

CITY AND BOROUGH OF SITKA

ORDINANCE NO. 2012-03 S

**AN ORDINANCE OF THE CITY AND BOROUGH OF SITKA, ALASKA AMENDING THE OFFICIAL SITKA ZONING MAP TO REZONE LOT 25 BLOCK 1 OF SITKA INDIAN VILLAGE USS 2542 A & B FROM R-1 SINGLE FAMILY AND DUPLEX DISTRICT TO CBD CENTRAL BUSINESS DISTRICT**

**BE IT ENACTED** by the Assembly of the City and Borough of Sitka, Alaska as follows:

1. **CLASSIFICATION.** This ordinance is of a permanent nature but is not intended to be a part of the Sitka General Code of the City and Borough of Sitka, Alaska.

2. **SEVERABILITY.** If any provision of this ordinance or any application to any person or circumstance is held invalid, the remainder of this ordinance and application to any person and circumstance shall not be affected.

3. **PURPOSE.** The purpose of this ordinance is to recognize the long standing commercial use of residentially zoned piece of property at 256 Katlian Street. While the existing zoning may have achieved objectives in the past, the rezoning also furthers the development of a more consistent zoning pattern in the area.

The rezoning is found to be consistent with the goals and policies of the 2007 Sitka Comprehensive Plan.

The Assembly finds that a parking restriction on this property along Kaagwaantaan Street for residential parking only is needed in order to approve this ordinance. This restriction is documented and enforceable through the attached restricted deed, agreeable to the current property owner, and which shall be binding on all future owners as well as occupants of this property. This restriction is in the public's best interest for protecting public health and safety by limiting additional traffic and parking congestion along the substandard Kaagwaantaan Street.

4. **ENACTMENT.** NOW, THEREFORE, BE IT ENACTED by the Assembly of the City and Borough of Sitka that the official zoning map is amended to rezone Lot 25 Block 1 of the Sitka Indian Village USS 2542 A and B from R-1 Single Family and Duplex to CBD Central Business District.

This enactment includes the requirement that the owner of this property sign and record the attached restricted deed that limits parking on the property along Kaagwaantaan Street for use only by the property residents. This restriction that shall be binding on all current and future owners as well as occupants of the property.

The property is also known as 256 Katlian Street.

5. **EFFECTIVE DATE.** This ordinance shall become effective on the day after the date of its passage.

51 **PASSED, APPROVED, AND ADOPTED** by the Assembly of the City and Borough of Sitka,  
52 Alaska this 14<sup>TH</sup> day of February, 2012.

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\_\_\_\_\_  
Cheryl Westover, Mayor

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56 ATTEST:

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59 \_\_\_\_\_  
Colleen Ingman, MMC

60 Municipal Clerk

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## **RESTRICTED DEED AGREEMENT**

This Restricted Deed Agreement (“Agreement”) is executed this 15<sup>th</sup> day of February, 2012, by Brian McNitt (“Owner”), 10-A Maksoutoff St., Sitka, Alaska 99835, and City and Borough of Sitka, 100 Lincoln Street, Sitka Alaska 99835, regarding the following property, also known as 256 Katlian St., Sitka, Alaska 99835 (“Property”):

Real property situated in the Sitka Recording District, First Judicial District, State of Alaska, and more particularly described as follows:

All of Lot No. Twenty-five (25), Block No. One (1), Sitka Indian Village as shown on the official plat of U.S. Survey No. 2542 A and B, Sitka Recording District, First Judicial District, State of Alaska.

This Property shall be subject of the following restriction:

Only residents of the Property shall be able to park along and on the Kaagwaantaan Street side of the Property. This restriction is in the public’s best interest for protecting public health and safety by limiting additional traffic and parking congestions along the substandard Kaagwaantaan Street.

This restriction was agreed to by the Owner, in consideration for the passage of Ordinance No. 2012-03 S by the City and Borough of Sitka Assembly on February 14, 2012. That ordinance granted the Owner’s request for amending the Official Sitka Zoning Map to rezone the property from R-1 Single Family and Duplex District to Central Business District.

This restriction is executed for the benefit of the City and Borough of Sitka. No amendment of or termination of this Agreement shall occur unless mutually agreed to by the City and Borough of Sitka Assembly, and the owner of the Property at the time of the proposed amendment or termination of the Agreement.

Violation of this Agreement may result in repeal or amendment of Ordinance No. 2012-03 S, as well as other remedies allowed by law, including injunctive relief to enforce this Agreement.

