



# CITY AND BOROUGH OF SITKA

ASSEMBLY CHAMBERS  
330 Harbor Drive  
Sitka, AK  
(907)747-1811

## Minutes - Final City and Borough Assembly

*Mayor Cheryl Westover*  
*Deputy Mayor Pete Esquiro, Vice-Deputy Mayor Thor*  
*Christianson,*  
*Terry Blake, Phyllis Hackett, Mim McConnell, and Mike Reif*

*Municipal Administrator: Jim Dinley*  
*Municipal Attorney: Theresa Hillhouse*  
*Municipal Clerk: Colleen Ingman, MMC*

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Tuesday, April 10, 2012

6:00 PM

Assembly Chambers

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### SPECIAL MEETING 5:00 - 5:50 PM

- I. CALL TO ORDER
- II. FLAG SALUTE
- III. ROLL CALL

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

**A 1**      [12-55](#)

Community Purpose Exemptions Requests: 1) Youth Advocates of Sitka Inc. and 2) Alaska Arts Southeast Inc.

*Assessor Randy Hughes reviewed the applications and had no objections.*

*Mayor Westover mentioned she would like voters to decide; contending the burden of exemptions was shared by all tax payers. In a response to a question on how school funding was calculated, Hughes relayed the total taxable amount was the basis for school funding. Mandatory exemptions (seniors, churches, the Tribe etc.), were not part of the base.*

*Annette Becker, Director of Youth Advocates, offered background on their agency and purpose. She added 73% of their funding comes from Medicare related sources and the remaining 27% is grant funded.*

*Roger Schmidt of Alaska Arts Southeast read a statement prepared by Directors Cindy Edwards and Brant Brantman. The statement spoke to the activities the center offered and the community partnering on health and wellness that had taken place. Kenyatta Bradley, Sara Frenzy, and SJC Daycare Director Lolly Miller spoke in support of the community purpose exemption request.*

**A motion was made by Christianson to approve Youth Advocates of Sitka Inc's application for a community exemption based on the following findings:**

- 1. Property is owned by a nonprofit organization,**
- 2. Organization is not organized for business or profit making purposes,**
- 3. Receipt of some monies for use of the property to defray operating costs does not necessarily bar the right to an exemption,**

4. Use of the property is exclusive and no spatial apportionment is required,
5. General benefit to the community, without a dominant profit motive, may be sufficient to grant a community purpose exemption based upon AS 29.45.050(b)(1)(a) and SGC 4.12.025.

A motion was made by Christianson to approve Alaska Arts Southeast, Inc's (Noting the parcel of property is better known as the Hames Center and the main parking lot) application for a community exemption based on the following findings:

1. Property is owned by a nonprofit organization,
2. Organization is not organized for business or profit making purposes,
3. Receipt of some monies for use of the property to defray operating costs does not necessarily bar the right to an exemption,
4. Use of the property is exclusive and no spatial apportionment is required,
5. General benefit to the community, without a dominant profit motive, may be sufficient to grant a community purpose exemption based upon AS 29.45.050(b)(1)(a) and SGC 4.12.025.

Both motions **PASSED** by the following vote:

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

#### IV. REPORTS I

*Representatives from the Alaska Department of Transportation explained the proposed action for Sawmill Creek Phase III (specifically Whale Park to Sawmill Creek Bridge). Some improvements noted were improved bicycle access - a four foot shoulder and separated pedestrian facility and eight foot sidewalks.*

#### **REGULAR MEETING 6:00 PM**

#### V. CORRESPONDENCE/AGENDA CHANGES

*Utility Director, Christopher Brewton, commended lineman Larry Bugher for completing his apprenticeship program with an impressive 96.0 average.*

#### VI. CEREMONIAL MATTERS

*Mayor Westover presented Lisa Busch with a Service Award for her involvement in a number of beautification and landscaping projects as well as her 12 years of service on the Tree and Landscape Committee. Mayor read a proclamation supporting the Fish to Schools Program and recognized the local NANA Management cooks and cafeteria staff.*

#### VII. PERSONS TO BE HEARD

*Betty Jo Moore spoke to Case No. ISI-10-184CI. She requested written communication with regards to a 2011 commercial operating license appeal to Administrator Dinley.*

*Lisa Busch of Sitka Sound Science Center invited assembly members to the Killer Whale Re-articulation fundraiser.*

*David Tjomsland believed he witnessed a City vehicle after hours at the boat haul*

out. It was determined the vehicle was working on a transformer.

