioner Bentz noted that this is the appeal of a planning director's decision. The planning director/ borough attorney and the applicant will each have 7 minutes to speak in support of upholding the director's decision. She then noted that opening presentations of 7 minutes each and closing remarks of 3 minutes each totals 60 minutes. Using a start time of 6:00 pm that would leave 30 minutes for discussion and questions.

Commission Fikes states that she supports leaving opening presentations at 7 minutes.

Ms. Hindman noted that Section 2 of the resolution does not allow the applicant a 3-minute rebuttal. If the commission wishes to allow the applicant a rebuttal time, it will require a motion. Commissioner Bentz replied that the applicant is allowed a 3-minute closing statement. Ms. Hindman replied that as the resolution is written each appellants receives a 3-minute rebuttal and a 3-minute closing statement. The applicant only receives a 3-minute closing statement.

AMENDMENT E MOTION PASSED: Hearing no further discussion or objection the motion passed by the following vote:

Yes	11	No	0	Absent	0
Yes	Bentz, Brantley, Carluccio, Chesser, Ecklund, Fikes, Gillham, Martin, Morgan, Ruffner, Venuti				
No					

AMENDMENT F: Commissioner Brantley moved, seconded by Commissioner Carluccio to remove #8 of Section 2 of the resolution, rebuttal by the appellants.

Commissioner Ecklund had a question for Mr. Kelley. In this case, who is the plaintiff and who is the defendant? This is an appeal of the director’s decision; the applicant is not the one appealing here. Mr. Kelley replied this situation does not have a typical plaintiff and defendant. In this case, technically the planning director would be the respondent/defendant and appellants would be the plaintiff. He then noted that this case is unique as there is a property owner/applicant whose due process rights, as they related to his property, are at stake.

Commissioner Ecklund then wondered if the motion should be amended to establish the order of the closing statements as well as removing #8 of Section 2. She would propose that the appellants go first and then the applicant with the director having the final closing statement. She believe that the planning director should have the last say since it is their decision being appealed. Commissioner Carluccio agreed with Commissioner Ecklund.

As the maker of the motion, Commissioner Brantley amended the motion and Commission Carluccio as the second agreed, to the following:

AMENDMENT F1: Remove #8 of Section 2 of the resolution, rebuttal by the appellants, and give a 3-minute closing statement to each appellant, the applicant and the director in that order.

AMENDMENT F1 MOTION PASSED: Hearing no further discussion or objection the motion passed by the following vote:

Yes	11	No	0	Absent	0
Yes	Bentz, Brantley, Carluccio, Chesser, Ecklund, Fikes, Gillham, Martin, Morgan, Ruffner, Venuti				
No					

Commission Ecklund noted that with 7-minute opening presentations and 3-minute closing statements that comes to a total of 60 minutes, which leaves no time for discussion or questions if the hearing start time stays at 6:30 pm.

AMENDMENT G: Commissioner Brantley moved, seconded by Commissioner Ecklund to move the starting time for the hearing to 6:00 P.M.

Commissioner Fikes disagreed with changing the start time. She stated that this item has already been heard and she believes we need to stick with the tight schedule.

Commissioner Ecklund asked if the commission needed to make a decision that night. Mr. Kelley replied the commission is setting the procedure and that there is no requirement that a decision has to be made on that night. If the commission chooses, they can follow up with a written decision at a later date. Commission Ecklund asked who would write that decision. Mr. Kelley replied it would be authored by the commission with the assistance your attorney.

Commissioner Morgan stated that if the meeting time is not moved to 6:00 pm, they would not have the additional time to draft their decision and would most likely require another meeting. She would prefer to handle this matter in one meeting so she would support moving the meeting start time of 6:00 pm.

Commission Ecklund noted once again that if we leave the hearing time to one hour there would be no time for questions or discussion.

Chair Martin noted if necessary the Planning Commission meeting could start later. That has happened in the past when the plat committee has gone over time. He asked staff if that would be a problem. Ms. Hindman replied she did not believe it would be a problem as notices do contain the statement the meeting will commence at 7:30 pm or as soon thereafter as business permits.

Commissioner Bentz stated that she supports a starting time of 6:00 pm as there is already 60 minutes of allotted time and the commission will need to be time for questions and discussion. If the hearing starts at 6:30, we would be guaranteed to run into the Planning Commission regular meeting time. She also noted

it would take time to come up with findings and to draft a decision. She thought it would might be possible that our legal council could recommend that we move into an adjudicative session for deliberations which could require more time.

Commissioner Fikes stated should would be in favor of reducing the open presentations of the appellant and the applicant to 5 minutes each.

AMENDMENT G MOTION PASSED: Hearing no further discussion or objection the motion passed by the following vote:

Yes	10	No	1	Absent	0
Yes	Bentz, Brantley, Carluccio, Chesser, Ecklund, Gillham, Martin, Morgan, Ruffner, Venuti				
No	Fikes				

MAIN MOTION PASSED: Hearing no further discussion or objection the motion passed by the following vote:

Yes	11	No	0	Absent	0
Yes	Bentz, Brantley, Carluccio, Chesser, Ecklund, Fikes, Gillham, Martin, Morgan, Ruffner, Venuti				
No					

Revised Hearing Procedure

1. Chair will introduce the item on the agenda.
2. Planning Director & Deputy Borough Attorney – presentation of issues & director’s decision (7 minutes).
3. Appellant Meyer Opening Presentation (7 minutes)
4. Appellant Sanders Opening Presentation (7 minutes)
5. Appellant Cutler Opening Presentation (7 minutes)
6. Appellant Pitcher Opening Presentation (7 minutes)
7. Applicant Opening Presentation (7minutes)
8. Appellant Meyer Closing Statement (3 minutes)
9. Appellant Sanders Closing Statement (3 minutes)
10. Appellant Cutler Closing Statement (3 minutes)
11. Appellant Pitcher Closing Statement (3 minutes)
12. Applicant Closing Statement (3 minutes)
13. Directors Closing Statement (3 minutes)

AGENDA ITEM K. DIRECTOR’S COMMENTS - None

AGENDA ITEM L. COMMISSIONER COMMENTS - None

AGENDA ITEM M. ADJOURNMENT – Commissioner Carluccio moved to adjourn the meeting at 9:30 p.m.

Ann E. Shirnberg
Administrative Assistant