This Agreement “runs with the land,” meaning all current and future owners and occupants of this Property are subject to its terms and conditions. Any deed ever issued regarding this Property is subject to the restriction set out in this Agreement.

This Agreement shall inure to the benefit of, and shall be binding upon, the successors, executors, administrators, heirs and assigns of the respective parties, meaning the Owner and City and Borough of Sitka.

This Agreement shall be recorded in the Sitka Recording District by the Owner, who shall pay the recording fee.

In Witness, the parties execute this Agreement this 15<sup>th</sup> day of February, 2012.

**Owner**

\_\_\_\_\_  
Brian McNitt

STATE OF ALASKA            )  
  ) ss:  
FIRST JUDICIAL DISTRICT    )

On this \_\_\_ day of \_\_\_\_\_, 2012, personally appeared before me Brian McNitt, whose identity is personally known to me or proved to me on the basis of satisfactory evidence, and who states under oath by signing this document that he has the authority to sign this Agreement and does so freely and voluntarily.

\_\_\_\_\_  
Notary Public for Alaska  
My Commission Expires: \_\_\_\_\_

**CITY AND BOROUGH OF SITKA**

\_\_\_\_\_  
James Dinley  
Municipal Administrator

STATE OF ALASKA            )  
  ) ss:  
FIRST JUDICIAL DISTRICT    )

**THIS CERTIFIES** that on the \_\_\_ day of \_\_\_\_\_, 2012, before me, a Notary Public in and for the State of Alaska, personally appeared James Dinley, Municipal Administrator of the City and Borough of Sitka, Alaska, a municipality organized under the laws of the State of Alaska, and by signing this document verifies that he has been authorized to execute this document on its behalf, and he signs freely and voluntarily.

\_\_\_\_\_  
Notary Public for Alaska  
My Commission expires: \_\_\_\_\_



# City and Borough of Sitka

100 Lincoln Street • Sitka, Alaska 99835

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## MEMORANDUM

**To:** Jim Dinley, Municipal Administrator  
Mayor Westover and Members of the Assembly

**From:** Melissa Henshaw, Planner I *MH*

**Subject:** Ordinance 2012-03 Rezoning Lot 25 Block 1 Sitka Indian Village USS 2542

**Date:** January 3, 2012

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The Sitka Planning Commission is recommending approval of a zoning map amendment to rezone 256 Katlian Avenue from R-1 single-family and duplex residential district to CBD central business district. This is the property that houses Ludvig's Bistro and a residential unit on the Kaagwaantaan Street side as the property extends between the two roads. The board's recommendation was made during their October 4, 2011 meeting on a 3-0 vote.

The rezoning would extend the existing CBD zoning district that sandwiches this property. Since it is an expansion of an existing district, it is considered appropriate under the code and long standing zoning practices.

Most of the existing zoning pattern along Katlian Street has remained unchanged for the last 25 years. This pattern has a few residentially zoned lots sandwiched between lots that are zoned CBD central business district.

There was not any public comment on the request.

**RECOMMENDED ACTION:** Approve the ordinance.

**CITY AND BOROUGH OF SITKA**

**ORDINANCE NO. 2012-03**

*(Originally introduced as Ordinance 2011-41 in October 2011 and was postponed to first meeting in January 2012)*

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3. **PURPOSE.** The purpose of this ordinance is to recognize the long standing commercial use of residentially zoned piece of property at 256 Katlian Street. While the existing zoning may have achieved objectives in the past, the rezoning also furthers the development of a more consistent zoning pattern in the area. The rezoning is found to be consistent with the goals and policies of the 2007 Sitka Comprehensive Plan.

4. **ENACTMENT. NOW, THEREFORE, BE IT ENACTED** by the Assembly of the City and Borough of Sitka that the official zoning map is amended to rezone Lot 25 Block 1 of the Sitka Indian Village USS 2542 A and B from R-1 Single Family and Duplex to CBD Central Business District. The property is also known as 256 Katlian Street.

