

R-1 MH: Single-Family/Duplex/Manufactured Home District	GI: General Island District
R-1 LDMH: Single-Family/Duplex and Single-Family/Manufactured Home Low Density Districts	LI: Large Island District R: Recreational District
R-2: Multifamily District	OS: Open Space District
R-2 MHP: Multifamily/Mobile Home District	SC: Sawmill Cove Special District
CBD: Central Business District	

P—Permitted

C—Conditional Use Permit Required

PU/CS—Permitted on Unsubdivided Islands and Conditional Use on Subdivided Islands

CU/*S—Conditional Use on Unsubdivided Islands and Prohibited on Subdivided Islands

E. General Services Uses Table 22.16.015-3 Footnotes.

1. Public facilities not otherwise identified may be permitted in the public zone subject to planning commission recommendation and assembly approval subject to findings of fact that show the use is in the public interest, all reasonable safeguards are to be employed to protect the surrounding area, and that there are no reasonable alternative locations for the use.
2. All uses in the waterfront district are intended to be water-related or water-dependent except that upland uses may be non-water-related.
3. Uses listed as conditional uses in the GI and LI zones may be considered, but not necessarily approved, on a case-by-case basis.
4. Hospital buildings shall be set back a minimum of ten feet from all property lines.
5. Establishments accommodating five or more children require state licenses and are conditional uses.
6. Day cares with four children or less not related to the provider are a permitted use in the R-1 and related zones and establishments with five children or more not related to the provider are a conditional use in the R-1 and related zones.

7. A replacement vet clinic in the 1200 block of Halibut Point Road as a substitute for the long standing historical use in the area is expressly authorized and shall be the only vet clinic allowed in an R-2 zone.
 8. Any uses, except retail and business uses, and natural resource extraction and mining support facilities uses may be approved in accordance with Section 2.38.080.
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21.24.040 Party wall agreement.

A party wall agreement shall be included as a covenant to all zero lot line subdivisions and shall be entered into by the adjacent affected property owners. This agreement shall include, but is not limited to, the following sections:

A. Recitals.

1. A legal description of the property;
2. Declarations of ownership, common wall definitions, and the purpose of the document.

B. Party Wall.

1. Declaration of the party wall as defined;
2. Provisions for the shared responsibility of major maintenance and replacement as well as the use of any common problems (i.e., party wall) of said development;
3. Statement of the duration and effect of this agreement;
4. Provisions for regulations involving encroachment onto the adjacent property.

C. Use of the Property.

1. Provisions for the major maintenance or modification of each side of the structure's exterior with the adjacent owner's agreement;
2. Declaration of the restricted use to a single-family dwelling only for each lot;
3. Restrictions for the maintenance and upkeep of each lot in a neat and orderly fashion;
4. A statement on the procedure should one or both of the units be destroyed or removed. This may include the provision of one owner purchasing the total interest of the other party and the removal and revocation of the zero lot line subdivision and party wall agreement thereby returning the total property back to a single lawful use.

(Ord. 03-1729 § 4 (part), 2003.)

22.08.250 Day care, home provider, children's services.

"Day care," "home provider," or "children's services" means the caring of children, ages newborn through twelve, in other than the children's own home environment. It shall be lawful to care for up to four children, not your own, in a private home and be considered a valid home occupation. For five or more children, state licensing and a conditional use permit as a day care center shall be required. (Ord. 02-1683 § 4 (part), 2002.)

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THE SUPREME COURT OF THE STATE OF ALASKA

GOLD COUNTRY ESTATES)
PRESERVATION GROUP, INC.,) Supreme Court Nos. S-13475/13525
an Alaska Nonprofit Corporation, and)
WILLIAM H. CRAMER, individually,) Superior Court No. 4FA-05-01190 CI
)
Appellants and) OPINION
Cross-Appellees,)
) No. 6651 – February 10, 2012
)
v.)
)
FAIRBANKS NORTH STAR)
BOROUGH,)
)
Appellee and)
Cross-Appellant.)
)

Appeal from the Superior Court of the State of Alaska,
Fourth Judicial District, Fairbanks, Randy M. Olsen, Judge.

Appearances: Peter J. Aschenbrenner, Aschenbrenner Law
Offices, Inc., Fairbanks, for Appellants and Cross-Appellees.
Jill S. Dolan, Assistant Borough Attorney, A. René Broker,
Borough Attorney, Fairbanks, for Appellee and Cross-
Appellant.

Before: Carpeneti, Chief Justice, Fabe, Winfree, Christen,
and Stowers, Justices.

PER CURIAM.

STOWERS, Justice, with whom CHRISTEN, Justice, joins,
concurring in part and dissenting in part.

I. INTRODUCTION

Margery T. Kniffen, as Trustee for the Margery T. Kniffen Family Trust (Margery Kniffen), and Darrell Kniffen II, purchased an undeveloped tract in Fairbanks North Star Borough, planning to develop a subdivision. They also purchased a lot in Gold Country Estates, an existing subdivision adjacent to the undeveloped tract. The Kniffens sought a variance allowing them to construct a road across their Gold Country Estates lot to provide access to the planned subdivision. After hearing public testimony, the local Platting Board unanimously voted to deny the variance based on safety concerns. But after a subsequent site visit, the Board reconsidered the variance request and approved it.

Gold Country Estates homeowners appealed to the Planning Commission, which held a *de novo* hearing and upheld the Platting Board's decision. The homeowners filed suit in superior court, arguing that the Platting Board denied them due process and violated the Open Meetings Act and that the proposed road violated Gold Country Estates' covenants. The superior court ruled that Gold Country Estates' covenants did not allow a Gold Country lot to be used as access for the new subdivision. Though the Kniffens' access proposal was defeated, Gold Country continued to pursue its due process and Open Meetings Act claims against the Borough. The superior court ultimately ruled in favor of the Borough on those claims, but denied the Borough's motion for fees and costs.

The homeowners now appeal, arguing that the superior court erred by not finding that the Platting Board denied them due process and violated the Open Meetings Act. The Borough cross-appeals, arguing that it was entitled to attorney's fees and costs. We affirm the superior court's grant of summary judgment in favor of the Borough on the homeowners' Open Meetings Act and due process claims, as well as the superior court's order declining to award attorney's fees.

II. FACTS

Gold Country Estates, First Addition (Gold Country Estates) is a residential subdivision located northeast of Fairbanks and accessed by Goldmine Trail off the New Steese Highway. In April 2004 Margery Kniffen and her son, Darrell Kniffen, purchased a large undeveloped tract immediately south of Gold Country Estates to develop into Fox Bluffs Estates subdivision. The next month, they purchased Lot 5, Block 8 of Gold Country Estates; their plan was to access Fox Bluffs by building a road through Lot 5, Block 8 of Gold Country Estates.

Before the Kniffens could move forward with their development plan they needed Platting Board approval of a variance application and separate approval of their subdivision application. The variance would allow Fox Bluffs Drive to be constructed across Lot 5, Block 8 of Gold Country Estates, where it would intersect with Bullion Drive.¹

The Kniffens' requests were placed on the October 27, 2004 Platting Board agenda. Notice of the meeting and the agenda were published on the Borough's website and in the Fairbanks Daily News-Miner, and 75 "Dear Property Owner" letters were mailed to Gold Country Estates residents and others who lived nearby. At the Platting Board meeting, the Kniffens requested a postponement of their application because three of the Platting Board's seven members were unable to participate.² The Board

¹ Fairbanks North Star Borough Code (FNSBC) 17.100.040(c)(5) (renumbered by FNSB Ordinance 2005-10 § 2 (2005)). This opinion will cite to code provisions as they were numbered at the time of the Platting Board hearings, prior to renumbering in 2005.

² The Platting Board convenes with seven regular members. At all times relevant to this appeal, the Board consisted of six members with one vacancy. The six regular members were William Mendenhall, Janet Matheson, Ronald McIntosh, Margery
(continued...)

nonetheless heard public testimony on the Kniffens' proposals. Most of the testimony was from Gold Country Estates property owners opposed to the Kniffens' applications.

The Board convened its regularly scheduled meeting on November 17, 2004. Notice of the meeting and its agenda were published in the Fairbanks Daily News-Miner and on the Borough's website. Gold Country Estates residents did not receive "Dear Property Owner" letters in advance of the November 17, 2004 meeting. Borough staff presented a report recommending approval of the Kniffens' variance and subdivision applications with several conditions. The Board then heard public testimony. This testimony was largely against the Kniffens' variance application and included safety concerns about the proposed intersection. In particular, concern was expressed that the access plan was hazardous because the new road would intersect with Bullion Drive on a curve, where sight lines were inadequate. After the close of public testimony, the Board unanimously voted to deny the variance. The Board did not vote on the Kniffens' subdivision application because no legal access was available to Fox Bluffs without the variance. Later that evening, after voting to deny the Kniffens' variance, Platting Board member Janet Matheson submitted a written request for reconsideration of the Board's decision.³

Reconsideration was scheduled for the Board's next meeting on December 15, 2004, and the Board scheduled a site inspection of the proposed variance location for December 14, 2004. Notice of the site inspection was published on

²(...continued)

Kniffen, Oliver Backlund, and Margaret McCombs. Willie Bliss was an alternate member. Though Margery Kniffen was a member of the Platting Board during 2004, she did not participate in its decisions regarding the variance or subdivision application.

³ The Platting Board's agendas state: "Any action taken during this meeting is subject to reconsideration during this meeting or at the next."

December 7, 2004 in the Fairbanks Daily News-Miner and on the Borough's website. Four board members, Mendenhall, Backlund, Bliss, and Matheson, along with three Borough staff members, the Borough engineer, and the transportation planner all attended the site visit. One of the visit's purposes was to consider whether the proposed intersection had safe sight distance. When the Board arrived at Lot 5, Block 8, they discovered Mr. Kniffen had trimmed back bushes and flagged the portion of the lot the Kniffens proposed to reserve in the final plat as a sight distance triangle easement. These steps enabled the Board to better assess whether the proposed intersection had adequate sight distance. Although Mr. Kniffen was present at the property during the Board's visit, the Board did not communicate with him.

The Board held its regularly scheduled December meeting the day after the site visit, on December 15, 2004. Notice of this meeting was provided by publication in the Fairbanks Daily News-Miner and on the Borough's website. Because reconsideration of the Kniffens' proposal was back on the agenda, "Dear Property Owner" letters were sent on December 7, 2004. The letters notified Gold Country Estates residents and other nearby homeowners that the Board would be reconsidering its November 17 decision denying the Kniffens' variance application.

At the December 15, 2004 meeting, a Board member moved to reconsider the November 17, 2004 decision to deny the variance. Before discussing the Kniffens' applications, the Board's Chairperson stated:

As a point of information, the Board has visited the site and viewed the intersection and looked at the proposed access point for the subdivision . . . and looked at hazards and public safety issues since a majority of the public testimony that we had before dealt with the fact that the neighborhood considers the intersection directly beyond this access point to be hazardous.

After a short discussion, the Board voted 5-0 to approve the Kniffens' variance application. It also unanimously approved their subdivision application. The Board adopted findings of fact in support of its December 15, 2004 decision at its regularly scheduled meeting on January 26, 2005. The Board did not accept public comment at its December 15 or January 26 meetings.

Meanwhile, in December 2004, 16 Gold Country Estates homeowners, along with some neighboring residents from outside the Gold Country Estates subdivision, formed Gold Country Estates Preservation Group, Inc. (Gold Country), a non-profit corporation. On February 1, 2005, Gold Country filed an appeal of the Platting Board's decision to the Fairbanks North Star Borough Planning Commission.⁴

The Planning Commission heard Gold Country's appeal at a de novo hearing on April 19, 2005. The Planning Commission was given a staff report on the appeal; staff exhibits; Gold Country Estates First Addition protective covenants; Platting Board Rules of Order; applicable ordinances; copies of the "Dear Property Owner" letters; maps of the proposal; road, drainage, and soils information; the original Platting Board staff report and recommended findings of fact; trails information; the Kniffens' attorney's written opinion; minutes and action letters from the Platting Board meetings; all written public comments received by the Planning Commission throughout the proceedings; and Gold Country's appeal, including attachments and citations. The Planning Commission also heard testimony from the Platting Board's staff, the public, the Kniffens, and an extensive presentation from Gold Country's counsel. At the conclusion of the hearing, the Planning Commission denied Gold Country's appeal by a vote of 6-2. On May 17, 2005, the Commission adopted findings of fact for Resolution

⁴ FNSBC 17.80.010.

AP 003-2005, which upheld the Platting Board's decision to grant the Kniffens' requested variance.

III. PROCEEDINGS

Gold Country filed suit against the Borough in superior court alleging violations of the Open Meetings Act.⁵ Gold Country's first amended complaint added the Kniffens as defendants and alleged that the Kniffens were threatening to violate Gold Country Estates' protective covenants. The Kniffens sought an order requiring individual members of Gold Country to ratify the action under Alaska Civil Rule 17.⁶ On December 14, 2005, the superior court granted the Kniffens' motion and required "[a]t least one member of Gold Country, willing to bear the risks of litigation, [to] ratify the litigation within 30 days."

Gold Country filed a second amended complaint naming William H. Cramer, a real party in interest, as another plaintiff. On June 27, 2006, the superior court granted summary judgment in favor of Gold Country against the Kniffens, declaring that the Gold Country Estates covenant restricting lots to residential use was enforceable "to [the] extent the lots are not to be used to create driveways to other subdivisions."

The Borough made a Rule 68 offer of judgment on December 14, 2006, offering Gold Country \$2,000 "in full and complete satisfaction of all of Plaintiff's

⁵ AS 44.62.310. Gold Country also filed an administrative appeal of the Planning Commission's decision to the superior court, but that appeal was subsequently dismissed.

⁶ Civil Rule 17(a) provides: "Every action shall be prosecuted in the name of the real party in interest. . . . No action shall be dismissed on the ground that it is not prosecuted in the name of the real party in interest until a reasonable time has been allowed after objection for ratification of commencement of the action by, or joinder or substitution of, the real party in interest"

claims against Defendant.” Gold Country did not accept the offer. Instead, Gold Country filed a third amended complaint naming the Borough as the only defendant, re-alleging violations of the Open Meetings Act, and alleging for the first time violations of due process under the United States and Alaska Constitutions.

The superior court granted the Borough’s motion for summary judgment on the Open Meetings Act claims on October 14, 2008. The superior court concluded that the Planning Commission’s de novo hearing cured any Open Meetings Act violations that may have occurred in the Platting Board proceedings. Similarly, the court determined that because Gold Country had notice and an opportunity to be heard before the Planning Commission, any due process violation in the Platting Board proceedings had been cured. In a Sua Sponte Order of Clarification issued several months later, the superior court noted that “because notice of the date and time of the [December 14, 2004] inspection was given through the newspaper and the borough website, reasonable notice was given of the site inspection performed by the Platting Board. . . . Therefore, the site inspection performed by the Platting Board was not a violation of the Open Meetings Act.”

The Borough filed a motion for Rule 68 or Rule 82 attorney’s fees. Gold Country opposed the request for Rule 68 fees, but did not dispute that the Borough was entitled to up to 20% of its attorney’s fees under Rule 82. Nevertheless, the superior court denied the Borough’s motion for fees. The trial court refused to grant Rule 82 attorney’s fees against Cramer because he had “joined the suit . . . at the insistence of the Kniffen defendants, and [his] posture in the case was as an interested landowner solely as to those private citizen defendants.” The superior court denied the request for Rule 68 attorney’s fees against William H. Cramer because the Borough’s Rule 68 offer was not addressed to him. The Borough’s motion for fees against Gold Country was denied because its suit was within the public interest, and because allowing the Borough to

prevail on enhanced attorney's fees would "chill legitimate suits against the government" and "be against public policy."

The Borough moved for reconsideration on March 19, 2009, arguing that Cramer should be jointly and severally liable with Gold Country for any award of attorney's fees because Cramer was the real party in interest under Civil Rule 17. The Borough also argued that, regardless of whether the Rule 68 offer of judgment was operative as to Cramer, it was error to deny fees against Gold Country because Rule 68 is not limited to tort or business litigation and can be applied to suits against the government.

Reconsideration was denied on March 24, 2009 and both parties appeal. Gold Country argues that the superior court erred by not granting summary judgment on its due process claim, not granting summary judgment on its Open Meetings Act claim, and refusing, on mootness grounds, to analyze whether an Open Meetings Act violation occurred.⁷ The Borough argues on cross-appeal that the superior court erred by denying its motion for attorney's fees.

⁷ The basis of Gold Country's mootness claim is somewhat unclear. It appears the superior court initially considered Gold Country's Open Meetings Act claim to have been rendered moot by the Planning Commission's de novo hearing; the court noted in its order on summary judgment, "[t]here is no reason to now void an action taken at a lower level of borough operations when the entire issue had received a new hearing at a higher level." But the superior court's subsequent Sua Sponte Order of Clarification acknowledged that its first order had not analyzed whether the Planning Board violated the Open Meetings Act. The superior court reasoned that public interest concerns required it to consider the alleged Open Meetings Act violations, regardless of whether they were moot. The Sua Sponte Order concluded that adequate notice of the site inspection had been given and that the Borough had not violated the Open Meetings Act.

IV. STANDARD OF REVIEW

We review a grant of summary judgment de novo, “reading the record in the light most favorable to the non-moving party and making all reasonable inferences in its favor.”⁸ We will affirm a grant of summary judgment “when there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law.”⁹

We review a superior court’s award of attorney’s fees for an abuse of discretion.¹⁰ We will conclude there has been an abuse of discretion if, after reviewing the whole record, we are left with a definite and firm conviction that the superior court erred in its ruling.¹¹ “An offer of judgment’s compliance with Rule 68 is a question of law, which we review independently.”¹²

V. DISCUSSION

A. Appellants’ Open Meetings Act Claims Are Moot, But We Reach Them To Resolve The Question Of Prevailing Party Status.

In its Sua Sponte Order of Clarification, the superior court observed that Gold Country’s Open Meetings Act claims were rendered moot by the finding that the Planning Commission had performed “substantial reconsideration” of the challenged action. However, the superior court went on to observe that “questions about . . . the Open Meetings Act are matters of public importance such that a finding on the question

⁸ *Witt v. State, Dep’t of Corr.*, 75 P.3d 1030, 1033 (Alaska 2003) (citing *Spindle v. Sisters of Providence in Wash.*, 61 P.3d 431, 436 (Alaska 2002)).

⁹ *Id.* (citing *Spindle*, 61 P.3d at 436).

¹⁰ *Balough v. Fairbanks N. Star Borough*, 995 P.2d 245, 254 (Alaska 2000) (citing *Davila v. Davila*, 908 P.2d 1027, 1031 (Alaska 1995)).

¹¹ *Id.* (citing *Buster v. Gale*, 866 P.2d 837, 841 n.9 (Alaska 1994)).

