

## MEMORANDUM

**To:** Mark Gorman, Municipal Administrator  
Mayor McConnell and Members of the Assembly

**From:** Maegan Bosak, Planner I *MB*

**Subject:** Jardine- Two bedroom Bed & Breakfast Conditional Use Permit

**Date:** September 12, 2014

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The Planning Commission is recommending denial of a conditional use permit request for operation of a two bedroom bed and breakfast filed by Brian Jardine at 105 Shelikof Way. Action on this item was taken at the August 19, 2014 Planning Commission meeting. The recommendation to deny the request, based on the following findings, passed unanimously 5-0.

Mr. Jardine owns a two-story house at 105 Shelikof Way. Jardine's property is part of a 3 lot subdivision. The property is accessed via an easement, shared with neighbors Mulligan and Grun, crossing Mulligan's property. Grun has a permit for a 2 bedroom bed and breakfast permit that was received in 1995. Neighbor's comments share concerns regarding traffic, parking and noise. Jardine has provided a parking plan delineating 4 available parking spots. The applicant has stated that they will provide transportation and breakfast as well as light snacks.

Brian Jardine also owns/operates A-Z Fishing Charters and has housed fishing guests in the past. Complaints regarding illegal operation of a "lodge" have been ongoing for many years. Neighborhood residents turned in a petition earlier this year to stop quasi lodges in R-1 zones, spurring this bed and breakfast permit request. Mr. Jardine was then asked to discontinue housing guests until a permit was granted. To date, the Planning Department and Robin Koutchak, Municipal Attorney, are working on updating the zoning code with new definitions of bed and breakfast and lodge.

The Planning Office has received multiple comments on this request and a number of citizens gave public testimony at the Planning Commission meetings. The Planning Department required additional public comment opportunities, extra meetings, due to the public interest.

The Planning Commission was unable to find that adjacent properties will not be adversely affected and neighborhood concerns cannot be mitigated.

**Recommendation:**

Deny the request based on the following findings.

**FINDINGS: 22.30.160 Planning commission review and recommendation.**

C. Required Findings for Conditional Use Permits. The planning commission shall not recommend approval of a proposed development unless it first makes the following findings and conclusions:

1. The City may use design standards and other elements in this code to modify the proposal. A conditional use permit may be approved only if all of the following findings can be made regarding the proposal and are supported by the record that the granting of the proposed conditional use permit will not:

a. be detrimental to the public health, safety, and general welfare;

**MOTION: M/S SPIVEY/WINDSOR** moved to approve that these findings can be met.

**ACTION: Motion FAILED unanimously 0-5** on a voice vote.

b. adversely affect the established character of the surrounding vicinity;

**MOTION: M/S WINDSOR/PARMELEE** moved to approve that these findings can be met.

**ACTION: Motion FAILED unanimously 0-5** on a voice vote.

c. be injurious to the uses, property, or improvements adjacent to, and in the vicinity of, the site upon which the proposed use is to be located.

**MOTION: M/S SPIVEY/WINDSOR** moved to approve that these findings can be met.

**ACTION: Motion FAILED unanimously 0-5** on a voice vote.

2. That the granting of the proposed Conditional Use Permit is consistent and compatible with the intent of the goals, objectives and policies of the Comprehensive Plan and any implementing regulation.

**MOTION: M/S SPIVEY/WINDSOR** moved to approve consistent with Comprehensive Plan 2.5.2 *To encourage commercial and industrial developments of a quality that does not adversely impact any adjacent recreational and residential areas.*

**ACTION: Motion FAILED unanimously 0-5** on a voice vote.

3. That all conditions necessary to lessen any impacts of the proposed use are conditions that can be monitored and enforced.

**MOTION: M/S POHLMAN/SPIVEY** moved to approve that these findings can be met.

**ACTION: Motion FAILED unanimously 0-5** on a voice vote.

4. That the proposed use will not introduce hazardous conditions at the site that cannot be mitigated to protect adjacent properties, the vicinity, and the public health, safety and welfare of the community from such hazard.

**MOTION: M/S SPIVEY/WINDSOR** moved to approve that these findings can be met.

**ACTION: Motion PASSED unanimously 5-0** on a voice vote.

5. That the conditional use will be supported by, and not adversely affect, adequate public facilities and services; or that conditions can be imposed to lessen any adverse impacts on such facilities and services.

**MOTION: M/S SPIVEY/POHLMAN** moved to approve that these findings can be met.

**ACTION: Motion PASSED unanimously 5-0** on a voice vote.

6. Burden of Proof. The applicant has the burden of proving that the proposed conditional use meets all of the criteria in Section B.

**MOTION: M/S SPIVEY/SESLAR** moved to approve.

**ACTION: Motion FAILED unanimously 0-5** on a voice vote.

The City may approve, approve with conditions, modify, modify with conditions, or deny the conditional use permit. The city may reduce or modify bulk requirements, off-street parking requirements, and use design standards to lessen impacts, as a condition of the granting of the conditional use permit. In considering the granting of a conditional use, the assembly and planning commission shall satisfy themselves that the general criteria set forth for uses specified in this chapter will be met. The City may consider any or all criteria listed and may base conditions or safeguards upon them. The assembly and planning commission may require the applicant to submit whatever reasonable evidence may be needed to protect the public interest.

**The general approval criteria are as follows:**

1. Site topography, slope and soil stability, geophysical hazards such as flooding, surface and subsurface drainage and water quality, and the possible or probable effects of the proposed conditional use upon these factors;
2. Utilities and service requirements of the proposed use, including sewers, storm drainage, water, fire protection, access and electrical power; the assembly and planning commission may enlist the aid of the relevant public utility officials with specialized knowledge in evaluating the probable effects of the proposed use and may consider the costs of enlarging, upgrading or extending public utilities in establishing conditions under which the conditional use may be permitted;
3. Lot or tract characteristics, including lot size, yard requirements, lot coverage and height of structures;
4. Use characteristics of the proposed conditional use that affect adjacent uses and districts, including hours of operation, number of persons, traffic volumes, off-street parking and loading characteristics, trash and litter removal, exterior lighting, noise, vibration, dust, smoke, heat and humidity, recreation and open space requirements;
5. Community appearance such as landscaping, fencing and screening, dependent upon the specific use and its visual impacts.

#### **22.24.010 Conditional uses.**

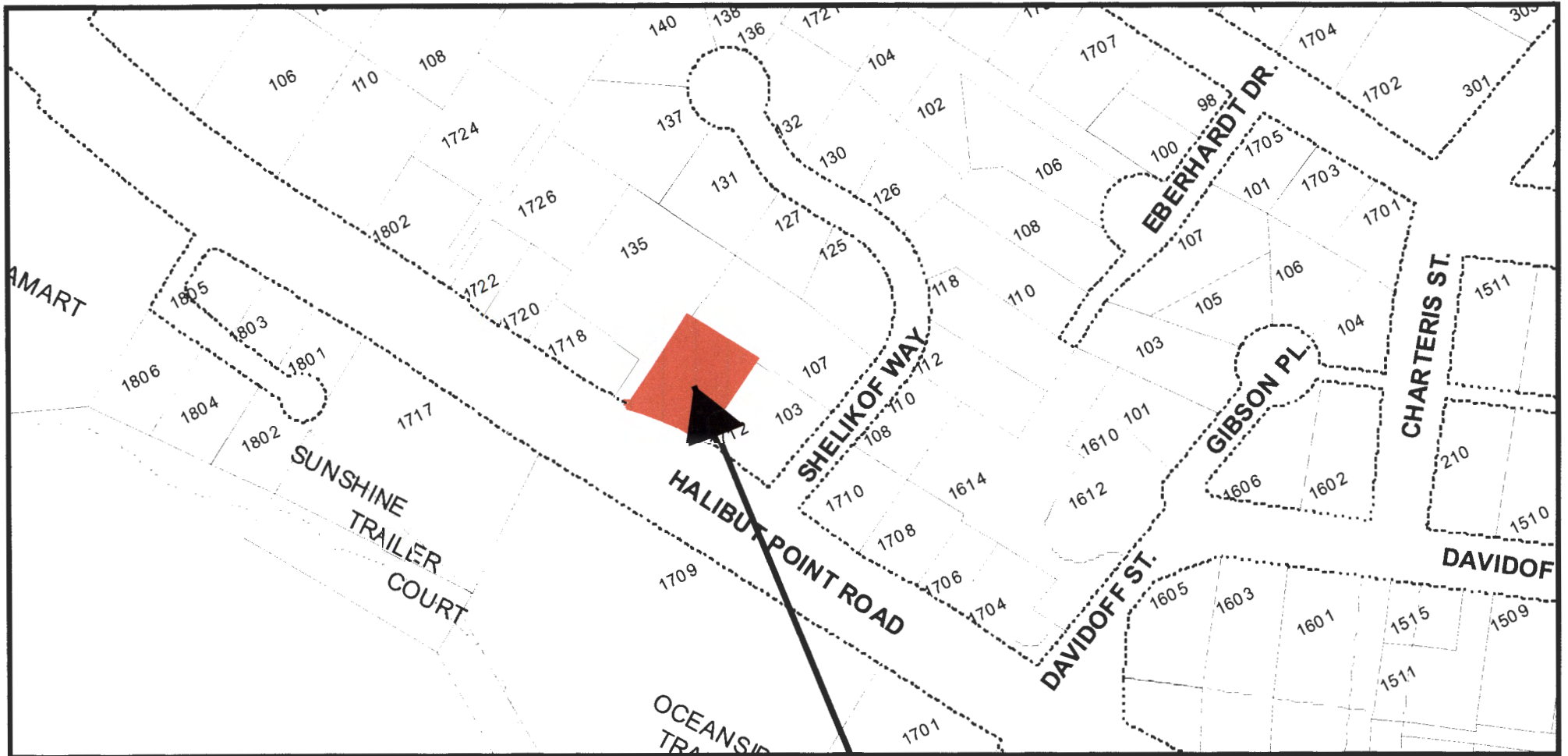
E. In evaluating the inputs of a proposed conditional use permit, the municipality may consider a commercial conditional use to be inappropriate for residential neighbors while the same conditional use may be acceptable when it is located along an arterial or collector street. The additional vehicular traffic generated by conditional uses, such as professional offices, may not be able to be adequately mitigated in residential areas.

##### **1. Criteria to Be Used in Determining Impacts of Conditional Uses.**

- a. Amount of vehicular traffic to be generated and impacts of the traffic on nearby land uses.
- b. Amount of noise to be generated and its impacts on surrounding land uses.
- c. Odors to be generated by the use and their impacts.
- d. Hours of operation.
- e. Location along a major or collector street.
- f. Potential for users or clients to access the site through residential areas or substandard street creating a cut through traffic scenario.
- g. Effects on vehicular and pedestrian safety.
- h. Ability of the police, fire, and EMS personnel to respond to emergency calls on the site.
- i. Logic of the internal traffic layout.
- j. Effects of signage on nearby uses.
- k. Presence of existing or proposed buffers on the site or immediately adjacent the site.
- l. Relationship if the proposed conditional use is in a specific location to the goals, policies, and objectives of the comprehensive plan.
- m. Other criteria that surface through public comments or planning commission assembly review.

**MOTION: M/S SPIVEY/WINDSOR** recommended denial of conditional use permit because the majority of required findings cannot be met and neighborhood concerns cannot be mitigated.

**ACTION: Motion PASSED unanimously 5-0** on a voice vote.



**Jardine**  
CUP- B&B  
105 Shelikof Way





**Jardine**  
CUP- B&B  
*105 Shelikof Way*





**JARDINE  
RESIDENCE**



**Jardine**  
CUP- B&B  
105 Shelikof Way





**Jardine**  
CUP - B&B  
105 Shelikof Way





**Jardine**  
CUP- B&B  
*105 Shelikof Way*



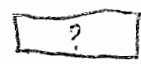




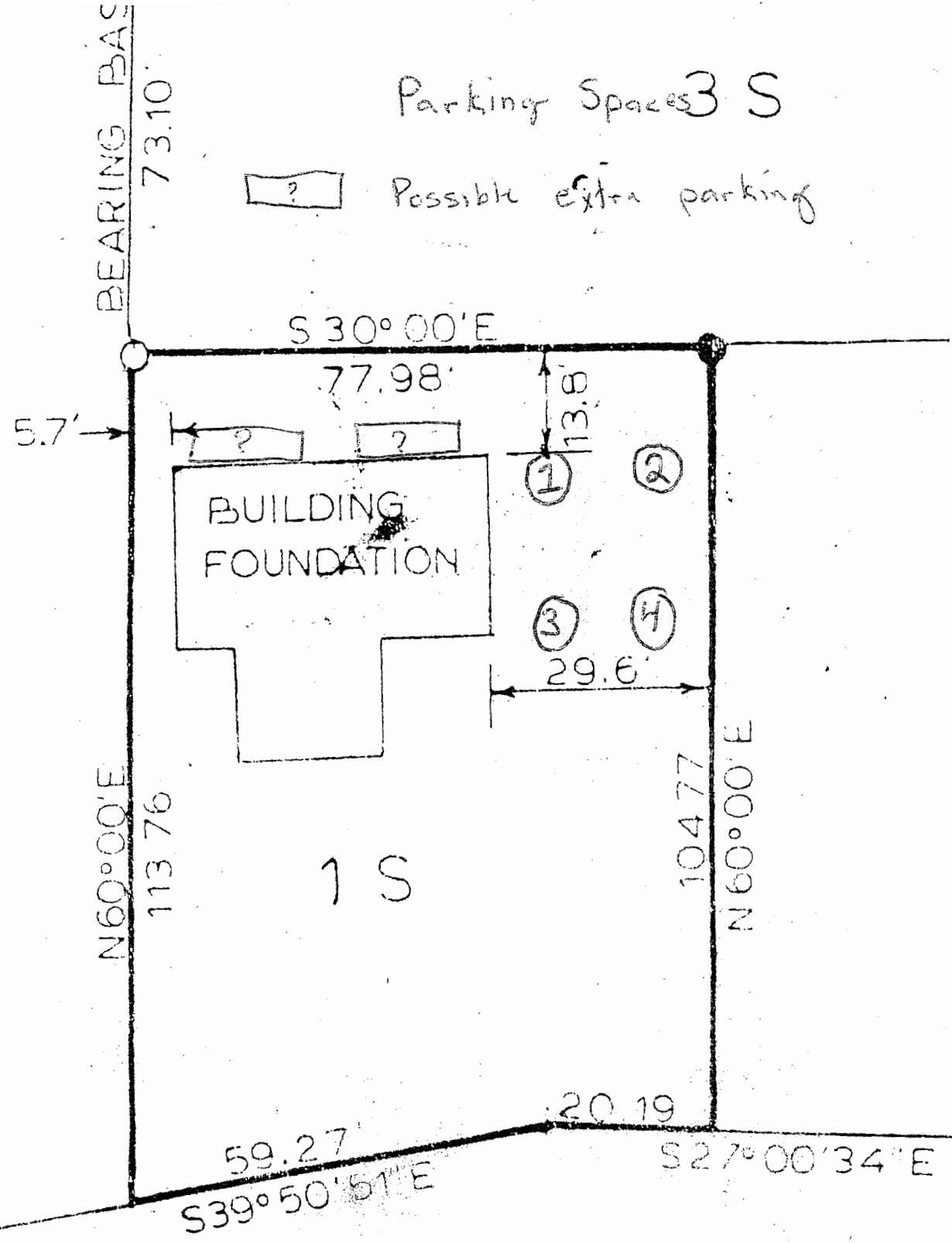




Parking Spaces 3 S



Possible extra parking



CH

**Jardine**  
 CUP- B&B  
 105 Shelikof Way

April 15<sup>th</sup>, 2004

Dear Planning and Zoning Committee,

We are submitting this application in hopes of obtaining a conditional use permit for a Bed and Breakfast in a house that we are in progress of purchasing at 105 Shelikof. The home is owned by Theron and Therese Cole. The purchase of the home is contingent upon approval of the conditional use permit.

My parents are moving to Sitka and will assist me in running the Bed and Breakfast. I have been looking for a home to purchase for over a year now and recently made an offer on 105 Shelikof. We specifically chose this home to purchase because it appears to meet our needs and desire to run a Bed and Breakfast. We feel the home has good potential because of the size, number of bedrooms, condition and available exits.

Since we do not yet own the home we have not had the life safety inspection yet but will do so in the near future and make corrections if needed prior to opening our home to any guests. Our intentions are to be open to guests as soon as we can make the necessary modifications after the purchase of the home.

We plan to provide transportation for our guests so traffic should be minimized. There are currently 4 parking spaces and if needed we could modify a deck and create 2 additional parking spaces.

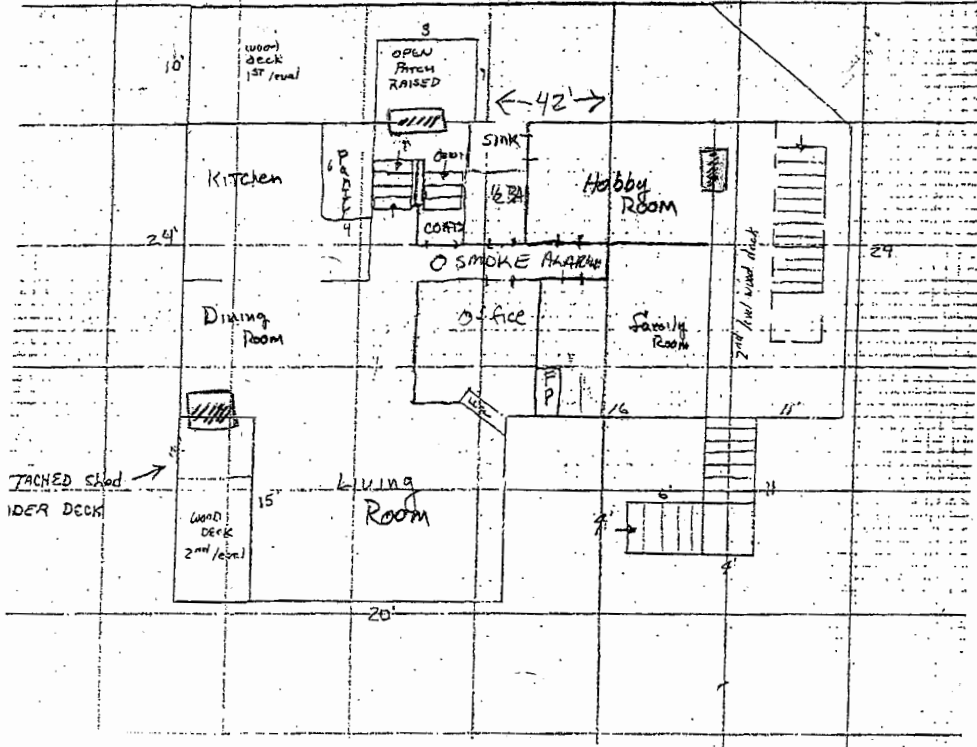
Thank you for your consideration of this application.

Sincerely,

A handwritten signature in cursive script that reads "Brian Jardine".

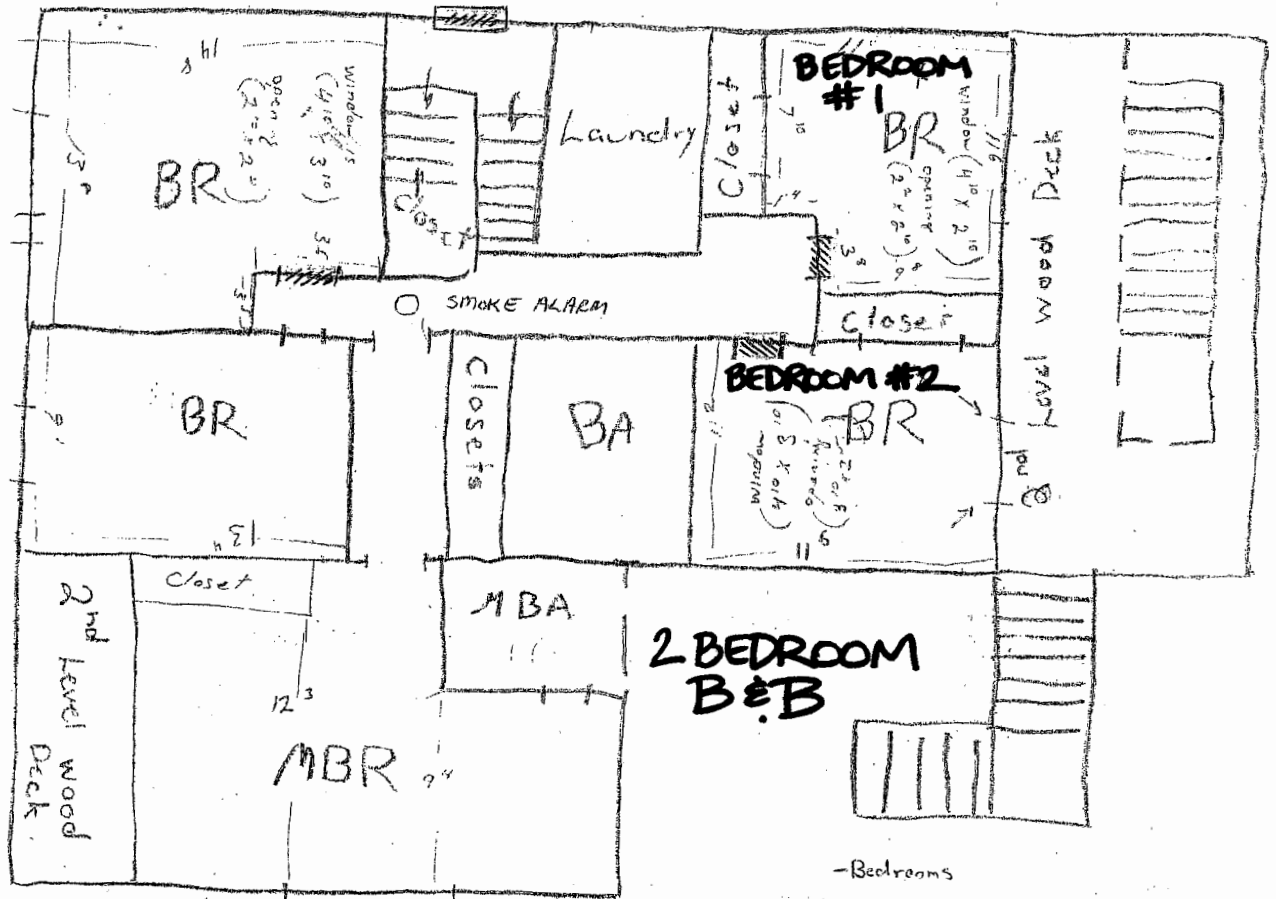
Brian Jardine

105 SHELKOF WAY  
UPPER LEVEL



JARDINE  
TWO GUESTROOM  
BED & BREAKFAST  
REQUEST  
105 SHELKOF WAY

← UPPER LEVEL  
NO GUESTROOMS



→ LOWER LEVEL

TWO GUESTROOMS

2 BEDROOM  
B & B

windown (3'10" x 3'10")  
(opening 1" x 1")