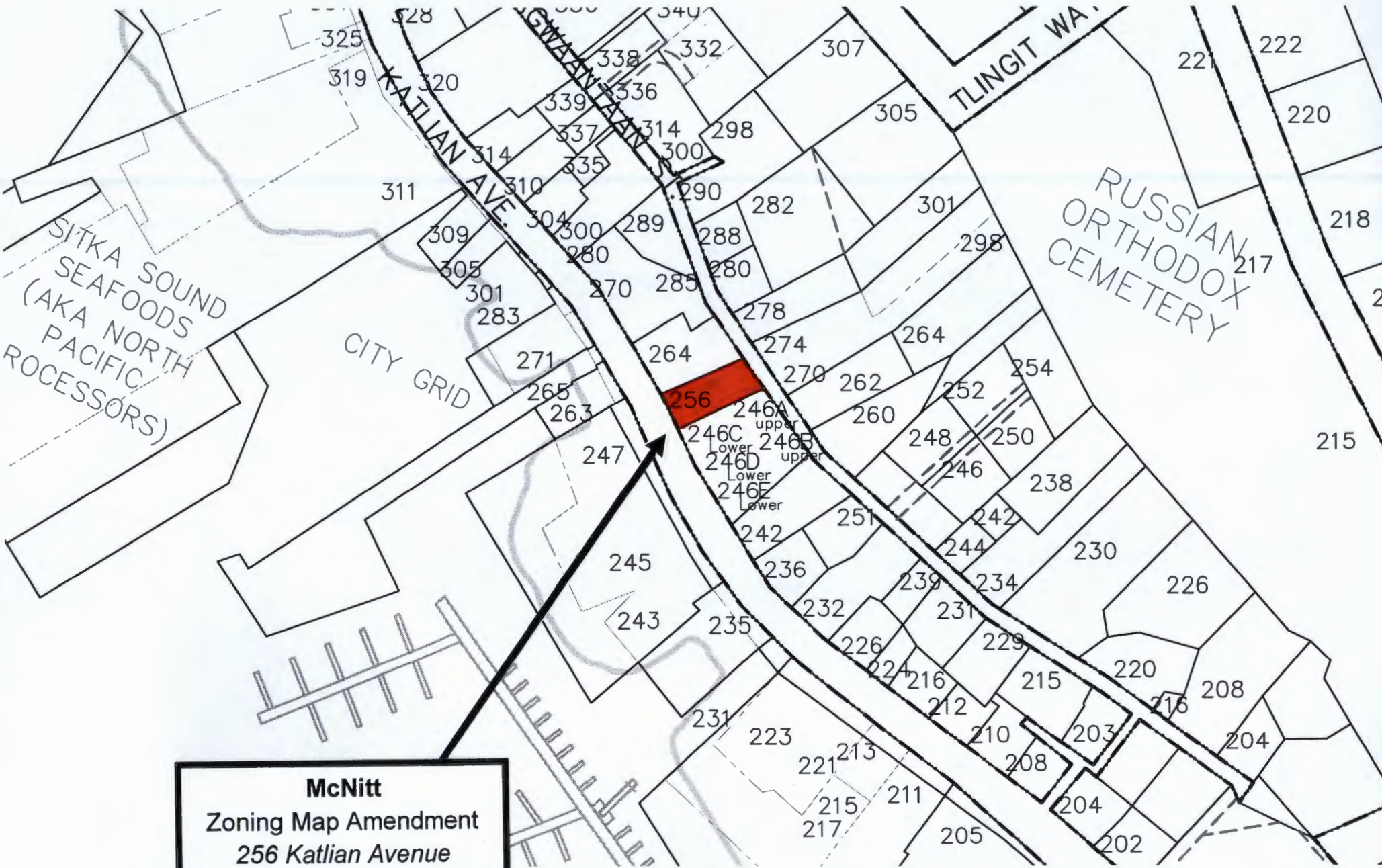
5. **EFFECTIVE DATE.** This ordinance shall become effective on the day after the date of its passage.

**PASSED, APPROVED, AND ADOPTED** by the Assembly of the City and Borough of Sitka, Alaska this 24<sup>th</sup> day of January, 2012.

\_\_\_\_\_  
Cheryl Westover, Mayor

ATTEST:

\_\_\_\_\_  
Colleen Ingman, MMC  
Municipal Clerk



**McNitt**  
Zoning Map Amendment  
256 Katlian Avenue

**McNitt**  
Zoning Map Amendment  
*256 Katlian Avenue*

**TAKEN FROM  
KATLIAN AVENUE**



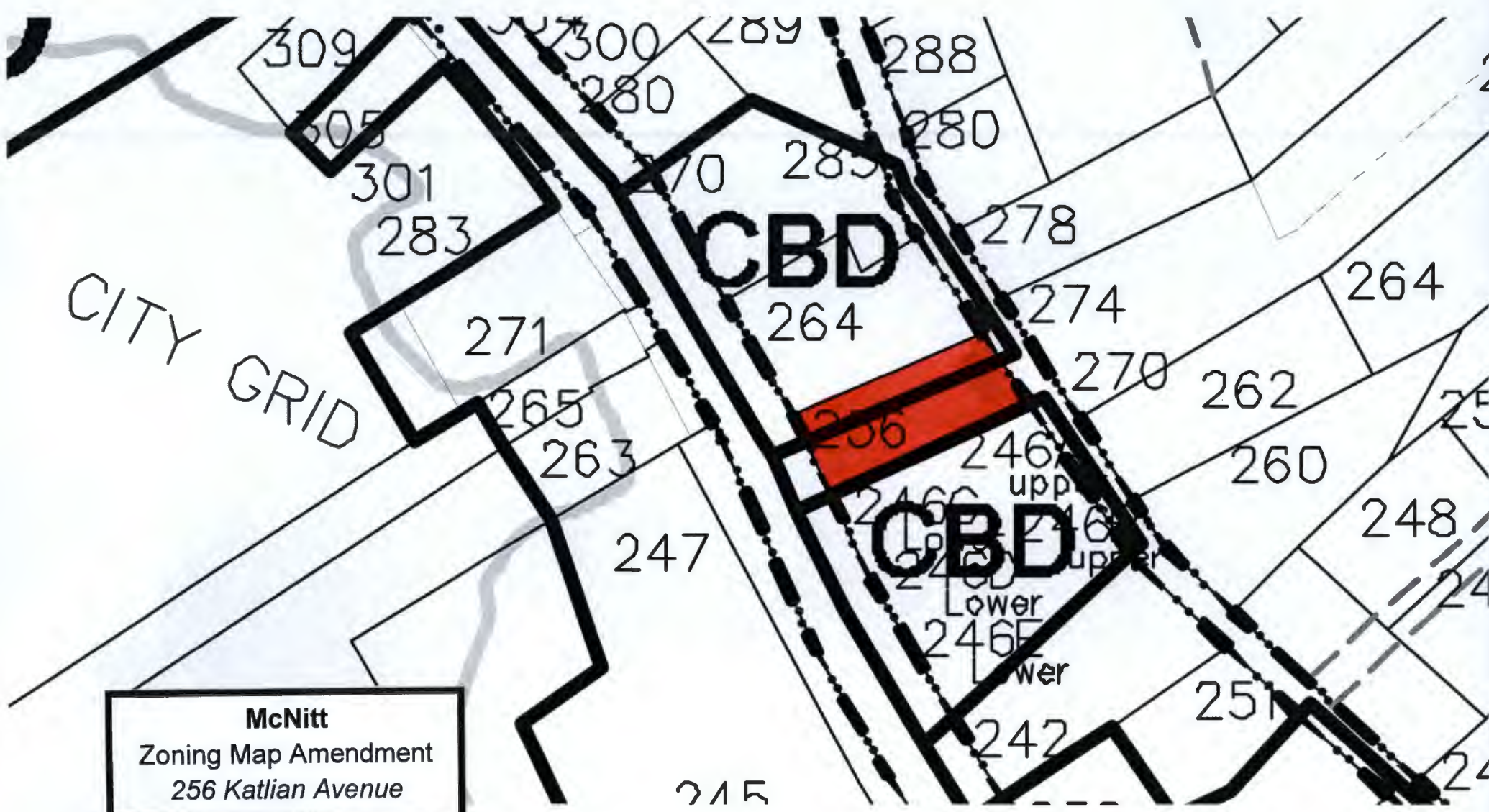


**McNitt**

Zoning Map Amendment  
256 Katlian Avenue

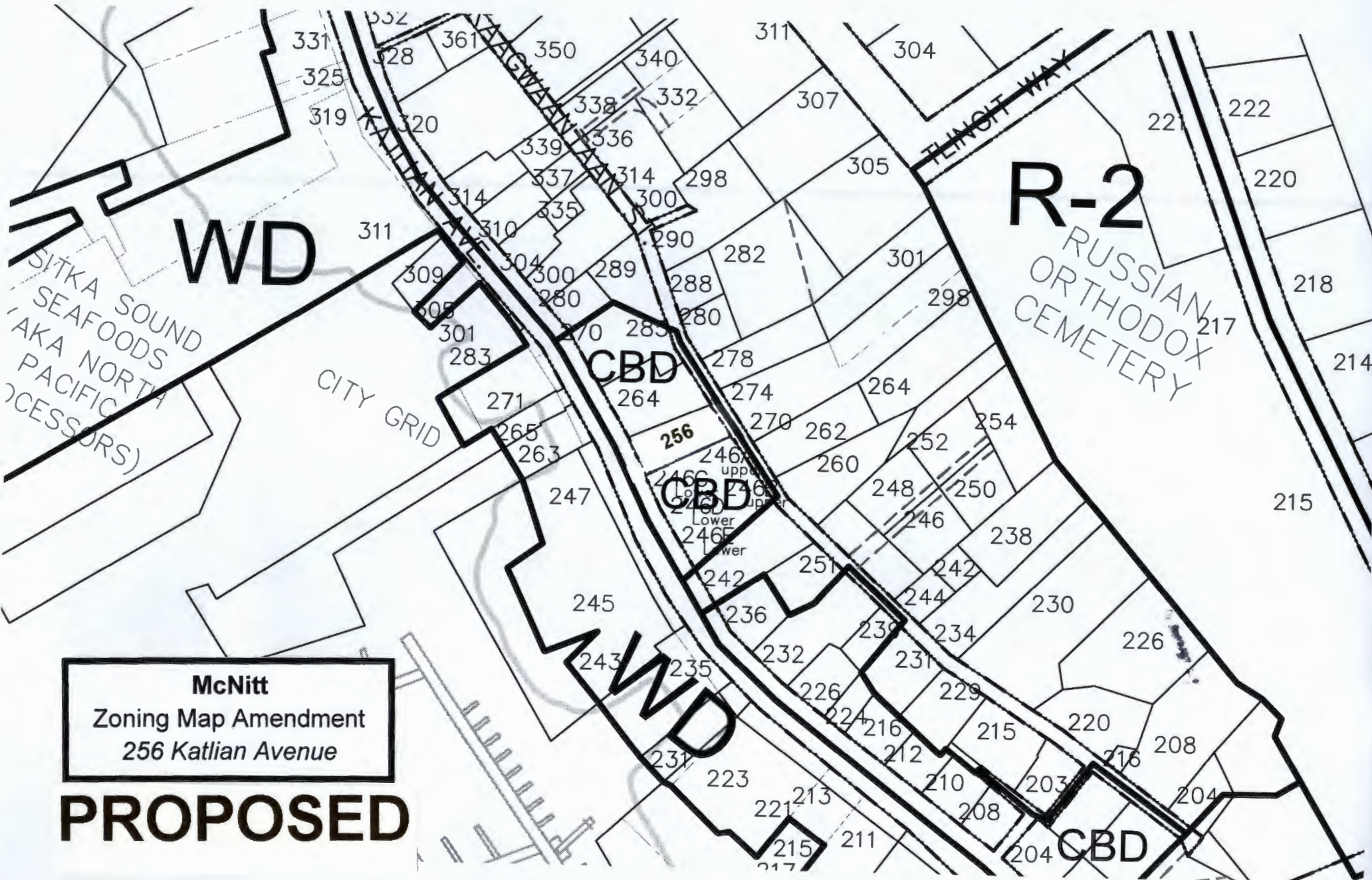
**TAKEN FROM  
KAAGWAANTAAN STREET**





**McNitt**  
Zoning Map Amendment  
*256 Katlian Avenue*

**CURRENT**



**McNitt**  
Zoning Map Amendment  
256 Katlian Avenue

**PROPOSED**

**City and Borough of Sitka  
Planning and Zoning Commission  
Minutes of Meeting  
October 4, 2011**

**Present:** Jeremy Twaddle (Acting Chair), Tom Rogers (Member), Darrell Windsor (Member), Wells Williams (Planning Director), Melissa Henshaw (Planner)

**Members of the Public:** Stephen Weatherman (Municipal Engineer), Gail/Lou Roderick, Debbie Stilson, Ron Waldron, Virginia Olney, Marty Martin, Marco Hernandez, Brian McNitt, Karen Johnson, Craig Giammona (Daily Sitka Sentinel)

Chairman Twaddle called the meeting to order at 7:00 p.m.