¹² *Thomann v. Fouse*, 93 P.3d 1048, 1050 (Alaska 2004).

should be made without regard to it being moot.” The court concluded that there was adequate notice of the site visit and therefore no Open Meetings Act violation. We agree that Gold Country’s Open Meetings Act claims should be addressed even though they are moot. But in light of our recent decision in *Mullins v. Local Boundary Commission*,¹³ we reach this conclusion for different reasons than those cited by the superior court.¹⁴

We have held that “[a] claim is moot ‘if it has lost its character as a present, live controversy’ or ‘if the party bringing the action would not be entitled to any relief even if it prevails.’ ”¹⁵ In *Mullins*, the plaintiff filed an appeal in superior court challenging the Local Boundary Commission’s decision to approve a petition for incorporation of the Deltana Borough.¹⁶ The plaintiff sought to stay the election in which voters would decide whether to incorporate the proposed borough.¹⁷ The superior court denied the plaintiff’s motion to stay the election, and when the voters overwhelmingly rejected the proposal, the superior court dismissed the plaintiff’s lawsuit as moot.¹⁸ On appeal, the plaintiff argued that the Local Boundary Commission had violated the Open

¹³ 226 P.3d 1012 (Alaska 2010).

¹⁴ We note that the *Mullins* decision was issued after the superior court ruled on Gold Country’s Open Meetings Act claims and therefore was not available to inform the superior court’s analysis.

¹⁵ *Mullins*, 226 P.3d at 1017 (quoting *Ulmer v. Alaska Rest. & Beverage Ass’n*, 33 P.3d 773, 776 (Alaska 2001)).

¹⁶ *Id.* at 1014-15.

¹⁷ *Id.*

¹⁸ *Id.*

Meetings Act.¹⁹ We held that “[t]he vote against incorporation voided the approval decision and provided the principal relief that [the appellant] sought in her appeal to the superior court,” thus rendering the appellant’s claims under the Open Meetings Act moot.²⁰

We distinguished the situation in *Mullins* from the circumstances of *Alaska Community Colleges’ Federation of Teachers, Local No. 2404 v. University of Alaska (ACCFT)*.²¹ In that case, we held that Open Meetings Act claims should be reached even where a subsequent meeting cured previous violations because “[t]he issues surrounding the first meeting [were] of sufficient public importance” that prosecution of a declaratory action should be allowed, “even assuming technical mootness.”²² But we declined to apply this principle in *Mullins*:

Unlike in *ACCFT*, the [Local Boundary Commission’s] approval decision was not reaffirmed at a curative meeting, and it is not still in effect. *Mullins*, unlike the plaintiff in *ACCFT*, cannot obtain the substantive relief she seeks because the [Local Boundary Commission’s] decision allegedly made in violation of the [Open Meetings Act] has been voided by subsequent events.^[23]

¹⁹ *Id.* at 1017-20.

²⁰ *Id.*

²¹ *Id.* at 1019 (citing *Alaska Cmty. Coll. Fed’n of Teachers, Local No. 2404 v. Univ. of Alaska (ACCFT)*, 677 P.2d 886 (Alaska 1984)).

²² *ACCFT*, 677 P.2d at 889.

²³ *Mullins*, 226 P.3d at 1019.

We held in *Mullins* that “[w]here a decision is no longer in effect . . . a court should conduct a standard mootness analysis to determine whether to address the [Open Meetings Act] claim.”²⁴

Here, the superior court granted summary judgment against the Kniffens, declaring that the Gold Country Estates covenant restricting lots to residential use was enforceable “to [the] extent the lots are not to be used to create driveways to other subdivisions.” The superior court’s ruling provided the primary relief sought by Gold Country, and Gold Country’s claim “has lost its character as a present, live controversy.”²⁵ Gold Country would not be entitled to further relief even if it prevailed because the superior court’s separate ruling established that Gold Country’s covenants do not permit the use of the Kniffens’ lot as a driveway.

Although Gold Country’s Open Meetings Act claims are moot, we “will hear an otherwise moot case to determine who is the prevailing party for purposes of awarding attorney’s fees.”²⁶ Thus, where the outcome of an otherwise moot claim may “change[] the status of the prevailing party and thus an award of attorneys’ fees,”²⁷ we reach the merits of that claim. Reversal of the superior court’s ruling on Gold Country’s

²⁴ *Id.* at 1019-20.

²⁵ *Id.* at 1017 (quoting *Ulmer v. Alaska Rest. & Beverage Ass’n*, 33 P.3d 773, 776 (Alaska 2001)).

²⁶ *Smallwood v. Cent. Peninsula Gen. Hosp., Inc.*, 227 P.3d 457, 461 (Alaska 2010) (internal quotation marks omitted); see also *LaMoureaux v. Totem Ocean Trailer Express, Inc.*, 651 P.2d 839, 840 n.1 (Alaska 1982) (overruling prior cases holding that this court “will not hear a moot case merely to determine who is the prevailing party for purposes of awarding attorneys’ fees”).

²⁷ *Ulmer*, 33 P.3d at 777 (holding that consideration of a moot case was *not* required where “there was no award of attorney’s fees that would be affected by appellate review and the issue ha[d] not been preserved for appeal”).

Open Meetings Act claims would likely deprive the Borough of prevailing party status. This possibility requires us to reach the merits of Gold Country's moot Open Meetings Act claims.

B. Neither The Platting Board Nor The Planning Commission Violated The Open Meetings Act.

Gold Country argues that the Platting Board's December 14 site visit violated the Open Meetings Act because it was improperly noticed and improperly convened, and because the Planning Commission's de novo hearing did not cure any Open Meetings Act violations. The Borough contends that the December 14 site visit was not a "meeting" within the meaning of the Open Meetings Act. We hold that the site visit qualified as a "meeting," but that it was properly noticed and did not otherwise violate the Open Meetings Act's requirements.

1. The December 14, 2005 site visit was a "meeting" subject to the Open Meetings Act.

Alaska's Open Meetings Act, AS 44.62.310(a), provides that "[a]ll meetings of a governmental body of a public entity of the state are open to the public except as otherwise provided by this section or another provision of law." Reasonable notice is required for all meetings required to be open under the Act.²⁸ The statute defines "meeting" as:

a gathering of members of a governmental body when more than three members or a majority of the members, whichever is less, are present, a matter upon which the governmental body is empowered to act is considered by the members collectively, and the governmental body has the authority to establish policies or make decisions for a public entity.^[29]

²⁸ AS 44.62.310(e).

²⁹ AS 44.62.310(h)(2)(A).

Gold Country claims the Borough conceded that the site visit was a special meeting because the Platting Board's Appeal Staff Report to the Planning Commission stated that "[t]he site inspection was a properly noticed public meeting." The Borough counters that "[s]ite visits . . . are not 'meetings' within the definition set forth in the Open Meetings Act" because "[t]he Board cannot perform any act that will legally bind the municipality on a site visit." It is undisputed that a quorum of four Platting Board members attended the site visit; the question is whether they collectively considered "a matter upon which the governmental body is empowered to act" during the visit.³⁰

Gold Country cites *Brookwood Area Homeowners Association, Inc. v. Municipality of Anchorage*³¹ in support of its contention that the site visit was a "meeting" for purposes of the Open Meetings Act. In *Brookwood*, a quorum of Anchorage Municipal Assembly members met with Quadrant, a developer, after the Planning and Zoning Commission rejected Quadrant's rezoning application.³² The meeting took place in Quadrant's office.³³ Quadrant employees and Assembly members discussed the rejected rezoning application and the Assembly later approved an amended version of the rezoning application.³⁴ A homeowners association filed suit against the Municipality alleging that the Quadrant meeting violated the Open Meetings Act.³⁵ The superior court held that no "meeting" took place at Quadrant's offices for purposes of the

³⁰ *Id.*

³¹ 702 P.2d 1317 (Alaska 1985).

³² *Id.* at 1320.

³³ *Id.*

³⁴ *Id.* at 1320-21.

³⁵ *Id.* at 1320.

Open Meetings Act, but we reversed that decision on appeal. We held that “a ‘meeting’ includes every step of the deliberative and decision-making process when a governmental unit meets to transact public business.”³⁶

Here, the Platting Board’s site visit is distinguishable from the meeting in *Brookwood*: The Board did not directly interact with the applicant at the site visit (although Mr. Kniffen was present at the site during the visit), and, unlike the *Brookwood* meeting, the Platting Board’s visit was publicly announced in the newspaper and on the Borough’s website. Nonetheless, we conclude that the information-gathering and discussion at the site visit constituted collective consideration of “a matter upon which the governmental body [was] empowered to act”³⁷ and a key step in the “deliberative and decision-making process”³⁸ by which the Platting Board reversed its initial vote and approved the Kniffens’ variance application. The Platting Board members received “evidence” in the sense that they made observations of the site and had an opportunity to assess the merits of the safety concerns voiced at the November 17 meeting. We thus hold that the site visit was a meeting for purposes of the Open Meetings Act.

³⁶ *Id.* at 1323. *Brookwood* was decided before the substantial legislative revision of the Open Meetings Act in 1994. When *Brookwood* was decided, the Open Meetings Act did not define the term “meeting.” See Ch. 69, § 1, SLA 1994.

³⁷ AS 44.62.310(h)(2)(A). It is irrelevant that the Board members who attended the site visit were not, as the Borough argues, able to perform any act during the site visit itself that would legally bind the Borough; the statutory definition of “meeting” requires only that members of a government body consider a matter upon which the body is empowered to act, even if such action is ultimately taken at a later meeting or hearing. As we noted in *Brookwood*, “[m]odern public meetings statutes reject the argument that only the moment of ultimate decision must be subject to public scrutiny, and require that preliminary deliberations be open as well.” *Brookwood*, 702 P.2d at 1322.

³⁸ *Brookwood*, 702 P.2d at 1323.

2. The Borough provided adequate notice of the December 14 site visit pursuant to AS 44.62.310.

Gold Country argues that because the Platting Board did not send out “Dear Property Owner” letters or broadcast a public service announcement to notice the December 14 site visit, the site visit was an improper meeting. We disagree. The Open Meetings Act does not require public meetings to be noticed with individual letters mailed to each potentially affected property owner. Alaska Statute 44.62.310 only requires that “[r]easonable public notice shall be given for all meetings required to be open under this section.”³⁹ Notices must include “the date, time, and place of the meeting,” “may be given using print or broadcast media,” and must be “posted at the principal office of the public entity” in question.⁴⁰

Gold Country argues that AS 29.40.130, defining proper notice of hearings, requires the platting authority to schedule a hearing on any properly filed petition for replat or plat alteration and to “mail a copy of the notice . . . to each affected property owner.”⁴¹ Because the Kniffens’ variance and subdivision applications would affect Gold Country members, Gold Country reasons that AS 29.40.130 required the Platting Board to provide notice of the December 14 site visit via individual “Dear Property Owner” letters. Gold Country also argues that the Borough’s past practice of sending such letters in advance of hearings in this matter gave property owners a reasonable expectation that they would receive mailed notice of any related meetings. But AS 29.40.130 governs notice in the case of alteration or replat *hearings* at which “[t]he platting authority shall consider the alteration or replat petition . . . and make its decision

³⁹ AS 44.62.310(e).

⁴⁰ *Id.*

⁴¹ AS 29.40.130.

on the merits of the proposal.”⁴² It does not govern the much broader category of “meetings,” which, as defined in AS 44.62.310, need not — and, in the case of the site visit here, did not — involve consideration and final resolution of a specific replat petition. As Gold Country points out, the Platting Board *did* mail individual notices regarding the October 27 initial application hearing and the December 15 reconsideration hearing (as well as the April 19, 2005 Planning Commission appeal hearing), consistent with AS 29.40.130. It was not required to do so with respect to the December 14 site visit meeting.

Gold Country also argues that the Platting Board was required to broadcast a public service announcement giving notice of the December 14 meeting, but it erroneously cites to FNSBC chapter 2.09, which provides rules of procedure for the Assembly. The Platting Board is governed by its own Rules of Procedure, found in FNSBC chapter 2.39. The Platting Board’s rules do not require a public service announcement of its special meetings.

Ultimately, we find no error in the superior court’s ruling that acceptable notice was given of the site visit meeting. But nothing in the opinion issued today should be read to undermine the importance of the legislative goals expressed in the Open Meetings Act. We encourage government bodies to provide notice of hearings and meetings through a variety of the means authorized in the Open Meetings Act, and we observe that particular care should be taken to abide by the spirit and intent of the Open Meetings Act in situations where a member of the public body is seeking action that would benefit the member personally.

⁴² AS 29.40.140.

On the record presented to us, we do not find that the Platting Board's newspaper and online announcements regarding the December 14 site visit were inadequate. The site visit did not violate the Open Meetings Act due to improper notice.

3. The December 14 site visit was properly convened.

Gold Country also argues that the December 14 site visit was “[i]mproperly [c]onvened” and that Matheson’s motion for reconsideration was defective. Gold Country considers these to be violations of the Open Meetings Act. Both arguments are unpersuasive.

Borough Code provides that the chairperson or a quorum of the Board members may call a special meeting of the Board.⁴³ Both parties appear to assume that Matheson, who filed for reconsideration, also called the site visit. Matheson was the acting chairperson in November and December 2004;⁴⁴ she therefore had the authority to “call a special meeting” in the form of the requested site inspection.

Gold Country’s argument that Matheson’s motion for reconsideration was invalid is without legal support. Gold Country argues that Matheson was required to provide written or oral reasons for her motion for reconsideration when she filed it and that her failure to do so rendered the motion itself, and the related portions of the December 15 meeting, invalid. But Matheson’s motion for reconsideration complied with the Platting Board’s rules: she was on the prevailing side of the initial motion, she provided notice of reconsideration before the close of business on the following

⁴³ FNSBC 02.39.050(B).

⁴⁴ Matheson was the acting vice-chair on both dates, but the record shows that McIntosh, the chair, was not present during the November 17 or December 15 meetings. Therefore, Matheson was the acting chair at both meetings. FNSBC 02.39.040(A).

workday, and she explained her reasons for seeking reconsideration at the outset of the following meeting.⁴⁵

C. Any Due Process Violations Committed By The Platting Board Were Cured By The Planning Commission Hearing.

Gold Country argues that its due process rights were violated by the Platting Board. The Borough counters that even if the Platting Board's procedures were inadequate, the Planning Commission's de novo review of the Platting Board's decision cured any defect in due process.

Under AS 29.20.020, a "governing body shall provide reasonable opportunity for the public to be heard at regular and special meetings." While this provision does not require that the public be allowed to comment at every stage of the decision-making process, it does imply that the public should have the opportunity to respond to significant new evidence or information obtained by the governing body.⁴⁶

⁴⁵ The Platting Board's Rules of Order provide:

Rule 42. A notice of reconsideration may be made only by a member who voted on the prevailing side. Unless reconsideration is to take place before adjournment, notice must be given in writing by the close of business on the following workday.

Rule 43. A member filing for reconsideration shall explain his reasons.

Rule 44. Prior to reconsideration of an item, a vote must be taken on the motion to reconsider. If the motion passes, the item is then brought to the floor.

⁴⁶ See, e.g., *Baghdikian v. Bd. of Adjustment of the Borough of Ramsey*, 588 A.2d 846, 849 (N.J. Super. App. Div. 1991) (holding that, following an unnoticed site inspection, the court will "not deem the failure to give notice as fatal when the board member makes a complete disclosure of his or her knowledge of the site condition (continued...)

It is troubling that Gold Country was denied the opportunity to respond to conclusions drawn and observations made by the Board at the site visit; the failure to allow public comment after the site visit and before the Board voted to reconsider the proposal may have violated Gold Country's right to be heard. But we have held that a failure to afford due process can be cured by a subsequent hearing where due process is provided.⁴⁷ And at its April 19, 2005 de novo hearing, the Planning Commission heard testimony from both Kniffens, multiple experts they hired to advise on the Fox Bluffs development, the Platting Board's attorney, many members of the public generally, and Gold Country homeowners. The Commission also heard a comprehensive presentation by Gold Country's counsel. At the conclusion of that lengthy meeting, the Planning Commission voted six to two to deny Gold Country's appeal. We hold that this meeting complied with due process and gave Gold Country an adequate opportunity to be heard on the modified condition of the site lines, thus curing any due process violations that may have occurred at the Platting Board level.

The primary support for Gold Country's argument that the Planning Commission's hearing did not cure the Platting Board's due process violations is that "counsel for the Platting Board, Ms. Hagen, instructed *both* bodies to disregard Gold Country's evidence that use of a Gold Country subdivision lot for transit access violated the Gold Country plat and its covenants." Gold Country argues that Hagen thus relieved the Kniffens of their burden to show that their subdivision "enjoyed legal access" and improperly made herself "a participant with the Board in decision-making."

⁴⁶(...continued)
gained by the inspection, and the applicants and objectors are given full opportunity to address the board member's comments").

⁴⁷ See, e.g., *City of N. Pole v. Zabek*, 934 P.2d 1292, 1298 (Alaska 1997); *McMillan v. Anchorage Cmty. Hosp.*, 646 P.2d 857, 866-67 (Alaska 1982).

We disagree. First, before Hagen testified in front of the Planning Commission she reminded its members that she was speaking as an advocate for the Platting Board and was not purporting to advise the Commission. Second, and more fundamentally, Gold Country's argument that there could be no "legal access" to Fox Bluffs given the restrictive covenants confining Lot 5, Block 8 to "residential use" misses the mark. As Hagen explained to the Planning Commission, neither it nor the Platting Board had jurisdiction to determine or enforce Gold Country's protective covenants.⁴⁸ Moreover, under the Borough Code, "legal access" exists if an applicant "dedicates sufficient land to provide access between the subdivision and the existing public road."⁴⁹ Because the Kniffens' application proposed dedicating sufficient land to provide access between Fox Bluffs subdivision and an existing public road (Bullion Drive), it appears that "legal access" existed for purposes of FNSBC 17.60.070(C)(1). Hagen's instructions to the Planning Commission did not mislead the Commission's members or violate due process. We hold that the Planning Commission hearing was sufficient to cure the alleged due process violations in the Platting Board's proceedings.

D. We Affirm The Superior Court's Order Denying Attorney's Fees.

The Borough sought an award of fees under Rule 68 or Rule 82 as the prevailing party. Gold Country opposed the Rule 68 request, arguing that the Borough

⁴⁸ Chapter 17.30.030 of the Code, entitled Action on Major Plat Applications, states that "[t]he board shall grant preliminary approval of the major subdivision upon determining that it meets the requirements and purpose of this title." FNSBC 17.30.030(E)(1). Chapter 17.60 of the Code, which contains the subdivision requirements, does not require that the requested action comply with protective covenants; See FNSBC 17.60.

⁴⁹ FNSBC 17.60.070(C)(1).

was awarded approximately \$2,350 in attorney's fees when it prevailed in Gold Country's administrative appeal of the Planning Commission decision.⁵⁰

The superior court entered judgment in favor of the Borough but denied the Borough's request for attorney's fees under both Rule 68 and Rule 82. The court first noted in its order that "the offer to settle made by the borough to Gold Country [was] not addressed in any way to [William] Cramer" and there was "no reason, under these facts, to award any attorney fees . . . against Cramer." The court further determined that the suit was not brought in bad faith and that the "portion of [Gold Country's] suit which brought under scrutiny the . . . operation of local government [was] within the public interest." The superior court concluded that "[t]o this extent [a Rule 68] offer by the borough to settle a claim, so as to seek upon prevailing enhanced attorney fees, would chill legitimate suits against the government."

