

CITY AND BOROUGH OF SITKA

ORDINANCE NO. 2010-05

AN ORDINANCE OF THE CITY AND BOROUGH OF SITKA AMENDING
SITKA GENERAL CODE 21.52.130 ENTITLED "PENALTIES AND
REMEDIES" TO INCLUDE THE EXEMPTION UNDER ALASKA LAW
RELATED TO GOVERNMENTAL OWNED PROPERTY AND CERTAIN PLAT
REQUIREMENTS

1. **CLASSIFICATION.** This Ordinance is of a permanent nature and is intended to become a part of the Sitka General Code ("SGC").

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 or circumstance shall not be affected.

3. **PURPOSE.** This Ordinance amends subsection A of SGC 21.52.130 entitled "Penalties and Remedies." SGC 21.52.130A is modeled after similar Alaska laws under the Uniform Land Sales Practices Act that make it a misdemeanor to violate certain platting requirements, such as offering or disposing of property before a required subdivision is registered or recorded. AS 34.55.008(1); AS 34.55.028(b). However, the same Alaska laws also recognizes sales or offers to sale property by a government or government agency as exempt from this restriction and penalty, under AS 34.55.008(1) and AS 34.55.042. The purpose of this Ordinance is to include this exemption under Alaska laws for offers and sales of government property (federal, state or municipal).

The applicable Alaska laws did not envision making and enforcing these types of platting requirements, restrictions and penalties on governments or government agencies. By adopting this clarifying amendment already sanctioned under Alaska law into the applicable municipal law at SGC 21.52.130A, government officials will be able to discuss, negotiate and execute sales of real property and related buildings and improvements prior to or contingent on any required subdivision being approved. This amendment will greatly assist governments, such as the City and Borough of Sitka, to be able to discuss, plan for, negotiate, and/or enter into agreements concerning its properties.

4. **NOW, THEREFORE, BE IT ENACTED** by the Assembly of the City and Borough of Sitka that SGC 21.52.130A is amended as follows (new language underlined; deleted language stricken):

By: Theresa Hillhouse, Municipal Attorney

I understand that at last night's Planning Comm'n meeting, an issue arose as to whether the proposed ordinance would result in governmental entities circumventing the Planning Commission process concerning approval of any revised or proposed plat. The answer is simple – The only thing this proposed ordinance 2010-05 does is to exempt government entities (federal, state and municipal) as allowed by State law (AS 34.55.042) from being subject to a misdemeanor charge for negotiating any contracts **prior to and contingent on** approval of a subdivision plat or replat. It does not amend any other provision in the SGC, nor exempt government entities from any other subdivision plat requirements.

I had no idea this concern existed, especially based on the memo from Gary White, provided in the Assembly packet regarding this proposed ordinance that directly addressed this issue (page 3 – see below), and based on the purpose statement of the ordinance (see below). I assumed the Planning Comm'n received that memo, and that the purpose section would have addressed this concern. I apologize if this point was not clear from these documents and the Assembly discussion at its last meeting, and I am sorry I was not there to answer your questions. I stayed home that night to try and shake a flu/cold bug acquired while out-of-town last week, not aware this would be a concern.

If any legal issues should ever arise at the Planning Comm'n meeting, please do not hesitate to call me on my cell phone (738-1810). If you have any other question regarding the proposed ordinance or other Planning Comm'n issues, please let me know (direct phone line at work 747-1879).

Gary White's April 19, 2010 memo at page 3 under request section (emphasis added):

Request

The SCIP Director requests that the Assembly be brought into the process earlier involving sales of property at the SCIP.

- 1. The SCIP Board approves a recommendation for a property sale in concept, discussing terms of the sale (approximate square footage, employee credits, proposed purchase amount, etc.)*
- 2. The Assembly reviews the recommendation of the SCIP Board's terms of the sale. The Assembly then has the ability to approve the terms or adjust the terms. (This allows opportunity for potential buyer to accept or decline adjusted terms of Assembly action.)*
- 3. **The subject property is surveyed and brought before Planning and Zoning Commission for their approval.***
- 4. Final Purchase Agreement is brought before Assembly for their approval and ultimate transfer of defined real property to buyer.*

Ord 2010-05 Purpose Section

*. . . By adopting this clarifying amendment already sanctioned under Alaska law into the applicable municipal law at SGC 21.52.130, government officials will be able to discuss negotiate and execute sales of real property and related buildings and improvements **prior to or contingent on any required subdivision being approved.** . . .*

21.52.130 Penalties and remedies.

A. The owner or agent of the owner of land located within a subdivision who offers to sell, transfers, sells or enters into a contract to sell land in a subdivision before a plat of the subdivision has been prepared, approved and recorded in accordance with this title, is guilty of a misdemeanor and upon conviction is punishable by a fine of not more than five hundred dollars for each lot or parcel offered for sale, transferred, sold or included in a contract to be sold.

B. No person may record a plat or seek to have a plat recorded unless it has been formally approved by the city and borough. A person who violates this subsection is punishable upon conviction by a fine of not more than five hundred dollars.

