

**BEFORE THE ALASKA OFFICE OF ADMINISTRATIVE HEARINGS ON BEHALF OF
THE CITY AND BOROUGH OF SITKA**

In the Matter of the City and Borough of)
Sitka Assembly, sitting as the City and)
Borough of Sitka Board of Adjustment's)
decision to deny VAR 25-01,)
)
Central Council of the Tlingit & Haida)
Indian Tribes of Alaska d/b/a TIDAL)
NETWORK,)
)
)
)
Appellant.)

OAH No. 25-2204-MUN
Agency No. VAR 25-01

ORDER ON MOTION FOR INTERVENTION

I. Introduction

In this matter, a motion for intervention has been filed by a group of eight Sitka residents who have formed a loosely organized group under the name of Sitka for Safe Tech ("SFST") that is being represented by an experienced telecommunications attorney from Texas. For the reasons covered below, SFST's request for formal intervenor status is denied given the absence of any provisions in the Sitka General Code that would permit this. However, SFST will be permitted to file a brief in this matter, and the Sitka residents identified in SFST's motion may, if they so choose, have SFST's attorney speak on their behalf during the public hearing in this matter.

The parties and SFST should be forewarned that the need to issue this order as expeditiously as possible has compelled an abbreviated discussion below.

II. Procedural and Factual Background

The Central Council of the Tlingit & Haida Indian Tribes of Alaska, doing business as Tidal Network ("Tidal Network"), seeks a conditional use permit that would allow it to construct a 120-foot cell phone tower within an area of Sitka zoned for residential use where structures are limited to a maximum height of 35 feet.¹ The conditional use permit required for construction of this tower was denied by the City and Borough of Sitka Planning Commission on April 16, 2025. Tidal Network subsequently appealed this decision to the Borough Assembly, which presides over these appeals as a Board of Adjustment under SGC 22.10.060. For reasons not relevant here, the Assembly delegated this matter to the Alaska Office of Administrative Hearings ("OAH") for consideration of the appeal and issuance of a decision pursuant to Ordinance No.

¹ See generally SGC Table 22-20-1.

2025-17. Notably, however, nothing in this ordinance indicated that rules of procedure adopted by OAH for hearings where it has statutory jurisdiction would override or supplement applicable provisions of the Sitka General Code.

Following a case planning conference held on July 16, 2025, a scheduling order was issued in this matter that specifically addressed the possibility of intervention motions. This provision was included because the Borough Attorney advised that at least one party had expressed a desire to formally intervene in the matter. After that order was issued, SFST timely filed its motion to intervene. That motion is opposed by Tidal Network and non-opposed by the Borough.

III. Discussion

A. SFST's motion is denied since the Sitka General Code does not permit intervenors in Board of Adjustment Proceedings

Among the procedural regulations that have been adopted by OAH is 2 AAC 64.180, which provides that intervention in an administrative hearing may be permitted in certain limited circumstances where the moving party can show that “intervention is appropriate under the standards set by applicable law.” Here, however, 2 AAC 64.180 is something of an irrelevancy. The limited role of the ALJ in this matter is to fill the shoes of the Assembly. The ALJ cannot do anything that the Assembly could not do. Thus, SFST’s motion to intervene must be evaluated under the Sitka General Code without reference to the procedural regulations that govern hearings where OAH has been assigned jurisdiction by the legislature.²

As Tidal Network notes in its opposition, there is nothing in the Sitka General Code that directly permits an interested person to seek formal party status in an appeal to the Board of Adjustment. While SFST contends that a right to intervene can be implied through several Code provisions read in conjunction with one another, that argument is effectively foreclosed by SGC 22.10.180 – which sets out in some detail a hearing procedure that makes no reference to intervenors. This omission does not appear to be the product of mere legislative oversight. If neighboring landowners opposed to a conditional use permit could readily seek intervenor status in Board of Adjustment matters, an appeal hearing that is clearly intended to be relatively modest in scope and duration could easily devolve into an administrative marathon where multiple parties had 30-minute blocks of time for elaborating on their concerns. It appears doubtful that the

² AS 44.64.030. OAH also presides over many of the hearings conducted under the Alaska Administrative Procedure Act. *See* AS 44.62.330 and .450.

Assembly wanted to subject itself to such complex and drawn-out proceedings when adopting the Code provisions that are controlling here.

B. SFST may file a brief addressing controlling legal authorities and principles.

While SFST is being denied formal party status, it will be permitted to file a brief addressing questions of law in this matter. While the parties apparently agree in principle that the factual record here is limited to the testimony and documents presented to the Planning Commission, there is nothing in the applicable Code provisions that forbids the Assembly from considering written legal arguments submitted in advance of the hearing. However, in fairness to the parties, anything provided by SFST here must conform to the 20-page limit included in the scheduling order. Any reference to statements, exhibits, or documents that were not presented to the Planning Commission will be disregarded.

Prohibiting SFST from submitting a brief here would be highly problematic from a constitutional standpoint, since it could be perceived as denying interested parties the right to offer written comments to the final administrative decisionmaker. While this will give the ALJ another legal brief to review and consider, it will not impose any additional burden on Tidal Network or the Borough.

C. The eight identified members of SFST may have legal counsel attorney speak on their behalf during the upcoming hearing.

Under the Code provisions governing the upcoming hearing, public comments are limited to 3 minutes per individual. There is nothing in the Code that prevents attorneys from offering comments on behalf of their clients, and there is a substantial risk that any attempt to prevent that would be deemed unconstitutional. Thus, the eight individuals identified in the motion may combine their time and have an attorney speak on their behalf.³ However, individuals who choose to have an attorney speak on their behalf may not offer additional public comment.

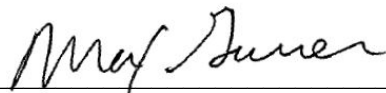
Out of fairness to Tidal Network and the Borough, counsel for SFST will not be permitted to claim additional public comment time on behalf of any individual who was not identified in SFST's motion to intervene. Since SFST is not being allowed to intervene as a party in this matter, any commentary offered by its counsel must be made during the portion of the hearing set aside for public comment. This means SFST will not be allowed an opportunity to present an opening or rebuttal statement.

³ Counsel for SFST is obviously permitted (and gently encouraged) to be so concise in his comments that it is not necessary to use the full amount of time available to him.

IV. Conclusion

SFST's motion to intervene is denied for the reasons covered above. However, it will have a full and fair opportunity to submit a brief on relevant legal points and provide comment through counsel at the upcoming hearing.

DATED: August 8, 2025.

By: 
Max Garner
Administrative Law Judge

Certificate of Service: I certify that on August 8, 2025, a true and correct copy of this order was distributed as follows: Rachel Jones, Borough Attorney (by email); Mindy Lowrance (by email); Douglas Bonner, Attorney (by email); Chris Cropley (by email); W.Scott McCollough, Attorney (by email)

By: 
Office of Administrative Hearings