We agree with the superior court that a citizen litigant's claim alleging violation of the Open Meetings Act, with no accompanying claim for monetary damages, is unlikely to be an appropriate vehicle for a Rule 68 offer. Rule 68 provides that "[i]f the judgment finally rendered by the court is at least 5 percent less favorable to the offeree than the offer," the offeree must pay all costs and a fixed percentage of actual reasonable attorney's fees under a schedule that is pegged to the date of the offer.⁵¹ Here Gold Country's claim requested no monetary damages. A Rule 68 offer of judgment serves no legitimate purpose in a citizen's Open Meetings Act claim against the

⁵⁰ The administrative appeal was dismissed when it was recognized that "[t]he result of a successful appeal by Gold Country Estates would be for the court to remand the case to the Planning Commission to consider the [Open Meetings Act] violation[.]" which "would be a complete waste of time and available resources" given that the issue was already being fully litigated before the superior court in a separate suit (i.e., the one on appeal before us).

⁵¹ Alaska R. Civ. P. 68(b).

government where there is no accompanying claim for monetary damages. To allow the recovery of attorney's fees would force the citizen litigant to drop its suit or face a potentially ruinous attorney's fee award, despite its good-faith effort to require the government to follow its own processes.

Moreover, the Borough's offer of \$2,000 — an amount that was completely unrelated to the relief sought and which could have no effect on the allegedly illegal governmental action — could have been perceived by Gold Country as an attempt to force Gold Country to drop its effort to hold the government accountable. As the superior court concluded, to approve of “[t]he government's offer of a nominal sum[] to entice a party to waive what it views as a right” would “chill legitimate suits against the government” and would be “counter-productive to good lawmaking and law review.” And as the superior court correctly noted, “[a] suit may ultimately fail but requiring the government to defend its processes is not an abuse of the system. For such issues, the tort or business litigation strategies of offers [of] judgment are inapplicable.”

Additionally, it was within the superior court's power to deny the fee award under Civil Rule 82. Rule 82(b)(3)(I) permits the trial court to vary a fee award to “the extent to which a given fee award may be so onerous to the non-prevailing party that it would deter similarly situated litigants from the voluntary use of the courts.” This rule provision embodies the concern expressed by Justice Matthews in his dissenting opinion in *Bozarth v. Atlantic Richfield Oil Co.*,⁵² where he cautioned: “If the superior court is to serve its constitutional purpose as a forum available to all the people, superior court

⁵² 833 P.2d 2 (Alaska 1992).

judges must consider whether an award of attorney's fees will impair the constitutional right of access to the courts."⁵³

In *State v. Native Village of Nunapitchuk*,⁵⁴ we expressly stated that Rule 82(b)(3)(I) "continues to apply to all cases," including "those intended to effectuate public policies."⁵⁵ We further observed that "[t]rial courts remain free to reduce awards that would otherwise be so onerous to the losing party as to deter similarly situated litigants — including litigants that would have previously been identified as public interest litigants — from accessing the courts."⁵⁶ Gold Country, and those similarly situated, have a right to seek remedial relief from perceived Open Meetings Act violations. Here, the superior court determined that an award of fees against Gold Country would chill further suits seeking review of the government's actions under its own processes. Thus, it properly applied Rule 82(b)(3)(I) to relieve Gold Country of the obligation to pay a fee award. We therefore affirm the superior court's order denying attorney's fees.⁵⁷

⁵³ *Id.* at 6 (Matthews, J., dissenting).

⁵⁴ 156 P.3d 389 (Alaska 2007).

⁵⁵ *Id.* at 406.

⁵⁶ *Id.*

⁵⁷ Gold Country also claims that because it raised a constitutional due process claim, it is entitled to protection under AS 09.60.010(c)(2), which provides that the court "may not order a claimant to pay the attorney fees of the opposing party devoted to claims concerning constitutional rights if the claimant as plaintiff, counterclaimant, cross claimant, or third-party plaintiff in the action or appeal did not prevail in asserting the right, the action or appeal asserting the right was not frivolous, and the claimant did not have sufficient economic incentive to bring the action or appeal regardless of the constitutional claims involved." Because we affirm the superior court's judgment (continued...)

VI. CONCLUSION

We AFFIRM the superior court's grant of summary judgment in favor of the Borough on Gold Country's Open Meetings Act and due process claims. We also AFFIRM the superior court's denial of the Borough's motion for attorney's fees.

⁵⁷(...continued)

declining to award attorney's fees, we need not reach the question whether Gold Country is protected from an award of fees under AS 09.60.010(c)(2).

STOWERS, Justice, with whom CHRISTEN, Justice, joins, concurring in part and dissenting in part.

I agree with the court's resolution of this appeal except as to its conclusion regarding the superior court's order on attorney's fees (Part V.D.). Rather than affirming the order denying attorney's fees, because I find the court's order unclear, I would remand and have the superior court clarify its order.

As the court's opinion explains, the Borough sought an award of fees under Rule 68 or Rule 82 as the prevailing party. Gold Country opposed the Rule 68 request, arguing that the Borough was awarded approximately \$2,350 in attorney's fees when it prevailed in Gold Country's administrative appeal of the Planning Commission decision. But Gold Country's opposition to the motion for fees also conceded that the Borough could be entitled to fees under Rule 82; indeed, Gold Country filed a proposed order granting the Borough \$2,453 in attorney's fees.

The superior court entered judgment in favor of the Borough but denied the Borough's request for attorney's fees under both Rule 68 and Rule 82. The court noted in its order that "the offer to settle made by the borough to Gold Country [was] not addressed in any way to [William] Cramer" and there was "no reason, under these facts, to award any attorney[']s fees . . . against Cramer." The court further concluded that the "portion of [Gold Country's] suit which brought under scrutiny the . . . operation of local government is within the public interest. To this extent an offer by the borough to settle a claim, so as to seek upon prevailing enhanced attorney[']s fees, would chill legitimate suits against the government."

After examining the record thoroughly, I remain uncertain of the basis for the superior court's order denying fees against Gold Country. Its order may indicate that the superior court intended to deny part of the Borough's fees under AS 09.60.010 because some part of the Borough's fees were incurred in connection with Gold

Country's due process claim. Under some circumstances, that statute applies when constitutional claims are litigated; in particular, it can shield an unsuccessful litigant from fees associated with constitutional claims.¹ But the superior court's order denying fees did not cite AS 09.60.010, nor does it explain how application of this statute could justify the denial of all of the Borough's attorney's fees. Similarly, though the superior court explained its reasons for denying the request for Rule 68 fees against Cramer, it did not explain, and I cannot discern, its reasons for concluding there was not a valid Rule 68 offer as to Gold Country.

I would therefore affirm the superior court's order denying attorney's fees against Cramer. But because I am unable to determine what statutory or rule-based authority the superior court relied upon to deny the Borough's motion for attorney's fees against Gold Country,² I would remand to the superior court for clarification, and to make additional findings, if necessary.

In all other respects, I agree with the court's opinion affirming the superior court's grant of summary judgment in favor of the Borough on Gold Country's Open Meetings Act and due process claims.

¹ Under AS 09.60.010(c)(2), the court "may not order a claimant to pay the attorney fees of the opposing party devoted to claims concerning constitutional rights if the claimant . . . did not prevail in asserting the right, the action or appeal asserting the right was not frivolous, and the claimant did not have sufficient economic incentive to bring the action or appeal regardless of the constitutional claims involved."

² The court's opinion does an excellent job of explaining what it thinks the superior court's order sought to accomplish. But I think the court is reading more into the order than is there, and I would prefer to have the superior court explain its reasoning rather than engage in an exercise of legal hermeneutics.

Colleen Ingman

From: Connor Nelson [keystone99835@yahoo.com]
Sent: Tuesday, February 21, 2012 3:06 PM
To: Theresa Hillhouse Hillhouse
Cc: assembly@cityofsitka.com
Subject: Fw: Menendez Conditional Use Permit

Sorry I sent this before it was finished. The remainder of what I wanted to say is as follows:
Again, it's clear the party wall agreement is a requirement of the zero lot line platting process. 21.24.010 C - "Shall comply with the documentation required elsewhere in this chapter". D - "The plat application shall include the proposed party wall agreement as required in section 21.24.040". 21.24.050 "The applicant shall submit all required information at least 15 days prior".

So, it's clear the covenants are a requirement of the subdivision process for a zero lot line and not a civil after-the fact agreement. In chapter 22.04.040 Interpretations and Application of Provisions "It is not intended by this title to interfere with or revoke or invalidate any easement, covenant, or other agreement between parties."

There are common sense reasons why you can't expand these zero lot lines into commercial business. I will address those by a separate letter to you and the assembly in addition to this email.

Thankyou for your time and consideration on this matter. /s/ Connor Nelson

-- On Tue, 2/21/12, Connor Nelson <keystone99835@yahoo.com> wrote:

From: Connor Nelson <keystone99835@yahoo.com>
Subject: Menendez Conditional Use Permit
To: "Theresa Hillhouse Hillhouse" <hillhouse@cityofsitka.com>
Date: Tuesday, February 21, 2012, 2:49 PM

Dear Theresa, I'm writing this email regarding the above conditional use permit. I'll focus my comments to you as they pertain to our ordinances as set forth in SGC. I don't know your official position on this matter, only that you may have viewed this as a civil matter. If this is the case, I'd ask you to consider the following;
Zero lot lines are generated under chapter 21.24 of the subdivision codes and this chapter clearly provides a number of conditions to be met along with a number of items that have to be provided and approved as part of the subdivision. One of these is a "party wall agreement". 21.24.040 - this section states "A party wall agreement shall be included as a covenant to all zero lot line subdivisions", "this agreement shall include, but is not limited to the following sections". One of the required following sections is 21.24.040 C. Use of Property C.2 "Declaration of the restricted use to a single-family dwelling only for each lot." So, C.2 is the minimum that needs to be in the covenants, but per 21.24.040 the covenant is not just limited to that language. The party wall agreement that was accepted and passed as part of this subdivision plat is shown on the plat and is recorded in book 69, page 67 of the Sitka Recording Office. Please note, also recorded on 6/11/2007 is a warranty deed showing the Menendez as the grantee of subject property. That warranty deed states "subject to covenants, conditions, easements, restrictions, etc, etc". In the recorded covenants, first page, part D states "The purpose of this document is to ensure the use of the property for residential purposes only."

Valorie L Nelson
107 Littlebyrd Way
Sitka, AK 99835

012712

Municipal Clerk, Colleen Ingman;

Please consider this letter to be my official appeal (per SGC 22.30.230) to the Assembly of the Planning and Zoning Commission recommendation of approval to the assembly for a conditional use permit request for a day care at 506 First Street at their meeting on January 17, 2012.

My name and address are listed above and my interest in the matter is that the law is not being followed. I am co-owner of a zero lot line property in a commercial zone and if the same reasoning is used in the future as was used on January 17, a gas station could be one wall away from me.

The specific reasons why I believe the decision by the commission to recommend approval of the permit request is wrong are as follows: Per SGC 21.04.030 C Zero Lot Line (ZLL) Subdivisions states that a ZLL is a subdivision creating lots for residential units with common walls or for building residences on the side lot lines. 21.24.040 requires that a party wall agreement be included as a covenant and 21.24.040 A.2 requires it to include the purpose of the agreement. The purpose section of both party wall agreements submitted by Amanda Johnson at that meeting state "for residential purposes only". Table 22.16.015-1 lists residential land uses and a day care business is not one of them. Per 22.04.070 Conflict with other regulations states "Whenever the requirements of this title are at variance with the requirements of any other lawfully adopted rule, regulation or ordinance, the most restrictive of those imposing the higher standards shall apply". SGC 21.04.040 B states "When the provisions of this title impose greater restrictions than are imposed by other applicable city, state and federal regulations, the provisions of this title shall control. Clearly title 21 states zero lots lines are for residential units only, therefore a conditional use for a business in a residential zero lot line subdivision is not a lawful use.

The desired outcome is that the conditional use permit application should not be recommended to the assembly for approval, and should be denied by the Planning and Zoning Commission.

The record of appeal documentation should include the audio of the Planning and Zoning meeting of that item on 011712 and the documentation submitted by Amanda Johnson. If the 8 pages of the party wall agreements are not available to you, I will submit those when I return to Sitka next week.

I am currently traveling for medical reasons, and should you need to contact me, you may do so by calling my cell at 907-738-0027.

/s/Valorie L Nelson

Valorie L Nelson
107 Littlebyrd Way
Sitka, AK 99835

012512

To Whom It May Concern;

Please consider this letter to be my official request for reconsideration (per SGC 21.52.060 and 22.30.190) to the Planning and Zoning Commission and the Administrator on the conditional approval of the conditional use permit for Menendez Day Care at 506 First Street on January 17, 2012.

I am an aggrieved person per SGC 21.08.010 A because I am an owner of a zero lot line subdivision property. Per SGC 21.04.030 C "Zero Lot Line Subdivisions (Chapter 21.24). A subdivision creating lots for residential units with common walls or for building residences on the side lot lines." Clearly the law states zero lot lines are residential, to argue otherwise will certainly result in litigation from those currently holding title to zero lot line properties.

The party wall agreements submitted by Mrs. Johnson (as required by SGC Chapter 21.24) clearly state that the purpose of the document is to ensure the use of the property for residential purposes only and that the duration of the agreement is perpetual. Webster's New World Dictionary Third College Edition defines residential as "of or connected with a residence" and perpetual as lasting or enduring forever.

The planning commission erred in passing this permit subject to the blessing of the municipal attorney, who now appears to be saying this is a civil issue. We have laws in this community known as the SGC, when the city fails to follow their own laws, it is not a civil matter just because they don't choose to enforce it.

If the reasoning that was used at the 011712 Planning and Zoning meeting continues, my zero lot line could conceptually turn into me having a gasoline station, food store or many other commercial uses right next door (my zero lot line in is the commercial zone).

I am currently traveling for medical reasons, and should you need to contact me, you may do so by calling my cell at 907-738-0027.

/s/Valorie L Nelson

**Chapter 21.24
ZERO LOT LINE SUBDIVISIONS**

Sections:

- 21.24.010 Application and zero lot line plat of subdivision.
21.24.020 Final plat requirements.
21.24.030 Zoning requirements.
21.24.040 Party wall agreement.
21.24.050 Procedure after application.

21.24.010 Application and zero lot line plat of subdivision.

The zero lot line subdivision application, review and approval procedures shall be the same as those for minor subdivisions (Chapter 21.12) except as specified below:

- A. The exact locations of the structures shall be shown along with dimensions to each adjacent property line. This may be accomplished by either of the following methods:
1. Obtain foundation permit and have foundation in place when survey is accomplished to provide plat of subdivision; or
 2. Indicate proposed location of structure and surveyor field stake foundation prior to building permit.
- B. No construction beyond the footings and stem wall shall be permitted and commenced until plat approval has been completed.
- C. Upon the receipt of a detailed written request by the applicant, the municipality may approve an alternate zero lot line process on a case-by-case basis. In all instances, a plat must be approved by the city planning commission or assembly and shall comply with the documentation required elsewhere in this chapter.
- D. The plat application shall include the proposed party wall agreement as required in Section 21.24.040.

(Ord. 03-1729 § 4 (part), 2003.)

21.24.020 Final plat requirements.

The final plat shall comply with all other final plat requirements and shall include all required plat certificates and plat notes. In addition, the final plat shall contain the following additional certification:

LOT(S) _____ ARE INTENDED TO BE SOLD ONLY FOR ZERO LOT LINE DEVELOPMENT. LOT DEVELOPMENT SHALL REMAIN ZERO LOT LINE OR COMMON WALL CONSTRUCTION IN ITS ENTIRETY FOR THE LIFE OF THE COMMONLY BOUND UNITS. SHOULD FIRE OR OTHER DESTRUCTION OCCUR TO ONE OR BOTH OF THE UNITS, THEY SHALL BE RECONSTRUCTED ONLY AS A COMMON WALL UNIT, AGAIN, FULLY JOINED TO THEIR NEIGHBOR, UNLESS ONE SUCH PARTY TOTALLY BUYS THE INTEREST OF THE OTHER AND RECONSTITUTES THE ORIGINAL PROPERTY BACK INTO A SINGLE LEGAL USE. THERE IS A RECORDED PARTY WALL AGREEMENT RESTRICTING THE USE OF THIS PROPERTY FOUND AT SITKA RECORDING DISTRICT UNDER SERIAL NUMBER _____.

Chapter 21.24 ZERO LOT LINE SUBDIVISIONS

CONSTRUCTION OF THE COMMON WALL UNITS ALONG A COMMON LOT LINE SHALL BE SIMULTANEOUS UNLESS SEPARATE CONSTRUCTION RECEIVES PRIOR APPROVAL BY THE MUNICIPALITY FOR GOOD CAUSE SHOWN.

(Ord. 03-1729 § 4 (part), 2003.)

21.24.030 Zoning requirements.

Zero lot line subdivisions may be permitted in the R-1 (single and duplex residential), R-1 MH (single, duplex and single mobile home), R-1 LD (single and duplex low density), R-1 LDMH (single, duplex, and single mobile home low density), R-2 (multifamily residential), and R-2 MHP (multifamily residential including mobile homes and mobile home parks) zoning districts in accordance with the provisions of Title 22, Zoning.

A. Additional Requirements.

1. Zero lot line subdivisions shall permit side by side, one-family structures only (no duplex or more per side) and shall have a minimum of twenty-five percent of the total party wall adjoined together as a common wall.
2. The common wall shall consist of the following minimum rated fire wall: five-eighths-inch type "x" rated sheet rock shall be placed on the interior face of each unit, followed by a minimum of a two-inch by four-inch stud wall (sixteen-inch on center), followed by a five-eighths-inch weather-resistant, fire-rated gypsum wallboard. This is followed by a minimum of a one-inch air space, then a five-eighths-inch weather-resistant, fire-rated gypsum wallboard, then a minimum of a two-inch by four-inch stud wall (sixteen-inch center) with a five-eighths-inch type "x" rated sheet rock on the interior face of the second unit. This double-protected wall forms the common or party wall and shall be constructed so as to extend from the top of the concrete stem wall to the underside of the roof sheathing.
3. Separate water, sewer, and electrical utility services are required for each unit side. All the above services shall extend to and be individually connected to the adjacent municipal lines in the adjacent street. As separate saleable units, a zero lot line is treated as if they were totally separated buildings. No break or problem in any utility service should be allowed to have any adverse effect on the adjacent unit.

(Ord. 03-1729 § 4 (part), 2003.)

21.24.040 Party wall agreement.

A party wall agreement shall be included as a covenant to all zero lot line subdivisions and shall be entered into by the adjacent affected property owners. This agreement shall include, but is not limited to, the following sections:

A. Recitals.

1. A legal description of the property;
2. Declarations of ownership, common wall definitions, and the purpose of the document.

B. Party Wall.

1. Declaration of the party wall as defined;
2. Provisions for the shared responsibility of major maintenance and replacement as well as the use of any common problems (i.e., party wall) of said development;

3. Statement of the duration and effect of this agreement;
4. Provisions for regulations involving encroachment onto the adjacent property.

