

July 20, 2010

Dear Assembly Members,

I am concerned about the Planning Commission's recent decision to approve an industrial use on a residential island.

The owner of the larger lots on Kasiana Island is requesting a conditional use permit for natural resource extraction and mining support facilities. In a previous assembly meeting Mr. Wells Williams pointed out that the difference, between the site development of a low density residential property and the resource extraction from industrial commercial property, is the sale of materials. Because Mr. Sudnikovich has made an agreement to trade or barter the rock to another party, he feels that he is not "selling" materials from the property and therefore is not violating the zoning restrictions in effect.

Trade and barter is an invisible economic force in our community and makes our community very resilient in the face of recent economic upheavals, but the legal definition of trade and barter was never intended to cover taxable business income and profit. Our governments would dearly love to be able to tax our traditional trade and barter system and an abuse of this kind is all the excuse they would need.

I also oppose the creation of a rock quarry on Kasiana Island for aesthetic, environmental and religious reasons. Aesthetically, it will create offensive noise pollution and it would be an eyesore for many years. Environmentally, I am sure that the rain run-off will adversely affect the habitat that the herring rely on when they spawn in April every year. Religiously, the Native community regards Kasiana Island as the most important island in the sound for traditional harvesting of herring. It is the one place in all of Sitka Sound that the herring always come to, even when there are low returns, they always spawn every year around Kasiana Island. It is the center target of the older "scout" fish that lead the first herring into the sound. I say religious because our people believe that humans are equal to all other living things. All living things have a spirit and therefore deserve to be respected in a religious sense.

This is the basis for my objection to a rock quarry on Kasiana Island. I hope that I have not offended anyone. I know that the assembly was elected to make hard decisions and I will not criticize their final decision if my concerns are acknowledged and taken into consideration. Thank you for listening.

Roby Littlefield

Dog Point Camp

Christian Fabian

57 Brighton Avenue, Unit #1 • Belleville, NJ 07109

July 14, 2010

Sara Peterson
Colleen Ingman
Office of the City Clerk of Sitka
100 Lincoln Street
Sitka, AK 99835

Dear Ms. Peterson:

RE: 22.30.220 APPEAL OF PLANNING.

We appeal the decision of the approval and recommendation for a conditional use permit on Kasiana Island filed by Tim Eddy and S & S Contractors which was made at the last meeting of the Planning Commission, moving the permit request forward to the next Assembly meeting on July 27th.

We think that the decision is wrong because it is based on erroneous zoning of Kasiana Island, and there are omissions and oversights in the deciding factors considered by the Committee.

ERRONEOUS ZONING

From the city code of Sitka:

22.16.120 GI general island district.

A. Intent. The general island district is intended to replace the open general district. One of its goals is to protect the residential character of small subdivided islands while providing for commercial uses on small unsubdivided islands. The zoning district lines are intended to, whenever feasible, include unsubdivided islands of modest size and islands containing **six lots or less**.

22.16.135 LI large island district.

A. Intent. The large island district is intended to replace the open rural low density district. Its goals include protecting the residential character of the larger subdivided islands. It is intended to cover islands such as Middle Island, Long Island, and Galankin. **Islands with seven lots or more may be included in this zone**. An objective of this zone is to have developments served by access easements built to a defined standard and to have potential moorage areas identified. (Ord. 02-1683 § 4 (part), 2002.)

There is no reason why Kasiana, with 21 total lots, should be in the GI zone when 22.16.120 and 22.16.135 say that 7 lots or more should be in the LI zone.

Mr. Wells Williams, Planning Commission Director, has stated that the code on the zoning map overrules the language of the code. The City Code actually says the opposite:

22.04.040 Interpretation and application of provisions

C. In case of any ambiguity or difference of meaning and inconsistencies between the text and any illustrations or other graphics, the text throughout this title shall control.