C. The city and borough of Sitka or any aggrieved person may bring a civil action to enjoin any violation of this title, any transfer or sale of an unlawfully subdivided parcel, the violation of the planning commission or the assembly pursuant to this title issued, and the violation of any term or condition of any plat or other entitlement approved under this title, and to obtain damages for any injury the plaintiff suffered as a result of the violation. An action for injunction under this section may be brought notwithstanding the availability of any other remedy. Upon application for injunctive relief and a finding of an existing or threatened violation, the superior court shall enjoin the violation.
(Ord. 03-1729 § 4 (part), 2003.)

21.52.140 Fees.

Collateral references. — Broker's liability for or nondevelopment of nearby property. 71 ALR4th 511.
fraud or misrepresentation concerning development

Sec. 34.55.008. Prohibitions on dispositions of interests in subdivisions. Unless the subdivided land or the transaction is exempt under AS 34.55.042,

(1) a person may not offer or dispose of in this state an interest in subdivided land before the time the subdivided land is registered in accordance with this chapter;

(2) a person may not dispose of an interest in subdivided land unless a current public offering statement is delivered to the purchaser and the purchaser is afforded a reasonable opportunity to examine the public offering statement before the disposition. (§ 1 ch 179 SLA 1968; am § 2 ch 138 SLA 1977)

NOTES TO DECISIONS

Applied in *Stepanov v. Gavrilovich*, 594 P.2d 30 (Alaska 1979).

Sec. 34.55.010. Application for registration. (a) The application for registration of subdivided land shall be filed as prescribed by the department's regulations and must contain the following documents and information:

(1) an irrevocable appointment of the department to receive service of lawful process in a noncriminal proceeding arising under this chapter against the applicant or personal representative of the applicant;

(2) a legal description of the subdivided land offered for registration, together with a map showing the division proposed or made, and the dimensions of the lots, parcels, units, or interest and the relation of the subdivided land to existing streets, roads, and other off-site improvements;

(3) the states or jurisdictions in which an application for registration or similar document has been filed, and an adverse order, judgment, or decree entered in connection with the subdivided land by the regulatory authorities in each jurisdiction or by a court;

(4) the applicant's name, address, and the form, date, and jurisdiction of organization; and the address of each of its offices in this state;

(5) the name, address, and principal occupation for the past five years of every director and officer of the applicant or person occupying a similar status or performing similar functions; the extent and nature of the interest of the director, officer, or other person in the applicant or the subdivided land as of a specified date within 30 days of the filing of the application;

(6) a statement, in a form acceptable to the department, of the condition of the title to the subdivided land including encumbrances as of a specified date within 30 days of the date of application by a title opinion of a licensed attorney, not a salaried employee, officer, or director of the applicant or owner, or by other evidence of title acceptable to the department;

(7) copies of the instruments that will be delivered to a purchaser to evidence the interest of the purchaser in the subdivided land and of the contracts and other agreements that a purchaser will be required to agree to or sign;

(8) copies of the instruments by which the interest in the subdivided land was acquired and a statement of any lien or encumbrance upon the title and copies of the instruments creating the lien or encumbrance, if any, with data as to recording;

(9) if there is a lien or encumbrance affecting more than one lot, parcel, unit, or interest a statement of the consequences for a purchaser of failure to discharge the lien or encumbrance and the steps, if any, taken to protect the purchaser in case of this eventuality;

(10) copies of instruments creating easements, restrictions, or other encumbrances, affecting the subdivided land;

(5) made intentional misrepresentations or concealed material facts in an application for registration.

(b) The findings of fact, if set out in statutory language, must be accompanied by a concise and explicit statement of the underlying facts supporting the findings.

(c) If the department finds after notice and hearing that the subdivider has been guilty of a violation for which revocation could be ordered, it may issue a cease and desist order instead. (§ 1 ch 179 SLA 1968)

Sec. 34.55.028. Penalties. (a) A person who wilfully violates AS 34.55.006 or 34.55.008 is, upon conviction, punishable by a fine of not more than \$50,000, or by imprisonment for not less than one year nor more than five years, or by both fine and imprisonment.

(b) A violation of this chapter other than as provided in (a) of this section or of a regulation adopted under this chapter is a misdemeanor and is punishable by a fine of not less than \$1,000 or double the amount of gain from the transaction, whichever is larger but not more than \$50,000, or by imprisonment for not more than six months, or by both fine and imprisonment. (§ 1 ch 179 SLA 1968; am § 4 ch 138 SLA 1977)

Sec. 34.55.030. Civil remedy. (a) A person who disposes of subdivided land in violation of AS 34.55.006 or 34.55.008 is liable as provided in this section to the purchaser unless in the case of an untruth or omission it is proved that the purchaser knew of the untruth or omission or that the person offering or disposing of subdivided land did not know and in the exercise of reasonable care could not have known of the untruth or omission.

(b) In addition to any other remedies, the purchaser, under (a) of this section, may recover the consideration paid for the lot, parcel, unit, or interest in subdivided land together with interest at the rate of six percent a year from the date of payment, property taxes paid, costs, and reasonable attorney fees less the amount of income received from the subdivided land upon tender of appropriate instruments of reconveyance. If the purchaser no longer owns the lot, parcel, unit, or interest in subdivided land, the purchaser may recover the amount that would be recoverable upon a tender of a reconveyance less the value of the land when disposed of and less interest at the rate of six percent a year on that amount from the date of disposition.

