



# CITY AND BOROUGH OF SITKA

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

## Minutes - Final City and Borough Assembly

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Tuesday, September 23, 2014

6:00 PM

Assembly Chambers

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### REGULAR MEETING

#### I. CALL TO ORDER

#### II. FLAG SALUTE

#### III. ROLL CALL

**Present:** 5 - Hunter, Hackett, Esquiro, Reif, and Swanson

**Excused:** 2 - McConnell, and Miyasato

#### IV. CORRESPONDENCE/AGENDA CHANGES

[14-194](#)

Airport Long Term Parking and Alaska Marine Highway Schedule

Administrator Gorman informed that additional long-term parking has been authorized at the far end of the paved airport parking lot.

[14-193](#)

Reminders & Calendars

#### V. CEREMONIAL MATTERS

Mr. Reif offered his gratitude to special individuals that he had the pleasure to work with through his tenure on the Assembly and offered special thanks to his wife Melanie for her support. He was humorous with the audience displaying a younger and an older Mike attributing his aging to service on the Assembly. He was given a picture taken during the Assembly ALS Challenge with a caption that read "Beam Me Up Assembly My Work Here is Done," Mr. Reif added that he may serve again someday.

#### VI. SPECIAL REPORTS: Government to Government, Municipal Boards/Commissions/Committees, Municipal Departments, School District, Students and Guests (time limits apply)

STA Director Lawrence Spotted Bird relayed that at a recent meeting STA approved three actions: 1) A resolution to support of bilingual signage throughout Sitka, 2) Get out to Vote effort for all elections, and 3) CBS Staff recommendation for locating the ceremonial canoe outside Centennial Hall. They recently celebrated 20 years for Tribal Tours and Naa Kahidi Dancers. He noted this Friday a documentary would be shown "Walking in Two Worlds" at 6:00 PM at the Community House. He reminded people to fill the Bus Food Drive Saturday.

**VII. PERSONS TO BE HEARD**

Garry White, Gary Paxton Industrial Park (GPIP) Director, announced two upcoming meetings: September 24 to discuss proposals received for the GPIP and the Economic Innovation Forum to be held September 30.

Chamber Director, Jennifer Robinson, mentioned the Seasons End Celebration to be held September 27.

**VIII. REPORTS****a. Mayor, b. Administrator, c. Attorney, d. Liaison Representatives, e. Clerk, f. Other**

Deputy Mayor Hunter reported Mim was attending the Northwest Community Land Trust Coalition conference this week and had asked Hunter to read her activities report for her.

She recently attended the Local Emergency Planning Commission meeting and also attended the inaugural celebration of the Carnival Miracle cruise ship with Mark Gorman. Last week she attended SE Conference in Wrangell. This is what she has to say about it: "It was a very good conference with interesting reports and good networking. Some high lights were the two reports presented by Meilani Schijvens, owner of Rain Coast Data. One was the annual **Southeast by the Numbers** and the other was a new report on **Arts and the Southeast Economy**. Another interesting presentation was done by a group of SE residents on Food Sustainability. The reports from Kasaan and Thorne Bay were of particular interest. The Southeast Islands School District is converting all ten of their schools to heating with wood. This energy is being used to produce food at the Thorne Bay School in a hydroponic greenhouse and the produce is being used in other schools in the district or sold. Other presentations were on the marine industry, mariculture, electric vehicles in Juneau, and alternative energy. Sitka has the most heat pumps in the state, around 100. We received updates on regional hydro projects and Chris Brewton and Jay Sweeney were highlights of the day with their presentation on the Blue Lake Hydro Dam Expansion Project. We also learned about the elements of a modern mine from university professor Robert Loeffler.

I had the opportunity to speak with DOT's Andy Hughes in the hallway at SE Conference about our poor ferry service. I told him that I'm tired of the excuses as to why we can't get equitable service, especially considering the size of our community compared to others in the region that are smaller but getting much better service. I also said I think the state's highest priority should be keeping our roads open, not keeping costs down. Their choices are adversely impacting our economy. Garry White was with me during this conversation if you would like another perspective about the discussion. I think it's time for Sitka to take a stand for equitable ferry service." Also attended the Tribal Tours 20th Anniversary party.

