

Appeal of the SJ Quad subdivision

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MAY 14 2010  
Clerk's Office  
City & Borough of Sitka

May 14, 2010

Dear Mayor and Members of the Sitka Assembly:

I respectfully appeal the decision of the Planning Commission's approval of the final plat filed by Pacific Tower Properties, Inc. for a minor subdivision of the former Sheldon Jackson Campus (805 Lincoln Street, 104 Jeff Davis Street, 804 Sawmill Creek Road).


My name is Nancy Yaw Davis. I live at 701 Lincoln Street. My interest in the property began in 1936 when I was born on Jeff Davis Street and my interest in the property as a concerned citizen will continue for the rest of my life.

I believe the decision is wrong for the following specific reasons: The proposed plat is not a "minor" division in any sense of the word. It does not meet the city code for a minor subdivision. (See Chapter 21.12. Minor Subdivisions p. 242). The three proposed parcels will not become "integral parts of the adjoining lots" (See 21.12.010 Applications. A.2. page 242), that is, the lots will not be touching or bounding at a point or line. Rather, the cemetery which was "contiguous" before becomes separated. Nor does the plat proposal reflect a common sense understanding of something that is "minor" or small in size. The plat totals 105,058 square feet.

The desired outcome to this appeal is to bring the plat proposal to the full assembly where additional discussion can be held. Under the present code the plat does not need to come before the assembly because it is called "a minor subdivision". Also, under the present code there is no appeal process. A sharpened understanding, clarification, and change in the city code for "minor subdivisions" in Sitka is one desirable outcome. Bringing the proposed subdivision to the attention of the Assembly is the second desired outcome.

Thank you for this opportunity.

Respectfully submitted,



Nancy Yaw Davis

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**Chapter 1.04  
GENERAL PROVISIONS**

Sections:

- 1.04.010 Definitions.
- 1.04.020 Grammatical interpretation.
- 1.04.030 Acts by agents.
- 1.04.040 Prohibited acts include causing, permitting, etc.
- 1.04.050 Other definitions.
- 1.04.060 Repeal shall not revive any ordinances.
- 1.04.080 Conflict of interest.
- 1.04.100 Forest policy.

**1.04.010 Definitions.**

The following words and phrases, whenever used in ordinances of the city and borough of Sitka, Alaska, or in any ordinance of any predecessor municipal government thereof, which ordinances have been or are adopted as ordinances of the city and borough of Sitka, Alaska, shall be construed as defined in this section unless from the context a different meaning is intended, or unless different meaning is specifically defined and more particularly directed to the use of such words and phrases:

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**Chapter 21.04**  
**INTRODUCTION AND GENERAL PROVISIONS**

Sections:

- 21.04.010 Title.
- 21.04.020 Purpose.
- 21.04.030 Scope and jurisdiction.
- 21.04.040 Interpretation, conflict, and separability.
- 21.04.050 Severability.
- 21.04.060 Users' guide—Chapters.

**21.04.010 Title.**

This title may be referred to as the subdivision ordinance of the city and borough of Sitka. (Ord. 03-1729 § 4 (part), 2003.)

**21.04.020 Purpose.**

Subdivision of land becomes a public responsibility in that properly constructed roads and streets must be maintained and various public services customary to urban areas must be provided. The welfare of the entire community is thereby affected in many important aspects. It is therefore in the interest of the public, developers and the owners that subdivisions be conceived, designed, and constructed in accordance with sound rules and proper standards. The purposes of this title are:

- A. To promote and protect the public health, safety, and welfare;
- B. To provide for the proper arrangement of roads and streets in relation to existing or proposed roads and streets;
- C. To provide for adequate, useful and convenient open spaces;
- D. To provide for the efficient movement of vehicular, pedestrian, and other modes of transportation;
- E. To assure adequate and properly placed utilities;
- F. To provide for access for firefighting apparatus;
- G. To provide recreation, light, and air;
- H. To avoid population congestion;
- I. To facilitate the orderly and efficient layout and use of the land in light of the constantly changing conditions;
- J. To provide for the accurate surveying of land; and
- K. To ensure orderly growth and development consistent with the comprehensive plan, zoning ordinance, official map and the capital budget.