(c) Every person who directly or indirectly controls a subdivider liable under (a) of this section, every general partner, officer, or director of a subdivider, every person occupying a similar status or performing a similar function, every employee of the subdivider who materially aids in the disposition, and every agent who materially aids in the disposition is also liable jointly and severally with and to the same extent as the subdivider, unless the person otherwise liable sustains the burden of proof that the person did not know and in the exercise of reasonable care could not have known of the existence of the facts by reason of which the liability is alleged to exist. There is a right to contribution as in cases of contract among persons so liable.

(d) A person whose occupation gives authority to a statement that has been used with the person's consent in an application for registration or public offering statement, who is not otherwise associated with the subdivision and development plan in a material way, is liable only for false statements and omissions in the person's statement and only if the person fails to prove

(1) lack of knowledge of the facts by reason of which the liability is alleged to exist; and
(2) that in the exercise of the reasonable care a person in the same occupation could not have known of the existence of the facts by reason of which the liability is alleged to exist.

(e) A tender of reconveyance may be made at any time before the entry of judgment.

(f) A person may not recover under this section in an action commenced more than four years after the person's first payment of money to the subdivider in the contested transaction.

Monday, April 19, 2010

MEMORANDUM

To: Jim Dinley
From: Garry White, Director
Subject: SCIP/CBS Property Sales

Introduction

The purpose of this memorandum is to discuss issues with the current process of selling property at the Sawmill Cove Industrial Park (SCIP) in regards to property that does not conform to the recorded subdivision plat of the park.

The SCIP Director has been working with CBS staff to find the most efficient and effective way to process the property purchase requests. The CBS Attorney has found a solution to move property sales forward in an efficient and effective way that could potentially reduce CBS expenses and bring more clarity to the process. (Please see attached)

The SCIP Board has two potential sales of property at the SCIP. Both potential property sites do not conform to the existing record plat of the SCIP. One of the potential sales is very time sensitive.

The suggested amendment to Sitka General Code 21.52.130 could also be useful to the CBS as the move forward with the development of other CBS property including the bench land properties.

Background

The City and Borough of Sitka acquired the property know as the Sawmill Cove Industrial Park in 1999. In early 2000, Ordinance 00-1568 was created to line out how the Sawmill Cove Industrial Park was to be operated.

The purpose of CBS Ordinance 00-1568:

“Unlike other property owned by the municipality, the former Alaska Pulp Corporation mill site was acquired not for governmental purposes from the state or federal government, but for economic development and disposal. In general, the property will not be used for public improvements. It will be leased or sold to individuals and corporations to develop business opportunities and provide jobs. For this reason, it is important to enact a procedure for property management and disposal at the site which more closely corresponds to private sector disposals.”

When the property was acquired by the CBS the original plat of the property contained large lot sizes. In 2008 a re-plat was completed to create smaller lots sizes. The goal of the re-plat with smaller lots was to make the property more marketable.

Current issues with property sales

- The existing subdivision of the SCIP does not take into account site characteristics or topographical challenges. As the development of the SCIP progresses, requests for property sales do not always fall in line with the existing lot sizes and site characteristics of the current subdivision of the property.
- Sitka General Code regarding subdivisions does not allow for the CBS to offer the sales of specific properties other than what is contain on the current plat. Please see below.

SGC - 21.52.130 Penalties and remedies.

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- The Sawmill Cove Industrial Park Board is only an advisory board to the Assembly. The Assembly makes the final decision to sell or long term lease of property.
 - When a potential client wants to purchase a piece of property that does not conform to the existing plat, the SCIP Board negotiates terms of the potential sale with the potential buyer using the guidelines established by Ordinance 00-1568.
 - Under the current scenario, the CBS would then need to spend roughly \$1,500-\$4,000 to survey the new potential lot.
 - The new subdivided lot would need to go before the Planning and Zoning Commission twice to have the subdivision approved.
 - The newly subdivided lot would need to come back to the SCIP Board of Directors for approval of recommendation to the Assembly
 - The purchase agreement would come before the Assembly with the terms negotiated by the SCIP.
 - This would be the first time the Assembly would have an opportunity to discuss the terms of the sale of property. If the Assembly does not agree with the terms negotiated between the SCIP Board and potential buyer the deal could fall apart with the loss of CBS funds and Planning and Zoning Commission time.

Request

The SCIP Director requests that the Assembly be brought into the process earlier involving sales of property at the SCIP.

1. The SCIP Board approves a recommendation for a property sale in concept, discussing terms of the sale (approximate square footage, employee credits, proposed purchase amount, etc.).
2. The Assembly reviews the recommendation of the SCIP Board's terms of the sale. The Assembly then has the ability to approve the terms or adjust the terms. (This allows opportunity for potential buyer to accept or decline adjusted terms of Assembly actions.)
3. The subject property is surveyed and brought before Planning and Zoning Commission for their approval.
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