



# CITY AND BOROUGH OF SITKA

## Minutes - Final

### Planning Commission

*Chris Spivey, Chair*  
*Darrell Windsor, Vice Chair*  
*Debra Pohlman*  
*Randy Hughey*  
*Richard Parmelee*

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Tuesday, February 21, 2017

7:00 PM

Harrigan Centennial Hall

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#### I. CALL TO ORDER AND ROLL CALL

Chair Spivey called the meeting to order at 7:02 PM.

Present - Spivey, Windsor, Pohlman, Hughey, Knox (Assembly Liaison)

Absent - Parmelee

#### II. CONSIDERATION OF THE AGENDA

#### III. CONSIDERATION OF THE MINUTES

A Approval of the February 7, 2017 minutes.

Windsor/Pohlman moved to APPROVE the February 7, 2017 meeting minutes.

Motion PASSED 4-0.

#### IV. PUBLIC BUSINESS FROM THE FLOOR

#### V. PLANNING DIRECTOR'S REPORT

#### VI. REPORTS

B Planning Regulations and Procedures.

#### VII. THE EVENING BUSINESS

C Discussion and direction regarding a Critical Areas Ordinance.

Planning and Community Development Department (PCDD) Director Bosak gave a brief overview of the August 18, 2015 landslides and the research and regulatory actions that followed. The proposed critical areas ordinance would become part of Title 20. Bosak introduced municipal legal staff.

Municipal Attorney Brian Hanson introduced himself and stated that the development of this ordinance resulted from a long collaborative process.

Hanson stated that outside counsel has been involved in the drafting and review. The document has gone through many versions and has involved numerous municipal departments.

Risk management needs to balance the duties of the municipality to the public. Balance is not easy, but it is very important that the commission consider this ordinance. The city has the general duty to protect the public's safety while also allowing development. Future homebuyers and taxpayers should be considered and be reasonably protected by code. This ordinance provides for the tools of geotechnical analysis and waivers.

Paralegal Reuben Yerkes stated that this ordinance seeks to balance laissez faire government and overly burdensome government. Yerkes gave a brief overview of the definitions within the ordinance draft. Yerkes stated that the definition of "geotechnical evaluation" has undergone particularly extensive consideration. Yerkes drew attention to line 150, which is essentially a grandfathering clause. Yerkes briefly outlined the waiver process. High occupancy commercial projects shall not be eligible for a waiver.

Commissioner Hughey asked for clarification on reasonable requirements for a waiver. Hanson stated that the ordinance provides direction for each waiver to be individually developed. Hanson stated that blind waivers are disfavored while circumstance-specific waivers have more strength when landowners clearly acknowledge that they have been properly informed. Yerkes stated that the waiver provides a pressure release valve. Bosak stated that people have differing views on the role of government, but one role is clearly to inform the public.

Commissioner Pohlman asked about impacts on downhill owners who are not in a moderate or high risk area – could an uphill owner with a waiver be liable for downhill damages? Yerkes stated that no code could truly address those "act of God" concerns. Hanson stated that the waiver does not confer liability. The waiver works to protect the municipality from financial liability. Chair Spivey asked if the city granted a waiver to a property above, and a landslide goes through the upper property to a property below, could the lower property owner sue the city. Yerkes drew attention to line 65, which states that the waiver is not in lieu of other code requirements. Spivey asked if the property developed with a waiver is the cause of the slide, would the city be liable for the damages to downhill properties because the city granted the waiver. Hanson stated that the municipality would be covered under municipal immunity.

Vice-Chair Windsor asked for clarification on "high occupancy commercial use," and Bosak clarified that those are building code abbreviations and not zoning abbreviations. Yerkes stated that R-1 is housing for transient occupancy.

Pohlman asked how line 72 is defining "locations damaged by previous landslides." Pohlman stated that one insurer she spoke with would consider proximity as being within 5 miles of a previous landslide, which would be problematic in Sitka. Yerkes stated that general consensus of the existence of a landslide indicates that it is valid, in addition to geotechnical analysis.

Pohlman asked if neighboring property owners would receive notice of a

waiver and for clarification on the public process for informing the public of mapping. Windsor pointed to 20.01.020(A)2 to indicate that even properties outside the medium and high risk zones would be impacted. Hanson stated that public notice requirements are not currently in this ordinance.

Spivey asked how much this code mimics Juneau's and other community's codes. Yerkes stated that there isn't a lot to compare to, but Juneau, Seattle, and Snohomish were analyzed. Hanson stated that there haven't been any court cases in Alaska to back up the enforceability of such a waiver. Washington has found such waivers enforceable, but Alaska is yet to be determined. Spivey asked if any of Juneau's waivers have been tested in court, and Hanson stated that this is new to everyone in Alaska. Hanson stated that outside counsel conducted a nationwide review. Hanson stated that people on the east coast develop on beaches and people in the midwest develop on the Mississippi River. Hanson stated that society has become more litigious.

Assembly Liaison Knox asked about the burden of acceptance of knowledge, and what happens when the property is transferred. Hanson stated that the detailed covenant would be required to be recorded with the land record. Knox asked if this ordinance could be a model to use for other types of hazards. Hanson stated yes, but it should be individualized for the specific hazard at hand.

Hughey clarified that property owners could obtain a waiver and proceed with development, and Yerkes stated yes so long as other code provisions are met.

