



City and Borough of Sitka

100 Lincoln Street • Sitka, Alaska 99835

MEMO

To: Assembly

From: Theresa Hillhouse, Municipal Attorney *TH*

Date: May 18, 2010

Re: Appeal of SJC Minor Subdivision Plat Decision

On your May 25, 2010 regular meeting agenda is an item requested by a citizen, Nancy Yaw Davis, appealing the Planning Commission decision regarding the Shelton Jackson College minor subdivision plat which creates three new lots. This item is for your consideration at this time, not on the merits of the Planning Commission decision, but only on whether it involved a minor or major subdivision plat. This is because SGC 21.32.170B and SGC 21.32.180A only authorizes Assembly review of major subdivisions, and only review of minor subdivision plats if the applicant appeals (SGC 21.12.030C). Appeals by non-applicants of a minor subdivision plat are governed by SGC 22.30.240A, which is directly to court from the Planning Commission's decision.¹

The pertinent laws on major subdivisions are set out in SGC 21.32. SGC 21.04.030 entitled "Scope and jurisdiction" describes a major subdivision generally as "[a] subdivision of more than four lots or tracts."

The pertinent laws on minor subdivisions are set out in SGC 21.12. SGC 21.12.010A and SGC 21.04.030 describe the various types of circumstances which qualify for such a plat, with SGC 21.12.010A.1 applicable to the present case since the proposal only creates three additional lots (emphasis added):

- A. **The minor subdivision plat procedure shall apply to the following plats:**
1. Plats that create no more than four additional tracts or lots;

¹ SGC 22.30.240 entitled "Judicial appeal" states:

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

1. Plats that create no more than four additional tracts or lots;

2. Plats that create parcels that will become integral parts of the adjoining lots or rights-of-way;
3. A movement or creation of lot lines that does not result in an increase in the density or number of residential units within the area being subdivided or resubdivided;
4. A subdivision involving the vacation of a street or alley;
5. A subdivision created for a government agency acquisition of a street right-of-way.

SGC 21.12.010B describes the required conditions for approval of a minor subdivision, which were all been met in this case:

- B. Basic Criteria. The following general conditions are necessary for approval of a minor subdivision:
1. No dedications are needed;
 2. Monuments exist sufficient to locate all proposed lots on the site;
 3. The plat includes all contiguous land under common ownership;
 4. Maintenance agreements as necessary.

The only grounds specified in Ms. Davis' May 14, 2010 appeal letter for her claim that this is a major rather than minor subdivision plat are:

- (1) "It does not meet the city code for a minor subdivision" because "the three proposed parcels will not become "integral parts of the adjoining lots (See 21.12.010 Applications. A.2. page 242), that is, the lots will not be touching or bounding at a point or line. Rather, the cemetery which was "contiguous" before becomes separated."
- (2) "Nor does the plat proposal reflect a common sense understanding of something that is "minor" or small in size. The plat totals 105,058 square feet."

Regarding her first claim, the provision she cites at SGC 21.12.010A.2 is only one of the criteria that qualifies as a minor subdivision. She neglects to mention that SGC 21.12.010A.1 qualifies a plat with no more than 4 new lots as a minor subdivision plat.

Regarding her second claim, common usage of a term does not apply if a term is defined by law. *See* for example, SGC 1.04.010; *see also* SGC 21.04.030. In this case, the type of conditions and criteria for minor subdivision is specifically defined by SGC 21.12.010, and includes the type of proposal before the Planning Commission, which was to create 4 new lots or less.

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Please note that Ms. Davis' appeal letter claims that "under the present code there is no appeal procedure." However, as mentioned above, there is an appeal procedure for non-applicants regarding minor subdivision plat decisions – directly to court. Not all Planning Commission decisions may be appealed directly to the Assembly. She has been informed that this is her avenue of appeal in the attached May 12, 2010 Municipal Clerk's email letter regarding any minor subdivision plat decision by the Planning Commission.

Attachments

cc: Jim Dinley, Municipal Administrator
Wells Williams, Planning Director