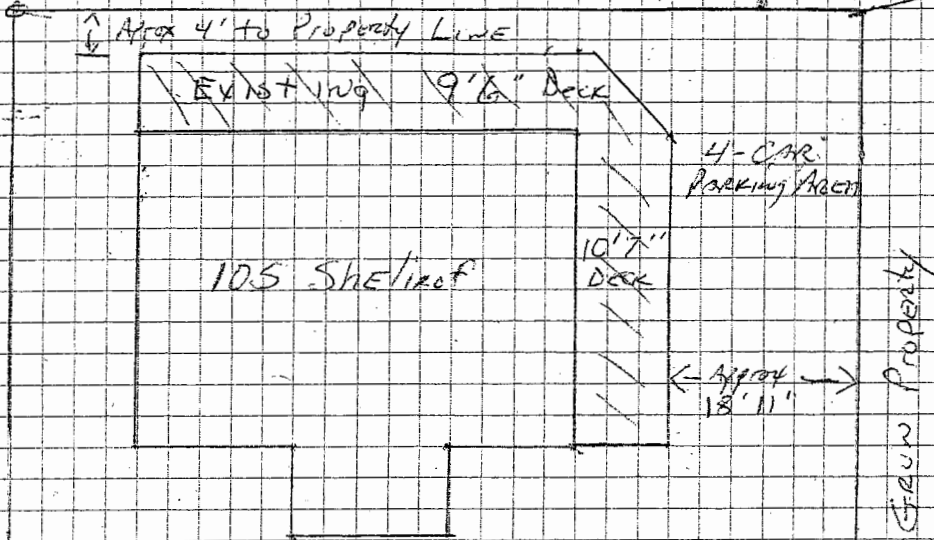
LOWER LEVEL

- Bedrooms
- windows
- Exits out of bedrooms
- Exits out of house



Mulligan Property

Drawn  
EASER

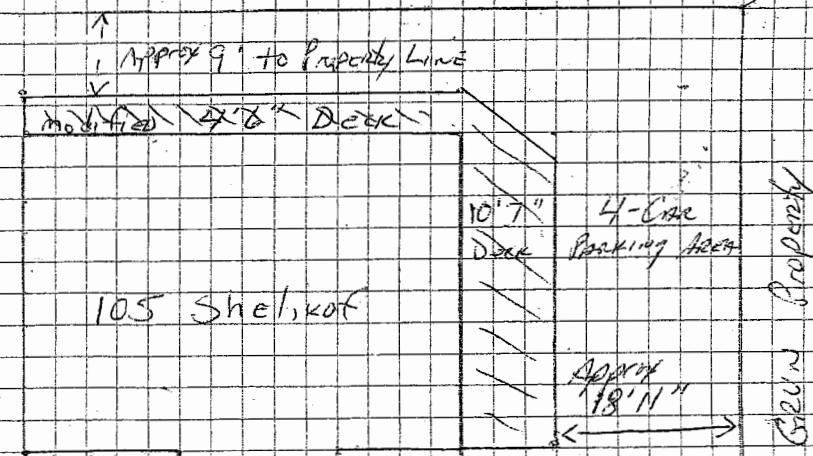


← EXISTING

### PARKING PLAN 105 SHELKOF

Mulligan Property

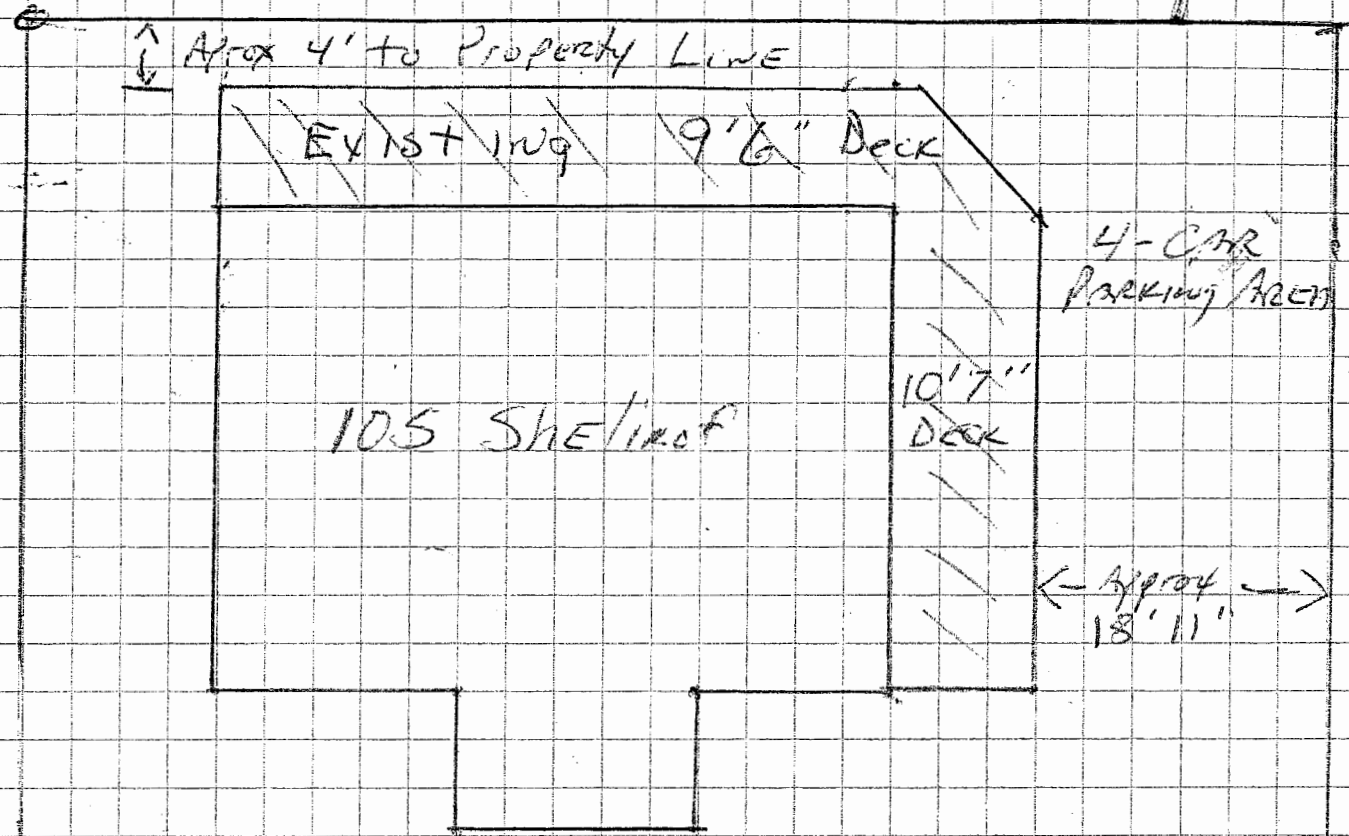
Drawn  
EASER



MODIFIED →

Mulligan Property

DRIVER  
EASEMENT



Approx 4' to Property Line

EXISTING 9'6" Deck

105 SHEETROF

10'7" Deck

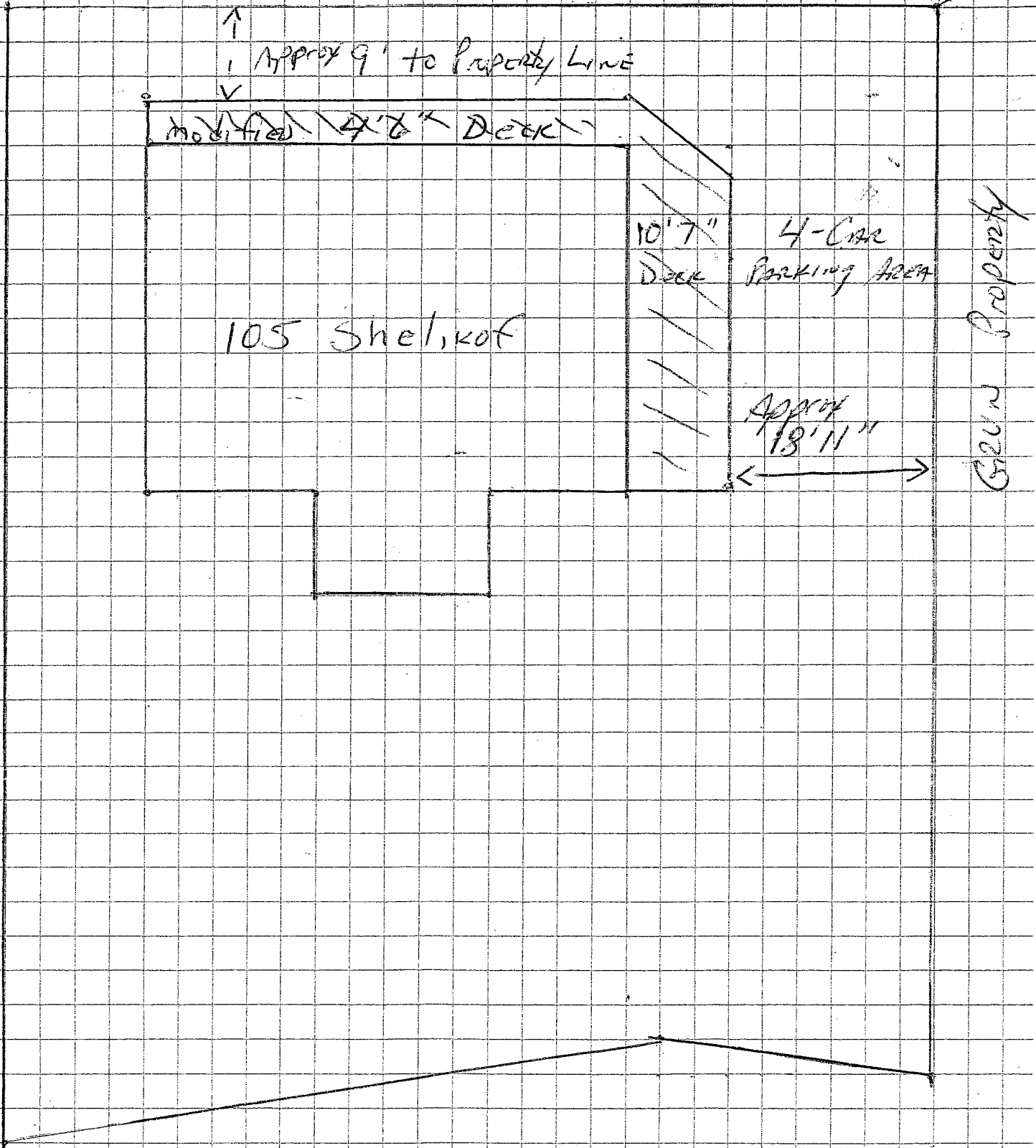
4-CAR  
PARKING AREA

← Approx 18'11" →

Green Property

Existing Parking Place

DRIVEWAY  
ASSEMBLY  
↓ →



Modified Parking Plan



## Maegan Bosak

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**From:** Michelle Peterson [michellepeterson@live.com]  
**Sent:** Wednesday, August 13, 2014 1:15 PM  
**To:** maegan@cityofsitka.com  
**Subject:** Response to Memorandum of Law  
**Attachments:** img011.jpg; img012.jpg; img013.jpg; img014.jpg; img015.jpg; img016.jpg; img017.jpg; img018.jpg; img019.jpg; img020.jpg; img021.jpg; img022.jpg; img023.jpg; img024.jpg; img025.jpg; img026.jpg

To: Planning and Zoning Commission  
From: Brian Jardine  
Date: August 13, 2014  
Re: Conditional Use Permit Application, 105 Shelikof Way

This is a response regarding the Memorandum of Law submitted to the Planning and Zoning Commission by Robin L. Koutchak, CBS attorney.

In Ms. Koutchak's Memorandum of Law, she encourages the commission to review the past decisions of my previous applications "for the sake of consistency." I also encourage the commission to review the past reasons for denial in my application for a CUP.

I am applying for a CUP to operate a two room bed and breakfast. In chapter 22.24 of Special Use Permits, section B, item 3 states that "the number of bed and breakfast sleeping rooms per residence shall be limited to three rooms in an R-1 or related zone and five rooms in an R-2 or related zone." Number 11 states that "there shall be a minimum of **one** off street parking space for every three guestrooms in bed and breakfast establishments located in single family residential zones." I am only applying for a 2 room bed and breakfast and I have **four** off street parking spaces, which are located on my personal property. I have only had two vehicles for the past 10 years. I would encourage the commission to add an addendum to my CUP once granted, stating that my bed and breakfast may only have 2 vehicles on my property. I believe this would alleviate Mr. Mulligan's concerns that we would add traffic to our driveway, which is a shared easement between myself, Mr Mulligan, and the Ms. Grun.

Ms. Koutchak states that "the dispute involves a small cul-de-sac with three large homes, each having a view of the water." In her memorandum she goes into detail describing that Mr. Mulligan's home is the servient estate and that my home, and Ms. Grun's home are the dominate estates. Ms. Koutchak states that "the control of the easement has been recognized by previous commissions and the planning department. It was granted by the servient estate in **1997** "as long as the property is used for residential purposes."

This makes it sound like Mr. Mulligan granted the easement. Even being reported by Shannon Haughland, Daily Sitka Sentinel, Staff Writer in the newspaper, that Mr. Mulligan granted the easement in 1997. However there is an error in Ms. Koutchak's facts. Michael and Gloria Snowden granted the easement in a document recorded in Book 39, Page 516, on June 29, **1977**. In addition the grant of easement does not read as Ms. Koutchak represented. It actually reads "so long as said property is used for residential purposes." The Warranty Deed dated June 7th 1985, by and between Stephan W. Guymon and Karen Guymon, husband and wife, as grantors and Theron J. Cole and Therese L. Cole, husband and wife, as grantees, also is subject further to an easement agreement, including the terms thereof, as to a joint easement for the purposes of **driveway** access and water line, which agreement was recorded June 29th 1977 in Book 39 at page 516 of the records of the Sitka Recording District. The fact is: this easment is simply our shared driveway. Mr. Mulligan **did not**

grant this easement.

Ms. Koutchak notes that the servient estate (Mulligan) controls the easement. She cited LaBrenz v. Burnette 218 P.3d 993,1000 (Alaska 2009). I have attached a copy of LaBrenz v. Burnette, as Exhibit "A". LaBrenz is the servient estate and Burnette is the dominate estate. Burnette (dominate estate) won this case in both Superior Court and an appeals court.

This case proves that just because you are the servient estate you can not impose your "strong arm" and take away from the peaceful enjoyment of the dominate estates, nor can you use your standing as a servient estate to trespass, landscape or build on the dominate estate's private property. This case was about a landscaping argument between LaBrenz and the Burnettes. The Burnettes did not want Mr. LaBrenz to landscape their own private property. This case has no relevance to my request to open and operate a very small bed and breakfast. I have no desire to landscape or build a fence on Mr. Mulligan's property. **The scope of a servient estates authority is only for the maintenance of the easment.**

Ms. Koutchak states that "Any use beyond that and that which interferes with the servient estates quiet enjoyment, could be considered in a court of law, as "abuse of an easment". She goes on to list the primary factors that a court would look at to determine if the easment had been abused, such as intensity of use, scope of the estate, and interference with servient estates quiet enjoyment.

Ms. Koutchak goes into great detail to defend the servient estates rights, but makes no mention of any of the dominant estate rights. The servient estate is also not allowed to interfere with the dominate estates quiet enjoyment of the easement. If you are the servient estate, you are not "lord of the land". This does not give the owner of the servient estate total control of his neighbors, and had no application when a neighbor is applying for a CUP. We have a low intensity of use, we have a quiet and peaceful home, we have never been sited for a noise complaint, and we only have 2 vehicles. Mr. Mulligan is a commercial fisherman, and is rarely home in the summer, and even when he is home we have always been peaceful and respectful neighbors.

Ms. Koutchak cited, Price v Eastham, 254 P. #d 1121, 1129-30 (Alaska 2011). Price v Eastman. See attached "Exhibit B". Mr. Price had a small easment on his property which was used as a hiking trail by community members for many years. As the years went on, people started using their snow machines on the easment. Mr Price put up no trespassing signs. They were removed and this case went to Superior Court.

The way this case relates to Mr. Mulligan and myself, is that Mr. Mulligan is concerned we will now be using our shared easment as a super-highway which disturbs his peaceful enjoyment of his home. To ease his concerns, we will only operate 4 months a year. We will only have 2 vehicles. We will go outside with our guests at 6am to take them to the dock. We will return home by 4 pm. On average we currently and project to use the driveway only 4 or 5 times per day. Mr. Mulligan and his renter, on average use our shared driveway, more than we do. I know that this is well within the scope of R-1 Zoning behavior.

Ms. Koutchak's memorandum states, "Mulligan has a right to safe, quiet and peaceable enjoyment of his property by law and he has a right to demand that the City and Borough of Sitka enforce their code. The legal department and the administrator support that right." Ms. Koutchak also states, that "We have ten years of complaints by the servient estate, verified with photographs and testimony of Mulligan and a handful of others, that traffic at all times, noise both very early and very late, and parking in the summer months in a small cul-de-sac, is fairly intense and the scope of use by the dominate estates is beyond the intended R1 zoning allowance"

All of Mr. Mulligan's evidence and complaints are regarding the existing bed and breakfast which was in operation when Mr. Mulligan purchased his property. He purchased this home with full knowledge that a B&B was on a property next door to him. He also knew that said property was owned by someone who charter fishes. My CUP should not be denied because of Mr. Mulligan's complaints with another neighbor. Ms. Koutchak is pre-supposing that the approval of my bed and breakfast will cause un-due hardship on the neighborhood. The Law is not designed to judge who will and who won't commit a crime in the future, or who will and who won't uphold the laws of a conditional use bed and breakfast permit. I would like the opportunity to own and operate a bed and breakfast with no pre-supposed future wrong-doing. I have not in the past 10 years caused any un-due hardship on our neighborhood.

Ms. Koutchak is defending Mr. Mulligan and his concerns with his private property. They are using the easment as a way to demonstrate Mr. Mulligan's opposition to our proposed bed and breakfast. I have failed to see any demonstration of how the operation of our 2 bedroom bed and breakfast poses any detriment to the City and Borough of Sitka. Our proposed bed and breakfast is not detrimental to the health, safety and welfare of our neighbors, it does not adversely affect the character of the neighborhood and it is not injurious to other uses and improvements in the area.

Ms. Koutchak states, " Mulligan would at least have a private right of action against the servient estate of Jardine, and quite possibly against CBS for failing to follow our zoning code." Once again, this is another typo and error in Ms. Koutchak's facts. To clarify, I would like to point out that I am the **dominate** estate of Jardine.

The building administrator strongly encouraged me to reapply for my bed and breakfast permit after being denied 8 years ago in 2006. Megan at the planning department told me that less than two percent of CUP have been denied lately. The building administrator let me know that we had an entirely new planning and zoning commission since my application in 2006, and that none of them were friends of Mr. Mulligan and that none of them were his cronies from the Elks Club. (as in 2006) I was also led to believe that I would not be discriminated against this time.

Ms. Koutchak states that "one of the oldest doctrines of the law is called the unclean hands doctrine." She states that you "may not receive equitable relief unless you are innocent of wrongdoing and unfair conduct relating to the subject matter of his/her claim."

Ms. Koutchak is using the unclean hands "label". I believe she is deliberately creating a prejudice and is purposely smearing my request. She is using the "unclean hands doctrine", as if I have been convicted in a court of law. Every definition of this doctrine, I can find, relates to a Court of Law, not a "tribunal" as she inserts to the definition, in her memorandum. Last time I checked, I was not going in front of a judge and jury, but asking for a CUP. (See attached Exhibit C.)

I purchased my home in 2004. I introduced myself to my new neighbor, Mr. Mulligan. Upon finding out that I was a charter fisherman, he stated to me, "You are a disease and need to be wiped off the face of the planet." Since that date he has defamed my character with neighbors, local business owners, harbor users and members of the Elks Club. (Some of whom are my friends and just listen to him rant rather than argue with him.)

He stares and glares at me and my girlfriend, he photographs us from his bedroom window, and engages in intimidating behavior on a regular basis. On the basis of unclean hands, it is Mr. Mulligan who should not

recieve equitable relief in his claim. He is not lord of the driveway, and we have never created a disturbance in our neighborhood.

I would like to add that there is another term in law called "first point of wrong doing". In trying to determine who's right in a "he said/she said" game, it is clear that the first point of wrong doing was Mr. Mulligan when he told me, upon meeting him, that I was a disease.

Ms. Koutchak states that "For the Planning commission now to consider granting a CUP no matter what the conditions might be attached, would be against the code and public policy. It would also expose CBS and Jardine to a potential successful lawsuit by Mulligan. Past Commissions have found quite succinctly that 1) the request crosses an easment owed by a person who opposes it."

The easement is a shared driveway easement between three home owners. Mr. Mulligan is simply the servient estate. We all share the maintenance costs of our shared driveway. There is no other power awarded to Mr. Mulligan by being the servient estate. Ms. Koutchak also states that " 2) traffic, noise and parking cannot be mitigated." As mentioned before, in the past ten years, our property has not been the subject of any traffic, noise or parking complaints. The only neighbor in opposition of this CUP is Mr. Mulligan. The majority of the pictures he provides were from a family BBQ at the neighbors house, 8 or so years ago. We were not a party to that BBQ. We fail to see how pictures of a neighbors party 8 years ago, has anything to do with our request for a CUP. We have adequate parking, we are peaceable neighbors, we have the right to use our driveway.

Ms. Koutchak explaines that "there is already one B&B in this small area, constitutes a burden on the servient estate which this Commission and the planning department has heard loud and clear for many years. Mulligan has a right to a safe, quiet, and peaceable enjoyment of his property by law and he has a right to demand that the City and Borough of Sitka enforce their code."

We all know that Mr. Mulligan is "loud and clear." Currently there are no denisty laws for Bed and Breakfast's in Sitka, and I hope that the Commission can see that this is just one more way Mr. Mulligan is trying to "wipe out the disease" of charter fishermen. With all the complaints of traffic, and noise, it is unclear to me why he never called the police department on me! And if he felt that there was an "abuse of an easment", how come he never sued me? Perhaps the answer is because we have never been loud, we have never abused the easment, and we are quiet and peaceful neighbors. Just like Mr. Mulligan, we would like the quiet and peaceful enjoyment of our estate, and the ability to conduct our affairs with the dignity of privacy.

I would hope that the legal department and administrator support our rights as well, not just that of Mr. Mulligan.

Brian Jardine



Exhibit "A"

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**SUPPORTS LETTING CORPORATIONS DENY FEMALE EMPLOYEES BIRTH CONTROL COVERAGE**  
- Alaska Family Action Senate Candidate Survey, 6/30/14

**GET THE FACTS >>**

FABE: ALEXA ASHANG FOR BLOOM

FindLaw Caselaw Cases Annotated LABRENZ v. BURNETT

# LABRENZ v. BURNETT

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Font size: A A Reset

## Supreme Court of Alaska.

**Jeffrey LABRENZ, Appellant, v. Shane BURNETT and Jill Burnett, Appellees.**

**No. S-12770.**

**Decided: October 16, 2009**

Before: FABE, Chief Justice, EASTAUGH, CARPENETI, WINFREE, and CHRISTEN, Justices. Robert A. Sparks, Law Office of Robert A. Sparks, Fairbanks, for Appellant. William R. Satterberg, Jr., Law Offices of William R. Satterberg, Jr., Fairbanks, for Appellees.

### OPINION

#### I. INTRODUCTION

This appeal addresses a dispute between Jeffrey Labrenz and Shane and Jill Burnett over the use of land described in an easement. Labrenz has a driveway easement over the Burnetts' land, and in building his driveway, Labrenz installed decorative rocks, shrubs, trees, a fence, and a gate on the Burnetts' property. The superior court agreed with Labrenz that the slope of the Burnetts' land necessitated certain efforts to control erosion, but it found that many of Labrenz's improvements to the driveway easement were cosmetic in nature and ordered that they be removed. In addition, the superior court ordered Labrenz to move the fence and gate onto his own property. The superior court also permitted the Burnetts to use the easement to build a driveway to access the lower portion of their lot.

On appeal, Labrenz challenges the superior court's findings of fact as clearly erroneous and argues that his easement improvements were allowed under theories of contract and estoppel. He also contends that all of his improvements were reasonably necessary to protect his driveway from erosion and vandals. Because the evidence at trial supported the superior court's findings and the superior court's legal conclusions were not erroneous, we affirm the superior court's decision in all respects.

#### II. FACTS AND PROCEEDINGS

##### A. Facts

Jeffrey Labrenz and Shane and Jill Burnett own adjacent lots in the Sherwood Forrest Subdivision on Chena Ridge in Fairbanks. Lot 13A is owned by Labrenz, who also has an access easement over the lower portion of Lot 14A, owned by the Burnetts. Before the Burnetts owned Lot 14A, it was owned by Jeremy Riddle. The initial easement over Lot 14A was a thirty-foot-wide strip that was positioned during development of the subdivision by driving a bulldozer "along a path that was estimated, by eye, to be adequate for automobiles" to access Labrenz's property, Lot 13A.

Labrenz installed a driveway across Lot 14A to his property, and in the process, excavated outside of the driveway easement boundaries on Lot 14A. After it became apparent that Labrenz had over-excavated his easement, he and Riddle agreed on a replat of their adjoining lots, which was completed on May 4, 2004. Labrenz gave up a small portion of his lot in order to enlarge the easement area. In May 2004 Riddle sold Lot 14A to the Burnetts.

In addition to excavating his driveway easement in a manner that provided erosion controls, Labrenz landscaped it with light-colored rocks, shrubs, and spruce trees. Labrenz also placed a wire fence and gate on the easement, with a portion of the fence extending outside the easement on the Burnetts' property. The Burnetts objected to Labrenz's landscaping choices and the placement of the fence and gate on their property

**DID NOTHING, AS ATTORNEY GENERAL, TO PROTECT WOMEN IN THE MILITARY FROM SEXUAL ASSAULT**

**GET THE FACTS >>**

FABE: ALEXA ASHANG FOR BLOOM

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**SUPPORTS LETTING YOUR BOSS RESTRICT ACCESS TO BIRTH CONTROL**  
- Alaska Family Action Senate Candidate Survey, 6/30/14

**GET THE FACTS >>**

FABE: ALEXA ASHANG FOR BLOOM

### SSDI Benefits - File a Claim

File a claim for Social Security Disability Insurance (SSDI) benefits. Read the Social Security Administration's (SSA) instructions.

### Need a New Take on the Nine?

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EXHIBIT A

and requested that they be removed. Labrenz refused and replaced the wire fence with a white vinyl fence after he was sued by the Burnetts.

#### B. Proceedings

In June 2005 Shane Burnett filed suit against Labrenz, claiming that Labrenz had made use of the Burnetts' land in excess of Labrenz's rights under the easement. Specifically, Burnett alleged that Labrenz had trespassed on the Burnetts' property by making use of a wider strip of land than the easement allowed and "wasting the property." In August 2005 Burnett requested that the superior court issue an order requiring the removal of the improvements that Labrenz had made to the easement and enjoining Labrenz from making any further improvements. In late October 2005, the superior court denied Burnett's motion for a preliminary injunction requiring removal of the improvements. Jill Burnett was added as a plaintiff in December of that year. In March 2006 the superior court ruled that the Burnetts could only assert claims that had been available to Riddle, the former owner who originally granted the easement to Labrenz.

The case went to trial on October 26, 2006. Labrenz argued that all of the landscaping was necessary to protect his driveway from erosion. He also claimed that the fence and gate were necessary to protect his driveway from vandalism by snow-machiners and four-wheelers who might come on the property and destroy the driveway. The Burnetts argued that Labrenz had landscaped the easement area of Lot 14A to match Labrenz's own landscaping so that it would look like Labrenz's property and contended that the light-colored rocks and shrubs were decorative in nature. The Burnetts further maintained that to the extent the rocks and plants protected against erosion, other less obtrusive options such as "hardy grass" were available. Riddle testified that he had never approved Labrenz's rocks and shrubs and that he believed Labrenz's gate and fence were temporary. The surveyor of the replat testified that the purpose of the replat was to accommodate the improvements Labrenz had installed on the easement.

At the conclusion of the trial, the superior court made oral findings, determining that while "there has got to be some erosion control" to prevent against runoff, the light-colored rocks bordering the driveway were "more for the decorative beauty of the landscaping." Though the superior court acknowledged that the threat of erosion presented a "serious issue," it found that the threat of vandalism was not "a realistic problem" and ordered the fence and gate to be moved onto Labrenz's property. It took under advisement the question whether the rocks and shrubs would have to be removed and replaced with other plantings to control erosion.