C. Use of the Property.

1. Provisions for the major maintenance or modification of each side of the structure's exterior with the adjacent owner's agreement;
2. Declaration of the restricted use to a single-family dwelling only for each lot;
3. Restrictions for the maintenance and upkeep of each lot in a neat and orderly fashion;
4. A statement on the procedure should one or both of the units be destroyed or removed. This may include the provision of one owner purchasing the total interest of the other party and the removal and revocation of the zero lot line subdivision and party wall agreement thereby returning the total property back to a single lawful use.

(Ord. 03-1729 § 4 (part), 2003.)

21.24.050 Procedure after application.

A. **Submittal.** The applicant shall submit all required information at least fifteen days prior to the date that the planning commission hearing on the subdivision is scheduled. All data shall be submitted to the planning office of the municipality.

B. **Public Hearing.** At a regular meeting, the planning commission shall hold a public hearing on the application request. The commission may approve, conditionally approve, or deny the application. Flagging of lot lines shall be installed as directed by the municipality. If denied, the commission shall cause to have prepared a formal letter outlining the reasons for denial.

C. **Denial—Appeal.** If the planning commission denies the requested subdivision, the applicant has fifteen days, from the date of the denial, to file a timely appeal. Such appeal shall be in writing, stating any reasons the applicant feels are relevant to the cause and shall be filed with the municipal clerk. A timely appeal shall stay all proceedings pending the outcome of the appeal. The assembly of the city and borough of Sitka shall hear the appeal, acting as a board of adjustment, within sixty days of receipt of the appeal. All records, applications, and other material shall be supplied to the assembly for their deliberations.

(Ord. 03-1729 § 4 (part), 2003.)

This page of the Sitka General Code is current through Ordinance 11-38, passed September 27, 2011.

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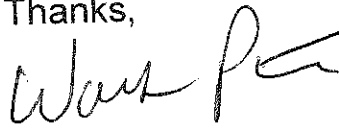
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Members of Planning and Zoning,

I have been plowing First St. whenever there is a considerable amount of snow since 2007. Also, my son Cecil has been attending Kids First since March 2010.

Thanks,

A handwritten signature in cursive script, appearing to read "Wayne Patterson", with a long horizontal flourish extending to the right.

Wayne Patterson

Subject: 506 First
From: joanna giglia (thebat777@yahoo.com)
To: kidsfirstdaycare@yahoo.com;
Date: Tuesday, January 17, 2012 6:38 PM

1-17-12
Joanna Giglia
1806-a alder way
Sitka, Ak

Members of Planning,

My name is Joanna Giglia, mother of Peter Menendez and mother in law to Dawn Menendez. In 2002, my children were looking to purchase a home that my daughter in law could run a daycare from. Since neither were at their current jobs long enough to qualify for a loan, i decided to take out a loan in my name to purchase a house for them to live in and for Dawn to run her daycare from. all mortgage payments, house repairs, or cost related to 506 first st has been their responsibility from day one. after facing health issues and lengthy hospital stays, i decided to do a quick deed to make sure if anything happened to me they would not loose their home.

I am now disabled and with current weather conditions I did not want to come to the meeting tonight. But please feel free to contact me with any questions.

Sincerely,
Joanna Giglia
747-8272

[Type the sender name]
[Type the sender company name]
Sitka, Alaska 99835

Planning and Zoning Commission

1/17/2012

Planning and Zoning Commission

Our child Gabriel Blankenship, currently attends Kids First Daycare and our drop off times are 9:45-10:00am and a pick- up time of 5:45-6:00pm. We are satisfied with the new system and feel that it is organized, smooth and considerate of neighboring driveways.

First street is not unlike any other street in Sitka as far as wear is concerned and does not pose as an issue for dropping off our child. Since the new system has been put in place, we have not once had to wait to drop off Gabriel or park our car anywhere besides Dawn's driveway.

We rely on Dawn to provide us with reliable and trustworthy daycare for our child so that we can also contribute to our local economy with our means of employment. Losing Kids First Daycare will impact our family in a financially negative way and I urge you to consider all the families that rely on KFD and how this will effect them as well. There seems to be a solution already.....at this point, aren't we just wasting peoples time?

Sincerely,

Brian and Sherri Blankenship

Amanda Johnson
504 First St.
Sitka, AK 99835
(907) 738-1679

January 5, 2012

RE: Menendez Conditional Use Permit Request

To whom it may concern,

After attending two Planning and Zoning meetings concerning Dawn Menendez' request for a Conditional Use Permit for her daycare at 506 First St., first on Dec. 20, and then on Jan. 3, I have had some time to think about the facts and the problems surrounding this request. I live at 504 First Street which is a zero-lot line connected to 506 First Street, and have been continually and negatively affected by the operations of their daycare.

The Menendez' are requesting this permit, after having had their business in operation for the last 8 years, only because I have complained, again, about the parking problems on my property and the continual traffic on First Street. If I had not done so, the Menendez' would be continuing to encroach on their neighbors.

The Menendez' did not purchase 506 First St. in 2003 as they testified, instead public record shows that the house was owned by Joanna Giglia until 2007, when Peter and Dawn Menendez' names were then added to the Deed along with Ms Gignias. I have attached copies of the paperwork to prove what I am saying. I am not sure why they would purchase 506 First Street, knowing that the daycare was impacting their neighbors and being unwilling to remedy the parking and traffic problems on the road.

2006 was the first time I requested assistance from the Planning and Zoning office to help deal with the traffic problems on First Street. I was told that a letter had been sent to Dawn Menendez and she would address the problems. Nothing was done.

In 2010, I built a fence to separate our properties in an effort to eliminate the parking from the daycare clients on my property.

In 2011, I talked again with Planning and Zoning about the traffic problems that continue to arise from the daycare at 506 First Street. This is when I found out that they were not in compliance with the codes and would need a Conditional Use Permit. That is also when I found out that Dawn Menendez has told her clients to park on 503 First Street's property, and has done so in writing, even though this is NOT her property and had no agreement with the property owner David Williams. I have also attached a copy of that letter. Dawn did two things to remedy the parking situation in front of her house after my complaint. She removed her boat, which was taking up the only parking spot they had in front of their house and she set up a 15-minute schedule for clients to pick up their children.

The Menendez' have never done any road maintenance on First Street, contrary to their testimony. David Williams, owner of 503 First St., Brad Dennison, owner of 505 First St., and Marty Johnson and me, owners of 504 First Street, have paid Tisher Construction, Little Bit Construction, and TM Construction to grade and resurface First Street.

There are several other factors that concern me also, and they are that there is no street light on First Street and it is very dark in the mornings and evenings when clients are dropping off and picking up their children. Other small neighborhood children walking down First Street are at a very high risk of being hit by an incoming or outgoing vehicle. Also, the City does not plow First Street and cars routinely get stuck in the snow.

The potential conditions that the Planning and Zoning commissioners came up with are great, but do not address road maintenance, hours of use, and there needs to be a "sunset" clause so that this conditional use permit is not infinite. Dave Williams' concerns about daycare clients turning around on his property and the road maintenance have not been addressed by the potential conditions. As he stated in his letter to the commissioners, "the road is not built to hand the excess traffic is has been receiving over the past ten years". What is going to be done about First Street in the future?

Also, I would hate to have to try to resell my house knowing that it was connected to their home where a daycare could and will be run. No potential buyer is going to want to purchase my home where there is a history of having problems with a neighboring business. I have the right to enjoy my property and should have the freedom to sell it, without this contingency.

First Street is not a good place to run a small business that generates constant traffic. I am not against their daycare; however, I think there are many other, much better places to run a daycare, such as a commercially zoned home. A daycare is a commercial business, and therefore should take place where there is more parking and there is a maintained road. I'm sure the daycare clients would be happier to have a smooth road that is properly lit, than to drive down First Street which is dark and laden with pot-holes and then be able to park in front of a daycare with plenty of parking and not have to adhere to a 15-minute drop off rule.

Items of the criteria to be used in determining impacts of conditional use are that the amount of "vehicular traffic to be generated and impacts of the traffic on nearby land uses" be taken into consideration, and another is "Effects on vehicular and pedestrian safety". (22.24.010 Conditional uses, E. 1).

The Menendez' have not done anything in the last 8 years in trying to mitigate the problems that have arisen from having a daycare business on a small dead-end road and I don't envision them adhering to the potential conditions that the Planning and Zoning commissioners have developed since they have been unwilling to do anything to improve conditions up to this point.

So, after much thought about this Conditional Use Permit, I am respectfully requesting that the Planning and Zoning and the Assembly deny the Conditional Use Permit to Dawn and Peter Menendez for their business, Kids First Daycare.

Respectfully,



Amanda Johnson

Melissa Henshaw

From: Amanda Johnson [amateagus@yahoo.com]
Sent: Thursday, December 22, 2011 7:50 AM
To: melissa@cityofsitka.com
Subject: street lights

Melissa,

I just wanted to let you know that I mis-spoke during the meeting the other night, and there are no street lights on First Street. During the meeting I had said there was a light over by 503's property, but there isn't. The closest street light is on Monastery. Sorry for any confusion that might have caused, but I wanted to make sure that everyone on the commission knows that.

Thanks,
Amanda

Amanda Johnson
504 First Street
Sitka, AK 99835

December 13, 2011

Amanda,

I am writing in regards to the recent complaint you filed with the City in relation to our home daycare facility. Specifically, it appears the complaint resulted from an incident with a parent who inadvertently partially blocked your driveway one morning while dropping his child off. I apologize that the incident inconvenienced you and wanted to explain the steps I have taken to mitigate any similar situations in the future.

First, I want to explain that I had no knowledge that there was a current concern regarding parking and the daycare. Prior to this isolated incident a few weeks back the only concern of yours I had been aware of was back in 2006. If you recall at that time we spoke with Officer Green and I was clear that should any future issues arise that if you were willing to communicate them to me I would take any steps necessary to make sure they are addressed in a timely and appropriate manner. Since 2006 we have been proactive in insuring that the impact our daycare has on the neighborhood is minimized. This includes parking and traffic. We have a staggered drop-off plan with our customers to limit the number of vehicles in the area at any one time. After the 2006 complaint we made efforts to insure that each parent was explained the parking rules and advised that failure to comply with them would lead to their child being released from my care. In response to the recent incident I have again sent out a letter to each parent explaining acceptable parking areas and reminding them of the aforementioned policy. Further, we insure that each new parent to the daycare is informed of the same parking policy. Lastly we have moved our boat out of our driveway to an off-site location, creating additional parking space in a further attempt to mitigate any concerns about parking.

Peter and I strive to be good neighbors and a conscientious home business. Again I apologize about any inconvenience that the recent incident may have caused but I do believe it was an isolated incident onset by unusually high snow conditions. We request that should any future concerns regarding the daycare facility arise that you communicate with us directly (you can just stop by and let me know, call or send a quick email detailing any concerns to kidsfirstdaycare@yahoo.com). This will allow me to take care of things quickly and to take proactive steps to address your concerns.

Sincerely,

Dawn Mahoney-Menendez

Subject: Teddy and Tim Boussom 2005-2008
From: Shannon Boussom (sboussom@gmail.com)
To: kidsfirstdaycare@yahoo.com;
Date: Tuesday, December 20, 2011 9:37 AM

Hi Dawn -

I'm just getting through my email and saw this from Helen. It looks like I'm too late, but I just wanted to write to say that Kids First Daycare was a lifesaver for us from 2005 to 2008. Both of our boys were infants when they started at Dawn's daycare and it was very difficult to find places for infants in Sitka. Most openings were already spoken for and we were fortunate to be referred to Dawn by one of my co-workers. My boys loved Dawn and were very happy at her daycare. I was relieved to know that they were with such a capable caregiver that I trusted. I remember the parking issues and hope I wasn't ever part of the problem, but it was difficult to get in and out in heavy snow even with all-wheel drive. I hope that Dawn can continue to offer her childcare services at her current capacity because she provides quality care for infants and young toddlers that is so difficult to find in Sitka.

I'll send pics this year Dawn - the boys have been asking a lot of questions about Sitka :)

Happy Holidays,
Shannon and Mike Boussom
Formerly of Sitka, currently Carnation, WA
sboussom@gmail.com
PO Box 446, Carnation, WA 98014
(425) 549-0195

Subject: letter of support
From: Helen Dangel (akle.aya@gmail.com)
To: kidsfirstdaycare@yahoo.com;
Date: Monday, December 19, 2011 6:43 PM

This is a letter of support for Kids First Daycare, Sitka, Alaska, owned and operated by Dawn Mahoney-Menendez.

Dawn runs a first-rate daycare out of her home. My son Janwu went to her daycare from about 18 months to 5 years old. Dawn has a great reputation around town as being a good daycare, and I heard about her through several co-workers who had children there. I tried more to get in 6 months before, but she was full. It was, and is, very difficult to find any daycare in Sitka, especially good quality. Dawn previously worked for a big daycare and I believe taught preschool. She had a schedule, and taught the kids colors, beginning numbers, and beginning letters, which is much more than previous daycare experiences.

Dawn was very good about sending notices home to parents regarding situations and weather. Dawn told us (parents) what the parking situation, and I did my best to respect the parking situation when picking up and dropping off my child, as did most parents. There is always some situation that comes up, but Dawn tried to make sure parking was kept out of her neighbors' way.

Again, daycare is extremely difficult to get in Sitka, and high quality daycare where your children are taught is almost impossible to get. I advocate that Dawn be able to run Kid's First Daycare at full capacity so she can continue to make her livelihood.

If you have any questions, please feel free to call me at (907) 752-1781.

Sincerely
Helen Dianne Dangel,
mother of Janwu Lorrigan, 6 years old

December 19, 2011

To Whom it may concern,

Our children went to Kids First Day Care. I found it to be one of the best daycare centers around.

Dawn is wonderful. The children always have great activities to do. At Kids First Day Care, I knew that my children were safe in Dawn's care while being in a loving and caring environment. Dawn provided nutritious meals and snacks to my children.

Although my children are now school aged, and no longer need a day care setting, I would highly recommend Kids First Day Care to anyone seeking child care.

Sincerely,
M/M Peavey



M/M Peavey
108 Andrew P Hope St
Sitka, Ak 99835
(907)738-2080
(907)738-0034

Melissa Henshaw

From: Brent Edwards [sitkalawyer@gmail.com]
Sent: Sunday, December 18, 2011 7:43 AM
To: melissa@cityofsitka.com
Subject: 506 First Street Conditional Use Permit

Dear Planning Commission and Staff -

We live at 706 Sirstad Street and received notice that the Menendez have applied for a conditional use permit to operate a daycare at 506 First Street. We have no objection to this use of 506 First Street.

Sincerely,

Brent and Valerie Edwards

Subject: Neighbor

From: Joann Salenski (joannmarie8085@yahoo.com)

To: kidsfirstdaycare@yahoo.com;

Date: Sunday, December 18, 2011 6:39 PM

Hi Dawn,

I am Joann Salenski. I lived on First St. From June 03-July 08. All the years I lived there I never once had a moment where I thought I had an issue with you. That being said, if I thought I did I would go tell you the problem and see what we can do about it. You and Pete look like nice approachable people. Todays economy many people have to work and put their children in daycare. I think it would be a serious injustice for your daycare to be shut down. Those children are fortunate to have you caring for them. I heard their laughter and see you taking wonderful care of them.

Good Luck,
Joann Salenski

Melissa Henshaw

From: Stephen Weatherman [stephen@cityofsitka.com]
Sent: Friday, December 16, 2011 11:57 AM
To: 'Wells Williams'; Melissa Henshaw
Cc: 'Michael Harmon'
Subject: Conditional Use Permit Request 506 First Street

Dear Wells and Melissa

Conditional Use Permit Request for 506 First Street.

I looked at the parking requirements for Day Care operations but couldn't find that use listed. The nearest use is an Adult day care center which requires 3 spaces plus one space per employee and one space per 10 residents. First Street is not fully developed to residential standards and there is not a parking lane identified for this street. This means there is no off-street parking available for the Day Care facility. We request a condition of use that requires appropriate off-street parking and that all pick up and drop off be allowed only on site and not in the public ROW.

Stephen L. Weatherman P.E.
Municipal Engineer
City and Borough of Sitka
100 Lincoln Street
Sitka, AK 99835
(907) 747-4042 office
(907) 738-5063 Cell
(907) 747-3158 Fax
stephen@cityofsitka.com

December 15, 2011

Sitka Planning Commission
c/o Planning Department
100 Lincoln Street
Sitka, AK 99835

Re: Menendez Conditional Use Permit Request

Thanks for the opportunity to comment on the Menendez Conditional Use Permit Request for a daycare facility at 506 First Street. My wife has informed me that she has already written you a comment letter at their request. Her letter was written with the intent of not making any waves in our small neighborhood and although it is mostly accurate, the part about parking not being an issue was driven by a strong desire to keep the peace.


Dawn and Peter Menendez are great neighbors. Dawn runs a first class day care and if we had kids to send to a day care Dawn would be our first choice. She's great with the kids and they all seem to love her. We totally support their request for a conditional use permit.

There is, however, an issue with some of the parents of the kids that use Dawn's day care. There is very little parking on 1st Street. We live basically on an alley way. At the Menendez residence there is room for one extra vehicle to park, at most, when the Menendez car and boat/trailer are also parked there. When the boat is gone there is, at most, room for two vehicles beside the Menendez car.

When parents are all dropping their kids off in the morning, and again in the late afternoon when they are picking the kids up it is not at all uncommon to have multiple cars trying to find a place to park. One such car is not a problem for us, two such cars are occasionally a problem depending on what else is parked nearby, and three such cars are almost always a problem.

I think it would be fair to ask the parents of the kids to limit themselves to parking only one car at a time at the day care, possibly two if the boat is gone and there is room for two. Beyond that, the parents should temporarily wait out on Monastery Street until a parking spot opens up at the day care. I don't think that would be a terrible inconvenience for them and it would solve the parking problem at the day care.

Thanks again for the chance to comment. Please grant Dawn and Peter their permit request.



Brad Dennison
505 1st Street
Sitka

cc: Dawn & Peter Menendez

Amanda Johnson
504 First St.
Sitka, AK 99835
(907) 738-1679

RECEIVED
DEC 15 2011

December 14, 2011

RE: Menendez Conditional Use Permit Request

To whom it may concern,

First Street is a small, unmaintained, dead end-street. I own 504 First Street, which is the other half of the zero-lot (506 First St) that is owned by the Menendez'. I have lived there with my family since December of 2003.

In years that the Menendez' have been operating a daycare next door, there has been considerable traffic in the mornings from 7:30 – 8:30 am and again in the evening from 4:30 – 6:00 pm. The issue I'm concerned about is not the daycare, but rather the lack of parking and continual traffic on a small road that is not maintained.

In 2006, after talking with Dawn to no avail about her clients continually parking on my property, I spoke with Sara Russell at the Planning and Zoning Office. A letter was then sent from Planning and Zoning to Dawn to rectify the parking situation. I have tried several times since 2006 to talk with Dawn and my husband has spoken with her also, yet the problem remains.

In 2010, I built a fence to separate our properties. This was yet another attempt on my part to keep the daycare clients from parking on my property. I am not against the day-care; I am against not being able to pull into my driveway after getting off of work and having to wait for someone to remove their vehicle from my property.