**Consideration of the Minutes from the September 6, 2011 meeting:**

**MOTION: M/S ROGERS/WINDOR** moved to approve the meeting minutes for September 6, 2011.

**ACTION: Motion PASSED unanimously** on a voice vote.

**This evening's business:**

**ZONING MAP AMENDMENT  
256 KATLIAN AVENUE  
BRIAN MCNITT**

*Public hearing and consideration of a zoning map amendment at 256 Katlian Avenue to change the zoning from R-1 single-family and duplex residential district to CBD central business district. The request is filed by Brian McNitt. The property is also known as Lot No. 25 Block 1 Sitka Indian Village US Survey 2542 A and B.*

Ms. Henshaw began the review for this request. This property houses Ludvig's Bistro on the first floor off Katlian Avenue and the second and third floors are residents. This property goes all the way from Katlian Avenue through to Kaagwaantaan Street. The Bistro is accessed off Katlian Avenue and the residential unit is accessed from Kaagwaantaan Street. This property is sandwiched by the central business district (CBD) and would not be spot zoning if changed from R-1 to CBD. This would allow more flexibility in the use of the structure. However very preliminary the Bistro would like to expand up to the second floor, and that is not allowed since this use is currently legal non-conforming.

Mr. Williams included some history on the zoning with regards to timelines and other properties noting that the zoning pattern along Katlian Avenue has been static for at least 25 years. There was a rezoning in 1986 in which Staff believes was a lengthy public process.

**Applicant:** Brian McNitt, owner of the property since 1993 came forward. When he purchased the property and Horan's did an appraisal of this, it did state on that appraisal that the property was in the CBD. However, while Mr. McNitt was on the Planning Commission a question came up and he was informed by Staff that his property is in fact R-1. Therefore this structure has a use that is legal non-conforming since the restaurant is on the ground floor. It is a possibility in the future that the restaurant would like to put a waiting/lounge area on the second floor and this

would not be possible if it is zoned R-1. However, access for this purpose would still be off of the Katlian Avenue street side.

As a requirement of the code, Staff must make a recommendation to the Commission. Staff is in favor of this request.

The Board had questions with concerns of parking. If this rezone does go though there are no parking requirements for the CBD zone. There are however, parking spots on the Kaagwaantaan side where the residential unit is accessed.

**Public Comment:** There was no public comment for this request.

**MOTION:** **M/S Windsor/Rogers** moved to recommend approval for a zoning map amendment at 256 Katlian Avenue to change the zoning from R-1 single-family and duplex residential district to CBD central business district. The request is filed by Brian McNitt. The property is also known as Lot No. 24 Block 1 Sitka Indian Village US Survey 2542 A and B.

**ACTION:** Motion **PASSED 3-0** on a voice vote.

#### **PLANNING DIRECTOR'S REPORT**

Planning Director Williams invited the Board to join Staff and the Assembly to do a site walk through on Thursday at 4:00 of the proposed major subdivision and lots to be auctioned off.

Ms. Henshaw informed the Commission that there is an applicant for the Planning Commission and the request is going to the next Assembly meeting. Also mentioned was next meeting's items.

#### **PUBLIC BUSINESS FROM THE FLOOR**

None.

#### **ADJOURNMENT**

**MOTION:** **M/S ROGERS/WINDSOR** moved to adjourn at 8:34 p.m.

**ACTION:** Motion **PASSED 3-0** on a voice vote.

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Jeremy Twaddle, Acting Chair

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Melissa Henshaw, Secretary

**Request:**

Rezone Lot No. 25 Block No. 1 Sitka  
Indian Village from R-1 to CBD

**Zoning District: R-1**

Front: 20 feet  
Rear: 10 feet  
Side: 8 feet

**CBD**

Subject to site plan approval

**Meeting Flow**

- Report from Staff
- Applicant comes forward
- Applicant identifies him/herself – provides comments
- Commissioners ask applicant questions
- Staff asks applicant any questions
- Floor opened up for Public Comment
- Comment period closed - brought back to the board
  
- Motions

**Tonight's Motions**

- A motion to approve
- A motion containing findings whether the motion passes or fails

**McNitt**  
**Zoning Map Amendment R-1 to CBD**  
256 Katlian Avenue  
October 4, 2011

The structure on this property houses Ludvig's restaurant on the first floor that faces Katlian Avenue across the street from the new BIHA building. On the second and third floor are residential apartments. This property extends from Katlian Street through to Kaagwaantaan Avenue.

The applicant's property on Katlian Street is currently zoned R-1 single-family and duplex residential district. The property at 256 Katlian Street is currently sandwiched by the CBD central business district.

The applicant would like to rezone this parcel to CBD to give some more flexibility for use with the restaurant. A restaurant is not allowed in the R-1 zoning district.