The superior court issued supplemental written findings and concluded that the rocks, shrubs, and trees were primarily decorative in nature and that the nature of the landscaping was not reasonable or necessary under the circumstances. The superior court ordered Labrenz to remove the shrubs, after which the Burnetts could landscape the easement "as they see fit." The superior court confirmed its earlier ruling that the fence and gate were to be moved onto Labrenz's property. Finally, the superior court ruled that the Burnetts would be permitted to use Labrenz's easement to access their own property, though the superior court warned that should the Burnetts damage Labrenz's driveway in developing their own access, they would be fully responsible for the damage.

Labrenz requested a new trial and clarification of the superior court's decision, as well as a stay of its order. The superior court denied both Labrenz's motion for a stay of judgment and his request for a new trial, but it issued a supplemental order addressing his request for clarification. It explained that improvements within the easement area must be reasonably related to the easement's purpose—that of a driveway. The superior court found that the decorative rocks, decorative shrubs, gate, and fencing placed on the easement were not reasonably related to the essential functions of the driveway and thus should be removed. Labrenz appeals.

#### III. STANDARD OF REVIEW

We review the superior court's factual findings under the clearly erroneous standard and will disturb those findings only "when we are left with a definite and firm conviction on the entire record that a mistake has been made." We review the superior court's legal conclusions de novo.

#### IV. DISCUSSION

##### A. The Superior Court Did Not Err in Finding That There Was No Express or Implied Contractual Agreement To Allow Labrenz's Rocks, Shrubs, Gate, and Fence.

Labrenz first argues that the superior court's findings are clearly erroneous "because the Burnetts are bound by the agreement reached between Labrenz and [Riddle] to expand the driveway easement to protect [Labrenz's] improvements." The parties stipulated to the admission of a written statement from the surveyor who conducted the replat of Lots 13A and 14A, rather than calling him as a witness. Labrenz relies on the surveyor's proffered testimony that

Mr. Riddle knew of Mr. Labrenz's gate/fence, plantings, rock and improvements in the easement area and the purpose of the agreement for the replat was to accommodate the improvements that [Labrenz] had installed in the access easement area; and that [Labrenz] paid for part of the replat costs.

Exhibit  
"A"

Labrenz argues that this testimony conclusively "establishes that Riddle knew of [Labrenz's] improvements in the easement" and "that a purpose of the agreement between Riddle and [Labrenz] for the replat was to accommodate or protect the improvements that [Labrenz] had installed in the access easement area." Yet as the Burnetts persuasively argue, the "intent of the parties regarding the extent of protection granted by the replat can best be determined by the testimony" of Riddle and Labrenz. The Burnetts concede that at the time of the replat, Riddle knew of Labrenz's improvements in the easement, but they highlight Riddle's testimony that he believed that Labrenz's gate and fence were temporary and that he never gave Labrenz approval for the rocks and shrubs.

Labrenz maintains that by entering into a stipulation that the superior court could consider the surveyor's written statement, the Burnetts "removed the trial court's ability to assess demeanor and determine credibility and they should be bound by their stipulation." But an exchange at trial reveals that the stipulation reflected only an agreement as to what the surveyor would say if called to the stand. When questioned by the superior court about admitting the surveyor's written statement by stipulation, the Burnetts' attorney responded, "obviously we'll argue [but] we are acknowledging that [is] his testimony."

The superior court heard evidence that the replat was not intended to approve all of Labrenz's improvements to the easement. Riddle testified that he had never approved Labrenz's rocks and shrubs and that he knew of Labrenz's gate and fence but believed that they were temporary. Thus the superior court's finding that there was no express agreement to allow Labrenz's decorative improvements, gate, and fence was not clearly erroneous.

Labrenz also argues that the replat amounted to an implied contract to protect his easement improvements. Labrenz relies on *Cluff v. Nana-Marriott*, in which we recognized that "[t]he existence of an implied contract must be determined by considering all the factors in light of the surrounding circumstances." Labrenz argues that "the actions of the parties . . . clearly demonstrate[ ] that the purpose of the replat was to protect the improvements installed in the easement." He also points to the fact that Riddle "never objected to any of [the] improvements, including the ditch-rock or shrubs." But under Alaska law, an implied contract "exists only when there is mutual assent between parties." : As we have observed, an implied contract "arises where the court finds from the surrounding facts and circumstances that the parties intended to make a contract but failed to articulate their promises." : In such a case, "the court merely implies what it feels the parties really intended." : Although Labrenz testified that he "assumed that he paid for the replat for the expansion of the driveway easement to protect all of his improvements," the superior court also heard testimony from Riddle explaining his understanding that Labrenz's gate and fence were temporary and that he never gave Labrenz approval for the rocks and shrubs. Given the conflict in the evidence regarding the intent of the parties, the superior court did not err in declining to find an implied contract between Labrenz and Riddle to protect all of Labrenz's improvements to the driveway easement.

#### B. The Superior Court Did Not Err When It Refused To Apply the Doctrine of Estoppel Against the Burnetts.

Labrenz next argues that the superior court's findings are inadequate "because they fail to [include] any findings concerning Labrenz's position that [the] Burnetts['] proposed actions were barred by quasi or equitable estoppel." Labrenz contends that the doctrine of quasi or equitable estoppel should be applied against the Burnetts because Riddle's failure "to object to the improvements he admit[ted] he knew were installed in the easement" created a situation where Labrenz "reasonably believe[d] that the replat was being performed to protect [his] improvements." Labrenz claims that he reasonably relied on "Riddle's silence and lack of objection" to his detriment and that he "paid thousands of dollars for a replat that [he] reasonably believed was intended to protect his improvements."

Quasi estoppel "precludes a party from taking a position inconsistent with one he has previously taken where circumstances render assertion of the second position unconscionable," - while "[e]quitable estoppel results from an assertion of a position, expressly or by implication, which is reasonably relied on by the opposing party to his detriment." - As discussed above, the superior court heard testimony from Riddle that he believed that Labrenz's gate and fence were temporary and that he never gave Labrenz approval for the rocks and shrubs. And as the Burnetts point out, the purpose of the replat "was not to allow Labrenz to landscape [the] Burnett [s'] property to Labrenz's liking, but was rather to cure a previously unauthorized encroachment onto [the] Burnett[s'] property." Thus, the superior court did not err when it declined to rule that the Burnetts' requested relief was barred by the doctrine of quasi or equitable estoppel.

#### C. The Superior Court Did Not Err in Finding That Some of Labrenz's Easement Improvements Were Not Reasonable and Necessary To Protect Labrenz's Driveway.

The superior court recognized the steep nature of the land in question and found that reasonable use of Labrenz's easement could include back-sloping to aid in channeling water and runoff, as well as installation of minimal rocks or plants to achieve additional water control. But the superior court found that the light-colored landscaping rocks, decorative shrubs, and white vinyl fence were not a reasonable use of the easement on the Burnetts' land. The superior court found that the primary purpose of the rocks and shrubs was decorative and that less intrusive means were available to help with erosion prevention. Labrenz challenges

Exhibit A

the superior court's factual findings that some of his improvements were not reasonable and necessary to protect the driveway.

1. The superior court's oral findings did not contradict its written findings.

Labrenz first argues that the superior court's findings are clearly erroneous because its "oral findings directly contradict [its] written findings." But a review of the superior court's oral and written findings reveals that they are not contradictory. The superior court made oral findings at the conclusion of the trial, recognizing that although Labrenz was responsible for "some really excellent landscaping" and "there has got to be some erosion control," the rocks placed by Labrenz along the driveway's border "may not have runoff implications" and were "more for the decorative beauty of the landscaping." The superior court then indicated that it was not yet prepared to require the removal of the rocks and shrubs and that it "want[ed] to think about that a little more."

In its written findings, the superior court again recognized the steep nature of the land in question and found that reasonable use of Labrenz's easement could include back-sloping to aid in channeling water and runoff, as well as installation of some rock and plantings for water control purposes. But the superior court found that installing light-colored landscaping rocks, decorative shrubs, and white vinyl fence was not a reasonable use of the easement on the Burnetts' land because they were primarily decorative in nature. The superior court's written findings thus did not contradict but rather supplemented its oral findings and explained them in more detail.

2. The superior court's findings that some of Labrenz's improvements were primarily decorative in nature and thus not reasonable and necessary to the easement were supported by the evidence.

Labrenz next argues that the superior court erred because it ordered the removal of the rocks and shrubbery as primarily decorative despite its finding "that the rock and shrubs are a reasonable manner of erosion control." Labrenz relies on our decision in *Simon v. State*, where we considered a landowner's challenge to the State's relocation of a highway within a right-of-way. . . We concluded that as long as the State's changes were reasonably necessary to improve the highway, the statutory easement allowed the State to relocate the highway anywhere within 150 feet of the centerline of the original roadway. . . . Pointing to his own testimony that the purpose of the rocks and shrubs installed was to prevent erosion, Labrenz argues that like the improvements in *Simon*, his improvements were reasonably necessary.

Yet a careful reading of the case cited by Labrenz reveals that his improvements to the driveway easement are not supported by our decisions. Where specific parameters, including the length and width of an easement have been expressly set forth, "the easement is specific and definite." . . . In such a case "[t]he expressed terms of the grant or reservation are controlling . . . and consideration of what may be necessary or reasonable to the present use of the dominant estate are not controlling." . . . The plain meaning of the subdivision map of the property unambiguously describes the original thirty-foot easement, and the plain language of the replat states that it is "for [a] driveway to Lot 13A." But there are no provisions in the replat for a permanent fence, a permanent gate, or other improvements that are not necessary to the existence of a driveway. . . .

As the holder of the easement, Labrenz "may make unlimited reasonable use of the easement." . . . But Labrenz is only entitled to use the Burnetts' property "in a manner that is reasonably necessary for the convenient enjoyment of the servitude," . . . or, as the superior court framed the issue, to make "improvements within the easement area [that are] reasonably related to the easement purpose: that of a driveway."

Labrenz claims that the "Burnetts' objections that the improvements make the property look like it is part of [Labrenz's] lot, without any evidence showing the improvements are unnecessary or unreasonable, cannot trump reasonable necessity." Given the steep nature of the land, it was reasonable for Labrenz to include features to control the threat of erosion. . . . But Labrenz was not entitled to interfere unreasonably with the Burnetts' enjoyment of their own property. . . . As the Restatement recognizes, in determining "what constitutes unreasonable interference with the enjoyment of the servient estate, aesthetic considerations may be relevant." . . .

The superior court heard evidence showing that certain aspects of Labrenz's landscaping were decorative in nature and thus not "reasonably related to the essential functions of [Labrenz's] driveway." Labrenz claimed that the rocks and shrubs on his driveway were necessary to prevent erosion. Yet Shane Burnett testified that other houses in the neighborhood use grass to control erosion on hillsides steeper than the property in question, and the superior court also heard testimony by Riddle that erosion on the hillside could be controlled using grasses. Thus, the superior court did not err in finding that some of Labrenz's easement improvements were not reasonable and necessary to protect Labrenz's driveway.

3. The superior court did not fail to sufficiently explain its reasoning as required by Alaska Civil Rule 52.

Labrenz also challenges the findings on the ground that the superior court did not explain its reasoning sufficiently as required by Alaska Civil Rule 52. In *Sullivan v. Subramanian* we explained the superior court's duty under Rule 52(a):



Exhibit  
"A"

[T]he trial court had a duty . . . to find the facts specially and state separately its conclusions of law thereon. This rule required the court to deal adequately with and state with clarity what it finds as facts and what it holds as conclusions of law. The findings and conclusions should be so clear and explicit as to give the Supreme Court a clear understanding of the basis for the decision made.[19]

In this case, the superior court's findings are quite detailed and allow for meaningful appellate review. The superior court did not disregard Labrenz's testimony as Labrenz claims but rather did not agree with Labrenz's version of events or his legal arguments. For example, the superior court found that it was not Riddle's intent to approve all of Labrenz's improvements and subsequently bind the Burnetts, relying on Riddle's testimony that he only became aware of Labrenz's improvements after they were completed, that he believed that Labrenz's gate and fence were temporary, and that he never gave Labrenz approval for the rocks and shrubs. In addition, the superior court found that the rocks and shrubs were decorative in nature and not reasonably necessary for the easement purpose after it heard the testimony of the Burnetts and Riddle and conducted a site visit. The superior court's written order provides citations to the trial transcript after each of its findings. The findings of the superior court also addressed and resolved all critical issues and claims of the case and are therefore sufficiently detailed under Civil Rule 52(a).

4. The superior court's finding that there was not a significant threat of vandalism to Labrenz's property is supported by the testimony at trial.

In finding that Labrenz must move his gate and fence off of the Burnetts' property, the superior court acknowledged that there is "always that risk" of damage from vandals and that Labrenz's desire to protect his property was understandable. Yet the superior court found that Labrenz could effectively protect his property simply by moving the gate to his property line.

Labrenz argues that the superior court's finding that there is no current risk of vandalism that would justify Labrenz's fence and gate on the Burnetts' property as being reasonably necessary is clearly erroneous because the finding "[was] not based on evidence admitted at the trial." Labrenz claims that the superior court based its finding on "personal knowledge of the character and history of the subdivision" and that this "undisclosed prior knowledge of the character of the area in question" calls its conclusions into question. Labrenz also contends that the superior court's finding is "contrary to the evidence admitted at trial," including Labrenz's own testimony that he observed damage left by trespassers and that neighbors had called to warn him about vandals on snow-machines and four-wheelers.

In its findings, the superior court addressed Labrenz's concerns about vandals and noted that previous vandalism had been in a lower area of the subdivision. But the trial court also noted a decline in the use of motorized vehicles in the area. Any knowledge that the superior court had of the area was not dispositive as other witnesses testified that there had not been any problems with trespassers vandalizing the property in the past. Thus, the superior court's findings were not "contrary to the evidence admitted at trial"; rather the superior court was simply not persuaded by Labrenz's testimony.

D. The Superior Court Did Not Err in Finding That the Burnetts Are Allowed To Use the Easement To Access the Bottom Part of Their Property.

The superior court found that the Burnetts have a right to make reasonable use of the driveway easement on their land. Labrenz argues that the superior court failed to address whether the Burnetts' plan "to construct a new driveway[ ] is reasonable under the circumstances." Labrenz also argues that the "Burnetts' construction of a new driveway into lot 14A through the easement is a violation of the [replat] agreement between Labrenz and Riddle." Yet the Burnetts persuasively argue that their construction of a new driveway to access the lower portion of their lot is not a violation of the replat agreement because "nothing in the replat revokes [their] right to access their property, including the easement." Furthermore, "[t]he owner of the servient estate may utilize the easement area in any manner and for any purpose that does not unreasonably interfere with the rights of the easement holder." . . .

The superior court heard testimony from Shane Burnett that he would like to access the lower portion of his lot but that the slope of the land makes it difficult to reach the lower portion from his existing driveway. The superior court also heard testimony and visited the property, and it determined that the Burnetts' plan for a second driveway to access a different part of their lot was reasonable and was not precluded by the replat agreement. . . . Its findings are not clearly erroneous.

E. The Superior Court Showed No Bias Against Labrenz.

After the superior court issued its supplemental written findings in May 2007, Labrenz requested a new trial and sought clarification of the superior court's decision. The superior court then issued a supplemental order regarding Labrenz's request for clarification, stating:

[Labrenz's] own unreasonable stance has led him to this situation. Despite being given a practical and equitable opportunity to remove and salvage the plants and landscaping materials at issue, he chose to continue flogging the poor expired beast before this court. [Labrenz's] energies would be better put to use in

determining how he might best reuse the materials previously consigned to this driveway, rather than besting [the Burnetts].

Labrenz claims that the superior court "expressed animosity" toward him, "demonstrat[ing a] deep commitment to the Burnetts' view of the facts." Labrenz also characterizes the superior court's remarks as an "unjustifiable, angry diatribe." Labrenz cites to the Alaska Code of Judicial Conduct ... and Ogden v. Ogden, where we remarked that appearance of impropriety is defined "by an objective standard—one that asks not whether a judicial officer displayed actual bias but whether the conduct would create in reasonable minds a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality and competence is impaired." ... But as we have repeatedly cautioned, "judicial bias should not be inferred merely from adverse rulings." ... The record does not reveal any improper actions or bias on the part of the superior court that would require us to remand the case to a different judge as Labrenz requests.

#### V. CONCLUSION

Because a number of Labrenz's easement improvements were not reasonably necessary to protect his driveway from erosion and vandals and because the Burnetts are legally entitled to use the easement on their property, we AFFIRM the judgment of the superior court in all respects.

#### FOOTNOTES

1. Martens v. Metzgar, 591 P.2d 541, 544 (Alaska 1979).
2. E.A. v. State, Div. of Family & Youth Servs., 46 P.3d 986, 989 (Alaska 2002).
3. 892 P.2d 164, 171 (Alaska 1965).
4. Altman v. Alaska Truss & Mfg. Co., 677 P.2d 1215, 1226 (Alaska 1983).
5. Martens v. Metzgar, 524 P.2d 666, 672 (Alaska 1974) (quoting Hill v. Waxberg, 237 F.2d 936, 939 (9th Cir.1956)).
6. Id. (quoting Hill, 237 F.2d at 937).
7. Dressel v. Weeks, 779 P.2d 324, 329 (Alaska 1989) (alteration and internal quotation marks omitted).
8. Krize v. Krize, 145 P.3d 481, 486 n. 19 (Alaska 2006) (internal quotation marks omitted).
9. 996 P.2d 1211, 1212 (Alaska 2000).
10. Id. at 1213.
11. Andersen v. Edwards, 625 P.2d 282, 286 (Alaska 1981) (internal quotation marks omitted).
12. Id. (internal quotation marks omitted).
13. See Kennedy v. Bodi, Mem. Op. & J. No. 3934, 1991 WL 11657237, at \*3 (Alaska, July 17, 1991) ("Because we find that the plain language of Plat 85-40 does not contemplate use of the easement for an above-ground cable such as the Bodis', we believe that the cable constitutes an unreasonable use of the easement.").
14. Id. at \*2 (citing Andersen, 625 P.2d at 286).
15. Restatement (Third) of Prop.: Servitudes § 4.10 (2000).
16. See id. § 4.10 cmt. d ("The first step in determining whether the holder of an easement is entitled to make a particular use challenged by the owner of the servient estate is to determine whether the use falls within the purposes for which the servitude was created.").
17. See id. § 4.10 cmt. h ("[T]he easement holder may not use it in such a way as to interfere unreasonably with enjoyment of the servient estate. What constitutes unreasonable interference will depend largely on the circumstances, particularly the purpose for which the servitude was created and the use of the servient estate made or reasonably contemplated at the time the easement was created.").
18. Id.
19. 2 P.3d 66, 69 (Alaska 2000) (internal quotation marks omitted). In Mapco Express, Inc. v. Faulk, 24 P.3d 531, 538-39 (Alaska 2001), we remarked that "[t]wo major principles emerge from our past decisions concerning Civil Rule 52(a). A trial court's findings are sufficiently 'clear and explicit' if they (i) allow for meaningful appellate review and (ii) resolve all critical issues and disputes between the parties."
20. Jon W. Bruce & James W. Ely, Jr., The Law of Easements and Licenses in Land § 8.20, at 8-60 (2009); accord 7 Thompson on Real Property § 60.04(b)(1) (David A. Thomas ed., 2d ed.2006).

Exhibit  
"A"

Exhibit  
A



21. The superior court instructed the Burnetts that if they develop a driveway that uses Labrenz's easement, they will be responsible for ensuring that the development reasonably protects Labrenz's driveway. The Burnetts concede that should they choose to develop their new driveway "in a manner outside of the court's instructions, Labrenz would then have a possible unreasonable interference or waste claim."

22. Alaska Code of Judicial Conduct Canon 2(A) states that "[i]n all activities, a judge shall . avoid impropriety and the appearance of impropriety, and act in a manner that promotes public confidence in the integrity and the impartiality of the judiciary."

23. 39 P.3d 513, 516 (Alaska 2001) (emphasis and internal quotation marks omitted).

24. Tillmon v. Tillmon, 189 P.3d 1022, 1027 n. 13 (Alaska 2008); see also DeNardo v. Maassen, 200 P.3d 305, 311 (Alaska 2009) ("Our past holdings demonstrate that neither interpretations of the law nor adverse rulings alone are sufficient to require recusal." (footnotes omitted)); Wasserman v. Bartholomew, 38 P.3d 1162, 1171 (Alaska 2002) ("Disqualification was never intended to enable a discontented litigant to oust a judge because of adverse rulings made." (internal quotation marks omitted)); Pride v. Harris, 882 P.2d 381, 385 (Alaska 1994) ("Indeed, every judge, when he hears a case or writes an opinion must form an opinion on the merits and often an opinion relative to the parties involved. But this does not mean that the judge has a personal bias or prejudice." (alterations and internal quotation marks omitted)).

FABE, Chief Justice.

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Exhibit B

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## PRICE v. EASTHAM

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### Supreme Court of Alaska.

**Thomas E. PRICE, Jr., Appellant, v. Mike EASTHAM, Veldon "Spud" Dillon, Lorraine Templeton, Bruce Turkington, Lee Krumm, La Velle Dillon, Bob Fenex, Carol Fenex, Bruce Willard, Linda Willard, Butch Bullard, Gordon Grebe, Diane Grebe, Eric Overson, Sam Matthews, Nancy Matthews, Ray Kranich, Eilene Wythe, Jack Alexander, Sue Alexander, Rick Alexander, Reed Alexander, Dave Sanders, Shirley Sanders, Greg McCullough, Lloyd Moore, Penny Moore, Tammy Hagan, Chuck Hagan, Kate Mitchell, Ben Mitchell, Ronnie Morrison, Barb Hrenchir, Mike Hrenchir, Gus Weber, Rita Weber, Bob Simcoe, Mark Jacobs, Barb Jacobs, Sharon Thompson, Rick Thompson, Fred Thompson, Connie Thompson, Mike Devaney, Rick Anderson, Dave Weber, Mark Robl, Terry Robl, Toras Fisk, Dave Boone, Marasha Boone, George Eschin, Jim Bills, Mike O'Malley, Joe O'Malley, Bill Markel, Gordon Berg, Floyd Newkirk, Karl Horst, Robert Pelky, Robert Plymire, Don Blackwell, Valda Ziemelis, Randy Whitehorn, Connie Whitehorn, Willie Bishop, Hans Albertson, Bill Sampson, Mike Arno, Allen Englebretson, Rodney McLay, Jim Spencer, Jimmy Spencer, Joe Wright, Jason Kinnard, Amy Kinnard, Sam Wright, Paul Budge, Brian Bellamy, Rick Wise, Nathan Wise, John Wise, Jacob Wise, Marty Wise, Jake Ellyson, Carol Ellyson, Bill Sheldon, Leroy Cahana, Sr., Doris Cabana, Larry Cabana, Dawn Cabana, and Scott Connelly, Appellees.**

No. S-11647.

Decided: February 3, 2006

Before: BRYNER, Chief Justice, MATTHEWS, EASTAUGH, FABE, and CARPENETI, Justices. Thomas E. Price, Jr., pro se. Michael Hough, Homer, for Appellees.

### OPINION

#### I. INTRODUCTION

In *Price v. Eastham* (*Price I*), we held that a public prescriptive easement had been established and remanded the case to the superior court for a determination of the easement's scope. In *Price I*, we discussed the question of scope in some detail, remarking that "[c]ourts have restricted the scope of prescriptive easements significantly to limit the burden on the servient estate" and suggesting that the superior court was "free to impose restrictions upon the easement consistent with the Restatement (Third) [of Property: Servitudes], including . . . limiting use to certain seasons, prescribing the width of the easement, and specifying the precise uses that may be made of the easement."

Upon remand, the superior court issued an order stating that the easement was to be sixteen feet in width and including a corresponding legal description. Because the order does not satisfy Alaska Rule of Civil Procedure 52(a) and therefore does not permit meaningful review, we remand for a determination of the precise scope of the easement in light of this opinion. We additionally affirm the superior court's refusal to condition the scope of the easement upon approval of a modification to Price's Farm Conservation Plan.

#### II. FACTS AND PROCEEDINGS

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Exhibit  
B

This case concerns the scope of an easement along a seismic trail crossing the property of Thomas E. Price. The trail was used without incident for many years (since at least 1956) until the late 1990s when trail traffic increased to the point of interfering with Price's quiet enjoyment of his land. Price posted the trail with "No Trespassing" signs in the winter of 1998-99. He replaced the signs each time unknown persons removed them. A group of snowmachine drivers eventually sued Price to settle the dispute.<sup>5</sup>

In its February 9, 2000 decision, the superior court found that a right-of-way existed under 43 U.S.C. § 932, Revised Statute (RS) 2477 and, in the alternative, that a prescriptive easement existed over Price's property.<sup>6</sup> The RS 2477 issue had not been raised by the parties at trial.<sup>7</sup> Regarding the scope of the RS 2477 right-of-way, the superior court stated only the general direction of the trail; clarified that it may be used for any purpose consistent with public travel; and declared its width to be "that width established by the traditional use of the trail, but in no place is the right of way narrower than is safe for two snowmachines to pass each other, nor wider than the original width of the seismic trail."<sup>8</sup>

In Price I, we held that the superior court's failure to give the parties notice and an opportunity to be heard at trial on the RS 2477 issue violated due process rights and we therefore reversed the superior court's finding of an RS 2477 right-of-way.<sup>9</sup> But we concluded that a public prescriptive easement had been established over Price's property.<sup>10</sup> Since the only relevant discussion of the easement's scope by the superior court concerned the RS 2477 right-of-way, we remanded the case to the trial court to establish the scope of the prescriptive easement.<sup>11</sup> In so doing, we cited to sections 4.1 and 4.10 of the Restatement (Third) of Property: Servitudes, discussed the range of relevant factors, and provided case law to guide the inquiry upon remand.<sup>12</sup>

After the hearing on remand, the superior court issued an order consisting of a single sentence stating that the easement was to be sixteen feet wide and containing a legal description of its general direction including the start and end points. Price now appeals.