Deborah Lyons spoke in support of the Sawmill Creek Phase III project and praised Public Works Director, Michael Harmon, and Administrator Dinley for advocating the project.

Dr. David Vastola urged the community to support the childhood cancer research fundraiser, St. Baldrick's, to be held April 13 at the Elk's Lodge.

Jeff Mossiege spoke to a proposal for a 9-hole disc golf course on lands bordered by Sitka High School and the Cross Trail.

## VIII. REPORTS II

USFS District Ranger, Carol Goularte, provided an updated on current events at the USFS: Nelson Logging Road thinning plans, False Island timber sales, Tenakee Inlet bridge removals, Sitkoh River reconstruction, outfitter and guide permits, filming permits, new cabins to be constructed at Lake Eva and White Sulphur, ongoing trail maintenance, Harbor Mountain use, goodwill partnerships, and budget reductions.

American Legion representatives explained the Alliance for American Legion program and their plans for restoration of Moller Park Field. Work would begin this summer.

## IX. CONSENT AGENDA

**A 2**      [12-43](#)              Approve the minutes of the March 27, 2012 Assembly meeting.

**This item was APPROVED ON THE CONSENT AGENDA.**

**B**              [12-44](#)              Appointments: 1) Appoint Ana Dittmar to a unexpired term on the Historic Preservation Commission, and 2) Reappoint Teka Lamade to a term on the Ports and Harbors Commission.

**This item was APPROVED ON THE CONSENT AGENDA.**

## X. UNFINISHED BUSINESS:

**C**              [12-37](#)              Reconsider the Assembly's decision sitting as the Board of Adjustment on February 28, 2012 granting a Conditional Use Permit filed by Dawn Mahoney-Menendez for a more than 4 children Day Care at 506 First Street, based on the recommendation of the Planning Commission at their January 17, 2012 meeting.

*Mike Reif recused himself as he is a fact witness in the case.*

*Filers*

*Connor and Valerie Nelson requested the reconsideration. Connor claimed there were contradictions in the parking plans and diagrams. With regard to Condition No. 12 First Street – the street is a city street and he didn't think the City should obligate people to maintain a city right-a-way nor did he think that stipulation should be part of the conditional use permit. The parking plan approval was a major oversight in his opinion. Connor stated zero lot lines were a form of a subdivision and spoke to a mandatory provision in the subdivision code with regard to party walls. Connor*

further stated the definition of single family – to be occupied by no more than one family and Home occupational use – is non residential use. 21.040.030 C. He asserted the packets for the January Planning Commission meetings were incomplete. The Nelson's added their reconsideration request wasn't about what a great day care the people offered, but was about the Sitka General Code and State Statutes. They emphasized this type of use was not allowed by the CBS code.

#### Applicant

Corie Bosman, Menendez attorney, rebutted. With regard to First Street she noted it was a city street and there was no maintenance. She added, it didn't bind anyone and no one was required to do anything. Nelson's issue should not become a Menendez issue. She stated the burden of proof was on the Nelson's.

#### Staff

The Planning Commission did do an exhaustive review on this process. Title 21 and 22 are not a unified development code. One is Zoning Code the other is a Subdivision Code. There are very few uses outside of the R-1, daycare is specified in the zoning code table. Williams is very comfortable with the review.

Westover believes that Conditional Use Permits should not necessarily go with the property. Hackett shares the Mayor belief. Hillhouse pointed out the reason you do not have the ability to grant a conditional use to one individual is that it would be considered arbitrary use.

Hillhouse – party wall agreements are pretty typical. There is a basic framework for all zero lot lines. It is a template that is all it is. That particular chapter was never meant to cover everything. There are eight different references to zero lot lines and one is Day Care use. If zero lot lines were never intended for a Day Care then you would have put a foot note that says this doesn't apply to Day Cares. Our code never exempted zero lot lines from Day Cares. The Planning Department can address the legislative clean up. Right now, the way the code reads it doesn't apply to zero lot lines.

Williams brought forth there is already a mandatory review after six months.

Both Williams and Hillhouse felt the decision to grant the CUP should be upheld.

Christianson clarified that the Planning Commission could call for a review at any time.

#### Public Testimony

Peter Menendez, the applicant's spouse, relayed that the idea of person coming in and wanting to purchase our home and continue a Day Care is not likely. There is so much extensive background work and licensing required. Plus, the odds are we won't be selling. We don't have any intention to turn our house into a duplex and the code wouldn't allow it anyway. There are many home businesses ran out of residential complexes. Historically, the CUP process is addressed on a case-by-case basis. He offered one example from Juneau where a zero lot line was granted a permit to run a Day Care.