The last incident was when Ryan Silva, a Sitka police officer who was picking up his child, blocked my drive way. He came to my door, because I had blocked him from leaving, which was due to the piled up snow and my not being able to pull into my driveway completely. I spoke with him about not parking on my property and since he is an officer of the law, I hoped he would oblige. However, the next morning, he blocked my parking spot, and I took pictures. He then asked me where he should park. The problem is that there really is **no** place for clients to park. This issue needs to be dealt with once and for all.

In talking with the Planning and Zoning Office, they discovered that the daycare does not have a conditional use permit. They have given the Menendez' the choice to reduce the size of their daycare to 4 children, or apply for a conditional use permit. It is only because of my complaint about the parking situation that talk of a conditional use permit even arose.

The drawing provided by the Menendez' does not depict the real and true parking situation because there is NOT room for a car to turn around on their property. They indicate that there is room for 3 vehicles, including 2 trucks and a car to park vertically in their space. They also indicate that there is room for 1 additional vehicle to park in back of those 3 vehicles. The reality is that they own a boat which occupies 1 of the vertical spaces and they own 1 car which takes up another space. That only leaves room for one very small car to park on their property. If the drawing were accurate none of us would be here right now. The letters from the adjacent property owners describe the major traffic congestion and how they too have had problems with clients parking on their property.

This road is a dead-end road and the daycare is at the end of it, therefore creating a bottle neck. When clients pull up to the Menendez' house, they have to turn around in someone else's driveway because there simply is not enough space. This is not only hazardous for the 7-8 cars and clients each morning and evening who are dropping off or picking up their small children at the day care, but when it is dark and there is snow piled up, there is concern for the other neighborhood children and the chances of having an accident are multiplied every day between 7:30 – 8:30am and 4:30 – 6:00pm.

First Street is not City-maintained. The increased traffic from the daycare causes First Street to be in a constant state of needing repair. Dave Williams, the owner of 503 First St. has paid Tisher Construction and Little Bit Construction to grade and fix the road in the past. Brad and Minnie Dennison who own 505 First St. paid Todd Miller several years ago to come and grade and re-rock the road, and we have filled the potholes numerous times, pouring concrete in areas to prevent further erosion of the road. I do not feel that the burden of fixing First Street should be placed on the adjacent property owners when the traffic that is created from the daycare is the reason for the repair in the first place.

Items of the criteria to be used in determining impacts of conditional use, are that the amount of "vehicular traffic to be generated and impacts of the traffic on nearby land uses" be taken into consideration, and another is "Effects on vehicular and pedestrian safety". (22.24.010 Conditional uses, E. 1).

In the letter that was signed by both Peter and Dawn Menendez, page 2 of 3, second paragraph, they suggest that "In order to reduce any similar occurrences in the future we are willing to require parents to park on the easement on Monastery Street and walk the children up to the house during times of heavy snowfall". This is a great solution to the traffic problem and I would appreciate it if the Menendez' would require parking for the daycare to take place on City Property along Monastery Street, **no matter the weather.**

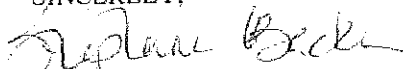
Respectfully,

Amanda Johnson

TO WHOM IT MAY CONCERN

IN 2003 I HAD THE PLEASURE OF HAVING MY CHILD IN KIDS FIRST DAY CARE. THE SERVICES PROVIDED BY DAWN EXCEEDED ALL OTHER CHILDCARE CENTERS IN SITKA. AS A SINGLE MOM WHO HAS TO WORK IT WAS A BLESSING TO FIND SUCH QUALITY CARE FROM A DAYCARE SERVICE. SITKA ONLY HAS A FEW CHOICES FOR CHILDCARE AND THE SERVICES PROVIDED BY KIDS FIRST DAY CARE ARE THE BEST IN TOWN. KIDS FIRST DAY CARE OFFERS SERVICES THAT ARE NOT AVAILABLE IN ALL CHILDCARE CENTERS. SITKA IS VERY LUCKY TO HAVE THE QUALITY SERVICES OF A DAYCARE CENTER THAT IS PROVIDED BY KIDSFIRST DAYCARE, LOSING THOSE SERVICES WOULD BE A MAJOR HARDSHIP ON OUR COMMUNITY. THE SERVICES PROVIDED BY KIDSFIRST DAY CARE ARE NEEDED IN OUR TOWN.

SINCERELY,


STEPHANIE BACKUS

Melissa Henshaw

From: Stephen Weatherman [stephen@cityofsitka.com]
Sent: Friday, December 16, 2011 11:57 AM
To: 'Wells Williams'; Melissa Henshaw
Cc: 'Michael Harmon'
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Respectfully,

Amanda Johnson

Subject: Daycare in the neighborhood

From: Minnie Dennison (minniedennison@gmail.com)

To: kidsfirstdaycare@yahoo.com;

Date: Monday, December 12, 2011 4:41 PM

Hello to whomever this concerns,

We are writing this letter to show support of the Kids First daycare, which is located about 100 feet from our home. The owners, Pete & Dawn, have been positive, supportive neighbors, and are always outgoing and friendly. The parking issues around pick-up and drop off time have had minimal impact on us. We can remember only once in the past 5 years when we have had to wait briefly for a vehicle to move to allow us to pass through our driveway. We enjoy the happy sounds coming from their yard in the summertime, and recognize that Dawn is a very competent and responsible caregiver. We would be saddened to hear their daycare had to close because of some legal issues.

Brad & Minnie Dennison

RECEIVED
DEC 12 2011

Concerns related to Menendez Conditional use permit Daycare request

From: David G Williams
1912 Sawmill Creek Road
Sitka, Alaska 99835
(907)752-0060

To: Sitka Planning Commission

To whom it may concern,

I am the owner of the duplex at 503 First street. I have lived in the upper unit from 1996 thru 1999, and 2008 thru 2009. The day care has been operated for approximately 10 years. During this period I have witnessed and received complaints from my duplex tenants about daycare vehicles parking and turning around in 503 First parking area. The pictures and drawings in the supplied public hearing notice do not reflect the real area in front of the Menendez property for their clients to park and turn around. The pictures show an open parking area in front of their residence, but in reality it has always been totally full with two cars and a boat. This leaves only a ten foot by ten foot area of road /505 First Streets driveway for their clients to park and turn around in. They are always parking in front or in my parking area. On many occasions two child pick ups or drop off happen at the same time, causing congestion forcing them to park on my lot or back into it when leaving.

This subdivision and road is privately owned and maintained by the residents. I tried in the past to get the city to upgrade and pave First Street with no success. This is due to the fact the road and utilities are not up to city code in construction. The road is built on muskeg with logs and matting covered in layered rock. I have in the past contracted Tisher Construction to grade and add rock to the surface. Two years ago at the cost of \$1500.00 I had Little Bit Construction fill and grade out numerous large potholes that have developed in front of my units parking pad since the daycare has opened. The potholes were in the same area used as a turnaround. On numerous occasions concrete has been added to fill the large potholes that develop at the stop sign at First and Monastery Streets.

I am not against the Menendez's providing a community needed business, but I truly do not feel I should have to pay for and maintain a PRIVATE road in a PRIVATE subdivision to provide a parking lot for them to run a business. In closing The road is not built to handle the excess traffic it has been receiving over the past ten years and I urge a member of the planning committee to walk down First street to see the real picture.


David G. Williams

Subject: 12-07-2011

From: Deanna Allison (deannaallison@hotmail.com)

To: kidsfirstdaycare@yahoo.com;

Date: Wednesday, December 7, 2011 2:24 PM

To Whom It May Concern:

I am writing in regard to Dawn Mahoney-Menendez (Kids First Daycare), whom I believe is the best choice for anyone's childcare needs.

I have known Dawn for almost 10 years, during which my children have been enrolled in her daycare (06-2004 to 07-2005 & 05-2007 to 09-2007). I have gotten to know her quite well. My children, and all other children who spend time around Dawn, have a great deal of fun and are never bored.

But that's not the quality that makes for a good childcare provider. Dawn is able to walk that fine line between "the fun one" and "the disciplinarian." That is not an easy task, but Dawn manages it with ease, and as such is able to retain the children's respect and have some of the best behaved children I have ever seen. We may not always think that a child respecting us is important, but it really does go a long way in keeping a child (and, in the process, his/her caregiver) happy. Dawn's ability to gain a child's respect convinces me that she is destined to be in this line of work. My child for one had some behavioral issues when she started to attend Kids First Daycare and Dawn had no problem with working with her and even suggested some places that I could take her to try and get her some help. Within a few months of attending Kids First Daycare my child became a well mannered little girl and no longer had the problems she did before Dawn was there to help. She helped me to potty train a child that, before her help, had refused to use the potty at all. She is a blessing my life and to the lives of my children.

I want you to know that Dawn has cared my children often, and I trust her with them completely. Anytime I or anyone else in Sitka is in need of a childcare provider, I think of and suggest Kids First Daycare.

Please feel free to contact me if you'd like me to elaborate on anything I've written here, or if you have any specific questions about Dawn and Kids First Daycare. I would be happy to discuss Her excellent qualifications at length. 253-255-3732 DeannaAllison@hotmail.com

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Sincerely,

Deanna Allison

Esther Diaz
106 Rudolph Walton Circle
Sitka, AK 99835

907-747-8748

December 4, 2011

To Whom It May Concern:

I received an email from Dawn Mahoney asking for my support to help save her daycare. My son, Eric, attended Kids First Daycare 7/06 thru 5/09. The three years that he attended were the best. I went to work knowing that my son was well taken care of. If any of you are parents, then you know what a relief that is to know that your child is in good hands.

I picked Kids First Daycare because of recommendations I received. I also knew that getting a spot into the daycare was hard, because she is limited on the number of children that she can place in her daycare. The stars and planets were lined up in my favor and Eric was accepted. We picked that daycare because of her cleanliness, size of daycare, location, and recommendations.

As I mentioned before, if any of you are parents, you know that your child's daycare is very important. Sitka, at that time, was very limited on choices of daycare. (That may be the same now, I don't know.) And, a daycare that accepts a small amount of children was just right for our child. He had attended SEARHC daycare and the children to teacher ratio were too high.

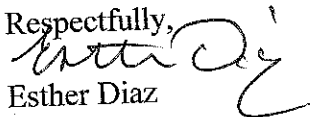
Dawn Mahoney's daycare also helped my son learn colors, shapes, etc... She always had a tidy, neat and clean house.

I remember that winter of 2006! The snow piled and First street was hard getting to. I had a 4X4 and made it to pick up my child. Dawn gave me the note about the parking and not to park or block the neighbor. I totally understood and complied.

The issue seems to be not the parking but the neighbor. She complained to planning and zoning, both times, (Nov. 2006 and Nov. 2011) instead of talking with Dawn. Or, as a last resort, with the local authorities about parking on her property. As a local Sitkan, you learn to be flexible when there is a situation that requires flexibility....such as, snow and ice that is not normal.

Even though my son does not attend Kids First Daycare, anymore, we still see "Teacher Dawn" around town and my son gives her a hug. She is the best! Please don't deny other children to attend this first rate daycare. Please don't reduce the amount of children, that the state allows, that can attend this loving daycare.

Respectfully,


Esther Diaz

Subject: Daycare

From: JoyAnn Dunnavant (jadunnavant@gmail.com)

To: kidsfirstdaycare@yahoo.com;

Date: Sunday, December 4, 2011 1:39 PM

Hey Dawn I hope this helps... Good luck

To Who It May Concern:

I am a parent of a 10 month old little boy and have been on a waiting list to get my son into Kids First. I can't wait for him to start there, I have been there on a few occasions either for a visit or to pick up my nephew. My son just loves it there with the kids and especially loves Dawn. Right now I am having to quit my job because I can't find daycare. I currently work nights and there are no centers that are open for the hours that I work. I was going have to either switch shifts or quit but since I am unable to switch to days I have to quit and try to find another job. I am hoping to find a job that will let me work day shift. Please let Dawn keep her business the way it has always been since June of 2003, Dawn is a great care giver and I would love for her to be able to watch my son when I go back to work. If you knew her and how she was with the kids at Kids First then you would want your kids to go there. They all love her!! My nephew is currently going to Kids First and he has so much fun, he is learning a lot of new things. He is so proud that he gets to be the junior teacher and tells me about it every time I see him.

Sincerely,
JoyAnn Dunnavant

Subject: Fwd: Day Care Support Letter
From: Devi Spangler (devispangler24@gmail.com)
To: kidsfirstdaycare@yahoo.com;
Date: Sunday, December 4, 2011 6:31 PM

----- Forwarded message -----
From: **Dee Spangler** <southsloughdee@live.com>
Date: Sun, Dec 4, 2011 at 3:30 PM
Subject: Day Care Support Letter
To: devispangler24@gmail.com

I am writing this letter to voice my support of Kids First Day Care in Sitka, Alaska which is run by Dawn Mahoney Menendez.

My grandson, Aydin Baxter, has attended her day care since May 2010. He is a very bright, active and emotionally charged young man. He attended two day care centers before being enrolled in her's. He was asked to leave both because he lacked self-discipline. He knew what he was supposed to do, and felt embarrassed when he did things wrong, but he just couldn't seem to control his frustration. He expressed his anger in inappropriate ways. The family dispaired of finding someone who could help him channel his feelings in more appropriate ways, and make him feel proud of himself. Both of his parents work. They have to in order to pay the bills. There are few day care centers in Sitka, and options are limited. My daughter was frantic, trying to find a good quality provider for Aydin's special needs. Dawn's day care was literally our last hope.

Fortunately for all of us, she has worked absolute magic on Aydin. He not longer gets frowny faces on his reports. He is very proud of that. As an older child, he has now been designated as a special helper. She has ignited in him a love of learning and a desire to be one of the good guys. Aydin would be simply lost without her. The quality of care that she provides is absolutely priceless to this family.

Please so not take actions which will result in the closure of such a valuable asset to your community. She truly provides a service that cannot be found elsewhere in the city; that is, a small, quality day care that provides unique services to children with special adjustment problems that cannot be met by larger facilities.

Sincerely,

DeAnna L. Spangler
PO Box 65
Coos Bay, OR 97420

12/3/11

To whom it may concern,

Dawn Menendez has been a part of me and my family's life for quite some time now. At first she was the wife of my co-ed softball coach and was always there for me when I needed her, be it for moral support or just a shoulder to cry on or my personal nurse when I got hurt on the field. But as time went on, my mother had another child and she needed a reliable day care that my brother could go to. Low and behold, Dawn had a great accredited day care that she ran out of her home called Kid's First Day Care. Not that much longer my brother was signed up and ready to start going to Dawn's daycare.

From the start Dawn and Pete Menendez were great and supportive people, always there and willing to give a hand whenever you needed it and to always look out for the wellbeing of their friends and their friends' children and families. I have never met such supportive and loving people in my whole life. It just makes you wonder how we got so lucky to have such great people in our lives.

I remember when my brother was younger and he was attending "Teacher Dawn's" (that's what me and my family affectionately call her because of everything she has taught, not just my little brother but my family as well, over the years), he would be so excited to go and see her that he would talk about her all the time even on the weekends because she was so interactive with the kids and got them out to do things. A lot of you might not know, but my brother is very active and outgoing and it is hard to keep him on track, but for some reason Teacher Dawn just knew the right things to do to keep him occupied and always happy. She would take them on walks and field trips and get them out in the fresh air when it was nice out. You would be driving to work one day and look to the left and there they would be, walking hand in hand to go to Totem Park with her, all being well behaved and huge smiles on their faces and everyone walking by them just saying how cute they were and how well behaved they were. When you look at happy kids like that, you just know that the teacher that is leading them is one of those "One in a million" teachers that kids and parents will never forget.

As a matter of fact, to this day, my brother is now eight years old and STILL talks about Teacher Dawn and how awesome her "school" was! He is old enough to go to Ventures, but never too old enough to appreciate the fun and laughter of her school. When I was taking care of him while my mom was out of town, Teacher Dawn said it was ok that we stop by and visited during the day after nap time. Eric, my little brother, was beyond excited because he hadn't seen Teacher Dawn in a few months because softball was over. He just couldn't stop talking about her awesome her decorations are at her school and all the little kids there. You may grow out of going to daycare but you never grow out of loving your teacher. Eric still sends Teacher Dawn

flowers (carnations, they are her favorite and he has saved this to his memory for life because he loves her so much) for her birthday, St. Patrick's day cards about leprechauns (because he knows Teacher Dawn is Irish), and birthday cards because he loves her.

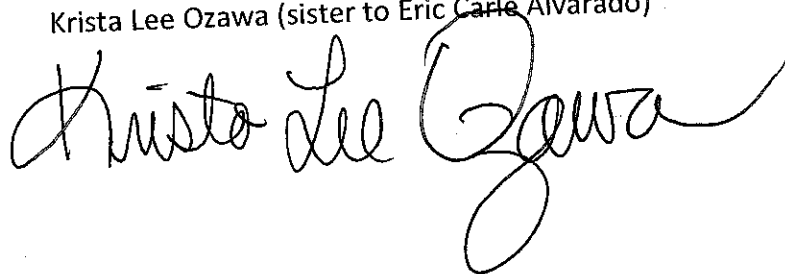
It saddens me that someone so vicious that can live next door to Dawn, can be willing to crush so many kids dreams of going to this day care. I know that if I ever have any children, I would be blessed to have her watch them and teach them everything that she has taught my brother and I. People like her neighbors should really look at themselves and how selfish they are being before they try to ruin someone else's life. Words cannot express the sadness that it would cause if Dawn's daycare was shut down because they could only have four children there at a time. That is not enough revenue for them to stay financially sound, especially in this economy.

Whenever I would drop my brother off at daycare or pick him up, I was ALWAYS told that I was not able to park in the neighbor's driveway because of their attitude towards Dawn and her husband. It was so icy and snowy one year and I had to pick Eric up, but I was not allowed to park near their neighbors house, so I walked from the main road and slipped and slid all the way to Dawn's house (after I had knee surgery mind you), and almost hurt myself. Those neighbors should be ashamed of themselves, not only for their attitudes, but for their actions and how they are going to detriment the future of some of these kids that love Dawn and her daycare as much as my brother had. For some of these kids it is the most stable and loving environment they have, and to take that away from them is not only hurting them, it is hurting their future. She is the best thing to happen to these kids and to take that away from them is the worst thing anyone could do to a child.

Please do not take Kid's First Day Care away from these kids, and most importantly, please do not take these kids away from Dawn. She is the best person I know for these kids and her and her husband are the best people I know in the world. Re think dropping the kids capacity to four and think about all of those other kids that will not be able to get all that love from Dawn and her daycare.

Sincerely,

Krista Lee Ozawa (sister to Eric Carlo Alvarado)

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

December 2, 2011

To Whom It May Concern:

This letter is on behalf of Kids First Daycare, owned and operated by Dawn Mahoney-Menendez. My son attended Kids First Daycare from 8/2007 to 12/2009. The care that he received was above and beyond any of my expectations. Dawn is gifted when it comes to nurturing small children. Kids First Daycare was my son's second daycare and there was no comparison when it came to which was more geared toward children and their needs, as well as the quality attention that he received. Daycare is not easy to find in Sitka, and it took me six months before I was able to find one, which was not nearly of the quality of Dawn's. It would be a travesty not to let as many kids as possible attend Kids First Daycare, both because it's so difficult to find and the wonderful care that is provided.