### III. DISCUSSION

The most important of Price's arguments on appeal is his complaint that the trial court failed to comply with the requirement of Civil Rule 52(a) that the superior court's order contain specific findings of fact and conclusions of law to permit meaningful review.<sup>13</sup> A superior court's findings are sufficiently "clear and explicit" to satisfy Civil Rule 52(a) if they resolve all critical areas of dispute in the case and are sufficiently detailed to allow for meaningful appellate review.<sup>14</sup> In particular, the superior court must provide findings sufficient to give a clear understanding of the grounds upon which it reached its decision.<sup>15</sup>

In our conclusion in Price I, we suggested that the superior court was "free to impose restrictions on the easement consistent with the Restatement (Third) and this decision, including, for example, limiting use to certain seasons, prescribing the width of the easement, and specifying the precise use that may be made of the easement."<sup>16</sup> The order issued by the superior court makes no reference to any limitations to be placed on the easement nor does it explain its reasoning in these terms.

Appellees argue that a common sense reading of the record supports the superior court's order and that a "precise" delineation of the easement was in fact provided by the superior court in its provisions as to width and length of the easement. But in Price I we provided guidance on the types of limitations to be considered by the superior court. Unfortunately, the conclusory nature of the superior court's finding is insufficient for us to determine whether the superior court meaningfully considered restrictions on the easement scope. Moreover, Price's evidentiary showing in the hearing on remand raises the question whether appellees are attempting to change the way they are using the easement. Because a change in the use of a prescriptive easement could significantly affect the scope of the easement, we now discuss the legal principles and types of facts required to determine whether appellees' present use of the trail is in line with the use that established the prescriptive easement in the first place.<sup>17</sup>

#### A. It Was Error for the Superior Court To Fail To Make Findings Sufficient To Allow Meaningful Review of its Reasoning Concerning the Precise Scope of the Easement.

In its decision of February 9, 2000, the superior court acknowledged the basic question that drives this case: what is the proper response when a public prescriptive easement is properly established by a relatively small number of people but is subsequently subject to a dramatic increase in the numbers of those who wish to use it?

This question implicates two separate inquiries: (1) how to delineate the scope of a prescriptive easement at the moment of perfection; and (2) whether a given change or expansion in the scope of that easement is permissible. The two inquiries are inseparable because the original scope of the easement must be fully understood before the second inquiry may begin. The second inquiry requires a comparison be made between the uses made of the easement when it was perfected and the proposed new use.<sup>18</sup>

In Price I, we provided guidance to the superior court on both inquiries.<sup>19</sup> We began by noting that "[b]ecause an easement directly affects ownership rights in the servient tenement, judicial delineation of the extent of an easement by prescription should be undertaken with great caution."<sup>20</sup> In citing this language, we echoed the

Regarding the first inquiry, the Restatement directs that a prescriptive easement's scope should be determined by the nature of the adverse use that led to its creation in the first place.<sup>21</sup> In *Price I*, we cited the Restatement provision stating that the focus of the inquiry should be placed on the servient estate owner's reasonable expectations.<sup>22</sup> In particular, the inquiry must consider what the servient estate owner "should reasonably have expected to lose by failing to interrupt the adverse use before the prescriptive period had run."<sup>23</sup>

Once the original use and purpose for which the easement was created is understood, the second inquiry begins. The second inquiry must compare the new uses to the old uses of the easement.<sup>24</sup> The comparison is undertaken to answer the question whether a new or challenged use of the easement falls within the purpose for which the easement was originally created.<sup>25</sup> In this inquiry, the Restatement urges courts to balance the interests of the servient and dominant estate holders as well as take conservation and neighborhood preservation concerns into account.<sup>26</sup> When a change in the use of a prescriptive easement is involved, the Restatement stresses caution, stating that the "degree of change permitted for a prescriptive easement is generally less than that for an expressly created easement."<sup>27</sup>

In making this second inquiry, the Restatement further notes that conflicts between the original and new uses frequently present factual issues as to "how broadly or narrowly the purpose should be defined, whether the proposed change is reasonably necessary, whether it is of the sort that should have been contemplated by the parties, how much damage or interference is likely to ensue, and whether it is reasonable."<sup>28</sup>

At the evidentiary hearing below and on appeal, *Price* has attempted to address these factors.<sup>29</sup> *Price's* main argument is that when compared with previous uses, the establishment of a parking lot and the sudden increase in snowmachines combined to create a use of the trail well outside of his reasonable expectations. In the hearing on remand, *Price* tried to present evidence concerning the establishment of a new parking lot near the trail. The superior court stopped *Price*, stating that the goal of the hearing was to determine the scope of the easement and, crucially, refused to consider the motivations of the appellants in changing the use of the easement. But the Restatement (Third) does direct the courts to include an inquiry into the motivations behind any change proposed by the easement holder in the use of the easement.<sup>30</sup>

*Price's* argument depends in large part on the date this easement was perfected. The emphasis in the inquiry is on whether the challenged use can be shown to have been conducted continuously for at least ten years. In this case, the ten-year period should be measured back ten years from the first attempt to block its use. Since *Price* posted the trail with "No Trespassing" signs in the winter of 1998-99, the date of perfection (in retrospect) is 1988-89. According to the two-step analysis of the Restatement, the superior court must first examine the uses of the easement made in 1988-89 and then proceed to compare them with later uses of the trail.

*Price's* argument therefore hinges on the factual inquiry as to whether the use of the trail changed dramatically in 1996. In the record before us, there is evidence to suggest a significant change in use. In its opinion of February 9, 2000, the superior court notes that evidence in the record suggests that the trail was used only occasionally for many years by a small number of people. It is uncontroverted that a parking lot was subsequently established in 1996 near the trailhead of the easement and a new trail linking the parking lot to the original trail was established soon thereafter. *Price* provides evidence to show that before the establishment of the parking lot, the public had used other trails to access the Caribou Hills development. *Price's* witness in the hearing on remand also expressed his opinion that the only reason the trail goes where it does is because of the new parking lot.

*Price* also complains that his estate is being unreasonably burdened by the present use of the trail. During the hearing on remand, the superior court first mistook *Price's* presentation of evidence showing increased use, erosion and environmental damage to his estate as an attempt to dispute the establishment of the easement and then questioned the relevance of his evidence on environmental erosion. But *Price's* evidence concerning environmental damage to his estate is germane to the issue of easement scope. The Restatement approach directs the courts to take conservation and neighborhood preservation concerns into account when balancing the interests of the dominant and servient estate holders.<sup>31</sup> *Price's* evidence of erosion damage occurring in recent years could also suggest that the change in use has been both significant and unexpected when compared to previous uses.

To address the Restatement's emphasis on the reasonable expectations of the landowner,<sup>32</sup> *Price* points out that he did not feel the need to dispute the use of the trail prior to 1998 precisely because that use was sporadic and did not interfere with his operations on the land. To forestall any argument that he sat on his rights with regard to this new use of the easement, *Price* also takes pains to point out that he protested the non-consensual increase in use of the trail (by posting "No Trespassing" signs) within two years of the establishment of the parking lot and well within the ten-year prescriptive period.

In short, *Price's* position is that the purpose for which the trail was expanded (and marked and groomed for the first time) after 1996 was to accommodate the increased traffic from the parking lot. He argues that this purpose is quite different from the purpose for which the original easement was established, that is, occasional

recreational use and access to three residences. He places particular emphasis on how the trail went from a normal trail to a "snowmachine superhighway" quite suddenly. Price's argument echoes the analysis in several cases in which an increase in intensity, frequency, and manner of use—particularly a sudden increase in traffic—on an easement due to circumstances beyond the reasonable expectations of the servient estate-owner was held to be impermissible.<sup>34</sup>

In response to Price's arguments, Eastham provides a list of people who over the last forty years have used the trail for various purposes, including for access to Caribou Lake residences as well as for recreational uses. But Eastham does not cite to evidence in the record that would demonstrate a lack of change in the type or intensity of use of the easement. Eastham also fails to argue or point to evidence supporting a conclusion that even if the uses are new, they are substantially similar to previous uses and, therefore, fall well within Price's expectations.<sup>35</sup>

On the other hand, Eastham does point to evidence concerning the variety of the trail's uses that go to the issue of seasonality as well as to evidence indicating the present width of the trail and industry standards concerning the width of snowmachine trails. In response to Price's argument that the snowmachiners can use a different trailhead, one that is in the process of being established by the Homer Soil and Water District, Eastham cites to evidence showing that the trail over Price's land leads to three other trails and allows access to different directions. Eastham uses this evidence to argue that the trail over Price's land is therefore distinct from and serves different purposes from the proposed trailhead. Eastham also refers us to evidence to show that this proposed trailhead is three miles away from the present parking lot and, as it is illegal to drive snowmachines along the road, is not useful to the snowmachiners.

It is of course the function of the superior court to judge witness credibility and weigh conflicting evidence.<sup>36</sup> If, as in this case, most of the evidence is oral testimony, or if the superior court's factual determinations depend largely on conflicting testimony, then the superior court's greater ability to assess witness credibility requires deferential review by this court.<sup>37</sup> But the superior court must nonetheless make its findings with sufficient specificity that we may review both the grounds for its decision and its application of the law to the facts.

We therefore remand the case for a determination of the scope of the easement in light of the analysis contained in sections 4.1 and 4.10 of the Restatement and our discussion in Price I. The analysis should also examine changes in the use of the easement since 1988–89. In undertaking this analysis, the superior court may, in its discretion, conduct additional evidentiary hearings concerning the changes in frequency, intensity, and manner of use of the easement.<sup>38</sup>

#### B. The Superior Court Did Not Err When It Refused To Condition the Scope of the Prescriptive Easement upon Approval of Appellees' Application for a Modification of Price's Farm Conservation Plan.

Price also argues that the superior court should have conditioned the use of the prescriptive easement on Eastham's first securing approval from the relevant regulatory authorities for a modification to Price's Farm Conservation Plan.<sup>39</sup> Eastham argues that this is a new argument and therefore impermissible upon appeal.

We have stated that we "will not consider on appeal new arguments which (1) depend on new or controverted facts; (2) are not closely related to appellant's arguments at trial; and (3) could not have been gleaned from the pleadings, unless the new issue raised establishes plain error."<sup>40</sup> On the other hand, we have also noted that the pleadings of pro se litigants should be held to less stringent standards than those of lawyers<sup>41</sup> and have explained that the briefs of pro se litigants are to be read "generously."<sup>42</sup>

In this case, Price did not make his Farm Conservation Plan argument at the trial court level or upon appeal in Price I and failed to raise this issue at the remand hearing after our decision in Price I. Thus, he has failed to preserve this claim on appeal.<sup>43</sup> Moreover, even if Price had mentioned this argument during the hearing on remand, his failure to raise the argument in Price I would still preclude him from raising the issue for the first time in this appeal.<sup>44</sup> As we have noted, an appeal "should narrow the issues in a case, not expand them."<sup>45</sup>

#### IV. CONCLUSION

The evidence presented in the record is well suited to answer the question presented in Price I, that is, whether an easement over Price's land existed in the first place. But it is presently not in a form proper to the precise delineation of the scope of the easement in light of the direction provided by us in Price I or by the Restatement (Third).

To determine the scope of the public prescriptive easement on Price's land, the superior court must make specific factual findings regarding the dates to be ascribed to the prescriptive period; the original purpose and use of the easement; any changes that have been made in the use of the easement; and, finally, the reasonableness of that change, taking into account such factors as the speed of the changes in use, damage to the estate, and the reasonable expectations of the servient landowner. Therefore, we REMAND the case to the superior court for such findings and both parties should prepare to address the factors at issue.

Exhibit B

FOOTNOTES

1. 75 P.3d 1051, 1059 (Alaska 2003).
2. *Id.*
3. *Id.*
4. Civil Rule 52(a) states in pertinent part: "In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon."
5. The plaintiff in the trial court was originally the organization Snomads, Inc. Michael Eastham's amended complaint substituted ninety-one individual plaintiffs for the Snomads.
6. To clarify, the trial court did not discuss the prescriptive easement or its scope in its initial decision of February 9, 2000. However, it did hold that a prescriptive easement existed over Price's land in its denial of Price's motion for reconsideration on the original RS 2477 ruling. Price, 75 P.3d at 1053.
7. *Id.*
8. *Id.* at 1056.
9. *Id.* at 1056-57.
10. *Id.* at 1058-59.
11. *Id.*
12. Alaska R. Civ. P. 52(a); cf. *Fyffe v. Wright*, 93 P.3d 444, 456 (Alaska 2004); *Ilardi v. Parker*, 914 P.2d 888, 892 (Alaska 1996).
13. *Mapco Express, Inc. v. Faulk*, 24 P.3d 531, 537 (Alaska 2001).
14. *Ilardi*, 914 P.2d at 892.
15. Price, 75 P.3d at 1059.
16. In *Murray v. Murray*, we faced a situation similar to the procedural facts in Price. 856 P.2d 463 (Alaska 1993). In *Murray I*, a divorce case, we remanded the case to the superior court to make findings sufficient to distinguish between marital and separate property. The trial court's subsequent opinion did not set out the analysis regarding the categorization of property called for in Alaskan case law, but named certain assets and deemed them separate property in a conclusory fashion. As a result, we remanded the case a second time. *Id.* at 466. In our decision, we provided guidance as to the kinds of findings the superior court would need to make in order to answer the questions raised by the case. *Id.* at 466-68; see also *H.C.S. v. Cmty. Advocacy Project of Alaska, Inc. ex rel. H.L.S.*, 42 P.3d 1093, 1101 (Alaska 2002) (court also finds trial court findings insufficient and gives guidance as to what facts must be found to answer the inquiry).
17. Price, 75 P.3d at 1058 n. 40; Restatement (Third) of Prop.: Servitudes § 4.10 cmt. d (2000).
18. Price, 75 P.3d at 1058-59.
19. *Id.* at 1058 (citing *Wright v. Horse Creek Ranches*, 697 P.2d 384, 388 (Colo.1985)).
20. Restatement (Third) of Prop.: Servitudes § 4.10 cmt. b (2000).
21. *Id.* § 4.1 cmt. a.
22. Price, 75 P.3d at 1058 n. 39 (citing Restatement (Third) of Prop.: Servitudes § 4.10 cmt. d (2000)).
23. Price, 75 P.3d at 1058 (citing Restatement (Third) of Prop.: Servitudes § 4.10 cmt. d (2000)).
24. Restatement (Third) of Prop.: Servitudes § 4.10 cmt. h (2000).
25. *Id.* § 4.10 cmt. c (2000); see also *Andersen v. Edwards*, 625 P.2d 282 (Alaska 1981).
26. Restatement (Third) of Prop.: Servitudes § 4.10 cmt. h (2000). Comment h states: "Although generally easements are permitted to evolve along with the properties they serve, the outcome in individual cases may depend on how fast the transition is taking place in the area and whether the easement was created by grant or prescription. The degree of change permitted for a prescriptive easement is generally less than that for an expressly created easement. In balancing the interests of the dominant and servient estate

Exhibit B



27. *Id.*

28. *Id.* § 4.10 cmt. c.

29. In *Price I*, we provided the superior court guidance in the application of these principles in the form of case law exemplifying the rule that subsequent uses of an easement must be reasonably related to uses made during the prescriptive period. *Price* at 1058 nn. 37, 40, 41, 42 and cases cited therein. In several of these cases, section 478 of the Restatement (First) of Property is relied upon as a guide for discussion. See e.g., *Twin Peaks Land Co. v. Briggs*, 130 Cal.App.3d 587, 593-95, 181 Cal.Rptr. 25 (1982); *Wright v. Horse Creek Ranches*, 697 P.2d 384, 388-89 (Colo.1985); *Benner v. Sherman* 371 A.2d 420, 422 (Maine 1977). Section 478 states that in ascertaining whether a particular use is permissible under an easement created by prescription, a comparison must be made between such use and the use by which the easement was created with respect to (a) their physical character, (b) their purpose, and (c) the relative burden caused by them upon the servient tenement. Restatement (First) of Prop. . . . § 478 (1944) ("Factors in Ascertaining Extent of Easements Created by Prescription"). *Price* uses this terminology in his brief, but we use the language of the Restatement (Third).

30. Restatement (Third) of Prop.: Servitudes § 4.10 cmts. f, g, h (2000).

31. *Id.* § 4.10 cmts. f, h.

32. *Id.* § 4.1 cmt. h.

33. *Id.* § 4.10 cmt. f; see also *Gibbens v. Weissaupt*, 98 Idaho 633, 570 P.2d 870, 876 (1977) (holding that an increase in degree of use due to commercial activities and additional residences on the dominant tenement is an unreasonable expansion of prescriptive easement); *Gutcheon v. Becton*, 585 A.2d 818, 822 (Me.1991) (holding that increased use did not burden servient estate because there was no evidence of increased noise or other effluence associated with traffic); *Leffingwell Ranch, Inc. v. Cieri*, 276 Mont. 421, 916 P.2d 751, 757 (1996) (holding that subdivision of ranch parcel into 174 units resulted in overburden of easement created for access to three homesteads); *Cote v. Eldeen*, 119 N.H. 491, 403 A.2d 419, 420-21 (1979) (holding that daily commercial use of easement by large trucks exceeded scope of prescriptive easement since prior use was occasional and non-commercial).

34. See *Wright v. Horse Creek Ranches*, 697 P.2d 384, 388 (Colo.1985) (holding that development altering the physical characteristics of a road imposed additional and non-consensual burdens on the estate and was an impermissible change of use); *Block v. Sexton*, 577 N.W.2d 521, 525-26 (Minn.App.1998) (holding that extent of prescriptive easement should not be enlarged beyond objects originally contemplated); *Hash v. Sofinowski*, 337 Pa.Super. 451, 487 A.2d 32, 35 (1985) (noting that court should act with care in determining the width of a prescriptive easement).

35. If *Eastham* can show that snowmachiners were using the trail at as high a rate as they now use it before the establishment of the parking lot and for at least ten years, then *Price* cannot complain that the challenged use is outside of his expectations. If *Eastham* cannot make this showing, then *Price* is protected from an invasive use of his land because he acted promptly and did not sit on his rights. This balance between the establishment of potentially beneficial new uses and the preservation of the rights of landowners is exactly that which the Restatement seeks to establish. Cf. Restatement (Third) of Prop.: Servitudes § 4.10 cmt. c (2000).

36. *In re Adoption of A.F.M.*, 15 P.3d 258, 262 (Alaska 2001).

37. *Vezey v. Green*, 35 P.3d 14, 19-20 (Alaska 2001).

38. *Murray*, 856 P.2d at 466.

39. *Price* owns only the agricultural interest in his land. *Price*, 75 P.3d at 1057. *Price* argues that since he must prepare and submit a proposed amendment to his Farm Conservation Plan whenever he wishes to change his use of the land, the users of the prescriptive easement should be forced to do the same.

40. *Krossa v. All Alaskan Seafoods, Inc.*, 37 P.3d 411, 418-19 (Alaska 2001).



41. *Breck v. Ulmer*, 745 P.2d 66, 75 (Alaska 1987) (citing *Haines v. Kerner*, 404 U.S. 519, 520, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972)).

42. *Hymes v. Deramus*, 119 P.3d 963, 965 (Alaska 2005).

43. See *Sea Lion Corp. v. Air Logistics of Alaska, Inc.*, 787 P.2d 109, 115 (Alaska 1990).

44. Cf. *State, Comm. Fisheries Entry Comm'n v. Carlson*, 65 P.3d 851, 873 (Alaska 2003); *Univ. of Alaska v. Simpson Bldg. Supply Co.*, 530 P.2d 1317, 1323-24 (Alaska 1975).

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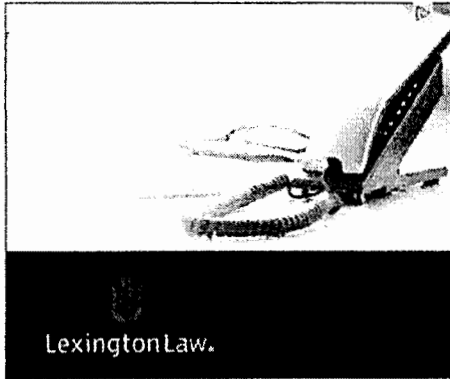
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*exhibit c*

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**Unclean Hands Law & Legal Definition**



The clean hands doctrine is a rule of law that someone bringing a lawsuit or motion and asking the court for equitable relief must be innocent of wrongdoing or unfair conduct relating to the subject matter of his/her claim. It is an affirmative defense that the defendant may claim the plaintiff has "unclean hands". However, this defense may not be used to put in issue conduct of the plaintiff unrelated to plaintiff's claim. Therefore, plaintiff's unrelated corrupt actions and general immoral character would be irrelevant. The defendant must show that plaintiff misled the defendant or has done something wrong regarding the matter under consideration. The wrongful conduct may be of a legal or moral nature, as long as it relates to the matter in issue.

For example, if a seller sues a customer for payments on a contract, defendant may claim plaintiff has unclean hands because he fraudulently induced him to sign the contract. A court of equity will not decide issues of fairness and justice if it is shown that the person asking for such justice has acted wrongly in regard to the issue at hand. In another example, when a brokerage firm claimed that its confidential client information was being pilfered by the competition, the court held that the firm did not come to court with "clean hands" since the court found that firm demonstrated a similar lack of regard for the competitor's confidential client information when it snared the same broker six years earlier.

The doctrine has often been applied in the context of family law issues, specifically in cases of financial misconduct. Fraudulent conduct has been a factor in awarding support and division of property, among other issues.

**Definition List**

- [Unclassified Modernisms](#)
- [Unclaimed Assets](#)
- [Unconditional Security](#)
- [Unconform Contract](#)
- [Unbundling Rules](#)
- [Unclean Hands](#)
- [Uncollected Funds](#)
- [Uncompensated Injured Losses](#)
- [Unconditional](#)
- [Unconditional Cash](#)
- [Unconditional Delivery](#)

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- [Terms with 'Unclean' or 'Hands'](#)
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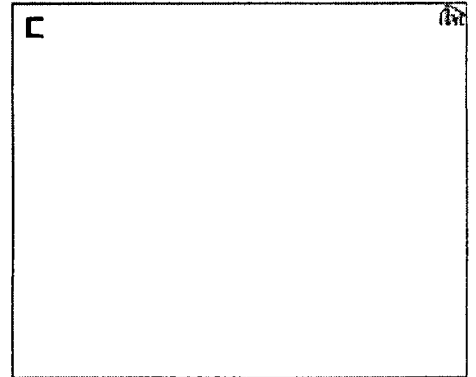
## unclean hands

n. a legal doctrine which is a defense to a complaint, which states that a party who is asking for a judgment cannot have the help of the court if he/she has done anything unethical in relation to the subject of the lawsuit. Thus, if a defendant can show the plaintiff had "unclean hands," the plaintiff's complaint will be dismissed or the plaintiff will be denied judgment. Unclean hands is a common "affirmative defense" pleaded by defendants and must be proved by the defendant. Example: Hank Hardnose sues Grace Goodenough for breach of contract for failure to pay the full amount for construction of an addition to her house. Goodenough proves that Hardnose had shown her faked estimates from subcontractors to justify his original bid to Goodenough.

See also: [affirmative defense \(Default.aspx?selected=2363\)](#)

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sestrialaw.com

PRESENTED BY BIG VOODOO



## Memorandum of Law

To: Planning and Zoning Commission

From: Robin L. Koutchak, CBS attorney

RK

Date: August 1, 2014

Re: Conditional Use Permit Application, 105 Shelikof Way

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The Planning Commission is being asked to review a Conditional Use Permit (CUP) for a bed and breakfast in an R1 zone at 105 Shelikof Way.

A thorough review of the history of this request indicates a previous CUP at this location with this same applicant was denied in 2006. A similar application in 2004 was withdrawn by the applicant prior to formal denial. The commission is urged to review the past decisions in these applications for the sake of consistency, portions of which are attached. There has been no material change to the application request or the neighborhood since the prior requests.

The dispute involves a small cul-de-sac with three large homes, each having a view of the water. Richard Mulligan, at 107 Shelikof has the largest estate, which overlooks both 105 and 101. Mulligan's estate is what is known in property law as "the servient estate". That is, he has the largest estate and the other two estates in the cul-de-sac, 105 (Jardine) and 101 (LaVonne Grun) have "the dominant estates". In property law, the servient estate is the estate which grants an easement to other estates that need access to their property. The properties that need access are called the "dominant estates". In other words, Jardine and Grun (dominant estates) must cross Mulligan's property (servient estate) in order to access their houses. In no way does the legal term "dominant estate" mean that the two estates "dominate" the servient estate with the use of the easement. In fact, the servient estate (Mulligan) controls the easement. LaBrenz v. Burnett, 218 P.3d 993, 1000 (Alaska 2009). The purpose of the easement in this R1 zone is quite simply "a driveway." This control of the easement has been recognized by previous commissions and the planning department. It was granted by the servient estate in 1997 "as long as the property is used for residential purposes." Any use beyond that and that which interferes with the servient estates quiet enjoyment, could be considered in a court of law, as "abuse of an easement". Primary factors a court will look at in determining abuse of the easement are (1) the intensity of use and (2) the scope of the estate served by the easement and 3) interference with the servient estates quiet enjoyment. Restatement (Third) of Property: Servitudes, sec. 4.13 (1994), Price v. Eastham, 254 P. #d 1121, 1129-30 (Alaska 2011). *William B. Stoebuck & Dale A. Whitman, The Law of Property Sec. 8.9, at 461 (3d ed. 2000).*

As a matter of law, this is fairly straight forward.

