

**Connor K. Nelson
107 Littlebyrd Way
Sitka, AK 99835
907-747-4589**

02/24/12

Re: Menendez Conditional Use Permit Application

Dear Mayor and Assemblymembers;

As stated in my 2/21/12 email to the attorney I'm writing to address the common sense and Sitka General Code (SGC) reasons why these commercial businesses can't be expanded in the Zero Lot Line (ZLL) Subdivisions.

I've received Theresa's memorandum and the case cited is moot. She states in her second paragraph "SGC 21.24.040 does not specify that the party wall agreement can restrict use of the property". SGC 21.24.040 states "This agreement **shall** include, but is not limited to, the following section". Again, one of the sections is C-2 "The restricted use to a single-family dwelling **only** for each lot". By its own definition this would limit it to a residential use. But it also says not limited to, so other restrictions can be added in addition to the "shall include". Remember, the party wall agreement is one part of the package that has to be presented to the planning commission to be passed as part of the ZLL Subdivision.

Theresa also states "Even if it could, this would be contrary to SGC 22.16.015-3 which specifically allows for such R-1 zoned property to operate a day care, etc, etc". SGC 22.16.015-1 specifically allows for a duplex in R-1 as a permitted use, yet if you go to 21.24.030 zoning requirements A-1 "One family structures **only** (no duplex or more per side) so even the language of the ZLL Subdivisions is contrary to specifically allowed uses in 22.16.015-1. In both cases it's a matter of the most restrictive language. ZLL Subdivisions allow for single-family dwelling only. Per SGC 22.08.290 "Single-Family Dwelling" means a detached building constructed on a permanent foundation, and designed for human habitation exclusively and constituting one household.

If you allowed a day care under table 22.16.015-3, then you'd have to allow all the listed uses under table 22.16.015-1 through 22.16.015-6 that fall under the R-1 zoning across to WD zoning as allowable uses on all ZLL lots, as ZLLs are allowed in these zones. Then it would follow any listed use could reasonably use either or both sides of the ZLL lot. For instance, in the R-1 zone you could have a bed and breakfast on one side and a short term rental on the other, and maybe in the C-2 zoning a funeral home/crematorium on one side and a misc. repair shop on the other.

Certainly, the above scenarios are not where the ZLL subdivisions were intended to head. I think that everyone understands that the ZLL subdivision process allows 2 small lots to be made from 1 standard size lot. For instance, R-1 requires 8,000 sq. ft. for a legal lot. Under the ZLL Subdivision that can be made into two 4,000 sq. ft. legal lots. Obviously by the ZLL subdivision codes these small lots are for single-family dwellings

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only. Simply put, nothing more, not even home occupations. 22.08.450 “Home Occupations” means nonresidential use conducted within a dwelling unit by the resident thereof.

I believe you have the party wall agreement in your packet. You’ll note it’s part of the required filing of Plat 85-8. You can pull this plat up on your computer and see the complete plat with the party wall agreement on the face (the one provided to the commission had the plat notes cut off). Item 3 & 6 of the agreement – the agreement is perpetual and shall run with both parcels as required by SGC. Under item D “The purpose of this document is to ensure the use of the property for residential purposes only.” Again, home occupations are a non-residential use.

I’m not sure if you received a copy of the warranty deed in your packet granting the property to the Menendez’s in June of 2007, but it clearly states “subject to covenants, conditions, easements, etc”. Neither I nor my attorney can’t see anything but the strictest compliance with the ZLL Subdivision codes for this property.

Now it seems like we have parties trying to change the code and meaning by simply stating the required documents for the creation of ZLL subdivisions are meaningless. The major problems we have now with persons trying to sort the meaning of the ZLL Subdivision Code is that it was never vetted at the Planning Commission level. Wells, I’m sure knew the ramifications of trying to do a conditional use permit for a business in a ZLL development, but in 3 meetings it was never put on the table by him. Mrs. Johnson addressed it in the last meeting, where none of the commissioners had a handle on it and were coerced by Wells to pass it.

I think that the assembly is in a spot now that either way you vote; you may get a court challenge. I believe the correct action of the assembly would be to send it back to the planning commission so this can be properly vetted. It would give everyone a chance to understand the workings of the ZLL subdivision platting process and then each person should be able to understand any final decision of the assembly.

Again, thanks so much for your time and consideration of this matter.

/s/ Connor K Nelson