Mayor's upcoming activities:

Helping at the Season's End Celebration next Saturday.

Attending the SEDA Innovation Summit September 30th.

Attending Health Summit Planning Day October 3rd.

Administrator - Mentioned the Quarterly Partners Meeting with Blue Lake Dam

contractors was going well. Reported the State allowed for additional 7 day parking rows at the Airport. There was a water main break at the airport last week. It was the state's responsibility but they contracted with the city to fix the leak. Gorman noted the airport expansion plans could not happen until the lines were upgraded. Recently hired was Ron Duvall, IT Director, and Rob Farmer, Library Director. After the retirement of Wells Williams, Scott Brylinsky will serve as acting Planning Director while recruiting for a new Director. Sales tax reverts to 5% October 1 through March 31.

Attorney - Received Mike Gatti's report on tax possibilities and will be reviewing with a report to follow.

Liaisons - Hunter attended the Port and Harbors meeting where a number of issues were discussed.

Clerk - Reminded citizens of the upcoming Municipal Election on October 7 and announced that advanced voting was available now for those folks who would be out of town. Additionally, the Greater Sitka Chamber of Commerce luncheon September 24 would host the candidates for Assembly.

Other - Mike Reif asked Brewton about diesel fuel usage and wondered if we would stay under budget. Brewton said yes. He also inquired when we would be off Indian River water. Brewton estimated sometime after October 6th. The tunnel needs to be flushed and several other things have to be accomplished before we can make the shift back over to Blue Lake Water. Brewton didn't see any unknowns that would make us go over budget. Reif complimented all involved. Hackett attended the Sitka Community Hospital Board meeting and informed that their new CEO Jeffery Comer had started.

## IX. CONSENT AGENDA

- A**     [14-185](#)             Approve the minutes of the September 9, 2014 Assembly meeting
- This item was APPROVED ON THE CONSENT AGENDA.**
- B**     [14-192](#)             Reappoint Gwen Lazzarini and appoint Lisa Baugher to terms on the Police and Fire Commission
- This item was APPROVED ON THE CONSENT AGENDA.**
- C**     [14-189](#)             Award a Design/Build Contract to CBC Construction Inc. for Net Shed and Jarvis Street Roofs and transfer funds (\$10,000) - Bid \$185,500
- A motion was made by Reif that this Item be APPROVED. The motion PASSED by the following vote.**
- Yes:** 5 - Hunter, Hackett, Esquiro, Reif, and Swanson
- Excused:** 2 - McConnell, and Miyasato

## X. UNFINISHED BUSINESS:

- D**     [ORD 14-29](#)             Authorizing the extension of the lease of the land at 323 Seward Street to November 1, 2046 to White Elephant Shop, Inc.

Mayor read the title.

Alice Johnstone, a volunteer at the White Elephant Shop, spoke to Dorothy Breedlove's letter and stated the easement had caused problems for 50 years. She reminded the easement was not the agenda item, the lease extension was. Johnstone said the non-profit had given over \$1,000,000 to the community. Further, Johnstone added the Shop did its best to control the general public's use of the garbage dumpster. Johnstone stated the volunteers made sure to request folks dropping off items did not block the driveway.

Scott Harris, a nearby neighbor, stated his issue was with the drop off location. He asked the Assembly to not forget the conditional use process and believed the White Elephant Shop needed to go through the permitting process.

Dorothy Breedlove, a nearby neighbor, agreed with Harris and would like to see the drop off location moved to the other side of the building. She offered the relocation of the drop off area could be a condition of the lease.

Reif asked Planning Director, Wells Williams, if there was a conditional use permit. Williams responded that nothing was on file as far back as thirty years ago and the White Elephant predated that. He stated it was currently considered a non-conforming use. Williams added if the structure was expanded it would need to go through a CUP process. The Shop was considered grandfathered until an expansion change was made.

Esquiro believed the neighbors were entitled to some relief and wondered if there was a plan to expand the White Elephant building. Esquiro thought the solution was moving the drop off point and would like to see a timeline for relief. Williams pondered whether it would be prudent for the Assembly to make an amendment to the lease. Municipal Attorney Koutchak explained a couple options. The only thing this ordinance authorized was a new lease. She believed it was prudent for the Assembly to send this ordinance back to staff to develop a resolution and come back with a lease that all parties were happy with, or pass it with the understanding that the administrator was authorized to sign this with the understanding concerns would be addressed when the lease was drawn up.