We have ten years of complaints by the servient estate, verified with photographs and testimony of Mulligan and a handful of others, that traffic at all times, noise both very early and very late, and parking in the summer months in this small cul-de-sac, is fairly intense and the scope of use by the dominant estates is beyond the intended R1 zoning allowance. The CUP for

Grun was granted in 1995 for a 2 bedroom B&B. Mulligan moved into his house after that date. Mulligan would at least have a private right of action against the servient estate of Jardine, and quite possibly against CBS for failing to follow our zoning code.

Jardine is requesting a CUP for a two bedroom bed and breakfast. He was denied a permit in 2006 for a three bedroom bed and breakfast. He also runs a fishing charter business. It could be argued, simply based on observed traffic patterns at his house by several neighbors, that he is running a *de facto* lodge. In April, the city administrator sent a notice to Jardine of CBS's concern that he was running a Bed and Breakfast or Lodge out of his home. He was asked to respond and he did not. A second letter was sent in June to Mr. Jardine and again, he did not respond. (These letters are attached and it is expected the city administrator will be available for comment or questions at the planning commission meeting.) Due to the lack of concern shown by Jardine, he was asked to come and meet with the city administrator and members of the city's finance and planning departments. At this meeting in mid-June, he at first denied that he had anyone other than friends and family staying with him fishing. He then admitted, when questioned on the truthfulness of such a statement, based on his website but also common knowledge among the harbor users, business owners, employees and others in the community (including the administrator himself with personal knowledge), that he had "about 100 paying charter guests staying at his house a season." Jardine was told at that time that the city finance department could audit his business to determine if he was paying proper and accurate taxes. SCG 4.09.410 authorizes the city to audit any business as a matter of course. He was instructed by letter that he was to cease operations until the matter was resolved. Anecdotally, from observations by other neighbors, (besides Mulligan, who has been out fishing most of this time) harbor users and business owners, Jardine has not stopped housing people at his house, for his charter operation, despite being ordered to stop by the city administrator.

One of the oldest doctrines of law is called the "unclean hands doctrine" which holds as a rule of law that someone bringing a lawsuit or motion or asking the court (or tribunal of any sort) for equitable relief must be innocent of wrongdoing or unfair conduct relating to the subject matter of his/her claim. Jardine has, it is believed, run this *de facto* lodge for almost ten years even after repeated denials. The doctrine does not require that suitors have led blameless lives but it does require that a person act fairly and without deceit as to the controversy in issue. Knaebel v. Heiner, 663 P.2d 551, 554 (Alaska 1983).

For the Planning commission now to consider granting a CUP, no matter what conditions might be attached, would be against the code and public policy. It would also expose CBS and Jardine to potential successful lawsuit by Mulligan. Past Commissions have found quite succinctly that 1) the request crosses an easement owned by the person who opposes it and 2) traffic, noise and parking cannot be mitigated. Nothing has changed since the applications in 2004 and 2006 in this regard related to the servient estate.

Grun's property is not at issue – but Jardine's application, for the property immediately next door – can hardly be discussed without noting the traffic and noise from 101. Although Grun at 101 Shelikof has a permit for a 2 bedroom Bed and Breakfast, her web site and her meeting and conversations with the City administrator would indicate, along with the

photographs and testimony of Mulligan and others with personal knowledge, that in conjunction with her fishing charter business, she has been running a *de facto* Lodge. This must be considered by the Planning and Zoning commission – not to single out Grun – but because it *adds to the burden already suffered by the servient estate* (Mulligan).

The law department would urge the Planning Commission that it is not necessary for this CUP application to evaluate the distinction and definitions between Lodge and Bed and Breakfast. (That will be addressed by the legal department and planning department soon). Jardine has applied for a Bed and Breakfast permit and even if we were to take his word that this is all he wanted to use it for (and evidence shows otherwise), it still should be denied on the basis that the previous Commissions have denied the request for these reasons: 1) abuse of an easement granted by the servient estate and 2) non-ability to mitigate safety, traffic, parking and noise issues.

SGC 22.16.015 addresses prohibited uses which cause excessive disturbances in R1 zones that are not in keeping with the character and stated intent of the district. SGC 22.24.010 (E) (1) discusses criteria used to evaluate CUP applications: vehicular traffic, amount of noise, hours of operation, existing buffers, fire and emergency vehicle operations, and traffic layout.

That there already is one B & B in this small area, constitutes a burden on the servient estate which this Commission and the planning department has heard loud and clear for many years. Mulligan has a right to safe, quiet and peaceable enjoyment of his property by law and he has a right to demand that the City and Borough of Sitka enforce their code. The legal department and the administrator support that right.



# City and Borough of Sitka

100 Lincoln Street Sitka, Alaska 99835

*Coast Guard City, USA*

June 26, 2014

Brian Jardine  
105 Shelikof Way  
Sitka, AK 99835

Dear Mr. Jardine,

Thank you for meeting with us to discuss concerns regarding a potential charter/ B&B operation at your property at 105 Shelikof Way. We appreciate your time and willingness to share details of your business.

As you know, the property is zoned R-1 Single Family and Duplex. A conditional use permit has not been approved for either a bed and breakfast or a short term rental. In order to offer lodging to charter customers at this location, a permit must be granted.

We look forward to assisting you through the conditional use permit process. Feel free to contact the Planning Office with any questions.

\* Please refrain from housing paying charter customers until a permit to do so has been approved.

Thank you.

Mark Gorman  
Municipal Administrator

Cc:  
Planning Department  
Robin Koutchak, Municipal Attorney



June 2, 2014

Brian Jardine  
105 Shelikof Way  
Sitka, AK 99835

Dear Mr. Jardine,

As you were previously notified in writing on 4/14/14, multiple concerns have been received by the City of Sitka Administrators Office regarding a potential charter/ B&B operation at your property at 105 Shelikof Way.

As you know, the property is zoned R-1 Single Family and Duplex. A conditional use permit has not been approved for either a bed and breakfast or a short term rental. Any commercial use of the property that does not comply with the home occupation requirements would constitute a zoning violation.

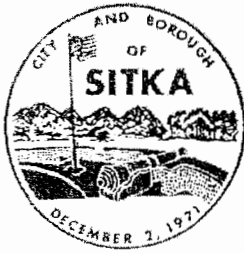
Please respond with a written description of the use if the property within fifteen (15) days of receipt of this letter.

The Municipality will evaluate the response along with other information and determine the appropriate course of municipal action.

Thank you.

Mark Gorman  
Municipal Administrator

Cc:  
Planning Department  
Robin Koutchak, Municipal Attorney



# City and Borough of Sitka

100 Lincoln Street Sitka, Alaska 99835

*Coast Guard City, USA*

April 14, 2014

Brian Jardine  
105 Shelikof Way  
Sitka, Alaska 99835

Dear Mr. Jardine,

The Administrators Office has received concerns about a potential charter operation at your property at 105 Shelikof Way.

As you know, the property is zoned R-1 Single Family and Duplex. A conditional use permit has not been approved for either a bed and breakfast or short term rental. Any commercial use of the property that does not comply with the home occupation requirements would constitute a zoning violation.

As a result, we are requesting that you provide us with a written description of the use of the property within fifteen (15) days of the receipt of this letter.

The Municipality will evaluate the response along with other information and determine the appropriate course of action.

Thank you.

Mark Gorman  
Municipal Administrator

Cc:  
Planning Department  
Robin Koutchak, Municipal Attorney

Planning



# City and Borough of Sitka

100 Lincoln Street Sitka, Alaska 99835

*Coast Guard City, USA*

April 3, 2014

Dear Concerned Residents:

I am in receipt of your signed complaint concerning alleged violations of commercially run charter businesses in an (R-1) zone, assumedly your neighborhood.

My office, the municipal attorney and the planning department, are more than willing to investigate your complaint and review the pertinent zoning codes and related issues. In order to facilitate this we need specific information on which charter businesses are functioning in your neighborhood. Once we have this information we will initiate our investigation and review process.

Sincerely,

Mark C. Gorman

Cc: Richard Mulligan 107 Shelikof Way  
Michelle Putz, 131 Shelikof Way  
Marie Laws, 140 Shelikof Way  
Molly E. Kitka, 135 Shelikof Way  
Ken Buxton, 108 Shelikof Way  
Robby Jarvill, 137 Shelikof Way  
Heather Albertson, 126 Shelikof Way  
Shirley Truitt, 130 Shelikof Way  
Dylan Swanberg, 112 Shelikof Way  
Joseph Schwantes, 125 Shelikof Way

03/24/14

In order for the Sitka assembly to create the proper enforcement legislation regulating illegal Charter Houses operating in our residential area a petition is needed. By signing this petition you're showing disapproval of commercially run charter businesses in a ( R1) area. The majority of Charter Businesses are located in Commercial Zones. Examples: Alaska Premier Charters, Dove Island Lodge, Kingfisher, L&M, Alaska Adventures, Big Blue, Sitka Point Lodge, Wild Strawberry to name a few.

Richard Mulligan 107 Shelikof Way  
RICHARD MULLIGAN

Michelle K. Potz, Michelle Potz 131 Shelikof Way

Marie Laws 140 Shelikof Way MARIE LAWS

Wallye Kitcher 135 Shelikof Way - Molly E KITKA

Ken Buxton 108 SHELIKOF WAY Ken Buxton

Robby Jarvill 137 Shelikof Way Robby Jarvill

Heather Albertson 126 Shelikof Way Heather Albertson

Shirley Pruitt 130 Shelikof Way Shirley Pruitt

Dylan Swanberg 112 Shelikof Way Dylan Swanberg

Joseph Schwartz 125 Shelikof Way Joseph Schwartz

BEFORE THE BOARD OF ADJUSTMENT  
FOR THE CITY AND BOROUGH OF SITKA

2006

IN THE MATTER OF THE )  
APPLICATION OF )  
BRIAN JARDINE AND )  
JOYANN DUNNAVANT FOR A )  
CONDITIONAL USE PERMIT )  
FOR A TWO GUESTROOM )  
BED AND BREAKFAST )  
\_\_\_\_\_ )

FINDINGS OF FACT AND DECISION

The Sitka City and Borough Assembly (“Assembly”), sitting as the Board of Adjustment pursuant to Sitka General Code (“SGC”) 22.30.060, 22.30.170, and 22.30.180, heard testimony on March 15, 2006 and voted unanimously, denying the motion to approve a conditional use permit to applicants Brian Jardine and Joyann Dunnivant (“Applicants”) for a two guestroom bed and breakfast at 105 Shelikof Way, Sitka, Alaska.

The Assembly denied the conditional use permit for the reasons set out below, for the same reasons the Planning Commission unanimously recommended denial of the conditional use permit in accordance with SGC 22.30.050F and SGC 22.30.160C, and based on review of the record and testimony at the Board of Adjustment hearing. The reasons for the denial were as follows, with the Assembly making the following findings:

1. The request crosses an easement owned by an individual who opposes it;
2. A privacy wall will not mitigate concerns over noise; and
3. Traffic concerns cannot be mitigated.

The Assembly issues this Findings of Fact and Decision. This Findings of Fact and Decision constitutes the final decision of the Assembly acting as the Board of Adjustment. Any appeal from this Findings of Fact and Decision must be filed in Superior Court within 30 days of



the date this Findings of Fact and Decision is signed, in accordance with SGC 22.30.210 and 22.30.240.

DATED this \_\_\_\_\_ day of March, 2006

\_\_\_\_\_  
Deputy Mayor Doris Bailey

ATTEST:

\_\_\_\_\_  
Colleen Pellett, MMC  
Municipal Clerk

2006

MOTION, by Dapceвич to amend to not fund the increases for the Human Resource Director, the Deputy Clerk and Parks and Recreation Manager by deleting the related amount of money that pertain to each adjustment.

Motion on the amendment FAILED on a 2-5 roll call vote with Stelzenmuller and Dapceвич in favor.

The main motion PASSED on a 6-1 roll call vote with Dapceвич opposed.

Item V  
ORD. 2006-06

MOTION, by Sherrod to approve Ordinance 2006-06 on second reading amending Title 22 Zoning of the SGC to make a number of clarifications and revisions.

Wells explained that Paragraph G would allow you to put something up that was ancillary to your business and you have to go through the conditional use process.

MOTION, by Dapceвич to amend the Enactment Section, Item G to read "Revise footnote 8 to Table 22.16.015-6 Retail and Business Uses that applies to the Central Business District to read "Kiosks, outdoor restaurants, portable structures such as food stands and other temporary structures including mobile food carts on wheels, are conditional uses."

Motion on the amendment FAILED on a 3-4 roll call vote with Skannes, Bailey and Dapceвич voting in favor.

The main motion PASSED on a 6-1 roll call vote with Dapceвич voting against.

**XI. NEW BUSINESS:**  
**Board of Adjustment**

MOTION, by Holst to convene as the board of adjustment.

Motion PASSED by unanimous consent

Item W  
CUP B&B Jardine/Dunnavant

MOTION, by Bailey to approve the conditional use permit for a two-guestroom bed and breakfast at 105 Shelikof Way filed by Brian Jardine and Joyann Dunnavant.

Brian Jardine said he has done everything he can to please his neighbors, but he doesn't think it is possible. He specified his is only a part-time operation and all the houses running up to his have rentals. He is even willing to add an additional parking place even though he has sufficient parking now.

Reiko Mulligan who lives at 107 Shelikof is totally against this as it goes across his property. He asserted that the applicant is in the charter business and that is where this is going.

Williams pointed out for him to have a rental he would have to provide extra parking.

Jardine mentioned that he did talk with DOT to see if he could get access from below and build stairs, but he was told he would not be allowed because he already had access.

Bailey read the Planning Commission findings.

Motion FAILED on a 0-7 roll call vote.

MOTION, by Dapcevich to direct the city attorney to draw up the Facts and Findings based on the denial of the Planning and Zoning Commission for the mayor's signature.

Motion PASSED on unanimous consent.

Item X  
CUP B&B Boyd Didrickson

MOTION, by Stelzenmuller to approve the conditional use permit for a two-guestroom bed and breakfast filed by Boyd Didrickson with the following conditions: 1) The maximum occupancy of the bed and breakfast shall be two guests per room with one child; 2) a Fire and Life Safety Inspection must be satisfactorily completed prior to occupancy of the bed and breakfast; and 3) the applicant shall contact the Planning Office by February 21, 2007, for a review.

Mayor Dapcevich stepped down as he believed he could not be objective. Skannes objected. However, Bailey pointed out that bias in a board of adjustment hearing is a legal reason to step down.

Pete Karras has lived on this street for years and strongly opposes this conditional use permit.

Adeline Jacobs lived in Sitka for 64 years and is a sister-in-law to Bertha Karras. She spoke to speed limits, buses and other problems.

Williams brought up that if this passes, Mr. Didrickson still has some hurdles to overcome to be active within one year.

Motion PASSED on a 5-1 roll call vote with Bailey opposed.

Reconvene

MOTION, by Stelzenmuller to reconvene as the Assembly in regular session.

Motion PASSED by unanimous consent.  
Mayor took back the gavel.

Item Y  
Land Sale

MOTION, by Stelzenmuller to grant preliminary approval so that the applicants can move forward and have a subdivision plat prepared for properties adjacent Verstovia Avenue and owned by Trevor Webb, Amy Johnson, and Paul and Carolyn McArthur.

Stelzenmuller spoke against this; he doesn't believe the Planning and Zoning Commission has had enough input; he objects to the price. He would like to see it developed and would like to see a plan to do that. Williams explained that the value came from the assessor.

Bailey pointed out that this would raise the tax rolls. Bailey would support Planning Commission work or deferral on this. Sherrod believes some middle ground might be appropriate and 40' seems a bit excessive; he wondered if 20' would suffice.

2006

**Jardine Three Guestroom Bed and Breakfast**

105 Shelikof Way  
February 21, 2006

For the third time, we have the Jardine Bed & Breakfast request before the Planning Commission. It has been almost 2 years since the Jardine's have been trying to get a Bed & Breakfast permit for their home on Shelikof Drive.

**Jardine Three Guestroom Bed and Breakfast**

105 Shelikof Way  
May 17th, 2005

The Jardine bed and breakfast request is back on the Planning Commission agenda after it was deferred at the last Planning Commission meeting. Rico Mulligan, whose home overlooks the property was out fishing and asked for the delay.

Tuesday night, staff will reacquaint the board with the layout of the parcels. Our recollection is that there are two Planning Commissioners who were not on the commission when the issue was discussed last year.

Although the request was controversial last year, there is actually more opposition to the request this go around. The Jardine property is served by an access and utility easement that goes through the Mulligan and the Grun lots. The proximity of the homes in this closed three lot neighborhood makes the potential for impacts of the bed and breakfast higher than normal.

We'll brief you on the history and the neighborhood characteristics before the board takes testimony. After hearing from the applicant and the public, the board will then be in a position to make a recommendation to the Assembly if it likes.

Findings will be suggested by staff following the outcome of any Planning Commission motion.

Thanks.

**Jardine Three Guestroom Bed and Breakfast**

105 Shelikof Way  
May 3<sup>rd</sup>, 2005

The Jardine three guestroom bed and breakfast request is back on the Planning Commission after the applicants declined not to pursue the completion of the approval process last spring.

The request involves a bed and breakfast on a private driveway that is shared by Ricko Mulligan and LaVonne Grun. Ms. Grun was granted a bed and breakfast conditional use permit several years ago.

City and Borough of Sitka  
PLANNING AND ZONING COMMISSION  
Minutes of Meeting  
February 21, 2006

2006

**Present:** Chair Pat Hughes, Tom Rogers, Brian McNitt, Don Alexander, Bob Goss, Planning Director Wells Williams, Planning Assistant Sara Russell, and Secretary Maria Finkenbinder

**Members of the Public:** Dennis Hicks, John Stein, Joyann Dunnivant, Brian Jardine, Rico Mulligan, LaVonne Grun, Molly Kitka, David Voluck (teleconference), Victor Scarano, Shane Snyder, Steve Clayton, Pete Karras Sr., Adelaide Jacobs, Lureen Stedman, Scott Saline, Boyd Didrickson, Harold & Barbara Stocker

**CONDITIONAL USE PERMIT  
2-GUESTROOM BED AND BREAKFAST  
105 SHELKOF WAY  
BRIAN JARDINE AND JOYANN DUNNAVANT**

*Public hearing and consideration of a conditional use permit request for a two guestroom bed & breakfast at 105 Shelikof Way. This request is filed by Brian Jardine and Joyann Dunnivant. The property is also known as Lot 15 of the Gibson, Kitka, Snowden Subdivision.*

Mr. Williams said that this is the third time the Jardine Bed & Breakfast request is before the Commission. He pointed out that the original request was filed when the Jardines were in the process of purchasing their home from Theron and Therese cole. The sale of the home was contingent upon the Jardines receiving a conditional use permit to operate a bed and breakfast. Given the controversy surrounding the request, they did not pursue the completion of the approval process in spring of 2004 but still ended up buying the house. In spring of 2005, they filed another request which continued to receive opposition from the neighbors. Mr. Williams further noted that the Jardines have since changed their request from three guestrooms to two but the issues remain such as parking, traffic and safety, and privacy. He added that some of the neighbors' position has shifted but Mr. Mulligan, on whose property the Jardines' access and utility easement runs through, presents a greater standing in opposing the request.

Mr. Jardine informed the Board that since they first filed their request, they have been trying to resolve all the issues and to address the neighbors' concerns. For instance on parking, they plan to fill in the seaward side of the property to add more maneuver ability in the parking area which could accommodate up to 6 vehicles. To address the privacy concerns of their adjacent neighbor, Molly Kitka, they plan to put up a privacy wall between the two properties. To reduce the amount of traffic going up and down the drive, they plan to provide transportation to their client.

Mr. Jardine stressed that they are willing to go for a six-month operation instead of the standard 12 months. He added that every time they try to resolve one issue, another issue comes up. He also pointed out that everyone in their neighborhood has a potential income from owning their homes, either from rentals or from B&B operations.

\* Mr. Mulligan of 107 Shelikof Way pointed out that the Jardines signed documents with the full knowledge that the property will be used for residential purposes only, not commercial. He reiterated his concerns on increase traffic, child safety, and noise in the neighborhood, pointing out that charter clients are here to party.

Ms. Grun of 103 Shelikof Way stepped forward to inform the Board that she is rescinding her signature from the petition that was submitted to the Commission. She expressed support to the Jardines' request.





# City and Borough of Sitka

100 Lincoln Street • Sitka, Alaska 99835

## MEMORANDUM

TO: John Stein, Municipal Administrator  
Mayor Dapcevich and Members of the Assembly

FROM: Wells Williams, Planning Director

SUBJECT: Jardine Two Guestroom Bed and Breakfast Conditional Use Request  
105 Shelikof Way

DATE: March 8, 2006

The Planning Commission is unanimously recommending denial of a two-guestroom bed and breakfast conditional use request filed by Brian Jardine and Joyann Dunnivant. The property is located on a private easement off of Shelikof Way. The board's action was taken on February 21<sup>st</sup>, 2006.

The request dates back to May of 2004 when it was originally a three-guestroom application. It has been controversial from its inception. The applicant pulled it before the Planning Commission took action that year, and, later pulled it again after the Planning Commission recommending denial in 2005.

The Jardine house was bought from T. Cole a couple of years ago. It is served by a private driveway that runs across Rico Mulligan's lot.

It is located next to a bed and breakfast that was approved for LaVonne Grun before Mr. Mulligan bought his home. The location of the property on a private easement that crosses another property makes the request fairly unusual.

The application has generated heated support and opposition over the past few years. Petitions and counter petitions have been submitted. At this point, next door neighbor Lavonne Grun supports it. Rico Mulligan, whose land contains Jardine's driveway, is adamantly opposed due to potential traffic generation. Molly Kitka, who lives on the other side of the Jardine property from Ms. Grun, has expressed strong opposition since there have been noise and privacy problems in the past.

The Planning Commission unanimously voted against the request finding that 1) the request crosses an easement owned by an individual who opposes it, 2) a privacy wall will not mitigate concerns over noise, and, 3) traffic concerns cannot be mitigated.

**RECOMMENDED ACTION:**

Deny the request based on the findings of the Planning Commission.

~~Point FF Denied Based on finding by Planning Commission~~

2004

As long standing members of the Planning Commission will recall, the Jardine request is full of controversy and intrigue. There have been a series of concerns about the Jardines prematurely operating the bed and breakfast. Concerns have surfaced about the parking on the private easements. The number of clients in the Grun bed and breakfast has been a point of contention. And, Molly Kitka who lives in an adjacent house has raised privacy concerns.

The best thing we can do is to go through each of these issues one by one.

It is highly doubtful that the Planning Commission will be in a position to make a recommendation Tuesday night.

### **Jardine Three Guestroom Bed and Breakfast**

105 Shelikof Way

June 7, 2004

On May 17<sup>th</sup> there appeared to be some discussion about recommending approval of a two guestroom bed and breakfast.

If that is the case, potential conditions are:

1. A mandatory one year review in March of 2005 with the applicant being required to submit a narrative outlining how the facility operated through February 15, 2005.
2. Two guests per guestroom.
3. Operation limited to May 1<sup>st</sup> through September 30<sup>th</sup>.
4. Creation of an additional parking space in front of the house by August 3, 2004. (By the applicant's statements, Mr. Jardine and his parents will be living in the house. The four parking spaces are two deep. It is reasonable to have the owner, parents, and the guests all have straight in parking so that vehicles don't have to be moved around everytime someone comes and goes, or, a cab drops off clients).

While condition #4 is purely a suggestion, it's the closest staff can come to meeting the board's concerns about a turning radius.

### **Jardine Three Guestroom Bed and Breakfast**

105 Shelikof Way

May 17<sup>th</sup>, 2004

As we expected, there has been a fair amount of activity on the Jardine request since the last meeting. Staff has done a substantial amount of deed research, talked to Brian Jardine, their realtor, Terry Cole, looked at the property, and located as built. We have included the readily reproducible information in your packet along with a color aerial photo.

The findings of the research include the following --

1. LaVonne Grun was granted a two guest room bed and breakfast permit in 1995. She was also granted the previously mentioned zero setback for a parking deck in 1997. There is no useful information on the parking issue in her B&B file.

2. There is an access and utility easement that appears to serve the now Cole and Grun property that goes through the Mulligan property. The easement was granted in 1997. The easement is in effect as long as the properties are used for residential purposes. The terms "residential purposes" are not defined.
3. Staff has been unable to locate a parking agreement between the two Reeder families who owned the Grun house (Steve Reeder) and the Mulligan house (Fred Reeder), and, the Coles. While we thought the agreement may have been developed, we can find no evidence that one was recorded and Mr. Mulligan says it was never mentioned to him.
4. There is a 29 foot distance between the exterior wall of the Cole house and their property line. 10 or 11 feet of this distance is taken up by decks and walkways. This leaves two parking space widths between the side of the Cole house and their property line.
5. The wood deck along the front of the Cole house comes very close to their "front" property line. The perimeter of the deck is actually mounted on what appears to be a concrete footing. Little is known about the extent of the footing or what would be involved in removing the deck to make room for additional parking in front of the house as Mr. Jardine has suggested.
6. There is nine feet, or one parking space width, between the Grun house and their side property line.

Some of the documents and diagrams in your packet have been included at the request of the Jardines.

Mr. Mulligan did submit a letter, and, additional photo the afternoon of May 12<sup>th</sup> since he may be commercial fishing the night of the meeting. He told staff he opposes the request and informed Mr. Jardine of this opposition when Jardine contacted him on the evening of May 11<sup>th</sup>. His concerns are laid out in his hand written letter. He has also provided a photo of cars parked in front of the Grun home taken May 1, 2004.

Staff can walk through this information at Monday night's meeting if the board feels a verbal review is useful. We can also simply answer questions.

It is important for full disclosure to state the obvious that the Planning Director worked closely with Mr. T. Cole for close to nine years. The personal friendship with T. and Terry Cole have contributed to the challenging nature of this application.