PLEASE NOTE: Even if Kasiana Island were GI, we believe the Planning Commission ruled incorrectly in approving the permit. The intent of the GI district, according to 22.16.120, is to protect the residential characteristics of the subdivided islands while allowing commercial uses on unsubdivided islands. This point was not brought to the attention of the Planning Commission. The Commission was not made to understand that residential use must take priority over commercial use. Instead the stated direction to the Commission implies that commercial use has priority over residential uses. The opposite is true. Residential uses must be protected—not commercial uses.

OMISSIONS and OVERSIGHTS

From Planning Committee meeting minutes, June 1, 2010:

“Mr. Williams confirmed on the meeting on June 1st, that the goal of the commission is to mitigate issues related to mining while allowing the property owners to make use of their property.”

Dictionary definition of “mitigate”:
“to lessen the gravity of (an offense or mistake)”

Mr. Williams’ statement indicates that the Commission’s goal is to minimize objections to the mining, rather than to evaluate the Application impartially. We believe the Commission was wrongly directed on this point.

The goal of the Commission should have been to evaluate the conditional use application based on Section 22.24.010: Evaluation and Approval or Denial of Conditional Use Application for Island Properties. Since the proposed mining operation does not meet all the criteria required by the Code, the Commission should have denied the permit.

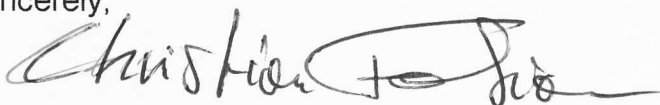
We feel it was incumbent on Mr Williams, as Commission Director, to acquaint the Commission, the Applicant, and the Land Owners with the conflict between the Zoning Map and the Zoning Code and to advise them that the Code takes precedence, as per 22.04.040. This was not done.

Our desired outcome would be:

- 1. To correct the zoning map for Kasiana Island to comply with 22.04.040, indicating that Kasiana Island’s status is LI.**
- 2. Were this correction made, the permit applied for by Mr. Eddy and S&S Contractors would be denied—the current City Code clearly indicates that a commercial rock quarry in a residential area zoned LI is not allowed.**

If we do not reverse the current decision, and we permit a quarry on Kasiana Island, a precedent would be set to allow damaging commercial operations on other islands.

Sincerely,



Christian Fabian

Dear Assembly,

This night is an important night for all of us. I have been very engaged in the issue for the Conditional Use Permit on Kasiana Island, since this proposed rock quarry will be 25 feet from my property. I can say to you truthfully and from the bottom of my heart: If I had known in September of 2007 that this is what the future would hold for me on this beautiful Island, I would have never bought land here and invested my retirement funds in buying this property.

I am on record appealing the decision of the Planning Commission after the third meeting, because there are many unanswered questions, lack of clarity, contradictions and a constantly changing story from S&S contractors, ranging from the original statement of a plan to do some landscaping on the lots in question to a large-scale commercial mining operation that will take years to finish.

I honestly think that this case will presage the future for Sitka, no matter what the outcome. With that in mind, here are the choices we have:

The first choice:

The conditional use permit will be approved. What are the consequences?

- We jeopardize the annual herring spawn and any possible future for the herring fishery in Alaska, which has never recovered from the Exxon/Valdez disaster.
- We jeopardize four eagle nests on the Island and countless other precious wildlife.
- The cruise boats and most of the residents on HPR will look at a huge rock pit and will be bombarded with the constant noise of blasting and heavy machinery for years.
- The cruise boats and most of the residents on HPR will have, instead of greenery to look at, a disaster of blowdown that will take 30 years to recover
- Kasiana island, sitting right in front of Sitka, is like the membrane in an audio speaker amplifying all the noise and directing it towards the Town. The location is so close, it might as well be a rock pit right at Mt Edgecomb High School
- This will set a damaging precedent for other islands where zoning and code can be manipulated or ignored to profit corporate interest.

So, this scenario will make a few people some money and it will bring suffering to many.

The second choice:

The conditional use permit will not be approved. What are the consequences?

This scenario will benefit many and a few people will have to seek profit elsewhere.