The daycare's schedule was very structured, which was important to the success of my son. The schedule included play time, snack time, story time, show and tell, quiet time, etc. Many of the children's duties were made fun with songs. The children had both a hand-washing song and a song for cleaning up toys before taking out more. Fresh vegetables were made fun to eat by seeing how loud they could crunch when they took a bite.

Dawn was very loving toward all of the children. My son loved going to her house. She was extremely consistent with her expectations of how the children should behave and when they weren't met, there were consistent repercussions. My son knew what was considered appropriate and inappropriate behavior and it helped tremendously at home in his development, as well.

The kids were taken on walks or able to play outside when the weather permitted. I never had any concerns with Dawn taking my son on walks around traffic because I knew she was extremely cautious and he was well looked after. She had a stroller that held four younger children and if there were older ones, they would walk beside her. The playground in her yard was also very safe. There was a gate all the way around it with rounded gravel that would minimize injury. She had many different choices to play on—a boat, slide, etc.

Kids First Daycare was run like a business. I received a bill every month so I knew exactly what to pay. It showed the deductions when she was closed for illness, etc. I also received a sheet when my son was still a baby that showed what he ate and how many times he used the bathroom throughout the day. I appreciated this information.

Any child able to attend Kids First Daycare is extremely fortunate. The skills that they learn help build the foundation of their lives. I would recommend Kids First Daycare to any parent and would hope that Dawn is able to continue to nurture the most kids possible.

If you have any questions, you can contact me at 907-738-1385 or by email sbarry@anhc.org.

Sincerely,

Sarah Barry

December 2, 2011

To Whom This May Concern;

I received a call from Dawn Mahoney-Menendez on Friday saying because of a parking issue you were cutting the capacity/attendance of her home child care to half. This means she would have to close her doors for child care. As an Early Childhood Professional this is very disturbing to me. Home child care is vitally important when parents are choosing child care for their children.

Parent's choices for child care are center care, home care, or relative care. If any of you have ever tried to find child care for your children you would know that child care is limited in this town so our residents use all the child care space we have. Some children thrive in center care with larger groups of children and some children need the smaller atmosphere of home child care. As a center director we need to know that there are options out there for the children that do not thrive in our centers. I have made referrals to Dawn's home care and after the children made a move there I would visit them and see that this smaller home environment is just what they needed to succeed.

We have very few home child cares in this town because it is a hard job to do in your home. They are with the children all day Monday through Friday with very little relief from other adults. In order to be financially capable of operating a home child care at a profit you need to be able to have 8 children at one time otherwise they would have to close.

Your committee knew the parking situation when you approved that Dawn could operate a home child care in that neighborhood. If there have only been 2 infractions over the many years she has been in operation then you can see that she is cautious about this issue and has shared it with her parents. Instead of coming up with the solution to cut her attendance in half you should be brainstorming a way to keep this home child care in operation. Not only is Dawn offering care for working parents she is a working employee herself and the child care keeps these parents and Dawn employed.

Since you have already granted her the right to run a home child care in that neighborhood you now should be looking for viable options of solving this situation. It is really unprofessional of this committee to make a decision without give Dawn a chance to help solve the parking issue between her and her neighbor. Dawn should have just as much say in this issue as the neighbor does.

Respectfully;

Rebecca Workman

Director, SEARHC Child Care Center

Lolly Miller

Director SJ Child Care Center

Brenda Papoi
301 Moller Ave.
Sitka, AK 99835
December 3, 2011

To Whom It May Concern:

I have been a resident of Sitka for 17 years, and I am writing to express my enthusiastic support of Kids First Daycare owned and operated by Dawn Menendez.

I understand that some residents of our community have voiced concern over the zoning of Mrs. Menendez' property in regard to her home daycare. However, I am one of thousands of parents living in Sitka, Alaska who have struggled to find daycare for my children. Kids First Daycare adeptly fulfills an unfortunate deficiency within our community. While attending Kids First Daycare, not only were my son and I treated with the utmost care and respect, but my son entered kindergarten equipped with much of the knowledge he needed to be successful.

Finding daycare in Sitka is so difficult, I requested to be put on a center's "wait-list" two months into my pregnancy. Luckily, we were accepted and my son started at four months of age. Unfortunately, his needs were not conducive to success in such a large setting and the director recommended Kids First Daycare. After speaking to Dawn Menendez and visiting her home daycare, I made the decision to enroll my son. I truly believe that my son would not have the skills he now has if it weren't for Dawn and her expertise.

I strongly urge you to allow Dawn Menendez to continue operating Kids First Daycare at the current capacity not only to fulfill a vital need of Sitka, but to nourish our children and equip them with the skills necessary to be successful members of our community.

Sincerely,



Brenda Papoi

December 01, 2011

To whom it may concern,

I am writing this letter on behalf of not only my Child's day care provider, but a wonderful friend as well.

My son Evan started at Kids First Daycare in May of 2006. He was ^{21 y/m} five months old. At the time I had just found out that the daycare he was currently going to was closing- out of no where. I asked who would be the best choice and Dawn Mahoney-Menendez was the name that was said. I called Dawn and told her everything, not even asking if she had any openings. Dawn took us right in.

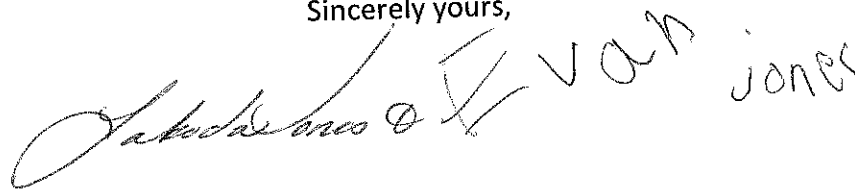
My child loves going to Dawn's house. He enjoys her company as well as the friendships he has developed at Kids First Daycare. Dawn provides structure at her facility such as a pre-school does. She is fun and creative. Pizza day, fruit salad day, movie day, show and tell are just a few activities provided at Kids First. Even the Leprechaun visits Dawn's house. Evan has never, ever asked to go anywhere else and he is seven now.

Kids First Daycare is ran like a tight ship. Dawn follows all of the rules and regulations that come with the responsibility of running a home daycare. Guideline handbooks and emergency contact information are updated regularly. Bills are always timely. I am even made aware when immunizations are due. Dawn even works with the DCAP program as a source of payment for parents. This can be the greatest challenge ever.

Dawn is honest, organized, responsible and loving. The best quality about Dawn is that she has such a natural connection with children. This is not only a job to Dawn; this is a lifestyle that brings her happiness. To think of a person like this losing her friends as well as her means of surviving breaks my heart.

I am with Dawn 100%. This is only right, for someone who has given that much to my child and me.

Sincerely yours,

A handwritten signature in black ink that reads "Lakoda and Evan Jones". The signature is written in a cursive style and is positioned above the printed name.

Lakoda and Evan Jones

STATE OF ALASKA

DEPT. OF HEALTH AND SOCIAL SERVICES
DIVISION OF PUBLIC ASSISTANCE
CHILD CARE PROGRAM OFFICE

SEAN PARNELL, GOVERNOR

3601 C STREET, SUITE 140
PO BOX 241809
ANCHORAGE, ALASKA 99524-1809
PHONE: (907) 269-4500
TOLL FREE: (888) 268-4632
TOLL FREE FAX: (888) 224-4536
FAX: (907) 269-1064 LICENSING
FAX: (907) 269-4536 PROGRAMS

December 1, 2011

City and Borough of Sitka
100 Lincoln Street
Sitka, Alaska 99835

To whom it may concern:

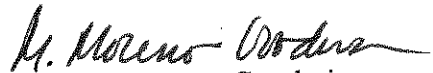
The Department of Health & Social Services, Child Care Program Office has been informed the licensed Facility: Kid First Day Care, located at 506 First Street, Sitka, Alaska 99835 is in jeopardy of not being allowed to continue to be open as a licensed facility unless they obtain a conditional use permit. We have encouraged the provider to contact your office to work with you to complete the application process for this permit.

Alaskan communities rely on the availability and accessibility of quality child care facilities. Licensed child care facilities are regulated and monitored to ensure they provide a healthy, safe environment for children ages: newborn through twelve years old. A licensed Child Care Facility in the State of Alaska has to remain compliant with comprehensive Child Care Licensing Regulations, State of Alaska Background Check Program requirements, Local Fire Marshal requirements and other applicable local and state requirements.

Please accept this letter as a measure of support for Kid First Day Care's approval on their application for a conditional use permit.

If you need anything further from the Department, please do not hesitate to contact me directly at 465-1768 or call the toll free number 1-888-268-4632 and request to be connected to the Southeast office. For your convenience, I can also be reached by email at mariana.moreno-goodwin@alaska.gov.

Sincerely,


Mariana Moreno-Goodwin
Child Care Licensing Specialist I

To whom it may concern,

Dawn Mahoney Menendez is by far the best daycare provider in town and my kids have been to a quite a few. Our son Gavin Silva attends Dawn full time Monday through Friday 7:30-5:00 pm. We don't know what we would do without her. She has the kids on a great schedule for meals and snacks, she is very reasonably priced for Sitka and is great with all the kids. This town would be in a great daycare need should Dawn have to shut down due to a non-caring neighbor. I know there are many kids out there still seeking daycare and can not find a good, clean, caring, reputable place to take them.

When you walk into Dawn's house you get this warm, caring feeling and see nothing but happy kids! Dawn's house is geared towards kids, is always clean, and is always open, has new toys out each week, and has an outdoor fenced yard for the playground. I hope you take all parents letters and meet with each individual parent before considering her to close. You will hear nothing but great things about Dawn Mahoney-Menendez and the daycare she has offered to many Sitka families in the past, present and hopefully many more years to come.

Ryan and Lauren Silva

Brian and Sherri Blankenship
4316 Valhalla Dr.
Sitka, AK 99835
December 5, 2011

Re: Kids First Daycare
City of Sitka
Assembly
Sitka, Alaska 99835

Finding childcare in Sitka is a frustrating and time consuming task. The options are limited and the waitlist can be long once you find reliable and licensed care. My husband and I searched for weeks and was waitlisted at two childcare facilities before being referred to Kids First by a local elementary school teacher. When we first walked into Dawn's daycare a year ago, we felt at home and relieved that our search was finally over.

The quality of care that Dawn provides at Kids First is outstanding and has proven superior to any daycare experience that we have had with past providers. Our child is always in a happy, structured and educational environment while at Kids First. In the past year, our 3 ½ year old son Gabriel has made leaps and bounds growing in all areas while at Dawn's.

Both my husband and I are self employed outside our home. My husband is a commercial fisherman and I own Element Body Wellness Center located here in Sitka. Without having reliable daycare, my husband and I will have no choice but to close down my business so that I can be home with our children. Losing Kids First will not only negatively affect our family but many other families as well.

A simple parking inconvenience is not worth this kind of sacrifice. All of these families pay property taxes/city taxes and assist in the economic growth of this community year round. I ask that the assembly keep in mind all aspects of this situation and be fair to all families involved. Let's resolve this issue amicably and come up with a solution that all parties can work with.

Respectfully,

Sherri and Brian Blankenship

To Whom it may concern:

My name is Mary Ferguson, and I am writing a letter to support Dawn Menendez and her business "Kids First Daycare". This letter not only speaks for myself, but for my 5 year old son Evander who attends Dawn's daycare.

When I had my son, I was a first time young mother. I took a job working night shifts due to not only lack of childcare at the time for infants, but more importantly the lack of people who I would trust to watch and care for my son they way I would expect. After about a year, I started getting recommendations from friends and family members about Dawn Menendez. I knew Dawn only through occasional encounters at the softball field. After hearing outstanding references I decided to contact Dawn in May of 2008. Unfortunately she did not have any openings, and I was told by others, she is a difficult daycare to get into because her openings are in high demand by parents. I told her I was interested and was willing to wait until there is an opening. She started watching my son full time in October 2008 shortly after his 2nd birthday and she has been his only childcare provider since.

Before he began in her care, I was forced to have someone else watch my son. He not only did not enjoy his time there, he spent a majority of his time in his car seat driving around, and he screamed and cried every time I dropped him off.

When I first dropped my son off at Dawn's daycare, he was lacking a bit of his communication skills. He didn't speak hardly any words, and primarily expressed himself and his needs through sign language that I taught him. After the first week at Kids First Daycare, my son started speaking. Dawn had helped my son develop social skills and life skills that were important in preparing him for school. She not only helped my son with things such as potty training, but she also helped me in teaching me things that I can do to help him at home.

Dawn Menendez is an outstanding friend and childcare provider to Evander. He is in kindergarten this year and continues to go to Dawn's house after he gets out of school. Having a birthday in the summer, my son was a little young to be starting kindergarten, but impressed teaching staff during orientation. He is very small for his age, but I was told that he is very smart, and already exceeds the expectations of a kindergartener. I STRONGLY believe that if it wasn't for Dawn's preschool like setting and curriculum, my son would not be as advanced as he is now. She took the time to teach my son "small things" such as cutting with scissors, coloring, learning colors and shapes, songs, days of the week, counting, etc... the list can go on and on. She not only cares for these children from 7:30-6:00, but outside of her daycare hours by inviting the parents and kids to join them for watching movies at the theater and other activities giving us as parents a chance to participate and interact with them and the kids.

Dawn puts her whole heart into what she is doing, and is very creative and effective in her ways of teaching and discipline. Her house is always decorated for each and every holiday, and birthdays are made special. She has toys that are educational and that are rotated, and a fenced yard with toys that are entertaining and that inspire their creative minds. Dawn exceeds my expectations as a child care

provider. When I plan to have another child, making sure Dawn has an opening will be among the first priorities.

My son looks forward to going to her house every day, and if for any reason, Dawn had to close her daycare, my son think he was being punished. He loves her very much. In the unfortunate event that anything was to happen to her daycare, mine and my son's life would be greatly affected. I am a single mother that works 3 jobs, and I know there is nobody else that would meet my standards and that could even compare to "Dawny's House". She is one of the few licensed daycares in this town that takes daycare assistance, and that will accept infants.

I believe that the situation that they are in now with their neighbor is a situation that happens down south, not in a small close knit community like Sitka. We don't live on major roads that are always taken care of by the city or state, so we need to learn to work together with our neighbors so we can all live peacefully. Neighbors help each other and compromise. If every neighbor took their petty problems to higher authority, our town would be at war. Our town really knows how to come together and help each other when something happens. Dawn and her husband Peter are people that are open to communication and are willing to negotiate. I believe that this situation could have been handled in a different manner, and it's a shame that it came down to this.

I have nothing negative to say about Dawn or Pete, and I feel so strongly for their business and their positive impact on the children in her care I am willing to aid them in whatever steps are necessary for her to keep her daycare. I hope the children that are attending her daycare can continue to be cared for by her.

Thank you for your time and consideration.

Mary Ferguson and Evander Elixman

To Whom It May Concern,

This letter is in regards to First Day Care run by Dawn Menendez. Finding day care that is affordable is difficult, as is finding day care for infants and toddlers. Dawn runs a well organized, clean and very friendly day care. There is consistency in her weekly activities and there is valuable lessons taught in her care. My daughter Ahnalaya Rose has been attending her day care since July of 2011, at 10 months, and has come home to my husband and I with more and more progress in her communication and socializing skills. For instance, she came home one day, and while eating, asked for more while signing the motion meaning more. She also pointed at a picture of a wolf and attempted to say the word and growl. My daughter now knows to wait her turn, understands what "playing nice" means, and is able to communicate with us what it is she wants and needs.

Finding day care that you have complete faith and trust in the providers is difficult, even in a small town such as Sitka. I have known Dawn for a few years now, and know that my daughter is in safe hands when I bring her to day care. As Ahnalaya is our firstborn, we were leery with who's care we leave her in.

In conclusion, I would like to state again that First Day Care is, if not the best, one of the best cleanest and affordable day care facilities available.

Thank You

Emilyann Atkinson



Kids First Daycare

My son Aydin, has been attending Kids First Daycare since May of 2010. It did not take me long to realize that putting him in the care of Dawn Mahoney Menendez was the best choice I've ever made. He has been in and out of other daycares since he was three months old. The daycares he attended before were large centers with lots of other children. My son, whom has difficulty in larger settings, did not do well in these programs. After being asked to remove him from his second daycare in two years, the provider suggested to me about sending him to Kids First, a home provider. At first I was a little apprehensive about sending him to a daycare inside someone's home. That changed the moment I met Dawn. She was, and still is a very caring nurturing, and animated person who puts the needs of both children and family's first. I myself have worked in a larger center for the past six years and I couldn't do as good of a job as she does. Some people have asked me why son isn't with me at the center where I work, and I just tell them some kids can't do large groups and my son is one of them. It would be a huge disappointment to this community where quality childcare is hard to find, if Kids First had to close. Dawn has already changed mine and my son's life and I'm sure she will continue to do so.

Sincerely,

Devi Spangler

To Whom It May Concern:

I am writing this letter on behalf of Dawn Menendez and her daycare Kids First Day Care. I have had both of my children enrolled in her daycare. My youngest child has been attending Dawn's since 10/10. My youngest child loves to go to Dawn's and it is actually more than a daycare to him. Dawn also provides preschool activities so he will be ready to enter Sitka's public school system next year and will be ahead of the game. He loves to go to Dawn's and has formed a relationship with her. I trust my children with Dawn and do not ever worry about them when I am at work, which is very important to a parent who has to work and send their children to daycare daily. Upon coming to Sitka I did research all the daycares that were available to my children and found that Kids First Day Care had an outstanding record and was recommended to me by numerous people as a quality, loving, and compassionate daycare. I am so happy with the care provided to my youngest child, not only is he learning academics but she also holds each child accountable for their behaviors, and teaching them social skills as well (which lacks in most childcare agencies in Sitka as I have found out talking to other parents with children in daycares throughout the area). My oldest child started going after school in August of this year because of the horrible experiences that he had at Ventures, which is the only other place in Sitka that provides childcare to school aged children. My oldest would cry and beg me not to send him to Ventures daily and he picked up many inappropriate and non-acceptable behaviors from going to Ventures. So this year I asked Dawn if she had room for my oldest who is 7 ½. Since going to Dawn's my oldest loves his care provider. It is not a "free for all" like it is at Ventures. Dawn has them do homework, help with the younger kids and holds the older kids accountable for their behaviors just like the toddlers and pre-school aged children. My children would be devastated to lose their care provider which is more than "just a place to go when my mom works". They genuinely love going to Dawn's and have formed meaningful relationships with her and the other children that attend Kids First Day Care.

During 2010 I came up to Dawn's house to pick up my children and someone was parked her driveway picking up their children and the neighbor across the street was outside. I politely asked if it was ok if I pulled in by the bushes and ran inside to get my children. The gentleman stated that it was no problem anytime. I thanked him.

It would be a sad state of affairs if Kids First Day Care had to shut down because of one neighbor's inability to discuss maturely in person with Dawn the situation or to simply ask the person who was barely on her property to move their car. It takes 2 mins to grab one's child and leave, and I have never seen anyone "parked or blocking" the said neighbor's driveway. I have had to swerve slightly onto their property a few times because of their dogs that run around unleashed and run towards my car so that I do not hit them.