Terry Cole indicated to staff that some of the cars in the photos may have been from the Cole family.

After the reviewing the information, a motion is in order recommending approval. A separate motion on findings can be made to support an affirmative or negative vote.

### **Jardine Three Guestroom Bed and Breakfast**

105 Shelikof Way

May 3, 2004

Richard Mulligan  
107 Shelikof Way  
Sitka, Alaska 99835

July 11, 2014

Dear Members of the Planning Commission,

Brian Jardine is asking for a conditional use permit for a Bed and Breakfast in a cul-de-sac at 105 Shelikof Way. I live at 107 Shelikof Way. He applied for this same permit in 2004 and it was rejected on the basis of lack of parking.

Since that time he has been running a charter fishing lodge out of the house with no permits. I have pictures of the traffic. It's loud and disruptive and he does this in the summer months from June to September. I would expect him to say that he just has friends and family that come fishing, as he has said that in the past. And he may well have some that do, however, he maintains a web site at [www.a-zsportfishingcharters.net](http://www.a-zsportfishingcharters.net) which sets out the rates he charges and states that it includes all lodging and meals. See attached copies of these web pages that were printed on July 11, 2014. He does have a charter fishing license but he has no other license with the city.

The area is zoned R-1 which is a single family and duplex residential area. This is the most restrictive area in zoning.

SGC 22.16.040 (A) (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."

The applicant has shown hand drawings and survey drawings that would suggest he believes they can accommodate 4 cars being parked alongside their house, the pictures they provide in their packet would show there is not room for 4 cars.

The code addresses parking as follows:

SGC 22.20.100 Off Street Parking requirements. (C) recommends each off street parking space be 10 feet by 20 feet, exclusive of access drives or aisles and no less than 9 ft by 18 ft.

(D) (1) states that for single or multi family dwellings, the parking facilities "shall" be located on the same lot or building site as the building they are required to serve.

(G) (1) Residential uses. 2 parking spaces per unit are required.



SGC 22.24.010 Conditional Uses.

(B) Provisions for Bed and Breakfasts.

11. There shall be a minimum of one off-street parking space for every three guest rooms in a bed and breakfast located in a single family residential zone.

The applicant then states in his application that they would only use their two vehicles to transport guests for fishing, shuttling them to their boat - their intent as to parking is not clear -- whether they plan to enlarge their area by taking down part of their deck to accommodate more cars or they will not allow more cars to be parked there.

The application also states that they will only serve light snacks and beverages in addition to breakfast, which is what a bed and breakfast is supposed to be. However, the website for this establishment makes it clear that all meals were provided. The change from a lucrative lodge and fishing charter service they were providing, to that of a bed and breakfast "to generate a little more income and to have a place for some of our client's" would be a big departure from what has been happening at this house. It's hard to believe given the rate structure that is listed on the business website, and the fact that this is Mr. Jardine's livelihood, that this change to a "B and B" is nothing more than window dressing to accomplish running an illegal lodge with less oversight by the city. (Public records request pending, will supplement at meeting, see letter attached June 26, 2014 Administrator to Jardine.)

Irrespective of any parking issues, SGC 22.16.015 states that prohibited uses are uses which cause or may be reasonably expected to cause, an excessive disturbance not in keeping with the character and stated intent of this district. SGC 22.24.010 (E) (1) lists criteria to be used in determining impacts of conditional uses. Among them are the amount of vehicular traffic, amount of noise on surrounding land uses, hours of operation, ability of police and fire to respond to emergencies, logic of internal traffic layout, and presence of existing buffers. My opinion is that it is noisy, there is a lot of traffic and cars parked in this small cul-de-sac already, the hours of operation start early (like 4 am) and go late (with more noise) and there are no "buffers" to protect my property from the noise and traffic generated by the two businesses on this cul-de-sac.

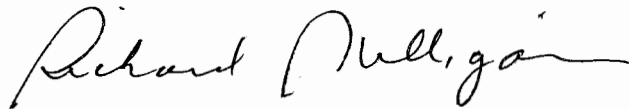
Although "Vonnie's" is not the subject of this application, the planning commission must take into account that there is an on-going business already, within feet of both the Jardine house and my house. This small cul-de-sac already has a B and B across the street ("Vonnie's" 101 Shelikof), which also runs a charter business and could easily be classed as a Lodge by any definition other than what is currently (and poorly defined) in our code. See attached letter from the city administrator to LaVonne Grun. Allowing "one more bed and breakfast" will allow the increased noise and traffic I have been enduring since 2005. The noise and traffic generated from

both parcels already causes me to lose the quiet enjoyment of my house and property. I believe that if I were to try to sell my house, the fact that two noisy, crowded "lodges" are being run would seriously impact my investment and the value of my house – in what would otherwise be a quiet cul-de-sac with only three residents, all having a nice view of the water. I have a deck with a hot tub and a view that I rarely get to utilize because of the constant traffic. The day starts at 4 am when the vans load up the excited "clients" and their fishing equipment and continues on through the night when the clients come back and barbecue and party. Jardine, the current applicant has been doing the same exact thing as Vonnie's and will continue to do so, should this application be granted. It adversely affects the established character of the surrounding neighborhood. That is why so many people in the neighborhood signed the complaint that was forwarded to the administrator. It appeared that Jardine stopped taking in guests after the administrator told me he had told Jardine he could be audited by the city, however, I was out fishing for 10 days and it appears he now has client's staying at the house again.

I urge you to reject the application for the B and B on the grounds previously stated. The planning commission has the power and authority to order the planning director to do a sight inspection of this house (SGC 22.30.340), which on information and belief, will show that the applicant has the house set up as a lodge. I believe a sales tax audit as authorized by the SGC 4.09.410 will have the same conclusion.

Very sincerely,

Richard Mulligan

A handwritten signature in cursive script that reads "Richard Mulligan". The signature is written in black ink and is positioned below the typed name.



# City and Borough of Sitka

100 Lincoln Street Sitka, Alaska 99835

*Coast Guard City, USA*

June 26, 2014

Brian Jardine  
105 Shelikof Way  
Sitka, AK 99835

Dear Mr. Jardine,

Thank you for meeting with us to discuss concerns regarding a potential charter/ B&B operation at your property at 105 Shelikof Way. We appreciate your time and willingness to share details of your business.

As you know, the property is zoned R-1 Single Family and Duplex. A conditional use permit has not been approved for either a bed and breakfast or a short term rental. In order to offer lodging to charter customers at this location, a permit must be granted.

We look forward to assisting you through the conditional use permit process. Feel free to contact the Planning Office with any questions.

Please refrain from housing paying charter customers until a permit to do so has been approved.

Thank you.

Mark Gorman  
Municipal Administrator

Cc:  
Planning Department  
Robin Koutchak, Municipal Attorney

# A-Z SPORTFISHING CHARTERS, LI

HOME ABOUT US SERVICES PRICES FISH PHOTOS CONTACT



*Quality Fishing & Halibut Charters Sitka Alaska*

Welcome to and enjoy a Sitka, Alaska fishing charter with A-Z Sportfishing Charters.

Sitka, Alaska is home to some of the best saltwater fishing in the world. According to the Alaska Department of Fish and Game, Sitka boasts some of the best catch rates for both salmon fishing and halibut fishing in Alaska. Our guest on our halibut fishing charters have caught halibut over 350 pounds. Our guests on our salmon fishing charters have caught salmon over 70 lbs. Lingcod and yellow-eye are also found in abundance.



Join us to fish and explore our beautiful Sitka, Alaska waterfront community. We are located on the outside of the Inside Passage, and are only accessible by air or sea, however, we have a full service airport with service directly to Seattle, via Alaska Airlines.

A typical day for your Sitka, Alaska salmon and halibut fishing trip, starts with a hearty breakfast. Then it's a short ride to the boat for a full day of salmon fishing and halibut fishing in Sitka, Alaska. At 6:00 am we will head to the fishing grounds, and start with fishing for Alaska salmon. We usually spend half the day salmon fishing and the other half of the day halibut fishing. Then it is back to the dock by 4:00 p.m. At the helm is Brian Jardine, a licensed U.S. Coast Guard captain. He has been charter fishing in Sitka, Alaska for the past 17 years. Brian will do everything he can to ensure you have an unforgettable salmon and halibut fishing experience.

Rates (per person, Double Occupancy)	Package Includes:	Get in Touch
3 nights/2 days fishing.....\$1,500.00	Transportation to and from the airport and daily boat trips.	907-738-2732
4 nights/3 days fishing.....\$2,050.00	All lodging accommodations and meals	brian@a-
5 nights/4 days fishing.....\$2,600.00	Approx. 10 hours of guided fishing per day	zsportfishingcharters.com
6 nights/5 days fishing.....\$3,060.00	All fishing equipment and tackle, including rain gear	Contact Us
Full day fish.....\$285.00	All licenses and king salmon stamps	
1/2 day fishing.....\$185.00	Custom fish processing in which fish is filleted, portion sized to your specifications, vacuum sealed then blast frozen and packed in airline-approved boxes for travel	

(c) 2012 A to Z Sportfishing Charter, LLC - Web Design by 2008 Designs

# A-Z SPORTFISHING CHARTERS, LL

HOME ABOUT US SERVICES PRICES FISH PHOTOS CONTACT

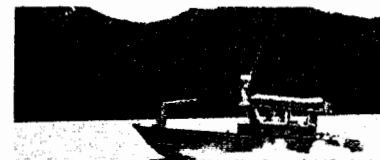
## About Us

**Brian Jardine** is the owner and operator of A-Z Sportfishing Charters, LLC.

- 100 ton U.S. Coast Guard Masters license
- Lived Sitka Alaska for 15 years
- Fishes commercially for Salmon, Halibut, Shrimp, Black Cod, and Herring
- First Aid and CPR certified
- Went to Sheldon Jackson College, in Sitka
- Bachelors Degrees in Marine Biology, Fisheries Science, Wildlife Management, and Aquaculture



The **Black Pearl** is a 26' Osprey powered by a **KAD-43 Volvopenta diesel engine**. The vessel has a heated cabin and head with a V-berth. This boat fishes up to five people comfortably.



The **Tawnya Faith** is a custom built 32' aluminum boat that fishes up to six people. The boat has a spacious heated cabin, it is also equipped with twin **Honda 225** four stroke engines.

### Rates (per person, Double Occupancy)

3nights/2days fishing.....\$1,500.00  
 4nights/3days fishing.....\$2,050.00  
 5nights/4days fishing.....\$2,600.00  
 6nights/5days fishing.....\$3,060.00  
 Full day

### Package Includes:

Transportation to and from the airport and daily boat trips.  
 All lodging accommodations and meals  
 Approx. 10 hours of guided fishing per day  
 All fishing equipment and tackle, including rain gear  
 All licenses and king salmon stamps

### Get In Touch

907-738-2732  
 brian@a-zsportfishingcharters.com  
 Contact Us



fish.....\$285.00	Custom fish processing in which
1/2 day	fish is filleted, portion sized to
fishing.....\$185.00	your specifications, vacuum sealed then blast frozen and packed in airline-approved boxes for travel

(c) 2012 A to Z Sportfishing Charter, LLC -  
Web Design by 210js Design

# A-Z SPORTFISHING CHARTERS, LLC

HOME ABOUT US SERVICES PRICES FISH PHOTOS CONTACT

## Services

A typical day of fishing with us starts at 5 a.m. with a hearty breakfast. Then it's a short ride down to the boats for a full day of fishing.

The boats leave the dock at 6 a.m. on their way to the fishing grounds. We start with fishing for salmon. We will usually spend half of the day on salmon and the other half of the day on halibut. Then it's back to the dock by 4 p.m.

Also if you want to, you can spend the day or half of the day getting crab and shrimp.

### Rates (per person, Double Occupancy)

3nights/2days fishing.....	\$1,500.00
4nights/3days fishing.....	\$2,050.00
5nights/4days fishing.....	\$2,600.00
6nights/5days fishing.....	\$3,060.00
Full day fish.....	\$285.00
1/2 day fishing.....	\$185.00

### Package Includes:

Transportation to and from the airport and daily boat trips.  
 All lodging accommodations and meals  
 Approx. 10 hours of guided fishing per day  
 All fishing equipment and tackle, including rain gear  
 All licenses and king salmon stamps  
 Custom fish processing in which fish is filleted, portion sized to your specifications, vacuum sealed then blast frozen and packed in airline-approved boxes for travel

### Get In Touch

907-738-2732  
 brian@a-  
 zsportfishingcharters.com  
 Contact Us

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# A-Z SPORTFISHING CHARTERS, LI

HOME ABOUT US SERVICES PRICES FISH PHOTOS CONTACT

## Prices

At the helm is Brian Jardine, a licensed U.S. Coast Guard Captain. He has a 100-ton Masters License and has been an Alaskan resident for the last fifteen years. Brian has fished commercially for salmon, halibut, black cod, herring, and shrimp.

### Rates (per person, double occupancy)

3 nights/2 days fishing.....	\$1,500.00
4 nights/3 days fishing.....	\$2,050.00
5 nights/4 days fishing.....	\$2,600.00
6 nights/5 days fishing.....	\$3,060.00
Full day fish.....	\$285.00
1/2 day fishing.....	\$185.00



Parties of 2 or less who do not want to share charter with another party, there may be an additional fees.. For fishing only

A \$500.00 deposite per angler is required to secure dates.

Methods of payment include: cash, check, and money order, or credit cards.

### Package Includes:

- Transportation to and from the airport and daily boat trips
- All lodging accommodations and meals
- Approx. 10 hours of guided fishing per day
- All fishing equipment and tackle, including rain gear
- All licenses and king salmon stamps
- Two 50 lb. boxes of airline-approved, vacuum-sealed fish per person, 100lbs per person

*Package price does not include airfare, sales tax, or gratuity*



Rates (per person, Double Occupancy)	Package Includes:	Get In Touch
3nights/2days fishing.....\$1,500.00	Transportation to and from the airport and daily boat trips. All lodging accommodations and meals	907-738-2732 briana@zsportfishingcharters.com Contact Us
4nights/3days fishing.....\$2,050.00	Approx. 10 hours of guided fishing per day	
5nights/4days fishing.....\$2,600.00	All fishing equipment and tackle, including rain gear	
6nights/5days fishing.....\$3,060.00	All licenses and king salmon stamps	
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1/2 day fishing.....\$185.00		

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## A-Z SPORTFISHING CHARTERS, LLC

HOME ABOUT US SERVICES PRICES FISH PHOTOS CONTACT

## Fish



## Yellow Eye Rockfish

Yellow Eye rockfish are the most well known and prized of the rockfish species. They can reach up to 3 feet, which also makes them one of the largest rockfish species. They have been known to grow to be 120 years old. They are firm and lean with mild and delicious flavor.



## King Salmon

King salmon (Chinook) are the largest species in the salmon family. They are also the state fish. Kings caught in Sitka average 25' to 35lbs., with the record in Alaska for a sportfish caught King being 97.2 lbs. The peak season for Kings is May thru July, but these salmon are caught all the way through the end of August. According to the Alaska Department of Fish and Game, Sitka is the home of Alaska's largest recreational marine King salmon fisheries.



## Coho Salmon

Coho salmon (Silver) fishing is fun and exciting. These salmon are known for their fierce runs and aerobic displays. Coho commonly range in size from 8 to 15 lbs., although they can reach up to 36 lbs. Getting into a school of frenzied "Crazy Coho", is definitely an experience you will never forget.



Lingcod

Lingcod are known as being one of the ugliest but best tasting fish in Alaska. Lings average 25 to 35 lbs but have been caught at 70 lbs.



Halibut Fishing

Halibut fishing is exceptional in southeast Alaska, and the waters off Sitka. Halibut are the largest of all the flatfishes. While catching a 50 to 150 lb halibut is quite common, we have been know to catch 300lb plus fish. The state record for the largest halibut caught sportfishing is currently 459 lbs. The small market size fish are called "chickens" while the larger ones are referred to as "barn doors". Sitka supports one of the largest recreational halibut fisheries.

Black Rockfish

Often caught while halibut fishing, Black Rockfish are fun to catch and put up a good fight for their size. They are smaller than the Yellow Eye and taste delicious. They can weigh up to 11 lbs.

Rates (per person, Double Occupancy)

3nights/2days  
fishing.....\$1,500.00  
4nights/3days  
fishing.....\$2,050.00  
5nights/4days  
fishing.....\$2,600.00  
6nights/5days  
fishing.....\$3,060.00  
Full day  
fish.....\$285.00  
1/2 day  
fishing.....\$185.00

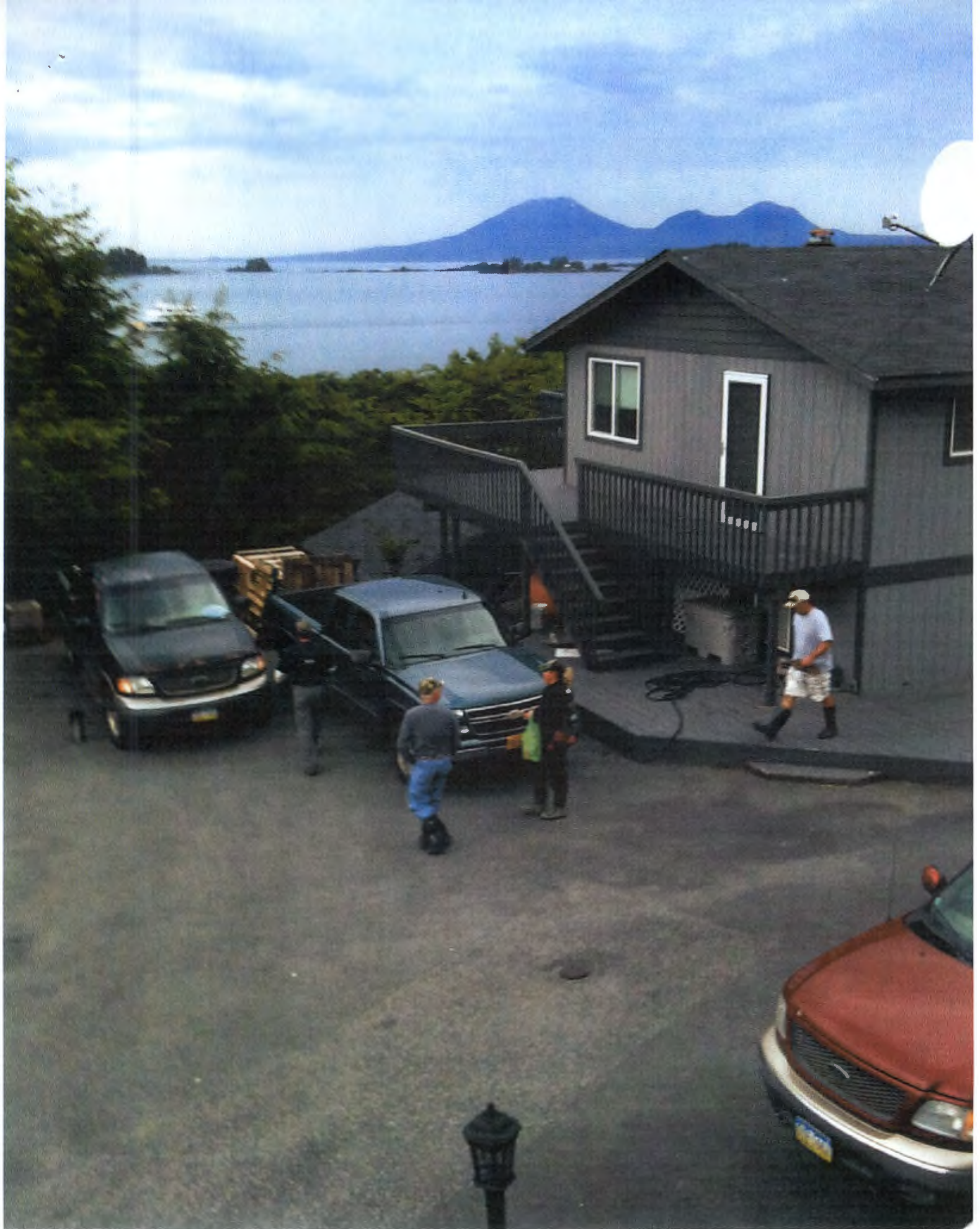
Package Includes:

Transportation to and from the airport and daily boat trips.  
All lodging accommodations and meals  
Approx. 10 hours of guided fishing per day  
All fishing equipment and tackle, including rain gear  
All licenses and king salmon stamps  
Custom fish processing in which fish is filleted, portion sized to your specifications, vacuum sealed then blast frozen and

Get In Touch

907-738-2732  
brian@a-  
zsportfishingcharters.com  
Contact Us





JARDINE'S LOADING UP 5:20 AM





DIFFERENT GROUP 5:30AM

## Maegan Bosak

---

**From:** Michelle Putz [michelleputz@yahoo.com]  
**Sent:** Thursday, July 10, 2014 7:53 AM  
**To:** maegan@cityofsitka.com; michelleputz@yahoo.com  
**Subject:** Comments for July Sitka Planning Commission Meeting

Maegan,

Please share the following comments at the July Sitka Planning Commission meeting as our comments (Michelle Putz and J. Perry Edwards, owners of the home at 131 Shelikof Way, Sitka, AK 99835) on the hearing for a 2-bedroom bed and breakfast conditional use permit at 105 Shelikof Way.

If you would like to talk to us or ask us about anything we have said, you may call us at home at 747-2708.

Perry and I appreciate the neighbors for making this effort to obtain the legal right to provide two rooms as a bed and breakfast in Sitka. We recognize that owning a home in Sitka is expensive and that a home business can help to make it more affordable.

We admit that we do not know all the rules and regulations related to bed and breakfasts, rentals, charter lodges, charter fishing, taxes, and enforcement of these rules and regulations. We also don't know if the City has the true ability or authority to enforce any of these rules and regulations, nor if they have the political will to enforce their own regulations. And we follow the rules, expect others to follow the rules, and expect someone to enforce the rules when they are not followed.

Since we and our neighbors recently complained about charter lodging in our neighborhood, the neighbors at 105 Shelikof Way built a flower "arbor" on the side of their deck that blocks the view of their deck (and to some degree, we expect it blocks the view from their deck). Because of the arbor, we are no longer able to see people on their deck. This occurred in late June/early July 2014.

Prior to the arbor, my spouse and I had a partial view of the deck at 105 Shelikof Way. We also have a view of the home's front door. My spouse and I personally observed many dozens of different people using the deck and coming and going during the summers, each of them coming and leaving in groups of 2-8 people, changing out regularly, leaving together early in the mornings and coming back usually later in the afternoon, all of them adults, never children, almost all of them older men, and all of them taking photos. While this doesn't conclusively prove that they were running a charter out of their home, it certainly resembled what you'd expect from a charter business. We all have house guests, but the regularity of the visitors, their make-up, group size, behavior, etc. all point to these guests using the house as temporary lodging and potentially as part of a charter fishing business. This has been occurring in 2014, 2013, and 2012.

During the winters we have seen and been told that the house has been rented out and, at times, seemed unused.

As far as we can remember, a request for a bed and breakfast conditional use permit was requested, considered and turned down over 2 years ago. We do not remember the circumstances for why that was turned down.

The driving/parking area around the houses in this tiny cul-de-sac are small and tight. There is no true turn-around space. The deck of this house comes out right to the black top and there appears to be little parking space.

We are unsure of whether there are permanent residents (i.e. people that live there for 4-6 months or more). The lock on the front door is a combination lock. From our observations, it appears that different people regularly come and go.

If there was going to be true and regular enforcement of Sitka code and regulations and strong consequences levied for not following those regulations, then I would suggest that this is not a good location for a bed and breakfast or charter business, or other short-term lodging, because of the lack of parking and turn-around space. However, I don't believe Sitka's code or regulations are strong enough nor have enough "teeth" to enforce the rules when we tell a property owner that they have been denied a permit. I also don't believe that there is enough political will to support enforcement of "permit denied."

Since the City already seems to be allowing this business and my husband and I have little expectation that it will stop, we prefer that the City, and the neighbors through the review process, have some level of review and enforcement by granting and enforcing a 2-bedroom bed and breakfast permit. We also prefer that the business be recognized so that it is required to pay it's rightful amount of taxes to help support community facilities and services.

We do have one additional concern if the permit is granted: the house is a 5-bedroom house, what will limit them from renting out/using more than two rooms for a bed and breakfast? What will stop them from using all five rooms as a bed and breakfast? And how will this be enforced?

Thank you for listening to and considering our concerns. You may share these concerns publicly and with the Assembly.

Sincerely,

/s/ Michelle K. Putz and /s/ J. Perry Edwards

131 Shelikof Way, Sitka, AK 99835

[michelleputz@yahoo.com](mailto:michelleputz@yahoo.com)



**Jardine**  
CUP- B&B  
105 Shelikof Way

**CITY AND BOROUGH OF SITKA**  
**PLANNING DEPARTMENT**  
SHORT-TERM RENTAL &  
BED & BREAKFAST APPLICATION

Short-Term Rental Fee	\$100.00
Bed & Breakfast Fee	\$ 35.00
(per Guestroom)	
* plus current city sales tax *	

APPLICANT'S NAME: Brian R. Jardine  
PHONE NUMBER: 907-747-3188 / 907-738-2796  
MAILING ADDRESS: 105 Shelikof Way, Sitka AK

OWNER'S NAME: \_\_\_\_\_  
(If different from applicant)  
PHONE NUMBER: \_\_\_\_\_  
MAILING ADDRESS: \_\_\_\_\_

PROJECT ADDRESS: 105 Shelikof Way, Sitka AK  
LEGAL DESCRIPTION Lot: 15 Block: \_\_\_\_\_  
Subdivision: Gibson, Kitka Snowden  
U.S. Survey: \_\_\_\_\_ Zoning Classification: R-1 MH

*Michelle  
907.738.2732*

State all reasons for justifying request: We would like to include a bed and breakfast in our home, to generate a little more income, and to have a place for some of our clients.