**A motion was made by Esquiro that this Ordinance be POSTPONED until the City, White Elephant Shop and neighbors can come up with a solution. The motion PASSED by the following vote.**

**Yes:** 5 - Hunter, Hackett, Esquiro, Reif, and Swanson

**Excused:** 2 - McConnell, and Miyasato

**E**     [ORD 14-32](#)     Proposing to amend Title 1, Administration, of the SGC by adding Section 1.04.90 Use of City Seal

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

**Yes:** 5 - Hunter, Hackett, Esquiro, Reif, and Swanson

**Excused:** 2 - McConnell, and Miyasato

**XI.    NEW BUSINESS:**

**F**     [14-187](#)     Decision on whether to allow any sales tax free day(s) following the

## Thanksgiving Holiday and set day(s)

Greater Chamber of Commerce Director, Jennifer Robinson, expressed their sincerest gratitude for supporting this.

Hackett stated she struggled with this every year and was more eager to support one day on Saturday and join other communities in Small Business Saturday. Reif spoke in support and was glad a policy was put in place.

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

**Yes:** 5 - Hunter, Hackett, Esquiro, Reif, and Swanson

**Excused:** 2 - McConnell, and Miyasato

**G** [14-188](#)

## Convene as the Board of Adjustment - Consider a Conditional Use Permit filed by Brian Jardine for a two-bedroom Bed &amp; Breakfast at 105 Shelikof Way

Staff - Planning Director, Wells Williams, informed that the action came from the Planning Commission. Planning Commission Chair, Chris Spivey, spoke to how the Commission reached its decision. All findings were met for the Planning Commission to issue the Conditional Use Permit (CUP), so every finding was voted on. Mr. Spivey felt the Commission had been given plenty of information on the history and how the applicant had tried in the past to get a conditional use permit and how each time it had failed. There was a large outpouring on both sides of the issue. The Commission voted on only two finding in the affirmative. Based on the information that the Municipal Attorney provided; it was not legal and opened up the City and Commission to law suits.

Applicant - Michelle Peterson represented Brian Jardine telephonically and was on hand primarily to address any questions related to the application.

Board - Reif disclosed that he was a charter fisherman like Brian Jardine and they did communicate during the season. It was determined that that relationship in itself did not define a conflict of interest on Reif's part. Reif surmised that essentially Mr. Jardine had been operating this as a B&B when he wasn't permitted to do so. Reif inquired if Jardine had ever paid bed tax. Municipal Attorney clarified that the board was not able to inquire into financial matters. When someone came forward that had been told twice before no, but kept doing it anyway, and now said they were going to follow the rules would be defined as an "unclean hands doctrine," which holds as a rule of law that someone bringing a lawsuit or motion or asking the court for equitable relief must be innocent of wrongdoing or unfair conduct relating to the subject matter of their claim. Koutchak noted bad behavior should not be awarded. Jardine had, it was believed, run this de facto lodge for almost 10 years-even after repeated denials." The bottom line came down to the easement. Koutchak planned to add enforcement provisions and rewrite the Zoning Code. There was no enforcement Right of Action for an aggrieved property owner. Right now they were to exhaust all administrative remedies. Jardine said he did not charge his charter clients housing or lodging fees, so he was not running a bed and breakfast in his opinion.

Applicant - Reif tried to inquire on financial matters of Michelle Peterson - Brian Jardine's girlfriend, and she stated that she wouldn't know that part of the business. Attorney Koutchak interjected that the City was working with Brian and had copies of his records but any questioning along those lines of Ms. Peterson was not proper and were not to be made. Peterson felt they made some legitimate points regarding a Memorandum of Law and the fact that the City had been describing them as lodges

similar to Dove Island, Island View etc., was not accurate. Peterson referred to their operation as a small B&B. She stated Mr. Mulligan's petition misrepresented what they were applying for.