This community would be losing a quality daycare provider if she is not allowed to run her business and I am sick to my stomach to think my oldest and then next year my youngest will have to attend Ventures, the only other school aged after care option. Thank you for your time.

Robin Riggs

Herman & Jada Green
4715 Lincoln Circle
Homer, AK 99603
(907) 235-6964

To whom it may concern,

Our son, Braxton Green, was in the care of Dawn Mahoney of Kid's First Daycare from November 09' to December 10'. Due to being a Coast Guard family it is hard to establish roots when you are uprooted every couple of years. It is always a challenge trying to find quality childcare. We totally lucked up when we found Kid's First. The care my child received from Dawn was nothing short of exceptional. We cannot say enough about Dawn Mahoney and Kid's First Daycare.

Braxton was just a little over 1 year old when he started at Kid's First. Coming from our previous location in Boston, MA that had many variations in types of childcare, we found that our options were very slim in Sitka. We particularly wanted an in-home facility because they are more intimate. We got way more than we expected. Braxton knew all his colors and shapes and could even recite the months of the year by the age of 18 months. We were amazed at all of the things he was able to do. He loved Dawn. It is a great feeling when you know that your child is being taken care of just as well as you would as the parent. Having peace of mind when it comes to your child is crucial.

We now live in Homer, AK. Braxton is now three and still talks about Dawn. We wish we could move her around with us everywhere we go. I'm sure the other parents who have had the privilege of having Dawn as their child's care provider must feel the same about her. Having one less option for childcare in Sitka would be such a disadvantage for working parents, especially one as great as Kid's First Daycare. The services Dawn Mahoney provides are a vital contribution to the community of Sitka.

Sincerely,

Herman & Jada Green

To whom it may concern;

My Son Cecil Patterson has been attending Kids First Day Care since 10/2010. Before that he had attended from 3/2010 - 01/2010. The only reason for the time break is because we moved out of Sitka.

Dawn has always been so great with Cecil. He loves his "Dawnie" and is excited to go there everyday. If he had to attend another daycare we would be heartbroken. I don't feel that he would learn as much as he has with another provider.

I am so thankful for Dawn. She is a huge asset in Cecil's learning experience.

If you valued your children's early education, manners and thoughtfulness. It would be a tragedy to lose Kids First Day Care.

Sincerely

Alicia Soto
Wayne Patterson

Alicia Soto
406 Monastery St.
752-9999

Wayne Patterson
406 Monastery St.
738-1204

Selina M. Slack

P.O. BOX 20701

Juneau, AK 99802

Phone: 907-463-4712

Cell: 907-738-5102

City of Sitka Assembly

assembly@cityofsitka.com

To the board members,

This letter is in support of Mrs. Dawn Mahoney-Menendez. It has come to my attention that her licensing and the re-zoning of the location of her license are to be discussed at future meetings. To my knowledge Kids First Daycare has been operated at 506 1st St. since 2004.

My son, Paul Ethan Hill was in the care of Mrs. Mahoney from November 2004 through June 2007. From the time he was 2 years 8 months until he was 5 years 3 months. In that time it was discovered that my son was categorized as being possibly autistic (later confirmed at SEARHC Neurology clinic). During the time he was in her care he learned to vocalize, communicate visually and attain certain coping tools to help him become an active child in social settings. The amount of child care services within the City and Borough of Sitka is limited. Even more so, exceptional child care is a hard thing to find anywhere. Kids First Daycare was recommended to us as being a "very well maintained child care within a home setting. Dawn is not only a great care provider but has numerous certifications in the field of child care and early development".

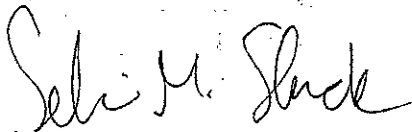
In the time I have known Dawn she has had an exceptional history of business management. Her in-home care is and always has been the same from child to child. There have been no variations in her dealings. She maintains her property as not only her home but as daycare for that purpose. I can not stress enough how much Dawn is conscientious of her neighbor. Citing in her instructions for drop off and pick up procedures that her driveway is to be used only. Recently, I had visited Dawn and seen that she put in fencing between her property and the adjacent lot. I would assume that she did this as a courtesy to her neighbor and at her own expense.

I digress with my numerous praises of Mrs. Mahoney-Menendez. Ultimately my son Paul was discharged from Kids First Daycare for an instance of biting. This proves to me that even though Dawn was very close to my son and even though he was special to everyone he met while there, Mrs. Menendez would not put her business in jeopardy or the safety and well being of the children in her care for any reason. It is my belief that Mrs. Menendez uses proper procedure and has a strict set of guidelines that she adheres to in her business dealings. I do not believe she would go outside the boundaries of what she is limited to. She is fully aware of what is mandated by law in her licensing and would not go outside that scope.

To punish Mrs. Mahoney-Menendez because of a difference of opinion, temperament or whatever it may be that caused her neighbor to request a re-zoning, would be a grievance not only to the children in her care but the City of Sitka as well.

If you have any questions, comments or concerns, feel free to contact me.

Sincerely,



Selina M. Slack

Deputy Clerk II

Juneau Trial Courts

to whom it may concern

I am writing on behalf of Kids First daycare
I think the service that is provided there is vital
to many families, who depend on the service that is
given. I feel that there will be families that would
be forced to quit their jobs.

I know from experience that the children that
have gone there love being there with their friends.
My son attended Kids First daycare, and is now in
school, but even still he tells me he misses Dawn
and the rest of the kids.

My son's progress from going to Kids First daycare
was amazing. I am grateful that my son got to go
to Dawn's daycare.

Franklin Akeyla

To Whom It May Concern,

I picked up my son Gavin Silva from daycare and pulled in to Dawn's driveway with my truck over the fence about 6 inches to 1foot. I went in and got my son and when I came out I couldn't back my truck out of the driveway due to a truck parked behind me. I went up to neighbor's door and knocked and when she answered the door, I asked her if she could move her truck, she said NO because I blocked her driveway and she couldn't get in but yet she was parked behind me and was in her driveway. I then told her I wasn't blocking her driveway and she said I parked on her property and then started telling me she has had problems with her neighbor for some time. I told her I simply came to pick up my son and don't know about any issues she has been having as my son just started coming here. She was very unpleasant towards me and I then told her she could come see me at work to work this issue out she has with her neighbor and told her I am a detective at Sitka Police Department. She then got became even more unpleasant towards me and I left.

You can certainly give me a call on my cell and I can explain more of the details 738-5586

Ryan Silva



City and Borough of Sitka

100 Lincoln Street • Sitka, Alaska 99835

November 17, 2006

Dawn Mahoney
Peter Menendez
506 First St.
Sitka, AK 99835

Joanna Giglia
1806 Alder Way #A
Sitka, AK 99835

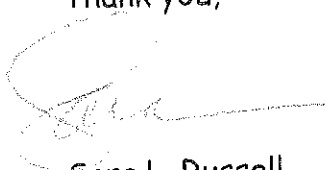
Dear Dawn, Peter, and Joanna,

It has been brought to our attention that there is a daycare in operation at 506 First Street. It appears that there are issues related to daycare parking on adjacent land owners' property.

We would appreciate you looking into the matter and resolving the issue.

If you should have any questions please contact the Planning Office at 747-1814 or 747-1824.

Thank you,



Sara L. Russell
Planner I

DECLARATION OF PARTY WALL

COVENANTS made APRIL, 15, 1985, by MICHAEL P.
(Month) (Day) (Year) (Owner)
AND MARY E. REYNOLDS of P.O. BOX 3215, Sitka,
(P.O. Box or Address) (City)
99835;

RECITALS

A. MICHAEL P. AND MARY E. REYNOLDS are to be the owners of the following described real property: (legal description of lot as subdivided into two (2) parcels)

Lot 1, H & P Estates, A Subdivision of Lot 2, Block A, Sirstad No. 2, Sitka, Alaska, plat 85-B as recorded on April 25, 1985

B. There is now a two family residence located on the property with the common property line for each lot running through the common wall of each residence.

C. MICHAEL P. AND MARY E. REYNOLDS desire that the boundary wall (Owner) be and remain a common wall, party wall.

D. The purpose of this document is to ensure the use of the property for residential purposes only, to prevent nuisances, to prevent the impairment of the attractiveness of the property and thereby to secure to each homeowner the full benefit and enjoyment of his home, with no greater restriction on the free and undisturbed use of his property than is necessary to ensure the same advantages to other property owners.

WITNESSETH

I. PARTY WALL

1. Declaration of Party Wall. The above described common wall shall constitute a party wall and each owner of the above described lots of real property shall have the right to use the wall jointly with the owner of the other lot.

2. Repair, Restoration, Rebuilding on Destruction. Should the party wall at any time while in use by both parties as aforesaid be damaged by any cause other than act or omission by the party, the wall shall be repaired or rebuilt at their joint, equal expense provided that the sum received from insurance against such damage or destruction shall be first applied to such damage or destruction, restoration or repair. Should the party wall be damaged or destroyed by the act or omission of either party, the wall shall be repaired or rebuilt at that party's sole expense.

3. Duration and Effect of Agreement. This agreement shall be perpetual and the covenants herein contained shall run with both parcels of land above described, but the agreement shall not operate to convey to either party, the fee to any part of the land owned or to be acquired by the other party.

4. Use of the Wall. The parties shall each have the full right to use the wall to support joists, cross-beams, studs, and other structural members as required on the erection of buildings on the respective premises, provided, however, that such use shall not injure the adjoining building nor impair the value of the easement to which the adjoining building is entitled.

5. Encroaching Modifications. Neither party shall extend the wall's thickness onto the land of the other party without the party's consent. Neither party shall add, expand or increase the size of their unit without full compliance with all Municipal codes, the consent of the other party and a reapproval and rewriting of an expanded common party wall agreement.

II. USE OF THE PROPERTY

1. Use. Each lot, tract, or plot covered by this agreement shall be used for single family residences only. Any enlargement to provide for additional separate units shall be an illegal use of the property, subject the owner to legal action by the Municipality and void the intent of this agreement thereby allowing private suit for damages by the common wall other party.

2. Maintenance of Exterior. Neither party shall paint or stain the exterior of his home without first submitting a plan to the owner of the other unit for approval. If the other owner fails to approve or disapprove such plans within ten (10) days after the submission, no such approval shall be required. The approval shall not be arbitrarily withheld and the second party is also required to then agree to utilize the same paint or stain and accomplish the same task within thirty (30) days on his portion of the structure.

3. Modification or Additions to Current Structure. No addition or modification or alteration of the existing building, nor any other new building shall or will be constructed or erected on the common wall properties until plans and specifications have been submitted to and approved by the owner of the adjacent common wall lot, tract, or plot as to the outward appearance and design, provided, however, that if the other owner fails to approve or disapprove within ten (10) days of submittal, no approval is required. In addition, a new party wall agreement and approval of the Municipality is required as well as meeting all applicable building codes. The approval of the common wall other party may not be unreasonably withheld and can only be withheld if the plans are found to be aesthetically incompatible with the original structure and other homes in the neighborhood.

4. Maintenance of Yard. The owner of each lot, tract, or plot shall maintain his property in neat fashion and shall not permit refuse, inoperable vehicles, junk or other clutter to be stored or placed on his property. Violation shall constitute a civil breach of this agreement and shall further place the owner in violation of Municipal codes.

5. Arbitration of Disputes. Any controversy that may arise between the parties with respect to the necessity of costs of repairs or with respect to any other right or liabilities of the parties under this agreement shall be submitted to the decision of three (3) arbitrators, one (1) to be chosen by each of the parties hereto and the third by the two (2) arbitrators so chosen. The award of the majority of the arbitrators shall be final and conclusive on the parties. The arbitrators shall be entitled to modest compensation for their services.

6. Duration and Effect of Agreement. The benefits and obligations of the covenants set forth in this agreement shall run with the land herein described so long as the wall or any extension thereof shall exist, and shall bind the respective parties hereto, their heirs and assigns, legal representatives and assigns. Should for some reason such as the total destruction of the entire two (2) family residence occur, the structure must be rebuilt as the same common wall unless either one of the parties desires to purchase the other party's interest and build a single family unit occupying all of the mutual property formerly containing two (2) units or construct a standard duplex for rental using the total space occupied by both former units.

IN WITNESS WHEREOF, Michael P. & Mary S. Reynolds has executed this agreement in SITKA, Alaska on this 18th day of April, 1985.

By: Michael P. Reynolds
(Owner)
Mary S. Reynolds

UNITED STATES OF AMERICA)
) ss.
STATE OF ALASKA)

This is to certify that on this 18th day of April
1985, before me, the undersigned, a notary public in and for
the Stat of Alaska, duly commissioned and sworn, personally
appeared Michael P. + Mary E. Reynolds to me known
to be the person(s) described in and who executed the above and
foregoing instrument, and acknowledged to me that they signed and
sealed the same freely and voluntarily for the uses and purposes
herein mentioned.

WITNESS my hand and official seal the day and year first
above written.

Richard D. Dugan
Notary Public for Alaska
My commission expires: 12/29/84

8 5-0 7 6 7
1700
RECORDED-FILED
SITKA REC.
DISTRICT

APR 25 8 43 AM '85
REQUESTED BY Michael P. and Mary E. Reynolds
ADDRESS P.O. Box 3215
Sitka, AK 99835

I have received and read a copy of the Parent Parking Schedule. With this schedule I agree to the following:

1- If I miss my time block or want to come early, I must park on Monastery St. and walk down.

2- If I have a special circumstance (Dr./Dentist appt etc.), I must call first to check if there will be a conflict. Otherwise, I will park on Monastery St. and walk down.

3- If for any reason I need to adjust my time block, I will call Dawn first to see if she can accommodate me.

4- If I choose not to adhere to parking schedule and cause a parking issue, I will be given a warning. If I continue to cause an issue, I understand that my child will be released from day care.

Parent's Signature: _____ **Date:** _____

The Parent Parking Schedule also contained a copy of the Parent Parking Diagram, which I have also received, read and understand.

Parent's Signature: _____ **Date:** _____

I also understand and agree that it is my responsibility to relay this information to anyone else that may be dropping off or picking up my child/children. I understand and agree that I will be held accountable for their actions.

Parent's Signature: _____ **Date:** _____

Available to park

Monastery st

DO NOT PARK OR BLOCK

SD4

DO NOT PARK OR BLOCK

SD3

First St
SW

OUT

DAWN CAR

#2 spot
pull all way to front
leave room for another car

#1 SPOT - use 1st
pull all way forward +
leave room for another
car

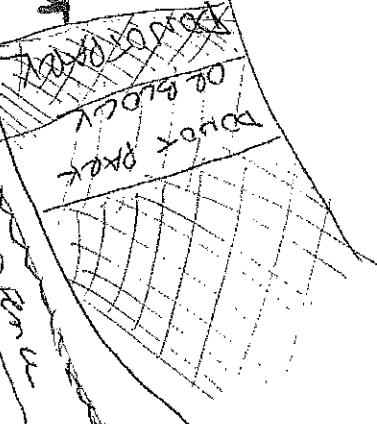
#3 spot is largest truck +
space 1 is taken. All allway
to garage + do not let car
go past SD4 parents line

SD6 Kids First
Day Care

Porch

Fenced
yard

SEND TO ROOM
OR BLOCK



SD5

**CITY AND BOROUGH OF SITKA
PLANNING DEPARTMENT
CONDITIONAL USE PERMIT APPLICATION**

Conditional Use Permit FEE \$100.00
plus current city sales tax

APPLICANT'S NAME: Dawn Mahoney - Menendez
PHONE NUMBER: 738-4114 / 747-5456 Pete - 738-4114
MAILING ADDRESS: 506 First St 747-3334

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

PROJECT ADDRESS: 506 First St
LEGAL DESCRIPTION Lot: 1 Block: A
Subdivision: Hop Estates
U.S. Survey: US 2691 Zoning Classification: R-1

List specific request: Conditional use permit for home daycare

State all reasons for justifying request: to operate a state licensed home daycare with more than 4 children

List all features and details of request: - please see attached narrative

State the schedule and timing of request: retroactive - please place on Dec 20th docket.

Please attach drawings, maps, and additional narrative as appropriate.

The applicant must verify, to the satisfaction of the Public Works Department, that utility lines and services are not under proposed structures.

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: [Signature] Date: 12/5/11
SIGNATURE OF OWNER: [Signature] Date: 12/6/11
(If different from the applicant)

**Approval will be based on plans submitted
or approved by the Planning Commission or Assembly**

Members of Planning and Zoning:

Please allow me to introduce myself. My name is Dawn Menendez and I've resided at 506 First Street since June 2003. When my husband Peter and I were looking to purchase a home it was not only because we wished to own rather than rent, but because I wanted to open a Licensed Home Day Care.

The first time we came to see this house we both knew it was perfect for us and for the business. So we discussed it for a few days then called Planning and Zoning to make sure a Licensed Home Day Care would be possible. When I called I spoke to a woman and told her that we had found a home we wanted to purchase and start a Licensed Home Day Care. I gave the address and was put on hold until she returned and said it is fine and was not a problem. She never informed me there was a distinction between having a daycare with 4 children or less and those with more children. She also never explained we would need a conditional use permit for the later. Based on this information we purchased our home in April 2003, and moved in and began my business Kids First Day Care in June 2003.

Since opening my business I have complied with State regulations to become an approved provider, which allows me to take families that receive State or Tribal Assistance. I also became a member of AEYC-SEA, which is a Food Program that regulates with both unannounced and announced visits to monitor that the food given meets U.S.D.A guidelines. From there in 2004 I completed all necessary steps to become licensed with the State of Alaska receiving again both announced and unannounced visits from licensing agents. To this day I have never had a complaint filed against me from a family and have no major violations with licensing.

In November 2006 there was an issue with a parent who mistakenly pulled into the driveway on the adjacent parcel at 504 First Street. There had been a lot of snow. Since our road is not considered a city road it does not get plowed by the City. The resident at 504 First St. came to my door to ask the vehicle be moved. The parent was already on her way out to do so. Two days later I received a letter from Planning and Zoning, as well as a message on my machine from the Sitka Police Dept. I have attached the letter for you to read. As you can see, not only does it state that Planning and Zoning was aware there was a day care in operation, but they asked me to resolve the issue. I immediately called the planning department and spoke to Sara Russell. I told her we were taking immediate actions by writing a letter to the parents telling them they were not to park at the neighbors and clearly explaining where they could park. Then I returned the call from the Police Dept and was told that if parents park there they would be cited. I explained I was writing a letter and I would include that in the letter as well as notice to the parents that if they did not comply they would no longer be able to use our

services. I wrote the letter, gave it to all parents and posted it on the inside of my front door, which is where I post notes for parents. I had a police officer come to see the letter and he explained that remedial actions had been taken to the resident at 504 First St.

From 2006 until now I have never been called, visited, cited or received a summons from the Police Department nor have any of my parents while at the daycare. Also, until now I have never been contacted by Planning and Zoning, nor had my neighbor tell me there was a new issue.