Valorie Nelson mentioned that twenty years ago she took something before the court and prevailed.

#### Rebuttals

Nelsons - Valorie Nelson said Amanda Johnson was sent an email from city staff saying that it wouldn't do any good to contest this. Conner alleges that this has been

referred to as a business use not a residential use many times. Conner says he still doesn't see four parking spots. His concern is this will set a precedence. He contends when you take a C2 property and put a zero lot on it you give up the opportunity to do anything else but residential. They urged the Assembly to remand this back to the Planning Commission and clear up the parking at a minimum.

Menendez – They have met the parking conditions. Both the Planner and Attorney agree conditions have been met. Nelson's concerns are what kind of zoning should be allowed in commercial areas. That should be addressed by the Planning Commission. If this gets sent back to the Planning Commission there is nothing more they can do.

Westover does believe that Planning needs to revisit the zoning regulations of zero lot lines, especially in other zones. Christianson and Hackett concurred that zero lot lines need to be revisited. Esquiro can see where the Nelson's have some valid concerns. He believes Menendeze is OK legally, but he still has a problem with an eight children Day Care in a zero lot line home, and would also like the Administrator to work with staff to address this. McConnell feels comfortable with the advice from the Planning Director and Attorney and would like to see the Nelsons pursue how the code reads for a commercially zoned zero lot line.

**A motion was made by Christianson that this Item be RECONSIDERED. The motion failed by the following vote.**

**No:** 6 - Westover, McConnell, Blake, Christianson, Esquiro, and Hackett

**Recused:** 1 - Reif

## XI. NEW BUSINESS:

### New Business First Reading

- D      [RES 12-07](#)      Supporting Alaska Arts Southeast, Inc. application under Round 2 Cycle of FY2012 Historical Preservation Fund Grant Program for Certified Local Governments

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

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

### Additional New Business Items

- E      [12-47](#)      Approve a conditional use permit for a short term rental filed by Ernestine Massey at 111 Harbor Mountain Road

**Reif moved to convene as the Board of Adjustment. Motion PASSED unanimously.**

**McConnell moved to approve a conditional use permit request, submitted by Ernestine Massey for a short-term rental at 111 Harbor Mt. Road as recommended by the Planning Commission and in accordance with the following findings:**

1. Will not be detrimental to the public health, safety and general welfare;
2. Will not adversely affect the established character of the surrounding

- vicinity, since there are no impacts on adjacent parcels;
3. Will not be injurious to uses of the properties in the immediate area;
  4. It is compatible with the goals and objectives of the Comprehensive Plan, specifically 2.5.2.i', Encourage the development of facilities to accommodate visitors without significant impacts on residential properties;
  5. That all conditions are present and can be monitored and enforced;
  6. It will not adversely affect public health, safety or welfare;
  7. It is supported by adequate public facilities;
  8. Applicant has met the burden of proof;
  9. This request does meet the general approval criteria 1 through 5;
  10. The Planning Commission has further reviewed the criteria for determining impacts of conditional uses under 22.24.010. Items a through l.

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

F 12-46

Approve a conditional use permit filed by Sharon Romine for Michael LaGuire at 713 Biorka Street for a short-term rental.

Hackett moved to approve a conditional use permit request, submitted by Sharon Romine on behalf of Michael and Jacqueline LaGuire for a short-term rental at 713 Biorka Street as recommended by the Planning Commission and in accordance with the following findings:

1. There are no topography or soil issues;
2. There are utilities necessary for the project;
3. The lot characteristics are of sufficient size to accommodate the use;
4. There will not be hours of operation that will conflict with the adjacent residential areas;
5. Landscaping and screening has been accommodated by the front fence;
6. It has determined that it will not be detrimental to the public health, safety and general welfare;
7. It will not adversely affect the established character of the surrounding vicinity,
8. Will not be injurious to uses of the properties in the immediate area;
9. The granting of the conditional use permit is consistent with the Comprehensive Plan, policy 2.5.2.i', Encourage the development of facilities to accommodate visitors without significant impacts on residential properties and 2.1.1 Contribute to a stable, long-term, local economic base;
10. The use will not introduce any hazardous conditions;
11. It will not adversely affect public facilities;
12. The applicant has met the burden of proof;
13. The vehicular traffic can be adequately met by the street and area and will not adversely impact nearby uses;
14. The amount of noise will not adversely affect the surrounding uses;
15. That the odors will not be an issue and will not add to the neighborhood over and above existing residential uses;
16. That the hours of operation are adequate and consistent with the existing residential character of the neighborhood;
17. This is located along a residential street that is a sufficient size to handle the traffic;
18. That there will not be additional client loads in the residential areas over and above traditional residential client loads;
19. Will not adversely impact vehicular and pedestrian safety;
20. Due to the presence along an existing paved street there is ability for police, fire and EMS personnel to respond to emergency calls;
21. That there is a logical and internal traffic layout by virtue of the driveway;

22. That signage will be in conformance with the sign regulations;  
23. There is no need for additional buffers; and  
24. The Planning Commission determined that there are not any other criteria that need to be reviewed.