(Ord. 03-1729 § 4 (part), 2003.)

**21.04.030 Scope and jurisdiction.**

This title governs all subdivision of land within the city and borough of Sitka. Except as otherwise provided by law, this title governs subdivision of land owned by the federal government, the state and its instrumentalities and the municipality in the same manner as it governs subdivisions of land owned by private persons.

The types of subdivisions regulated by this title are described below. Persons desiring to apply for approval of a subdivision plat should familiarize themselves with the various options to determine which best fits their situation.

The following are the various types of subdivisions or plats. The planning commission has the authority to be flexible within the limits of this title. Requirements and standards are outlined in this title. The municipality shall strive to apply these standards reasonably. The variance process is available to facilitate flexibility in land development.

A. Minor Subdivisions (Chapter 21.12). A subdivision that creates no more than four additional lots or tracts and does not require any dedications including:

1. A subdivision involving the movement or creation of lot lines that do not increase the density of an area;
2. A subdivision involving the vacation of a street or alley; and
3. A subdivision created for the acquisition of right-of-way.

B. Major Subdivisions (Chapter 21.32). A subdivision of more than four lots or tracts.

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**Chapter 21.12  
MINOR SUBDIVISIONS**

Sections:

- 21.12.010 Application.
- 21.12.020 Concept plat.
- 21.12.030 Final plat.
- 21.12.040 Recording timetable.

**21.12.010 Application.**

- A. The minor subdivision plat procedure shall apply to the following plats:
1. Plats that create no more than four additional tracts or lots;
  2. Plats that create parcels that will become integral parts of the adjoining lots or rights-of-way;
  3. A movement or creation of lot lines that does not result in an increase in the density or number of residential units within the area being subdivided or resubdivided;
  4. A subdivision involving the vacation of a street or alley;
  5. A subdivision created for a government agency acquisition of a street right-of-way.
- B. Basic Criteria. The following general conditions are necessary for approval of a minor subdivision:
1. No dedications are needed;
  2. Monuments exist sufficient to locate all proposed lots on the site;
  3. The plat includes all contiguous land under common ownership;
  4. Maintenance agreements as necessary.
- C. Preapplication. Participation in preapplication procedures as described in the major subdivision plat requirements (Section 21.32.020) is advised to address any questions regarding the minor subdivision application.

(Ord. 03-1729 § 4 (part), 2003.)

**21.12.020 Concept plat.**

- A. A concept plat, prepared by a registered land surveyor, must be submitted at least thirteen days prior to the next planning commission meeting. Applications shall include the application fee prescribed in Section 21.52.140.
1. Three copies of the plat, drawn to a scale of at least one inch equals one

hundred feet on paper of one of the following sizes, with each sheet being the same size: eighteen by twenty-four inches, twenty-four by thirty-six inches, or thirty by forty-two inches that includes the following:

- a. All dimensions and square footages of the parcels and easements to be created. The easements and improvements shall comply with all the applicable standards in Chapter 21.40.
  2. One eight-and-one-half-inch by eleven-inch sheet of the concept plat without signature blocks.
- B. The planning commission may offer guidance on the concept plat at a regularly scheduled meeting and that guidance shall be given within sixty days of the date of the application. In the event a final plat is not submitted within sixty days of the planning commission review of the concept plat, a new concept plat review shall be undertaken.
- C. Mailing of public notices and compliance with the advertising requirements in Section 21.52.040 is not required.

(Ord. 03-1729 § 4 (part), 2003.)