Describe how the facility will be operated, what meals will be served, and how guests will be transported. (This information may be provided on a separate sheet).  
Breakfast, light snacks and beverages such as coffee, tea and sodas will be served.  
our guests will be transported around town and to and from the airport in one of our two vehicles. Only the rare instance, a guest does have his or her own vehicle.\*

Anticipated start date: Preferably as soon as possible, with the majority being May thru August of the year 2015.

\*one of ours will park elsewhere, this case might happen about once per season. (over)

What months of the year the facility will be in operation:  
and August

May, June, July

Drawing of the **interior** layout showing:

1. Size and location of rooms
2. Types of facilities in the rooms
3. Windows and exits
4. Location of smoke alarms and fire extinguishers
5. Guestrooms specifically delineated on the plans

Drawing of the **exterior** site plan showing:

1. Dimensions of the home
2. How the house sits on the lot
3. Location of parking



Check if facility is not fully constructed at the time of the application



Check if Life Safety Inspection has already been completed. If not, please contact the Building Department at 747-1832 to schedule an appointment. This Inspection is to certify that the residence complies with life and fire safety code aspects.

***Bed and Breakfast applicants shall be aware that only limited cooking facilities such as small toaster ovens, microwaves, and refrigerators are allowed and those appliances must be outside of guestrooms.***

***In applying for and signing this application, the property owner hereby grants permission to Municipal staff to access the property before and after Planning Commission's review for the purposes of inspecting the proposed and/or approved structures.***

SIGNATURE OF APPLICANT: *B. Jordan*

Date: 6-29-2014

SIGNATURE OF OWNER: \_\_\_\_\_

Date: \_\_\_\_\_

*(If different from the applicant)*



**CITY AND BOROUGH OF SITKA  
Planning Commission  
Minutes of Meeting  
August 19, 2014**

**Present:** Richard Parmelee (Chair), Chris Spivey (Vice-Chair), Debra Pohlman (Member) Darrell Windsor (Member), Terrance Seslar (Member), Wells Williams (Planning Director), Maegan Bosak (Planner I)

**Members of the Public:** Scott Brylinsky, Tom and Lisa Sadler-Hart, Kay Turner, Lynne Brandon

Chair Parmelee called the meeting to order at 7:01 p.m.

**Roll Call:**

**PRESENT:** 5 –Parmelee, Spivey, Pohlman, Windsor, Seslar

**Consideration of the Minutes from the August 5, 2014 meeting:**

**MOTION: M/S SPIVEY/POHLMAN** moved to approve the meeting minutes for August 5, 2014.

**ACTION:** Motion **PASSED unanimously 5-0** on a voice vote.

**The evening business:**

**CONDITIONAL USE PERMIT- 2 BEDROOM BED AND BREAKFAST  
LOT 1-S GIBSON/KITKA/SNOWDEN SUBDIVISION  
BRIAN JARDINE**

*Planning Commission deliberation of a two bedroom bed and breakfast conditional use permit filed by Brian Jardine at 105 Shelikof Way. The property is also known as Lot 1-S Gibson/Kitka/Snowden Subdivision. The owner of record is Shannon J. Jardine and Brian R. Jardine.*

Planning Director Williams describes the process up to this point. Jardine's request is for conditional use permit for a 2 bedroom bed and breakfast. The public comment period is over and this meeting is specifically for Commissioner deliberation, findings and motions.

**COMMISSIONER DELIBERATION:** Commissioner Seslar researched Jardine's website and found that changes were being made by the applicant, even though he stated previously that he was not able to do so. Commissioner Spivey says that the Administrator asked the applicant to stop housing clients and he failed to do so. Furthermore, Spivey says the Municipal Attorney brings up many valid points and he is not willing to approve something that could create legal problems for the City. Commissioner Windsor says that this property is acting as a lodge which is not permitted. Commissioner Pohlman says she can't ignore that a neighbor is claiming he is adversely affected.

**FINDINGS: 22.30.160 Planning commission review and recommendation.**

C. Required Findings for Conditional Use Permits. The planning commission shall not recommend approval of a proposed development unless it first makes the following findings and conclusions:

1. The City may use design standards and other elements in this code to modify the proposal. A conditional use permit may be approved only if all of the following findings can be made regarding the proposal and are supported by the record that the granting of the proposed conditional use permit will not:

a. be detrimental to the public health, safety, and general welfare;

**MOTION: M/S SPIVEY/WINDSOR** moved to approve that these findings can be met.

**ACTION: Motion FAILED unanimously 0-5** on a voice vote.

b. adversely affect the established character of the surrounding vicinity;

**MOTION: M/S WINDSOR/PARMELEE** moved to approve that these findings can be met.

**ACTION: Motion FAILED unanimously 0-5** on a voice vote.

c. be injurious to the uses, property, or improvements adjacent to, and in the vicinity of, the site upon which the proposed use is to be located.

**MOTION: M/S SPIVEY/WINDSOR** moved to approve that these findings can be met.

**ACTION: Motion FAILED unanimously 0-5** on a voice vote.

2. That the granting of the proposed Conditional Use Permit is consistent and compatible with the intent of the goals, objectives and policies of the Comprehensive Plan and any implementing regulation.

**MOTION: M/S SPIVEY/WINDSOR** moved to approve consistent with Comprehensive Plan 2.5.2 *To encourage commercial and industrial developments of a quality that does not adversely impact any adjacent recreational and residential areas.*

**ACTION: Motion FAILED unanimously 0-5** on a voice vote.

3. That all conditions necessary to lessen any impacts of the proposed use are conditions that can be monitored and enforced.

**MOTION: M/S POHLMAN/SPIVEY** moved to approve that these findings can be met.

**ACTION: Motion FAILED unanimously 0-5** on a voice vote.

4. That the proposed use will not introduce hazardous conditions at the site that cannot be mitigated to protect adjacent properties, the vicinity, and the public health, safety and welfare of the community from such hazard.

**MOTION: M/S SPIVEY/WINDSOR** moved to approve that these findings can be met.

**ACTION: Motion PASSED unanimously 5-0** on a voice vote.

5. That the conditional use will be supported by, and not adversely affect, adequate public facilities and services; or that conditions can be imposed to lessen any adverse impacts on such facilities and services.

**MOTION: M/S SPIVEY/POHLMAN** moved to approve that these findings can be met.

**ACTION: Motion PASSED unanimously 5-0** on a voice vote.

6. Burden of Proof. The applicant has the burden of proving that the proposed conditional use meets all of the criteria in Section B.

**MOTION: M/S SPIVEY/SESLAR** moved to approve.

**ACTION: Motion FAILED unanimously 0-5** on a voice vote.

The City may approve, approve with conditions, modify, modify with conditions, or deny the conditional use permit. The city may reduce or modify bulk requirements, off-street parking requirements, and use design standards to lessen impacts, as a condition of the granting of the conditional use permit. In considering the granting of a conditional use, the assembly and planning commission shall satisfy themselves that the general criteria set forth for uses specified in this chapter will be met. The city may consider any or all criteria listed and may base conditions or safeguards upon them. The assembly and planning commission may require the applicant to submit whatever reasonable evidence may be needed to protect the public interest.

**The general approval criteria are as follows:**

1. Site topography, slope and soil stability, geophysical hazards such as flooding, surface and subsurface drainage and water quality, and the possible or probable effects of the proposed conditional use upon these factors;
2. Utilities and service requirements of the proposed use, including sewers, storm drainage, water, fire protection, access and electrical power; the assembly and planning commission may enlist the aid of the relevant public utility officials with specialized knowledge in evaluating the probable effects of the proposed use and may consider the costs of enlarging, upgrading or extending public utilities in establishing conditions under which the conditional use may be permitted;
3. Lot or tract characteristics, including lot size, yard requirements, lot coverage and height of structures;
4. Use characteristics of the proposed conditional use that affect adjacent uses and districts, including hours of operation, number of persons, traffic volumes, off-street parking and loading characteristics, trash and litter removal, exterior lighting, noise, vibration, dust, smoke, heat and humidity, recreation and open space requirements;
5. Community appearance such as landscaping, fencing and screening, dependent upon the specific use and its visual impacts.

## 22.24.010 Conditional uses.

E. In evaluating the inputs of a proposed conditional use permit, the municipality may consider a commercial conditional use to be inappropriate for residential neighbors while the same conditional use may be acceptable when it is located along an arterial or collector street. The additional vehicular traffic generated by conditional uses, such as professional offices, may not be able to be adequately mitigated in residential areas.

### 1. Criteria to Be Used in Determining Impacts of Conditional Uses.

- a. Amount of vehicular traffic to be generated and impacts of the traffic on nearby land uses.
- b. Amount of noise to be generated and its impacts on surrounding land uses.
- c. Odors to be generated by the use and their impacts.
- d. Hours of operation.
- e. Location along a major or collector street.
- f. Potential for users or clients to access the site through residential areas or substandard street creating a cut through traffic scenario.
- g. Effects on vehicular and pedestrian safety.
- h. Ability of the police, fire, and EMS personnel to respond to emergency calls on the site.
- i. Logic of the internal traffic layout.
- j. Effects of signage on nearby uses.
- k. Presence of existing or proposed buffers on the site or immediately adjacent the site.
- l. Relationship if the proposed conditional use is in a specific location to the goals, policies, and objectives of the comprehensive plan.
- m. Other criteria that surface through public comments or planning commission assembly review.

**MOTION: M/S SPIVEY/WINDSOR** recommended denial of conditional use permit because the majority of required findings cannot be met and neighborhood concerns cannot be mitigated.

**ACTION: Motion PASSED unanimously 5-0** on a voice vote.

This request and recommendation will be forwarded to the Assembly. Materials can still be submitted and notices will go out to the adjacent neighborhood.

### **CONDITIONAL USE PERMIT- DAYCARE/KINDERGARTEN IN R-1 ZONE LOT 1 WESTOVER SUBDIVISION EMILY DAVIS**

*Public hearing and consideration of a daycare conditional use permit filed by Emily Davis at 304 Baranof Street. The property is also known as Lot 1 Westover Subdivision. The owner of record is John and Karen Thielke.*

Bosak provides a staff report summarizing the conditional use permit request and concerns that were heard at the last meeting. The request is across from Baranof Elementary. It was most recently the Boys and Girls Club and professional offices. Staff feels the applicant should formalize their request so that Commissioners can proceed with their deliberations. Mary

Wegner, Sitka School Superintendent, submitted a letter with concerns that was included in the packets for review.

**APPLICANT:** Paul and Emily Davis step forward. Ms. Davis states that two classrooms will be sufficient with a living unit above for teacher. The applicant stresses that they want to make sure parking does not add to Baranof Elementary School congestion. Davis states she is happy to revise application if need. She also states that the lot next to the building should be marked as a private lot because it is confusing.

Williams asks about drop off and pick-ups. Davis plans to use the side lot of the building and the historically reserved spaces in the public lot. Commissioner Windsor asks about walking school kids from Baranof to the facility. Davis again stresses that they don't want to conflict with Baranof Elementary school hours. She would walk students from school to the learning center, reducing the cars in the area. Commissioners voice concerns over congestion.

Williams asks if Davis has worked with Baranof Elementary on the congestion schedule and specifically the signing out process. Davis has no association with the district but has sign in/out protocol with parents. Davis says she is happy to work with the district. Her number one goal is the safety of children.

**COMMISSIONER DELIBERATION:** Commissioner Parmelee asks Davis to talk with teachers and staff regarding drop off protocol. Davis asks if there is a conditional use permit with the building already as it was used as the Boys and Girls Club. Williams says that the extension of the permit would have to include plans that were exactly the same as the prior after school program. Mr. Davis exclaims that Ms. Davis is just trying to earn a living and work within the parameters. Williams ask Mr. Davis to lower his voice – everyone is working hard to go through all the details of the permit.

Commissioner Spivey says the application continues to change. Now they want to just do an after school program?

Dan Tadic, Municipal Engineer, says that the public parking lot will be used for construction materials and machinery storage for next summer's road projects. The lot is the only area to store the materials.

Davis says she can withdrawal application however every daycare application will come back before the Commission.

**PUBLIC COMMENT:** No public comment.

This request will be back on the September 2<sup>nd</sup> Planning Commission agenda.

**ZONING TEXT CHANGE  
COMMERCIAL HOME HORTICULTURE  
TOM AND LISA SADLER-HART**

*Public hearing and consideration of a zoning text change to revise SGC 22.16.015-6 to make commercial home horticulture a permitted use in the R-1, R-1 MH, R-2, R-2 MHP, GI and LI zones and revise SGC 22.08.195 Commercial home horticulture definition to clarify it allowing for the sale of products produced on site and to allow for the construction of accessory buildings. The applicant is Lisa Sadler-Hart and Tom Hart.*

Williams describes the zoning text change and definition change request.

**APPLICANT:** Tom Hart and Lisa Sadler-Hart come forward to share idea. They hope to increase economic benefit for food growers while increasing neighborhood access to fruits and vegetables. They are open to all discussions and understand that the process could take a while to flush out all the details. They also have concerns over increased traffic in neighborhoods and individual “garden stands” and what they should look like.

Williams is excited as this could be a new movement in Sitka. Sadler-Hart has done beautiful work throughout the community.

**COMMISSIONER DELIBERATION:** Commissioner Pohlman asks about conditional use permit process. Pohlman brings up fertilizer odor issues. What is the Commission going to do to include checks and balances? She asks about chicken coops.

Discussion over traffic generation and how this would affect R-1 neighborhood issues. Spivey says this could become like never ending garage sales and in the downtown area that could be a problem.

Sadler-Hart asks if traffic is the issue or the producible amount of food on the lots.

Spivey says it is mainly parking. Discussion on prohibitions on streets that are a lane and a half or properties under 50 ft wide. Commissioner Windsor says if it’s a small lot they won’t be able to grow enough to sell. Commissioner Seslar says perhaps the garden stand could be based on the size of the property.

Discussion over a time limit. Possibly one weekend per month or once a week.

Sadler-Hart states they would mainly take place June through September or during the growing season.

Various items such as orders, lockbox system and hours of operation come up.

Williams asks if we should include limiting greenhouses in the discussion. Specifically sizing and proximity to property lines.

Pohlman comments that this goes back to commercial uses in residential areas. How can we mitigate impacts? Perhaps another permitting process.

**PUBLIC COMMENT:** No public comment.

Request will be back for discussion at September 2<sup>nd</sup> Planning Commission meeting.

## **DISCUSSION**

### **CRESCENT HARBOR PARK PLAYGROUND EXPANSION**

#### **KAY TURNER**

*Discussion on proposed expansion of the Crescent Harbor Park Playground located on Lincoln Street next to Crescent Harbor by Kay Turner.*

Bosak describes details of the request. The idea was supported at the Historic Preservation Commission meeting.

**APPLICANT:** Kay Turner and Lynne Brandon come forward to answer questions. Turner says that a new playground is needed in Sitka and that the cause was recognized as a health summit goal. This playground would be ADA accessible and sustainable. Brandon states that the equipment will include games and encourage imaginative play. Park will be Sitka themed and have a neutral color scheme.



**COMMISSIONER DELIBERATION:** Commissioner Spivey asks about parking. Brandon says that the City has taken over maintenance on the lot across the street on SJ campus. Parking is also available at Crescent Harbor.

**PUBLIC COMMENT:** No public comment.

**MOTION: M/S SPIVEY/WINDSOR** moved to make a motion of recommendation to the Assembly on behalf of the proposed expansion of the Crescent Harbor Park Playground located on Lincoln Street next to Crescent Harbor by Kay Turner.

**ACTION:** Motion **PASSED unanimously 5-0** on a voice vote.

**PLANNING DIRECTOR'S REPORT:** No report.

**PUBLIC COMMENT:** No public comment.

**ADJOURNMENT:**

**MOTION: M/S SPIVEY/SESLAR** moved to adjourn at 9:17 pm.

**ACTION:** Motion **PASSED unanimously 5-0** on a voice vote.

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**Richard Parmelee, Chair**

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**Maegan Bosak, Secretary**

**CITY AND BOROUGH OF SITKA  
Planning Commission  
Minutes of Meeting  
August 5, 2014**

**Present:** Chris Spivey (Vice-Chair), Debra Pohlman (Member), Darrell Windsor (Member), Terrance Seslar (Member), Wells Williams (Planning Director), Maegan Bosak (Planner I)

**Members of the Public:** Scott Brylinsky, Paul and Emily Davis, Mary Wegner, Paul Haavig

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

**Roll Call:**

**PRESENT:** 4 –Spivey, Pohlman, Windsor, Seslar

**ABSENT:** 1 -Parmelee

**Consideration of the Minutes from the July 15, 2014 meeting:**

**MOTION: M/S WINDSOR/SESLAR** moved to approve the meeting minutes for July 15, 2014.

**ACTION:** Motion **PASSED unanimously 4-0** on a voice vote.

**The evening business:**

**CONDITIONAL USE PERMIT- 2 BEDROOM BED AND BREAKFAST  
LOT 1-S GIBSON/KITKA/SNOWDEN SUBDIVISION  
BRIAN JARDINE**

*Public hearing and consideration of a two bedroom bed and breakfast conditional use permit filed by Brian Jardine at 105 Shelikof Way. The property is also known as Lot 1-S Gibson/Kitka/Snowden Subdivision. The owner of record is Shannon J. Jardine and Brian R. Jardine.*

Planner I, Bosak, describes the progression of the two bedroom B&B request. Bosak describes the small subdivision and access easement. The two bedrooms will be in the lower level and living spaces are on the upper floor. This is the last public comment hearing, the next meeting will be specifically for Commissioner deliberation, findings and a motion. No new comments were received other than a letter submitted by the Municipal Attorney.

Robin Koutchak, Municipal Attorney, asks if there were any questions of her memorandum of law. No questions from Commissioners.

**APPLICANT:** Brian Jardine and Michelle Peterson, feel that the City is giving legal advice on behalf of the neighbor. Previous issues have been of noise and parking but there hasn't been any filed complaints. They have four parking spaces per the reason of permit denial in 2006. Peterson, feels that the Municipal Attorney is representing Mr. Mulligan rather than the

community interest. They feel that this is not a property problem but a problem between charter operators vs. commercial fishing. Neighbor is making threatening comments to the applicants. Commissioner Spivey asks if there is any new information pertaining to the request. Jardine discusses pictures passed around at the end of the last meeting showcasing the available parking. Applicants discuss that they have the requirements for the permit. They are requesting the permit for 3.5-4 months. They are willing to work with anyone. Peterson states that Mr. Mulligan is out fishing in the summers and they only wish to operate the B&B during that season.

Williams describes the next meeting and future Planning Commission and Assembly processes. The applicant can provide information from their Attorney for the next packet. Assembly public comment is tentatively scheduled for September 9<sup>th</sup>.

**PUBLIC COMMENT:** No public comment.

Permit request scheduled for the August 19<sup>th</sup> meeting. Williams reminds that the August 19<sup>th</sup> Planning Commission meeting will be at the Sitka Fire Hall.

**CONDITIONAL USE PERMIT- DAYCARE/KINDERGARTEN IN R-1 ZONE  
LOT 1 WESTOVER SUBDIVISION  
EMILY DAVIS**

*Public hearing and consideration of a daycare conditional use permit filed by Emily Davis at 304 Baranof Street. The property is also known as Lot 1 Westover Subdivision. The owner of record is John and Karen Thielke.*

Bosak provides a staff report explaining the conditional use permit request. The request is across from Baranof Elementary. It was most recently the Boys and Girls Club and professional offices. Davis recently opened the Pacific Learning Center downtown. Plans for new facility show daycare service for up to 35 children. Staff feels parking and pick up/drop off plans should be discussed in depth. Staff Contacted both Sitka School District Superintendent and new Baranof principal for their input.

Request will be scheduled for multiple meetings to make contact with school district.

**APPLICANT:** Emily and Paul Davis come forward to describe request. Primary focus will be on infant care and after school programming. Davis feels that this location would be perfectly suited for after school programming. Two licensed teachers will be residing upstairs. Willing to adjust hours to prevent congestion. The location also offers a backyard which would encourage outdoor activities. Williams asks how many classrooms Davis plans on having? Davis states 3 classrooms as it is hard to tell demand at this time. Will be dependent on how many children, ages, etc. Williams explains that CBS code states there must be 1 parking space per classroom plus two for the upstairs dwelling unit. They may need to apply for a parking variance. The reserved spaces in the adjacent public lot are not legal parking spaces for this facility. Davis has illustrated three parking spaces on the side of the building. Williams describes history of this building and parking provisions. Commissioner Windsor asks about fence and if it is on the property line?

Paul Davis states the two intended residents do not have cars. Williams says they still need the required spots but it will provide more availability for drop offs and pick ups.

**COMMISSIONER DELIBERATION:** Commissioner Pohlman asks hours of operation and how they can be staggered. Paul Davis says at their current location they are cognizant and considerate of traffic and congestion. Bosak asks Davis to expand on Harbor Drive location. Davis says that she does not want to add school age children to the first location, as it would change the atmosphere and create chaos.

Pohlman states the traffic is an issue for other local business i.e. the Elks around school times. This new institution is bringing up an old issue. Pohlman suggests bringing up issue of parking in general. Williams suggests focusing specifically on this issue and this property.

Williams also states that input needs to be heard from school representatives and we should wait for school to start so Commissioners can see congestion issues.

Commissioner Spivey talks about congestion and says it is awful.

Davis plans to rent the space but worries that it will not be available after multiple meetings. Davis also states that there will be more students walking from Baranof to the center, limiting parking needs. Spivey asks if students will be collected and escorted? Davis says that would make the most sense. She would like to work with the school as best as possible. Applicants thought this building would be the best due to the location across from Baranof Elementary. Commissioner Seslar asks about late arrival parents and possible congestion.

Windsor clarifies that conditional use permits stay with the buildings. Williams says yes but they are also based on plans submitted. Specific to business and unlikely that another person would come in and use the same business plan.

**PUBLIC COMMENT:** Mary Wegner, Superintendent of Sitka School District, says she's happy to work with the applicant.

Permit will be schedule for discussion at the August 19<sup>th</sup> and September 2<sup>nd</sup>.

**VARIANCE REQUEST  
LOT 7 ETHEL SUBDIVISION  
RANDY HITCHCOCK FOR STEVE ATKINSON**

*Public hearing and consideration of a variance request at 725 Alice Loop filed by Randy Hitchcock. The applicant is requesting a front setback from 20 feet to 16 feet to allow for a covered front porch on a new construction home. The property is also known as Lot 7 Ethel Staton Subdivision. The owner of record is Steve Atkinson.*

Bosak describes front setback request. Foundation is in compliance with setback requirements however the front porch will extend into front setback. Bosak reminds Commission of prior variances approved on Alice Loop and terrain/lot size. Applicant has already gone through Historic Preservation Commission. Located in a waterfront zone.

**APPLICANT:** Steve Atkinson, via phone from Huntington Beach, CA, shares plans for new construction home. He didn't realize it in planning stage but lot was mismeasured and so they are before the Commission asking for a reduction of four feet.

Williams says there are no questions. Residential area with no impacts.

**COMMISSIONER DELIBERATION:** No questions.

**PUBLIC COMMENT:** No public comment.

Williams describes known historical site and historical nature of the area, therefore the applicant was required to go through Historic Preservation Commission.

**MOTION: M/S WINDSOR/POHLMAN** move to approve the following findings:

1. That there are special circumstances to the intended use that do not apply generally to the other properties, specifically the topographic constraints;
2. The variance is necessary for the preservation and enjoyment of a substantial property right of use possessed by other properties but are denied to this parcel;
3. That the granting of such a variance will not be materially detrimental to the public welfare or injurious to the property nearby parcels of public infrastructure;
4. That the granting of such a variance will not adversely affect the Comprehensive Plan. It is in line with Comprehensive Plan 2.3.1 *To guide the orderly and efficient use of private and public land in a manner that maintains a small-town atmosphere, encourages a rural lifestyle, recognizes the natural environment, and enhances the quality of life for present and future generations without infringing on the rights of private landowners* and 2.3.4 *To minimize and resolve conflicts, between residential, commercial, recreational and industrial land uses.*

**ACTION: Motion PASSED unanimously 4-0** on a voice vote.

**MOTION: M/S WINDSOR/POHLMAN** move to approve a variance request at 725 Alice Loop filed by Randy Hitchcock. The applicant is requesting a front setback from 20 feet to 16 feet to allow for a covered front porch on a new construction home. The property is also known as Lot 7 Ethel Staton Subdivision. The owner of record is Steve Atkinson.

**ACTION: Motion PASSED unanimously 4-0** on a voice vote.

**VARIANCE REQUEST  
LOT 12 ETHEL STATON SUBDIVISION  
PAUL HAAVIG**

*Public hearing and consideration of a variance request at 745 Alice Loop filed by Paul Haavig. The applicant is requesting a side setback from 10 feet to 8 feet to allow for eaves on a new construction home. The property is also known as Lot 12 Ethel Staton Subdivision. The owner of record is Paul Haavig.*

Bosak describes details of variance request at 745 Alice Loop. Haavig is requesting a side setback from 10 feet to 8 feet. In most residential zones, this request would go through the administrative variance process. However due to the waterfront zoning, administrative variances are not permitted. Bosak describes specific covenants relative to the subdivision, including garages. New construction home request will go before Historic Preservation Commission next week, at August meeting.

Williams describes Shee Atika's intent in the creating the Ethel Staton subdivision as a waterfront zone. Most flexible zone that could allow for condominiums or boat storage.

**APPLICANT:** Paul Haavig says that the setback variance is specifically for the eaves and gutters. When originally placing the home on the lot plan, they followed the 80 foot front width however the middle of the lot only measures 78 feet wide. Asking for two foot variance on one side.