Pohlman asked about line 89, and stated concern that a lot line could be moved to put one property in a different risk zone. Scarcelli and Bosak stated that boundary line adjustments are typically done to resolve neighbor boundary disputes. Scarcelli clarified that the subdivision code currently allows flexibility for staff to require geotechnical analysis when deemed appropriate.

Hughey asked if a portion of the lot is in a specific risk zone, is the entire lot in that zone. Yerkes stated yes. Hughey asked if this may change, and Hanson clarified that the current ordinance draft would place the lot in the higher risk zone.

Pohlman asked why line 140 places the responsibility on the Administrator instead of others. Hanson and Bosak stated that this is consistent with the rest of code.

Spivey stated concern for how the waiver would impact the ability for a property purchaser to obtain financing. Spivey stated that he also wanted to receive input from title companies. Spivey stated that he thinks the cart is going before the horse since mapping has not been completed, but the ordinance makes sense. Hughey stated that he thinks this ordinance is good work. Windsor stated that staff did a good job drafting this. Bosak stated that some mapping has been completed, so the commission should move forward in order to determine the appropriate development for those areas. Windsor asked about treatment of unmapped properties. Yerkes pointed to line 72 which addresses unmapped areas.

Hughey asked if there are engineers in Sitka who could conduct the analysis.

Public Works Director Harmon stated that there are no geotechnical professionals in town, and it is a specialized field. The municipality has used professionals based in Washington. Harmon stated that there is so much anecdotal evidence, but his department will require solid data before it places restrictions on owners. Hughey asked about the cost. Harmon stated that there are different levels of analysis, which could begin at \$25,000-\$50,000. Harmon stated that if a higher risk area is just a corner of the lot, basic geotechnical analysis could more economically determine risk. Spivey asked if staff would help individuals connect with professionals, and Harmon stated yes.

Pohlman stated concern with the grandfather clause on line 150. Scarcelli stated that zoning code currently has provisions for legal nonconforming uses. Pohlman asked about why line 156 is so specific, and Hanson stated that he would research and provide an answer.

Administrator Gorman stated his satisfaction that this ordinance is moving forward, and stated that this would ideally be in place before mapping is completed and owners have questions on how to move forward.

Bosak stated that the commission could ask for public comment or give direction on desired changes.

Andrew Friske stated that he owns 420 Kramer Avenue. Friske stated support for the waiver. Friske stated that he and neighbors have searched for a geotechnical professional, and they only found one licensed in Alaska. Friske stated that the professional believed he could plan mitigation, with plans running at least \$40,000. Actual mitigation would likely exceed \$500,000. Friske stated that he is unsure if many property owners could afford the analysis and mitigation. Friske stated that Sitka has many properties in the tsunami risk zone, and property owners need to have options.

Pohlman stated that line 104 would result in an undue burden if there is only one firm conducting this research that is licensed in Alaska. Harmon stated that the professional engineer planning the mitigation must be licensed in Alaska to practice in Alaska, and a pass-through arrangement is not an option. Harmon stated that it is easy to obtain licenses in multiple states if there is sufficient work available. Harmon addressed line 156 and stated that the cited section is the mapping section only. A property cannot be grandfathered in if a slide has occurred within 150 feet, but mapping is a bit more abstract.

Pohlman asked about the timeline for mapping. Spivey asked if the commission could see a preliminary map. Bosak stated no, that the city is not paying for the study, and the city is on the DGGs timeline. Bosak stated that a lot of Sitka is going to be in a risk zone, and she anticipates receiving maps in approximately a year. Pohlman questioned releasing land for sale as discussed during the Comprehensive Plan process prior to the mapping being released. Hughey stated that we could make a layman's guess at low-risk areas to release. Windsor stated his support for the ordinance.

Bosak stated that this should receive Planning Commission approval before going to the Assembly. Spivey stated that he would like to do research and see this at the next meeting. Bosak stated that this will be on the next agenda, and we'd be looking for a motion at that meeting.

**D**

Discussion and direction on the framework for process, analysis, and

conditions regarding short-term rentals on boats in municipal harbors.

Bosak gave an overview of the history of short-term rentals on boats. Bosak outlined the review process that has been approved by the Port and Harbors Commission. Bosak stated that applicants would meet with USCG to meet their requirements before coming to the municipality. Port and Harbors Commission would hear the request before it comes to the Planning Commission. Notice will be expanded to nearby slip renters and will include on-site notice. Windsor stated that he felt comfortable with applicants beginning with Coast Guard review. Spivey stated that the applicants would have all their ducks in a row at that point. Bosak stated satisfaction at the collaboration between Port and Harbors Commission and Planning Commission.

Hughey/Windsor moved to APPROVE the review process for short-term rentals on boats.

Motion PASSED 4-0.

**VIII. ADJOURNMENT**

Spivey stepped down to make a public comment. Spivey stated that he manages a property in the Central Business District, and stated support for a joint municipal/state/private venture to build a parking garage behind the judicial building. Spivey stated that the municipality does not have adequate impound space. Perhaps a Rasmusson grant or other funding sources could be utilized. Building on this lot would not impact green space or views when compared with other possible locations. Spivey asked staff to consider and review the possibility of a joint parking structure project.

Bosak reminded the commission that another meeting is scheduled for Monday, February 27th at 7 PM.

Chair Spivey adjourned the meeting at 9:00 PM.

ATTEST: \_\_\_\_\_  
Samantha Pierson, Planner I