#### **21.12.030 Final plat.**

A. A final plat shall be prepared by a registered land surveyor and submitted for planning commission review following the board review of the concept plat. The plat shall comply with all the major subdivision final plat submission requirements in Section 21.32.160. The easements and improvements shall comply with all the applicable standards in Chapter 21.40. It must be submitted at least thirteen days prior to the next planning commission meeting. The perimeter of the subdivision shall be flagged with readily viewable marking at least ten days prior to the planning commission hearing. In addition, the planning office may require that interior subdivision lot corners shall be marked with two-inch square wooden hubs and flagging ten days prior to the planning commission hearing. Notices and a public hearing shall be required and given as provided for Chapter 21.52.

B. In addition to providing a plat that conforms to the major subdivision final plat requirements, the following shall be submitted:

1. General topography of the site and immediate surroundings, showing specific topographic features and spot elevations. The purpose of this topography is to provide an understanding of the overall terrain of the site and to confirm the grades of access easements and rights-of-way. The planning commission may also require more detailed topographic information of existing and proposed grades.

C. The planning commission shall approve, deny, or approve with conditions the final plat at a regularly scheduled meeting and the action shall be given within sixty days of the date of submission of a complete final plat. A delay in commission action may be requested in writing by the applicant, may result from the application being incomplete, or may result from evidence requiring further city consideration. If the plat approval is denied or the applicant is not satisfied with the conditions placed on the plat, the matter

shall be reconsidered by the planning commission unless the applicant files an appeal directly to the assembly.

D. After the final plat is approved, a recordable plat shall be prepared by a registered land surveyor including any required certificates as also required of a major subdivision, all applicable plat notes required by this title, and all plat notes required by the planning commission during the approval process. The recordable document shall reference all monuments that have been installed following the approval of the plat.

(Ord. 03-1729 § 4 (part), 2003.)

**21.12.040 Recording timetable.**

A. The approved minor subdivision plat shall be submitted for recording within twelve months of the commission action.

B. The recordable plat shall contain all the information required for minor subdivisions and final major subdivision plats including all signature blocks, the required easement maintenance signature block, location of set and recovered monuments, plat notes required by the planning commission during the approval process, and easement designations.

C. The city may elect to extend this time period one additional six-month period upon written request of the applicant prior to the expiration of the twelve-month period, if the city determines that the inability to submit the plat for recording within the twelve-month period is beyond the applicant's control. Failure to submit the complete plat for recording within these timeframes shall void the approval.

(Ord. 03-1729 § 4 (part), 2003.)

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**Chapter 21.32  
MAJOR SUBDIVISIONS**

Sections:

- 21.32.010 General outline of procedure for major plat approval.
- 21.32.020 Major subdivision preapplication.
- 21.32.030 Major subdivision—Suggested concept plan submittal.
- 21.32.040 Major subdivision—Preliminary plat submission requirements.
- 21.32.050 Preliminary plat review and approval.
- 21.32.160 Major subdivision—Final plat submission requirements.
- 21.32.170 Final subdivision plat review and approval by the planning commission.
- 21.32.180 Final subdivision plat review and approval by the assembly.
- 21.32.190 Appeal to superior court.

**21.32.010 General outline of procedure for major plat approval.**

The following are the basic steps to obtain major subdivision approval:

- A. Major subdivision preapplication;
- B. Major subdivision concept plat application for planning commission review;
- C. Review and approval of the complete preliminary plat by the planning commission;
- D. Consideration of any platting variances by the planning commission immediately prior to planning commission consideration of the final plat;
- E. Review and approval of the complete final plat by the planning commission;
- F. Review of any appeal of the planning commission's actions through the planning commission reconsideration process;
- G. Review and action on the final plat by the assembly.

(Ord. 03-1729 § 4 (part), 2003.)

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**21.32.050 Preliminary plat review and approval.**

The planning commission shall approve, deny, or approve with conditions the preliminary plat at a regularly scheduled meeting and the action shall be given within sixty days of the date of submission of a complete final plat. The exterior of lot lines of the project shall be flagged ten days prior to the first planning commission hearing on the preliminary plat. Flagging of interior lot lines shall be installed at the same time if required by the municipality. A delay in commission action may be requested in writing by the applicant, may result from the application being incomplete, or may result from evidence requiring further city consideration. If the plat approval is denied or the applicant is not satisfied with the conditions placed on the plat, the matter shall be reconsidered by the planning commission unless the applicant files an appeal directly to the assembly. (Ord. 03-1729 § 4 (part), 2003.)