**COMMISSIONER DELIBERATION:** No questions.

**PUBLIC COMMENT:** No public comment.

**MOTION: M/S WINDSOR/SESLAR** move to approve the following findings:

1. That there are special circumstances to the intended use that do not apply generally to the other properties, specifically the irregular shape of the parcel and presence of water at the rear of the property;
2. The variance is necessary for the preservation and enjoyment of a substantial property right of use possessed by other properties but are denied to this parcel;
3. That the granting of such a variance will not be materially detrimental to the public welfare or injurious to the property nearby parcels of public infrastructure, specifically that an 8 foot setback will be maintained;
4. That the granting of such a variance will not adversely affect the Comprehensive Plan. It is in line with Comprehensive Plan 2.3.1 *To guide the orderly and efficient use of private and public land in a manner that maintains a small-town atmosphere, encourages a rural lifestyle, recognizes the natural environment, and enhances the quality of life for present and future generations without infringing on the rights of private landowners* and 2.3.4 *To minimize and resolve conflicts, between residential, commercial, recreational and industrial land uses.*

**ACTION:** Motion **PASSED unanimously 4-0** on a voice vote.

**MOTION: M/S WINDSOR/SESLAR** move to approve a variance request at 745 Alice Loop filed by Paul Haavig. The applicant is requesting a side setback from 10 feet to 8 feet to allow for eaves on a new construction home. The property is also known as Lot 12 Ethel Staton Subdivision. The owner of record is Paul Haavig.

**ACTION:** Motion **PASSED unanimously 4-0** on a voice vote.

**PLANNING DIRECTOR'S REPORT:** August 19<sup>th</sup> Planning Commission meeting will be held at the Sitka Fire Hall.

**PUBLIC COMMENT:** No public comment.

**ADJOURNMENT:**

**MOTION: M/S POHLMAN/WINDSOR** moved to adjourn at 8:23 pm.

**ACTION:** Motion **PASSED unanimously 4-0** on a voice vote.

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**Chris Spivey, Vice-Chair**

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**Maegan Bosak, Secretary**



**CITY AND BOROUGH OF SITKA**  
**Planning Commission**  
**Minutes of Meeting**  
**July 15, 2014**

**Present:** Richard Parmelee (Chair), Darrell Windsor (Member), Terrance Seslar (Member), Wells Williams (Planning Director), Maegan Bosak (Planner I)

**Members of the Public:** Richard Doland, Chad and Kelly Goeden, Hans Von Rekowski, Ken Buxton, Dan Tadic (Municipal Engineer)

Chair Parmelee called the meeting to order at 7:01 p.m.

**Roll Call:**

**PRESENT:** 3 –Parmelee, Windsor, Seslar

**Consideration of the Minutes from the June 17, 2014 meeting:**

**MOTION: M/S WINDSOR/SESLAR** moved to approve the meeting minutes for June 17, 2014.

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

**The evening business:**

**VARIANCE REQUEST**  
**LOT 54 GAVAN SUBDIVISION**  
**SAM SKAGGS**

*Public hearing and consideration of a variance request at 504 Charteris Street filed by Sam Skaggs. The request is to reduce the side setback from 8 feet to 3 feet for a new construction house. The property is also known as Lot 54 Gavan Subdivision. The owner of record is Samuel D. Skaggs.*

Planner I, Bosak, describes the applicant's request. Skaggs is back before the Board with revised building plans requesting a side setback variance from 8 feet to 3 feet. Bosak describes the eagle permit and the location. Bosak reads public comment from Jay and Amy Sweeney.

**APPLICANT:** Via phone, Sam Skaggs, educates the Board on the extremely challenging site. Most of the lot is unbuildable, however they plan to build on a pounded piling foundation, going down approximately 20-25 feet. The plan is for a small home, a 30x30 ft. two story. Skaggs reviews the eagle permit and the ability to "take" two eagles which he is trying not to do. He is a conversationalist and waiting for the eagles to leave before working on the land so not to disturb them. He reminds the Commission that there are no eagle nests on the property and they aren't looking to remove trees to the west as they are a wind barrier. Skaggs is trying to build an earthquake safe house. The lot is disadvantaged due to the old city water line at the front. Richard Doland, Doland Built Homes, explains that excavation depths will be fairly negligible. No shot rock will be used only digging for footings. Doland approximates less than two feet of actual digging down.



Williams asks Skaggs to elaborate on his Sitka roots. Skaggs replies that he doesn't think this should have any bearing on the variance but he has been heavily involved in Sitka for many years. He looks forward to being a full time resident.

**PUBLIC COMMENT:** Dan Tadic, Municipal Engineer, says that Skaggs has worked with Engineer Dave Longtin on waterline easement and they appreciate his willingness to compromise with CBS.

**COMMISSIONER DELIBERATION:** No Commissioner questions.

**MOTION: M/S WINDSOR/SESLAR** move to approve the following findings:

1. That there are special circumstances to the intended use that do not apply generally to the other properties, specifically the rear of the property being unbuildable and the waterline crossing the front;
2. The variance is necessary for the preservation and enjoyment of a substantial property right of use possessed by other properties but are denied to this parcel;
3. That the granting of such a variance will not be materially detrimental to the public welfare or injurious to the property nearby parcels of public infrastructure, specifically public infrastructure is enhanced due to the arrangement of the waterline;
4. That the granting of such a variance will not adversely affect the Comprehensive Plan. It is in line with Comprehensive Plan 2.3.1 *To guide the orderly and efficient use of private and public land in a manner that maintains a small-town atmosphere, encourages a rural lifestyle, recognizes the natural environment, and enhances the quality of life for present and future generations without infringing on the rights of private landowners.*

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

**MOTION: M/S WINDSOR/SESLAR** move to approve a variance request at 504 Charteris Street filed by Sam Skaggs. The request is to reduce the side setback from 8 feet to 3 feet for a new construction house. The property is also known as Lot 54 Gavan Subdivision. The owner of record is Samuel D. Skaggs.

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

**CONDITIONAL USE PERMIT- 2 BEDROOM BED AND BREAKFAST  
LOT 1-S GIBSON/KITKA/SNOWDEN SUBDIVISION  
BRIAN JARDINE**

*Public hearing and consideration of a two bedroom bed and breakfast conditional use permit filed by Brian Jardine at 105 Shelikof Way. The property is also known as Lot 1-S Gibson/Kitka/Snowden Subdivision. The owner of record is Shannon J. Jardine and Brian R. Jardine.*

Planner I, Bosak, describes the two bedroom B&B request. Home is accessed on shared easement with neighbors Grun and Mulligan. Bedrooms are located on the bottom story of the home, living space is up above. Long history of property applying for permit and not granted. Neighborhood petition over concern of noise and traffic, prompted a meeting between City Officials and Jardine. Mr. Jardine owns a fishing charter business, A-Z Fishing Charters, and it could be presumed that those clients have been or could be renting rooms. Williams suggests that the Planning Commission takes a minimum of two meetings. Bosak reads two public

comments- from Michelle Putz and Richard Mulligan. Williams shares that neighbor Grun has a two bedroom bed and breakfast permit currently.

**APPLICANT:** Brian Jardine, says there is plenty of room for four parking spaces. Traffic will not increase or decrease. Past permit was not granted due to parking but parking is accounted for. He is aware of the permit regulations and he is willing to follow those. Permit will hold him accountable and City will get taxable revenue. Jardine only plans to operate for a few months out of the year. Mr. Mulligan also has a rental contributing to traffic on the easement. Jardine is looking to forward his business and make it lucrative. Would like bed and breakfast to run mid-May through September 1st. He drives trucks during the winter down south for additional income. He is willing to compromise and work with anyone who is willing to work with him.

Williams showcases pictures of parking on overhead screen for Commissioners. Jardine explains that he would just like to make a little extra income. Rather than start a neighborhood feud, they would like the opportunity to run the permit in accordance with the law.

**COMMISSIONER DELIBERATION:** Commissioner Windsor asks if there are clients staying there now? Jardine responds that he has friends staying with him. "Have you had clients in the past?" Windsor asks. Yes, we have. Jardine explains that they haven't been charging for the lodging only for the fishing. That's why they are going through this permit process is so they can make more money, specifically for the lodging. Jardine states that he is just looking for an opportunity to work within whatever boundaries the Board deems necessary. He is willing to look at a one year permit or whatever they say. There are children that visit the home.

Commissioner Seslar says that the website clearly states this is for lodging. Jardine responds that they lodge guests around town in hotels, etc. and that the website is very outdated. It shows a boat that Jardine no longer owns. Jardine only owns one boat. They have asked that the website be changed.

Windsor asks is the lodging referring to people staying at hotels? Jardine says that it is standard language and if its guys that he hunts with they will come up and stay with him and he charges the \$275 fishing fee only. After the meeting with the City, Jardine says he understands that this is not the way they would like to see it done. They are willing to work with all parties. They can show hotel receipts.

**PUBLIC COMMENT:** Mike Steinberg, 127 Shelikof Way, says they look directly down at Jardine's driveway. Steinberg thinks it is important to note that Jardine is trying to start and operate a legitimate business in Sitka. It takes a lot of different pieces. He wants Jardine to be part of the tax base. Steinberg is also a charter boat operator and it impacts his bottom line as he could then keep guests there or take guests out that are staying with Jardine. He doesn't see a lot of traffic in and out of the house. There aren't additional vehicles coming in and out. He says Vonnies B&B doesn't affect him. He wants to see this become a legitimate and legal business.

Molly Kitka, 155 Shelikof Way, has a little bit of concern. Her major concern was her own privacy. Jardine did put up a laddice screen to protect her privacy and to keep guests from looking off the deck into her house. They have been lodging people at their home for the last 10 years. She would like to know how the City plans to monitor the permit. How can it be determined the 3 bedrooms aren't being rented out rather than 2? She feels Jardine needs to prove himself before being granted a permit.

Williams is unaware of how this permit could be monitored. Seslar asks specifically about sales tax and if this could work as an enforcement agent. Williams does not know of any Planning Commission across the country that gets involved in company financials. Sales tax records are confidential records. Bosak says that bed tax reporting could be a means.

Windsor asks Ms. Kitka which house is hers. She describes proximity and past noise issues. She wants Planning Commission to have all the information – she is neither for or against permit. Her one concern was her privacy- traffic doesn't concern her. She wants forthrightness and honesty.

Jardine says he would like the opportunity to prove that he can operate within the rules. The website is out of date and not accurate. He is just asking for the opportunity to prove himself.

Ken Buxton, 108 Shelikof Way, says he's not indifferent but he would like to be fair and see things done right. He is available to answer questions. He voiced problems with Grun's operation but those seem to have been resolved. He's lived there for three years. Windsor asks him if he would notice any increase of traffic? No, he hasn't noticed any increase. There are two sides to every story. He wanted to hear them both and then make a decision on his own.

Richard Mulligan, 107 Shelikof Way, states he is totally against this request. There is already an established business that is out of control. Mulligan passes out photos to the Planning Commission of guests coming and going from Jardines and Grun's. Mulligan is afraid it is just going to get worse. Morning traffic between 4:30-5 am wakes him and his family up. Mulligan has submitted a records request for information he will provide to the Board. Parmelee asks how long he has lived there- 14 years. Pictures show gatherings between Grun's and Jardine's guests/captains – excessive traffic and noise. Jardine's guests do not park on Mulligan's property. Jardine points out that only one of the pictures is of his house.

Mike Steinberg, 127 Shelikof Way, again approaches the Board and says in the last 5 years he has seen Jardine put a new roof on the house, new deck, clean up the lot and general improvements. Thus increasing the value of his home and the entire neighborhood.

LaVonne Grun, 101 Shelikof Way, supports Jardine's right to operate a B&B and finds it offensive that she has been brought into this situation. She has a B&B and operates within the City guidelines. She says this is not about traffic or noise but operation of a charter fishery. It is about a commercial issue and Mr. Mulligan's dislike and hatred towards their sportfishing industry.

Jardine says that Mulligan's photos show that Jardine is providing adequate parking. Past request was turned down due to parking and that should not be a factor this time.

Williams reminds Board that the staff recommendation is to close public hearing and schedule it again at the next meeting.

Windsor asks about the petition. It will be included in the next packet. Williams says petition was against charter businesses in the neighborhood not specific properties.

Request will be scheduled again for August 5<sup>th</sup>.

**VARIANCE REQUEST  
LOT 3 STOCKER SUBDIVISION**

## CHAD AND KELLY GOEDEN

*Public hearing and consideration of a variance request at 2012 Cascade Creek Road filed by Chad and Kelly Goeden. The request is to reduce the side setback from 8 feet to 2 feet for construction of a new garage. The property is also known as Lot 3 Stocker Subdivision. The owner of record is Chad and Kelly Goeden.*

Bosak provides staff report commenting on the layout of the lot with the proposed two car garage. All property lines are side setbacks as it does not front a right of way. Bosak provides history of old waterline and issues that may arise for the applicants. Request went through the Development Review Committee and staff didn't foresee any issues. Applicants will be required to sign waiver releasing liability from any future erosion or drainage issues. Bosak reads comment asking for hydrologist study from Gary Olsen.

**APPLICANT:** Chad and Kelly Goeden share the planned location of the new two car garage. Coming out on the diagonal from the house. Points out the shed will be removed and garage will be built in its place. Creek follows the old water line which is not on Goeden's property. There will be no additional excavation on the site. They point out the location of the garage on the overhead.

Williams describes old city water line. He says requests like this are fairly common. Williams says waterline will never be used again and property behind the lot is wetlands.

Chad Goeden shares his appreciation for Planner I, Bosak. He states she was knowledgeable, kind and gives government officials a good name.

**PUBLIC COMMENT:** Neighbor, Hans Von Rekowski, 2010 Cascade Creek Road, shares concern of possible landslides in the area as seen in the past. He wants an engineered report to ensure additional weight will not create new slides.

Williams asks if Goeden plans to cut into the bank at all? No, they don't plan any additional excavation of the property.

**COMMISSIONER DELIBERATION:** Commissioner Parmelee asks Municipal Engineer, Tadic, if he knows the area? Tadic replies that he is not that familiar with it but the waterline is old WWII era. He knows that some areas of the line have collapsed and that there is still limited water draining through. He doesn't see any concerns.

**MOTION: M/S WINDSOR/SESLAR** move to approve the following findings:

1. That there are special circumstances to the intended use that do not apply generally to the other properties, specifically the limited building pad due to terrain;
2. The variance is necessary for the preservation and enjoyment of a substantial property right of use possessed by other properties but are denied to this parcel, specifically the implied right to construct a garage in an R-1 zone;
3. That the granting of such a variance will not be materially detrimental to the public welfare or injurious to the property nearby parcels of public infrastructure, specifically that the construction of the proposed garage will not increase the footprint and construction will not adversely affect the abandoned waterline;
4. That the granting of such a variance will not adversely affect the Comprehensive Plan. It is in line with Comprehensive Plan 2.3.1 *To guide the orderly and efficient use of private and public land in a manner that maintains a small-town atmosphere,*

*encourages a rural lifestyle, recognizes the natural environment, and enhances the quality of life for present and future generations without infringing on the rights of private landowners.*

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

**MOTION: M/S WINDSOR/SESLAR** move to approve a variance request at 2012 Cascade Creek Road filed by Chad and Kelly Goeden. The request is to reduce the side setback from 8 feet to 2 feet for construction of a new garage. The property is also known as Lot 3 Stocker Subdivision. The owner of record is Chad and Kelly Goeden.

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

**CONDITIONAL USE PERMIT- SHORT-TERM RENTAL  
LOT 18, BLOCK 11, SIRSTAD ADDITION NO. 2  
CHRIS BALOVICH**

*Public hearing and consideration of a short-term rental conditional use permit filed by Chris Balovich at 713 Lake Street. The property is also known as Lot 18, Block 11, Sirstad addition No. 2. The owner of record is Christopher Balovich and Shelly Vaughn.*

Bosak gives staff report commenting on location, building layout and access to the possible short term rental. The applicant has had the apartment for family and friends and would an additional income source. No meals or transportation will be provided.

Commissioner Windsor states that he has worked on the applicant's home in the past.

**APPLICANT:** Owner and applicant, Chris Balovich, comes forward to share his intent with the Commission. He has grown children and family members that often visit and he would like to be able to rent the apartment on a short term basis in between those times. Currently used as a long term rental. The one bedroom apartment is fully furnished. No meals or transportation will be provided. There is a private driveway on the side of the home and plenty of parking. Fire/Life safety inspection has already been completed.

**PUBLIC COMMENT:** No public comment.

**COMMISSIONER DELIBERATION:** No Commissioner questions.

**MOTION: M/S WINDSOR/SESLAR** move to approve the following findings:

1. The Planning Commission finds that the recommended conditional use permit
  - a. Will not be detrimental to public health, safety or welfare;
  - b. Will not adversely affect the surrounding character;
  - c. Will not be injurious to uses or property in the immediate vicinity;
2. Is consistent with Comprehensive Plan policy 2.5.2 I Encourage the development of facilities to accommodate visitors without significant impacts on residential properties;
3. That all conditions necessary to lessen impacts can be monitored and enforced;
4. Will not introduce hazardous conditions on the site;
5. Is adequately supported by public facilities and services;
6. The applicant has met the burden of proof; and
9. The Planning Commission finds that the general approval criteria have been met and the Planning Commission has evaluated the criteria set forth in 22.24.010 which is the



criteria for conditional uses that deal with hours of operation and location along collector streets.

**The general approval criteria are as follows:**

1. Site topography, slope and soil stability, geophysical hazards such as flooding, surface and subsurface drainage and water quality, and the possible or probable effects of the proposed conditional use upon these factors;
2. Utilities and service requirements of the proposed use, including sewers, storm drainage, water, fire protection, access and electrical power; the Assembly and Planning Commission may enlist the aid of the relevant public utility officials with specialized knowledge in evaluating the probable effects of extending public utilities in establishing conditions under which the conditional use may be permitted;
3. Lot or tract characteristics, including lot size, yard requirements, lot coverage and height of structures;
4. Use characteristics of the proposed conditional use that affect adjacent uses and districts, including hours of operation, number of persons, traffic volumes, off-street parking and loading characteristics, trash and litter removal, exterior lighting, noise, vibration, dust, smoke, heat and humidity, recreation and open space requirements;
5. Community appearance such as landscaping, fencing and screening, dependent upon the specific use and its visual impacts.

**1. Criteria to be used in determining impacts of conditional uses:**

- a. Amount of vehicular traffic to be generated and its impacts of the traffic on nearby land uses;
- b. Amount of noise to be generated and its impacts on surrounding land uses;
- c. Odors to be generated by the use and their impacts;
- d. Hours of operation, not different that a traditional residential use;
- e. Location along a major or collector street;
- f. Potential for users or clients to access the site through residential areas or substandard street creating a cut through traffic scenario;
- g. Effects on vehicular and pedestrian safety;
- h. Ability of the Police, Fire, and EMS personnel to respond to emergency calls on the site;
- i. Logic of the internal traffic layout;
- j. Effects of signage on nearby uses;
- k. Presence of existing or proposed buffers on the site or immediately adjacent the site;
- l. Relationship if the proposed conditional use in a specific location to the goals, policies, and objectives of the Comprehensive Plan;
- m. Other criteria that surface through public comments or Planning Commission Assembly review.

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

**MOTION: M/S WINDSOR/SESLAR** move to approve a recommendation of approval to the Assembly for a short-term rental conditional use permit filed by Chris Balovich at 713 Lake Street. The property is also known as Lot 18, Block 11, Sirstad Addition No.2. The owner of record is Christopher Balovich and Shelly Vaughn.

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

Commission discussion over the difference between CBS definitions of a Lodge and Bed and Breakfast. Williams states that staff will be working to update the definitions in the future.



**PLANNING DIRECTOR'S REPORT:** No report.

**PUBLIC COMMENT:** No public comment.

**ADJOURNMENT:**

**MOTION: M/S WINDSOR/SESLAR** moved to adjourn at 9:17 pm.

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

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**Richard Parmelee, Chair**

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**Maegan Bosak, Secretary**



# City and Borough of Sitka

100 Lincoln Street Sitka, Alaska 99835

*Coast Guard City, USA*

## Notice of Public Hearings

The Assembly of the City and Borough of Sitka will hold a public hearing during a regular meeting scheduled Tuesday, September 23, 2014 on the following items:

**Public hearing and consideration of a two bedroom bed and breakfast conditional use permit filed by Brian Jardine at 105 Shelikof Way. The property is also known as Lot 1-S Gibson/Kitka/Snowden Subdivision. The owner of record is Shannon J. Jardine and Brian R. Jardine.**

The Assembly may take action on September 23, 2014. The Assembly meeting will begin at 6:00 pm in Harrigan Centennial Hall at 330 Harbor Drive in Sitka.

Interested residents are encouraged to make comments during the meeting and written comments can be submitted to the Municipal Clerk at 100 Lincoln Street.

**Two bedroom bed & breakfast conditional use permit at 105 Shelikof Way:**

The applicant is requesting a conditional use permit for a two bedroom bed and breakfast at 105 Shelikof Way. This would allow the applicant to rent out up to two bedrooms. The applicant also owns a fishing charter business. Off-street parking spaces are available. The property is zoned R-1 Residential. The R-1 single-family and duplex 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.

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BRIAN/SHANNON JARDINE

JARDINE, BRIAN/SHANNON  
105 SHELKOF WAY  
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SARAH BELL

BELL, SARAH  
1724 HALIBUT POINT RD  
SITKA AK 99835

**Assembly Mailing  
September 12, 2014**

**Jardine**  
CUP- B&B  
*105 Shelikof Way*

FLORENCE WELSH

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1614 DAVIDOFF ST.  
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**P&Z Mailing**  
**August 8, 2014**

**Jardine**  
CUP- B&B  
*105 Shelikof Way*

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**P&Z Mailing**  
**July 25, 2014**

**Jardine**  
CUP- B&B  
*105 Shelikof Way*

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SITKA AK 99835

GERALDINE COPELAND  
COPELAND, GERALDINE  
1708 HALIBUT POINT RD  
SITKA AK 99835

BRIAN/SHANNON JARDINE  
JARDINE, BRIAN/SHANNON  
105 SHELKOF WAY  
SITKA AK 99835

LAVONNE GRUN  
GRUN, LAVONNE, M.  
P.O. BOX 741  
SITKA AK 99835

RICHARD MULLIGAN  
MULLIGAN, RICHARD, D.  
107 SHELKOFF WAY  
SITKA AK 99835

MICHAEL/SHEILA STENBERG  
STENBERG, MICHAEL, R./SHEILA  
127 SHELKOF WAY  
SITKA AK 99835

JOSEPH/MICKEY SCHWANTES  
SCHWANTES, JOSEPH/MICKEY  
P.O. BOX 2674  
SITKA AK 99835

KENNETH/KELLY BUXTON  
KENNETH BUXTON, JR & KELLY BUXTON  
108 SHELKOF WAY  
SITKA AK 99835

KATHY SWANBERG  
SWANBERG, KATHY, L.  
P.O. BOX 3053  
SITKA AK 99835

STANLEY FILLER  
FILLER, JR., STANLEY, J.  
406 HOLLYWOOD WAY  
SITKA AK 99835

STANLEY FILLER  
FILLER, STANLEY, J.  
P.O. BOX 777  
SITKA AK 99835

HEATHER/LEVI ALBERTSON  
ALBERTSON, HEATHER & LEVI  
P.O. BOX 921  
SITKA AK 99835

GILBERT/SHIRLEY TRUITT  
TRUITT, GILBERT/SHIRLEY  
P.O. BOX 1596  
SITKA AK 99835

GEORGE/ANNA WINTERS  
WINTERS, ANNA, E.  
P.O. BOX 402  
SITKA AK 99835

KERMIT WHITTEMORE  
WHITTEMORE, KERMIT, D.  
P.O. BOX 264  
SITKA AK 99835

WILLIAM/LAURA TIMMONS  
TIMMONS, WILLIAM/LAURA  
180 GOSSETS TURN DR  
MIDDLETOWN RI 02842

MOLLY KITKA  
KITKA, MOLLY  
P.O. BOX 922  
SITKA AK 99835

KERRY STROMME  
STROMME, KERRY, O.  
1717 EDGE CUMBE DR.  
SITKA AK 99835

JAMES/MICHELLE EDWARDS/PUTZ  
EDWARDS, JAMES & PUTZ, MICHELLE  
131 SHELKOF WAY  
SITKA AK 99835

GARY/CAROLYN JARVILL  
C/O ERIC JARVILL  
JARVILL, GARY, L./CAROLYN, B.  
P.O. BOX 6286  
SITKA AK 99835

BERT/MARIE LAWS  
LAWS, MARIE, M.  
P.O. BOX 2436  
SITKA AK 99835

GAIL/CHERYL STROMME  
STROMME, GAIL, B./CHERYL, B.  
1717 EDGE CUMBE DR.  
SITKA AK 99835

LINN/TERRY SHIPLEY/BUTLER  
SHIPLEY, LINN, W./ BUTLER, TERRY, L.  
38 GRACE LANE  
MONTESANO WA 98563

MICHAEL/TEAL WEST  
WEST, MICHAEL, W./TEAL, L.  
209 CEDAR BEACH DR.  
SITKA AK 99835

JOYCE HEMNES  
HEMNES, JOYCE  
106 BAHOVEC CT  
SITKA AK 99835

LAWRENCE/HONEY POITRA  
POITRA, LAWRENCE, D./HONEY, LAURIE  
1730 HALIBUT POINT RD  
SITKA AK 99835

JANICE WEBB  
WEBB, JANICE, A.  
1802 HALIBUT POINT RD  
SITKA AK 99835

SARAH BELL  
BELL, SARAH  
1724 HALIBUT POINT RD  
SITKA AK 99835

**Planning Mailing**  
**July 3, 2014**

**Jardine**  
CUP- B&B  
*105 Shelikof Way*