Since the rezoning request is an incremental expansion of an existing CBD zone, it is by definition **not** spot zoning.

The intent from the Sitka General Code for the two zoning districts is as follows:

**22.16.040 R-1 single-family and duplex residential district**

- A. Intent. The R-1 district is intended to include lands suited by topography and other natural conditions for urban development and which are provided with a full range of public utilities including sewer, water, electricity and storm drains or intended to be provided with such utilities in the near future.
1. This district is intended primarily for single-family or duplex residential dwellings at moderate densities, but structures and uses required to serve recreational and other public needs of residential areas are allowed as conditional uses subject to restrictions intended to preserve the residential character of the R-1 district.

2. The R-1 district, as it is a very restrictive district, may also be utilized as a holding district for lands which are located within the urban area but are not presently served by access or utilities until such time as a full-scale development plan can be adopted to allow a more permanent zoning district designation.

#### 22.16.070 CBD central business district

A. Intent. The central business district is designed specifically for concentrated retail, personal and business services of all kinds satisfying all residents in one central location. It should further prohibit exclusive residential or industrial uses which would interfere with the development and continuation of its cohesive business purposes.

The zoning pattern along Katlian Avenue has remained static for at least 25 years. It was, presumably, established when the major zoning maps and zoning text amendment process was completed in 1986. The 2002 zoning rewrite did not revise the zoning map for the area. While Staff has not researched the zoning prior to 1986, we suspect that the zoning districts were the result of a lengthy consensus building process.

There has been at least one attempt to rezone a parcel from R-1 to CBD in the past 10 years. That attempt involved 242 Katlian Avenue that is owned by Karen (Lucas) Johnson. Ms. Johnson's parcel is vacant and there were concerns about the type of commercial structure that could be built on the lot if, indeed, it was rezoned.

The McNitt request is very different from the Johnson proposal since it involves a parcel with a long standing business on the first floor.

Tuesday night, we'll walk through the request with the Planning Commission. While Staff feels the rezoning should be approved, it is important that it be looked at from both the Katlian Avenue and Kaagwaantaan Street side.

Thanks.

**CITY AND BOROUGH OF SITKA**  
PLANNING DEPARTMENT  
ZONE CHANGE APPLICATION

ZONE MAP AMENDMENT FEE	\$100.00
ZONE TEXT AMENDMENT FEE	\$100.00
<i>Plus current city sales tax</i>	

Applicant's Name: Brian McNitt  
 Phone Number: 738-0616  
 Mailing Address: 10-A Maksoutoff St.  
 Applicant's Signature: Brian McNitt Date Submitted 7/14/11

**Provide information or data, as necessary, to fully outline the reasons and justifications for the request. Attach additional sheets as necessary.**

- For official map amendments, the application shall contain:
1. A legal description of **each** subject property along with the owner's name, address, and contact person for **each** subject property;
  2. An analysis showing the public benefit of the proposed amendment;
  3. An analysis showing the proposal's consistency with the Comprehensive Plan;
  4. A map of the area to be rezoned.

**LIST SPECIFIC REQUEST:** Amend zone map for 256 Katlian St. (Block 1, Lot 25, Sitka Indian Village Subdivision) from R-1 to Central Business District.

**EXPLANATION OF REQUEST:** 256 Katlian has had a "non-conforming use" allowance for many years for a commercial operation on its ground floor while the property is zoned R-1.

Both adjacent properties on either side of 256 along Katlian are zoned CBO.

This amendment <sup>will</sup> benefit the public and improve consistency with the Sitka Comprehensive Plan by making the zoning in the immediate area more orderly and consistent. The amendment will also bring an existing non-conforming use in line with the appropriate zoning.

**After the application and supporting materials has been determined to be complete by the Planning Office, the request will be placed on the next available Planning Commission agenda.**