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**21.32.170 Final subdivision plat review and approval by the planning commission.**

A. A final plat shall be prepared and submitted for planning commission review following the board review of the concept plat. The plat shall be prepared by a registered land surveyor and shall comply with all the major subdivision final plat submission requirements. The easements and improvements shall comply with all the applicable standards in Chapter 21.40. It must be submitted at least thirteen days prior to the next planning commission meeting. The perimeter of the subdivision shall be flagged with readily viewable marking at least ten days prior to the planning commission hearing. In addition, the planning office may require that interior subdivision lot corners shall be marked with two-inch square wooden hubs and flagging ten days prior to the planning commission hearing. Notices and a public hearing shall be required and given as provided for Chapter 21.52.

B. The planning commission shall approve, deny, or approve with conditions the final plat at a regularly scheduled meeting and the action shall be given within sixty days of the date of submission of a complete final plat. The applicant shall ensure that the flagging of lot lines required for preliminary plat review remains visible during the final review process. A delay in commission action may be requested in writing by the applicant, may result from the application being incomplete, or may result from evidence requiring further city consideration. If plat approval is denied, or the applicant is not satisfied with conditions placed on the plat, the planning commission shall review the plat on reconsideration prior to an appeal being considered by the assembly.

(Ord. 03-1729 § 4 (part), 2003.)

**21.32.180 Final subdivision plat review and approval by the assembly.**

A. The assembly shall approve, deny, or approve with conditions the final plat at a regularly scheduled meeting and the action shall be given within sixty days of the date of submission of a complete final plat. A delay in assembly action may be requested in writing by the applicant, may result from the application being incomplete, or may result from evidence requiring further city consideration.

B. No lot, tract, or parcel within any major subdivision may be sold until service by public road access, water supply, sanitary sewer collection and disposal, and electrical power has been inspected, approved, and accepted for maintenance by the city and borough. All easements shall be recorded with the plat, and may not be changed without city approval. Streets shall be named and all lots shall have street addresses when the plat is recorded. Due consideration should be given to the dedication of park, playground and other areas for public use. If the plat approval is denied or the applicant is not satisfied with the conditions placed on the plat, the matter shall be reconsidered by the planning commission unless the applicant files an appeal directly to the assembly.

(Ord. 03-1729 § 4 (part), 2003.)

**21.32.190 Appeal to superior court.**

Any person aggrieved by a final decision of the assembly under this chapter may appeal

that decision to the superior court. An appeal to the superior court shall be heard solely on the record created before the assembly and the planning commission. (Ord. 03-1729 § 4 (part), 2003.)

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**22.30.240 Judicial appeal.**

A. Appeals from the final decision of the assembly, or other city board or body involving Title 21 SGC, and for which all other appeals specifically authorized have been timely exhausted, shall be made to superior court within thirty days of the date the decision or action became final, unless another time period is established by state law or local ordinance.

B. Notice of the appeal and any other pleadings required to be filed with the court shall be served on the municipal clerk, administrator, and city attorney within the applicable time period. This requirement is jurisdictional.

C. The cost of transcribing and preparing all records ordered certified by the court or desired by the appellant for such appeal shall be borne by the appellant. The appellant shall post with the municipal clerk prior to the preparation of any records an advance fee deposit in the amount specified by the municipal clerk. Any overage will be promptly returned to the appellant.

(Ord. 02-1683 § 4 (part), 2002.)