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

- G**      [12-45](#)      Anderson APPEAL of Planning Commission's decision to grant variances submitted by Boyd Didrickson - 428 Kaagwaantann Street  
PULLED

**This item was PULLED prior to the meeting. One of the parties could not be present.**

- H**      [12-49](#)      Approve an award of a Professional Services Contract to Pacific Groundwater Group for Sitka Groundwater Supply Development Phase 1 - not to exceed \$107,370; and authorize an expenditure not to exceed \$700,000 for exploring potable water source alternatives

*Harmon emphasized the seriousness of having an alternative water source. In the past it was Indian River. However, we can no longer take surface water from that source without boiling it first, which isn't feasible for hospitals, schools, restaurants etc. It has put us in a very difficult position. This money will be used to explore the possibility of wells with subsurface water versus a filtration plant. The water fund only has a working capital of about \$700,000 which would drain the water fund. Therefore, we plan to set it up as a loan and build it in to the rate structure. In the interim this needs to be expedited. Sweeney added, the dollars in the water fund are currently earmarked for the UV Project and they are still investigating other financing options.*

**Hackett moved to approve an award of a Professional Services Contract to Pacific Groundwater Group for Sitka Groundwater Supply Development Phase 1 - not to exceed \$107,370; and authorize expenditure not to exceed \$700,000 for the purpose of exploring potable water source alternatives. The motion PASSED on the following vote.**

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

- I**      [12-50](#)      Authorize a professional services agreement with McMillen LLC to provide Construction Management Services on the Blue Lake Expansion Project.

*Chris Brewton and Dean Orbison explained the magnitude of the project.*

**McConnell moved to authorize the Municipal Administrator to negotiate and execute a Professional Services Agreement with McMillen LLC to provide Construction management services on the Blue Lake Expansion Project. The motion PASSED on the following vote.**

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

- J**      [12-51](#)      Authorize the Municipal Administrator to amend and execute a Professional Services Agreement with Currents Consulting to provide engineering services for Construction Management of the Blue Lake Expansion

*Orbison and Brewton relayed that Currents is a critical resource for the city and*

*huge value for the dollar.*

**McConnell moved to authorize the Municipal Administrator to amend and execute a Professional Services Agreement with Currents Consulting to provide engineering services for Construction Management of the Blue Lake Expansion. The motion PASSED on the following vote.**

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

## Motion to Extend

**A motion was made by Reif that this meeting be EXTENDED to 10:45 PM. The motion PASSED by an unanimous vote.**

**K**      [12-53](#)

Award a contract or reject bid proposal for Transit Services to transport cruise ship passengers from the Old Sitka Dock to the Centennial Hall or O'Connell Bridge parking areas submitted by Halibut Point Marine Services

*Chris McGraw explained that they are still in conversations with Holland American Line and that they have not given them a yes or no and recommended that this decision gets postponed until he knows something definite. Currently the cruise lines don't have to pay moorage or longshoreman in Sitka.*

*Hackett had questions regarding ADA issues - How many wheel chair tie downs are there and do they secure the person in the chair or would they have to be transferred into the seat. McGraw didn't have the answers but he will research.*

**McConnell moved to award a contract to provide Transit Services to transport cruise ship passengers from the Old Sitka Dock to the Centennial hall or O'Connell Bridge parking areas to Halibut Point Marine Services.**

**A motion was made by Christianson that this Contract/Agreement be POSTPONED until the next regular meeting. The motion to POSTPONE PASSED by the following vote.**

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

**L**      [12-52](#)

Assemblymembers' discussion on the FY 2013 School District Budget

**This item was DEFERRED to the upcoming worksession planned with the School District later this week.**

## XII PERSONS TO BE HEARD:

*None.*

## XIII. ADJOURNMENT

**Motion was made by Christianson that the meeting be ADJOURNED. The meeting was adjourned at 10:35 PM by a unanimous vote.**

**ATTEST:**

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Colleen Ingman, MMC  
Municipal Clerk