Brian McNitt  
201 Lincoln Street  
Sitka, AK 99835

North Pacific Seafoods, Inc.  
4 Nickerson Street, Suite 400  
Seattle, WA 98109

North Pacific Seafoods, Inc.  
Sitka, AK 99835

Luis Miller  
314 Katlian Avenue  
Sitka, AK 99835

Peter/Bertha Karras  
230-A Kaagwaantaan Street  
Sitka, AK 99835

Fred/Deborah Reeder  
311 Tlingit Way  
Sitka, AK 99835

Harry/Pamela Gibson  
PO Box 9460  
Ketchikan, AK 99901

Alaska Native Brotherhood  
235 Katlian Avenue Suite A  
Sitka, AK 99835

Baranof Island Housing Authority  
245 Katlian Avenue  
Sitka, AK 99835

Esther Thomas Estate  
PO Box 755  
Sitka, AK 99835

Annie Joseph  
PO Box 684  
Sitka, AK 99835

Hames Corporation  
1867 Halibut Point Road  
Sitka, AK 99835

Irene Pearson  
PO Box 1143  
Sitka, AK 99835

Orthodox Church in America  
PO Box 210569  
Anchorage, AK 99521

Boyd Didrickson  
428 Kaagwaantaan Street  
Sitka, AK 99835

Nan Kyun Yoon/Choong Soe  
2830 Pelican Drive  
Anchorage, AK 99502

Katherine Sulser/Linda Heim  
PO Box 599  
Sitka, AK 99835

Mary Paul  
456 Katlian Avenue  
Sitka, AK 99835

Eli Howard  
4735 200<sup>th</sup> Street SW Apt. 104  
Lynnwood, WA 98036

Karen Johnson  
224 Katlian Avenue  
Sitka, AK 99835

Carol Peters  
3500 Goliad Road, Lot 279  
San Antonio, TX 78223

Genevieve Guanzon  
2329 Eureka, Apt. D3  
Anchorage, AK 99503

Kevin/Marife Plaisance  
PO Box 152  
Sitka, AK 99835

Theresa Heyburn  
PO Box 6315  
Sitka, AK 99835

Tom Mattingly  
PO Box 624  
Sitka, AK 99835

Dan Stockel  
PO Box 1175  
Sitka, AK 99835

Jacob White  
PO Box 361  
Hoonah, AK 99829

*Jay Sweeney, Finance Director, pointed out if the City were going to support these grant applications the City should be paid for the work that the grant applications generate for the Finance Department. The City should be able to bill the grantee an administrative charge.*

**A motion was made by Hackett that this Resolution be APPROVED. The motion PASSED by the following vote.**

**Yes:** 6 - Westover, Blake, Christianson, Esquiro, Reif, and Hackett

**Recused:** 1 - McConnell

**G RES 11-25** Supporting Alaska Arts Southeast, Inc. grant funding application from the FY12 Historic Preservation Fund to Certified Local Governments.

**A motion was made by Christianson that this Resolution be APPROVED. The motion PASSED by the following vote.**

**Yes:** 7 - Westover, McConnell, Blake, Christianson, Esquiro, Reif, and Hackett

**H RES 11-26** Supporting ANB, ANS, ANB Hall grant funding application from the FY12 Historic Preservation Fund to Certified Local Governments.

*Robert Medinger, representing the Sitka Historical Society, said they serve as the fiscal agency for this grant. They plan to have panels designed for the ANB/ANS Building in recognition of their 100th Anniversary which will bring many people to Sitka next October.*

**A motion was made by Hackett that this Resolution be APPROVED. The motion PASSED by the following vote.**

**Yes:** 7 - Westover, McConnell, Blake, Christianson, Esquiro, Reif, and Hackett

**I ORD 11-40** Adjusting the FY10 and FY11 Budgets for changes identified during the Fourth Quarter FY10 Formal Budget Execution Review.

*Finance Director, Jay Sweeney, explained a number of departments were over budget due to previous leave amounts being recorded insufficiently.*

**A motion was made by Hackett that this Ordinance be APPROVED. The motion PASSED by the following vote.**

**Yes:** 7 - Westover, McConnell, Blake, Christianson, Esquiro, Reif, and Hackett

**J ORD 11-41** Amending the official Sitka Zoning Map to Rezone Lot 25 Block 1 of Sitka Indian Village, USS 2542 A & B from R-1 Single Family and Duplex district to CBD Central Business District.

**A motion was made by Esquiro that this Ordinance be POSTPONED until the first meeting in January. The motion PASSED by the following vote.**

**Yes:** 6 - Westover, Blake, Christianson, Esquiro, Reif, and Hackett

**No:** 1 - McConnell

**K ORD 11-42** Amending Section 4.09.100 of SGC to identify possible sales tax holiday for certain sales in 2011 - December 10.

*Shirley Robards, owner of Stereo North, and Jennifer Robinson of the Greater Sitka Chamber of Commerce spoke in support of the Friday and Saturday after Thanksgiving as sales tax free days.*