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## Colleen Ingman

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**From:** Nancy Yaw Davis [nydavis@gci.net]  
**Sent:** Wednesday, May 12, 2010 5:55 PM  
**To:** 'Colleen Ingman'  
**Subject:** RE: Your appeal options  
**Attachments:** image001.gif

OK. I'm getting quite an education through all this. I will appreciate the City, the commissions and the Assembly – and the City Attorney' responsibilities more now – for the rest of my life ...

Thanks for your part in the process.

Nancy

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**From:** Colleen Ingman [mailto:colleen@cityofsitka.com]  
**Sent:** Wednesday, May 12, 2010 4:24 PM  
**To:** 'Nancy Yaw Davis'  
**Subject:** RE: Your appeal options

It should be directed to the Assembly.

*Colleen*

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**From:** Nancy Yaw Davis [mailto:nydavis@gci.net]  
**Sent:** Wednesday, May 12, 2010 11:11 AM  
**To:** 'Colleen Ingman'  
**Subject:** RE: Your appeal options

Dear Colleen,

Thank you for this information which is indeed helpful. Questions: Is the appeal statement deadline this Friday, May 14 at 5 p.m., or May 19 at noon? Also, to whom do I direct my appeal? The Planning Commission met on May 4. The extra time would be appreciated, but I can meet the May 14 deadline if necessary. (Note typo: 2010, not 2011 – I hope!) Thanks again for the research and the options.

Nancy

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**From:** Colleen Ingman [mailto:colleen@cityofsitka.com]  
**Sent:** Wednesday, May 12, 2010 9:09 AM  
**To:** nydavis@gci.net  
**Subject:** Your appeal options

Hi Nancy,

I didn't find an appealable process to the Assembly for Minor Subdivisions in Sitka General Code, especially for an individual versus an applicant. There is only an appeal process for individuals of Planning Commission decisions directly to court found below under SGC 22.30.240 (emphasis added):

**22.30.240 Judicial appeal.** A. Appeals from the final decision of the assembly, or other city board or body involving Title 21 SGC, and for which all other appeals specifically authorized have been timely exhausted, shall be made to superior court within thirty days of the date the decision or action became final, unless another time period is established by state law or local ordinance.

B. Notice of the appeal and any other pleadings required to be filed with the court shall be served on the municipal clerk, administrator, and city attorney within the applicable time period. This requirement is jurisdictional.

C. The cost of transcribing and preparing all records ordered certified by the court or desired by the appellant for such appeal shall be borne by the appellant. The appellant shall post with the municipal clerk prior to the preparation of any records an advance fee deposit in the amount specified by the municipal clerk.

After discussing with the Municipal Attorney and Municipal Administrator, the Municipal Administrator is willing to grant you the courtesy of going before the Assembly because he understands you are appealing whether this is a major vs. minor subdivision. Your argument should be concise or narrowly focused as outline below:

**22.30.230 Appeals to the assembly.**

A. Filing. Every appeal to the assembly shall be filed with the municipal clerk within ten days after the date of the recommendation or decision of the matter being appealed.

B. Contents. The notice of appeal shall contain a concise statement identifying:

1. The decision being appealed.
2. The name and address of the appellant and his interest(s) in the matter.
3. The specific reasons why the appellant believes the decision to be wrong. The appellant shall bear the burden of proving the decision was wrong.
4. The desired outcome or requested changes to the decision.

Please submit your argument no later than noon on May 19<sup>th</sup> for inclusion on the May 25, 2011 Assembly meeting.

It is important to note that if a majority of the Assembly agrees that it is a major subdivision, then they would schedule a hearing on the Planning Commission's decision at their next meeting June 8. If a majority of the Assembly does not agree that it is a major subdivision then no hearing will be scheduled with the Assembly and the only avenue left for you would be Sitka General Code Section 22.30.240 Judicial appeal, which must take place within 30 days of the date of decision.

Further, I have discussed your options with both members of the Planning Office — Wells Williams and Melissa Henshaw and they are both in concurrence with this direction.

Hopefully, this answers your questions.

*Colleen*

Colleen Ingman, MMC

Municipal Clerk

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