On Nov. 17th I was made aware of an issue by a parent (please see enclosed letter). I immediately wrote a new letter to parents reminding them of acceptable places to park. When I received the letter from Planning and Zoning on Nov. 28, 2011 this was the first and only time I was made aware of the R-1 Zoning issue and that our daycare may not be in compliance. I immediately called and spoke to Mrs. Henshaw and asked her what I needed to do to be compliant. She gave me the information necessary and I immediately began steps to correcting the problem. I have filled out necessary paperwork to begin the process for a Conditional Use Permit. I have also taken further steps by storing our boat at a friend's house indefinitely. This now frees up more parking space at my house by allowing 3 available parking spaces for parents in my driveway.

The families I have enrolled are not just drop-offs; they come month after month, year after year. They also do not all come at one time to drop off or pick up. It is a very rare occasion that we have three drop-offs or pick-ups show up at one time but that is usually because of snow issues. Again we do not receive city plow services. My husband and myself shovel from both ends of our property lines and the road in front of our home. It is done before I open, sometimes during the day if kids are playing in the yard, and at night. We have also made sure that First Street has been plowed on heavy snow days. But this is Alaska and there is going to be snow and we do as much as we can to make sure there is not a problem with snow. Also currently my families arrive and depart spaced out from one another.

I have been caring for children since I was 10 yrs old and spent the last 28 years caring for them. When I moved to Sitka in 1999 I tried a different line of work, but it was not for me. Children are my passion. I am good at what I do because I love what I do. I treat the children with respect and teach them to treat others the same. I provide structure and a safe and loving environment where they are free to be themselves. I have worked at a day center in town prior to opening my own to gain experience. Not all children were made for centers. I have received calls from both SEARHC and SJ day care directors about children that could benefit in my care. For the ones I was able to take they have flourished here. I have also opened my doors to Early Learning Program when I had a child with Autism. He needed extra time with professionals to help him learn the skills necessary for everyday

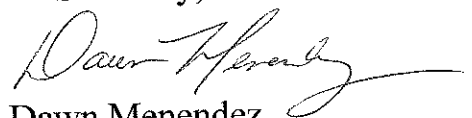
life. Not once did I hesitate to have them come in and work with him. Did it disrupt our schedule, sometimes, but it was for his benefit. Not all home day cares are willing to do that.

I teach my children to love and respect both themselves and others. I teach them honesty, patience, tolerance for others different from them. I allow them to be themselves, to color outside the lines if they want and praise them for their accomplishments. I teach my kids not to hate or be violent, not to use ugly words. I teach them to be self-reliant. I also potty train them, teach their ABC's, the calendar, colors and shapes. We explore our environment on walks so we can see the beauty our town offers. We have show and tell, movie day, fruit salad day, make your own pizza day and we celebrate each other's birthdays. I give my kids star charts and at the end of the week they get to choose a prize from the prize bag. We have had trips where parents and kids all meet on the weekend and see a movie at the theater together. This is because my day care is like a home and we are like family. I still have children whom I cared for that are now 13, 12, 9, etc. that come to visit, as well as kids that have moved away come to visit when they are in town. I love to answer the "but why" question even though it's the thousandth time. I can't express how much I love what I do and how honored I am for the trust placed with me- a parent's child. I work alone Monday- Friday from 7:30am-6pm taking care for 8 children. This does not include paperwork, cleaning, food preparation (as I provide 3 meals a day), or projects for the classroom. I keep my rates as low as possible and accept Day Care Assistance and Tribal Assistance.

The idea that my day care could no longer be possible saddens me more than words can say. If I am not granted a Conditional Use Permit and am forced to say good-bye to some of the children in our family, having only four would be a financial strain and most likely force me to close my doors. Day Care is very hard to find in our town, esp. for infants, which I have two. It's nothing you monetarily get rich from; rather it enriches my life and my heart. Please do not force me to close my doors.

Thank you for your time and patience.

Sincerely,



Dawn Menendez
Kids First Day Care

Wells Williams, Planning Director
Planning Commission
City and Borough of Sitka
100 Lincoln Street
Sitka, AK 99835

December 6, 2011

Re: Conditional Use Permit for Kids First Day Care

Dear Mr. Williams and Members of the Planning Commission,

The following additional information relates to our request for a conditional use permit (hereinafter "CUP") to operate a home daycare at 506 First Street, Sitka, Alaska (hereinafter "the daycare").

We purchased this property in 2003 with the specific intent of running a home daycare operation from our home. Prior to the purchase we performed due diligence by calling the City and Borough of Sitka Planning Department to insure that this use would be consistent with the zoning in the area. We were informed by city planning staff at the time that it was indeed consistent. We were never asked how many children we anticipated having at the daycare and never informed that should we have more than four children that a conditional use permit would be required. In reliance on this information we purchased the home in April 2003.

We began operating Kids First Day Care in June of 2003. I became state licensed to operate a daycare (which allows for more than 4 children) in 2004. We have successfully been licensed and operated the daycare with 7 to 8 children enrolled since that time. Kids First Day Care fulfills a much-needed gap in day care services in the community. We are one of the few providers in town who can take infants and who continues to operate in the summer months. We also serve as an alternative to the larger centers when they have children who need a smaller, more individualized program. Childcare operations in Sitka are very limited with many parents having to wait months before an opening can be found.

Recognizing we are in a residential area we have taken numerous steps to insure our impact on the neighborhood is minimized. We operate only on weekdays between 7:30 am and 6pm.¹ Several of our children arrive via school bus which drops them off at the easement on Monastery Street not increasing the traffic on our street at all. For the children who are dropped off at the house we have designed our drop-offs and pick-ups times to be staggered in order to minimize the number of vehicles at the house at any one time to insure each has a proper place to park and room to turn around. We clearly advise each parent where he or she is to park and turn around so as to not disturb or impact our neighbors in anyway. (See attached sketch). Further our property is located on a road that does not receive city maintenance. We have taken it upon ourselves to keep the road well maintained. For example on a number of occasions we have filled in potholes and we regularly have the road plowed. These services are done at our expense but benefit the neighborhood as a whole.

Since operating in 2003 we have had only 2 complaints, one in 2006 and one a few weeks back. Both complaints have come from our adjoining neighbor and both were made at times of heavy snowfall. In order to reduce any similar occurrences in the future we are willing to require parents to park on the easement on Monastery Street and walk the children up to the house during times of heavy snowfall,

It should be noted following the 2006 incident we received a letter from the City Planning Department recognizing we were operating a daycare and asking us to work with the neighbor to resolve the issue. (See attached letter) It should be noted that no mention was made by the City Planning staff in that 2006 letter to indicate we were in need of a conditional use permit. No further complaints occurred and we were not on notice of the need for a conditional use permit until receiving a letter on November 28, 2011.

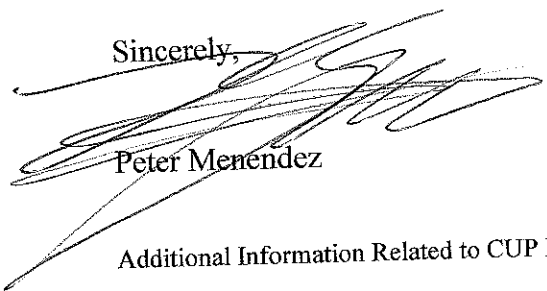
¹ It should be noted that were we forced to have no more than 4 children at anytime we would need to expand our hours into evenings and weekends to make the business financially viable. This would likely increase the impact on the neighborhood.

Lastly, while our house is part of a zero lot-line no part of the daycare occurs in the portion of the home that has a common wall with our neighbor. There is also fence dividing the front yards of the adjoining properties. The children are accompanied anytime they are outside and it would be impossible for the children to stray onto our neighbor's property without being detected. The children play outside in our fenced yard only during daytime, weekday hours. We have never had anyone complain about noise or other impacts from this activity.

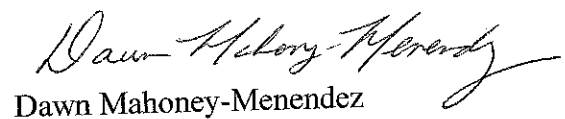
We purchased our home and have built a small, but successful, business over the past eight years. This was done on a good faith belief that the daycare was a compatible use for our neighborhood. We have actively taken steps to minimize any impacts that operating our daycare has on the neighborhood through limiting our hours of operation, and taking steps to insure parents are parking and turning around in appropriate places. We are more than willing to take additional steps to mitigate any concerns that the Planning Commission may have to allow us to continue to operate at the same level we currently do. However, if we were restricted to having no more than 4 children at the daycare we would likely not be able to continue to operate do to the financial hardship this would create. We have invested eight years of labor and love into our daycare. Should we be forced to close our doors the effect would spread to eight additional families in town who rely on our service.

For the above reasons we respectfully request the Planning Commission grant a conditional use permit to allow us to continue operating a daycare from our home on 506 First Street. If there is any additional information we can provide to aid the Commission in its decision please let us know.

Sincerely,



Peter Menendez



Dawn Mahoney-Menendez





Kids First Day Care

506 First Street



Dawn Mahoney-Menendez

747-5456

November 18, 2011

Attention Parents/Friends of Kids First Day Care,

In order to avoid a conflict with my neighbor at 504 First St., this is a letter to remind you about parking. Please do not park at or on any of the property of 504 First St.

Your choices for parking are:

- 1- Pull into the empty space at my house,
- 2- Pull all the way up to my garbage can (making sure back of your car is not past fence on 504 First St.).
- 3- Next to the bush across the street (making sure to keep access to house up the hill
- 4- On the left side of the street there is space by the 3 trees (making sure not to block their car space).
- 5- At the end of the road by mailboxes.

Please take note of above options and pass on the information to anyone whom may be dropping off or picking up your child.

Thank you for your prompt attention.

Sincerely,

Dawn

Dawn/Peter Menendez
506 First Street
Sitka, AK 99835

Karen Kane
PO Box 2243
Sitka, AK 99835

Joanna Giglia/Dawn Menendez
1806-A Alder Way
Sitka, AK 99835

Roland Worth/Michelle Friedman
612 Monastery Street
Sitka, AK 99835

Edward/Theresa Phillips
615 Monastery Street
Sitka, AK 99835

Dennis Bernhoff
618 Monastery Street
Sitka, AK 99835

Amanda Johnson
504 First Street
Sitka, AK 99835

Cecelia Maisel Trust
401 Northshore Blvd, Apt. 901
Portland, TX 78374

Alice Zellhuber Family Trust
616 Monastery Street
Sitka, AK 99835

Joel/Alice Hanson
417 Arrowhead Street
Sitka, AK 99835

Jennifer/Bill Grant
504 Shennett Street
Sitka, AK 99835

State of Alaska
6860 Glacier Highway
Juneau, AK 99801

Bradford/Minnie Dennison
505 First Street
Sitka, AK 99835

David/Dena Williams
1912 Sawmill Creek Road
Sitka, AK 99835

Carolyn Ludlow
PO Box 2604
Sitka, AK 99835

Ralph/Kristi Jones
622 Monastery Street
Sitka, AK 99835

Daniel/Mae Dunsing
PO Box 12
Sitka, AK 99835

Timothy/Sue Anderson
PO Box 2955
Sitka, AK 99835

Ray/Rhonda Durrer
702 Pherson Street
Sitka, AK 99835

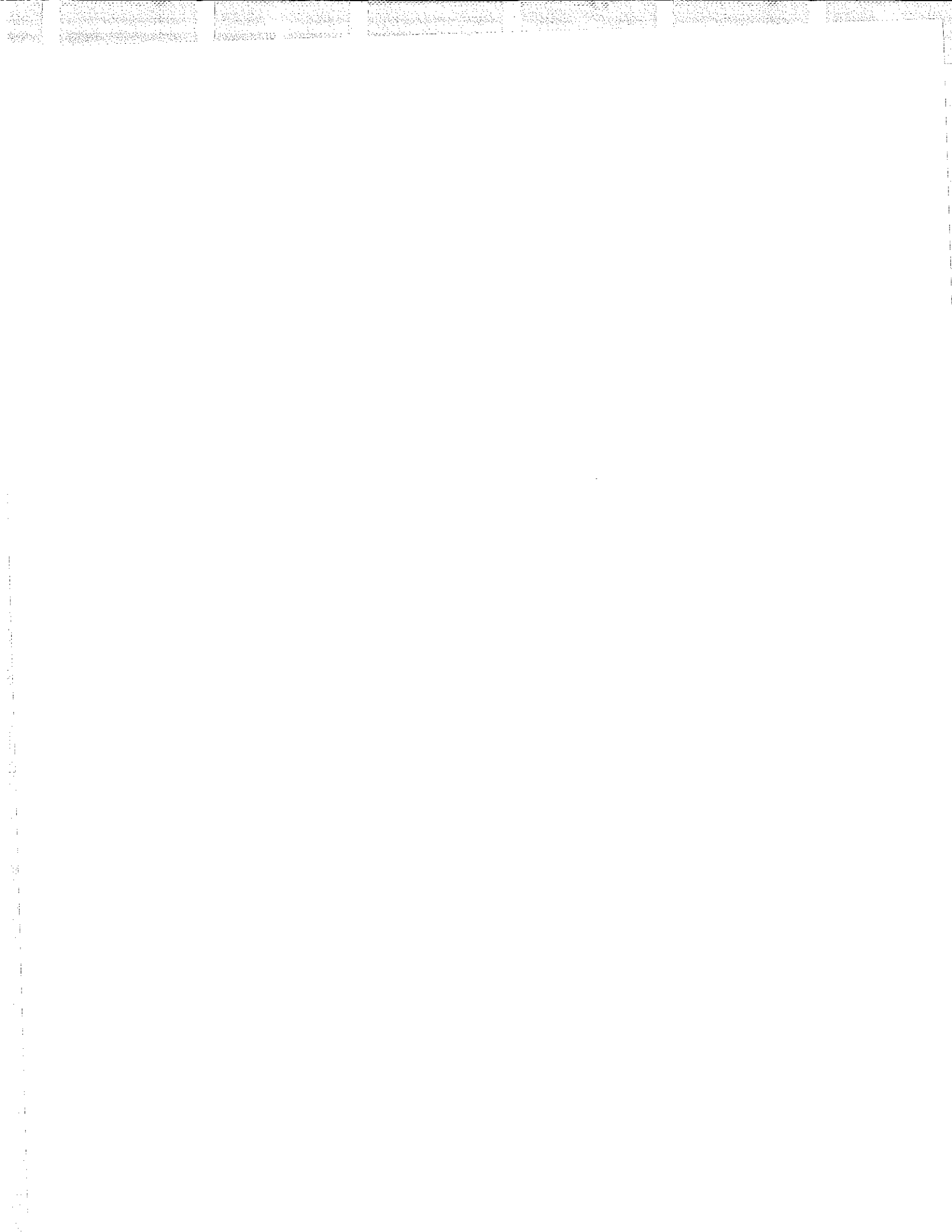
Jill Reid
706 Pherson Street
Sitka, AK 99835

Opal Upcraft
804 E 6th Avenue #4
Ellensburg, WA 98926

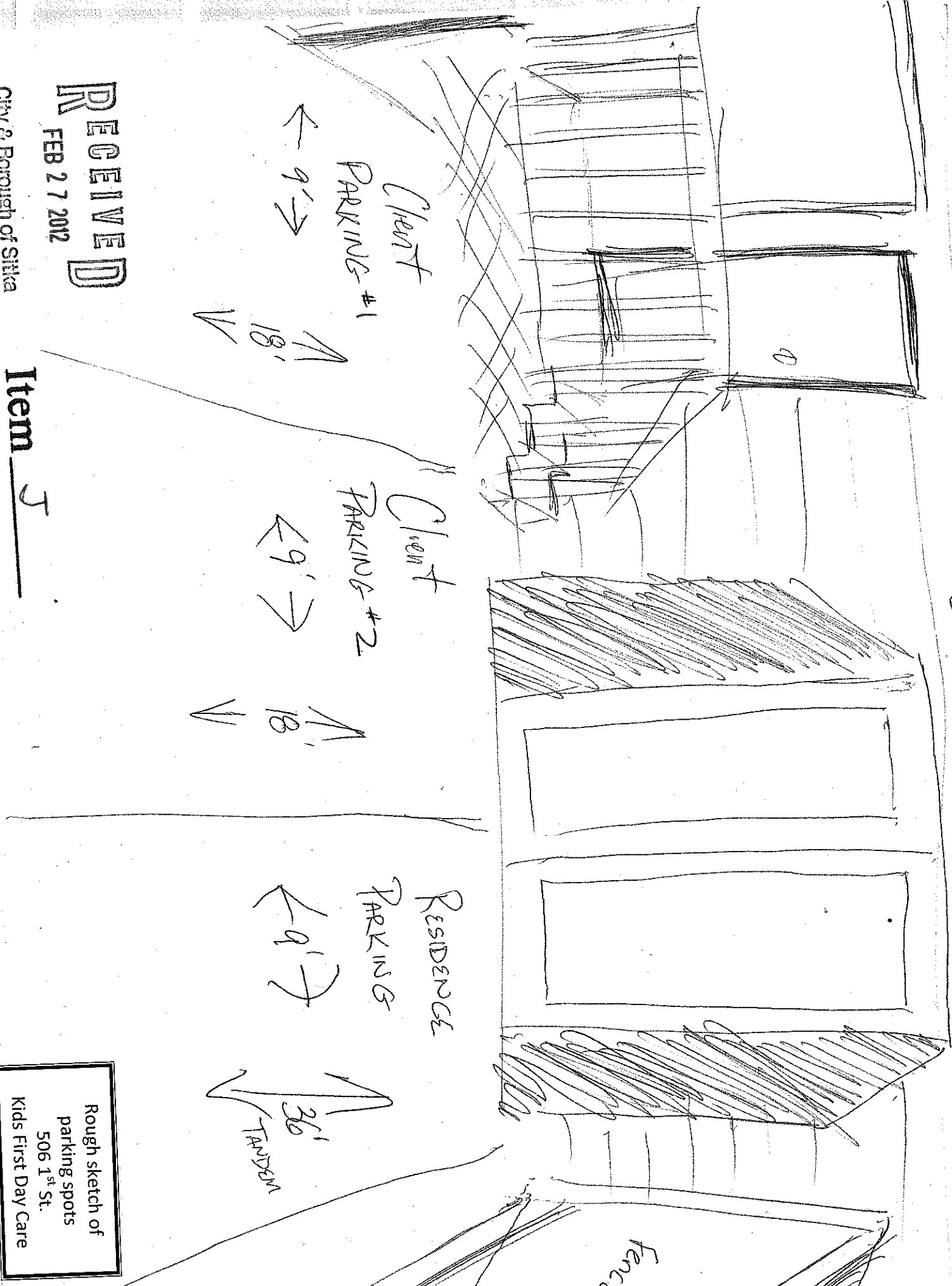
Ann Bills
415 Arrowhead Street
Sitka, AK 99835

Brent/Valerie Edwards
706 Sirstad Street
Sitka, AK 99835

Richard/Marites Holden
701 Sirstad Street
Sitka, AK 99835



506 1st St



RECEIVED

FEB 27 2012

City & Borough of Sitka

Item 5

Rough sketch of
 parking spots
 506 1st St.
 Kids First Day Care