Public - Michelle Putz, a neighbor, was not supportive of their request. They did sign a petition, understood what Jardine was proposing, and did not appreciate the number of people coming and going. Space was limited. Putz supported reviewing the Code.

Staff - Williams reviewed the key findings and stressed the City could not monitor the property closely enough in his opinion.

Applicant - Peterson argued that the business was not detrimental to the neighborhood and did not adversely affect it. They have had the same number of vehicles for the last 10 years. The petitioner Mr. Mulligan had more traffic than they did. She felt like the Commission and Board had been given a lot of incorrect information from Mr. Mulligan and the City Attorney about easement laws and didn't understand why they were asked to apply. She felt people wanted them to just go away.

Board - Hunter stated he did not like this process and was not looking to hurt the business. Given all this evidence, the discussion from the Planning Commission, he agreed that all the necessary findings could not be met. Hackett agreed with Hunter. She stated she had faith in the Planning Commission and knew they were very diligent and that they had looked at this seriously.

**A motion was made by Hackett to deny a conditional use permit request filed by Brian Jardine for a Two-bedroom Bed and Breakfast at 105 Shelikof Way as recommended by the Planning Commission because a majority of the following required conditions and findings could not be met in accordance with that Commission. Further, in accordance with Sitka General Code the Planning Commission shall not recommend approval of a proposed development unless it can first meet the following findings, conditions and conclusions and further considers that the Planning Commission recommended denial of the conditional use permit because the majority of required findings cannot be met and neighborhood concerns cannot be mitigated. The Board of Adjustment supports the Planning Commission's decision and denies the conditional use permit; and request that they be made a part of the final decision of record:**

1. a. not be detrimental to the public health, safety, and general welfare;  
b. not adversely affect the established character of the surrounding vicinity;  
c. not 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.
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.
3. That all conditions necessary to lessen any impacts of the proposed use are conditions that can be monitored and enforced.
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.
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.

**6. Burden of Proof.** The applicant has the burden of proving that the proposed conditional use meets all of the criteria to include 1. b above.

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.

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.

The motion **PASSED** by the following vote.

**Yes:** 5 - Hunter, Hackett, Esquiro, Reif, and Swanson

**Excused:** 2 - McConnell, and Miyasato

**H**     [14-186](#)     Approve transfer of available working capital in the General Fund to the Public Infrastructure Sinking Fund and Permanent Fund

Sweeney explained that the CBS General Fund had exceeded its revenues and under spent its budget, in particular salaries and wages. One reason for this was CBS budgeted for 100% employment when there was always transition within the workforce. Reif was very supportive and pleased there was a mechanism in place for this. He was also pleased to put money into Sitka's Permanent Fund. Hackett was also supportive and wanted to hear more about the Permanent Fund transfer and wondered when they were going to hear back from the Investment Committee. Sweeney noted the Committee planned to meet soon and would come forward with a recommendation. Esquiro mentioned he had been waiting for this for a long time. He added this was a good direction to take and encouraged those Assembly members that were here in the future to keep this going.

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

**Yes:** 5 - Hunter, Hackett, Esquiro, Reif, and Swanson

**Excused:** 2 - McConnell, and Miyasato

**I**     [14-191](#)     Discussion/Direction on the Non-profit Grant Allocation Process for FY 2016

Hackett supported the direction in the memo provided. She stated the recommendations were spot on. Reif agreed. Deputy Mayor Hunter reviewed the memo. The Assembly directed Administration to put in place the changes outlined in the Administrator's memorandum.

**This item was REFERRED to the Administrator's Office due back on 6/30/2015**

**XII. PERSONS TO BE HEARD:**

Planning Commission Chairman, Chris Spivey, expressed concern that one of the public opinion's was that the Commission was anti-business and Spivey assured that was not the case. Secondly, he stressed the importance that the City get someone with a good knowledge base and background to fill Planning Director Wells William's position upon retiring. Spivey stated he wouldn't feel comfortable making any decisions until a long-term person was in place with credentials.



**XIII. ADJOURNMENT**

With no further business Reif made a motion to ADJOURN, hearing no objections the meeting ADJOURNED at 8:17 PM.

ATTEST:

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Colleen Ingman, MMC  
Municipal Clerk