What makes absolutely no sense to me is that a project like this—so close to home and right in front of the Township—is even considered by responsible people. The damage from this commercial operation will scar Sitka in many ways and for years to come. There is no way to “mitigate” the blow down from an operation like this, and it will remain like a curse for years after the original activity of rock extraction has stopped. My property is directly targeted and no matter what anyone tries to assert, my property value will go down. Who would buy a piece of property with no trees and a view of a rock pit?

Being in a public office is not easy and it seems like an impossible task to make everyone happy. But we do live in a community, and for that community to thrive, it is clear that public officers must act for the good of their communities, as expressed in the community conscience.

So, what is it we could do to make all parties happy, including the community at large? This question, and this question only, is what we should be considering. We live in a community. Sitka is a breathtakingly beautiful town now—do we want to let it become like Ketchikan, where we can see one rock pit after another? A gentleman from the Forest Department here in Sitka asked me after the last Planning Meeting on July 6th why the town and the Forest Department weren't working with S & S Contractors to find more remote locations for their operation, with the possibility of a land exchange?

Sitka is up and coming and has a great future—we need to think about the long-term effects an action of this magnitude will have. I do not know all the answers but I do know that there is always a solution if we look for it. I hope you will consider this in your vote tonight. Thank you for your time and the opportunity to voice my concerns.

This is the last email exchange between Christian Fabian and Wells Williams regarding clarification of what the law says and how to apply it to Kasiana Island in Sitka, Alaska.

The importance of applying Code designed to safeguard the community, the land and the water cannot be underestimated, since there are exponential and long term effects from a large-scale commercial operation on a growing and expanding town like Sitka.

The decision made by the Assembly on July 27th will affect not only the future of Kasiana Island but the future of all of Sitka, and the future of ALL the surrounding Islands in Sitka Sound.

RE: **Zoning of Kasiana Island in question**

From: Christian Fabian (chrisfab@hotmail.com)

To: Wells Williams: wells@cityofsitka.com

Mon 7/19/10 2:48 PM

Hi Wells,

Thanks for your email.

I appreciate your communication, however for the purposes of evaluating the conditional use permit application in question, I require **more specific replies**. **The statements you made in your previous email were not supported by any reference**, and I would like to know on **what section of the Sitka Code you base your statements**.

Statements not supported by specific reference to City Code or law are simply your opinion, and although all of us have opinions, what we are **concerned with in this case is regulation**. Please supply:

1. "the zoning map has different standing."

Please cite Code section that supports your statement

2. "The Intent language is...not controlling of the zoning map."

Please cite Code section supporting your view that this Code section would take precedence over Code section 22.04.040

Sincerely,

Christian Fabian

From: wells@cityofsitka.com

To: chrisfab@hotmail.com

Date: Mon, 19 Jul 2010 09:37:49 -0800

Hi Christian...

Thanks for the emails...

The Planning Office has appreciated the opportunity to respond to your emails...

We will be preparing Kasiana conditional use materials for the August 27th Assembly meeting this week...

While the Planning Office responds to inquiries based on our knowledge of the code and professional training, we do not conduct legal research.

We look forward to answering any questions that are directed to us on the 27th.

Thanks for the interest in this case...

wells

Colleen Ingman

From: Christian Fabian [chrisfab@hotmail.com]
Sent: Monday, July 19, 2010 10:49 AM
To: wells@cityofsitka.com
Cc: Melissa Henshaw; hillhouse@cityofsitka.com; jimdinley@cityofsitka.com; sara@cityofsitka.com; colleen@cityofsitka.com; assembly@cityofsitka.com
Subject: RE: Zoning of Kasiana Island in question

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Please cite Code section supporting your view that this Code section would take precedence over Code section 22.04.040

Sincerely,

Christian Fabian

Come check me out on MySpace at <http://www.myspace.com/christianfabian>

From: wells@cityofsitka.com
To: chrisfab@hotmail.com
CC: melissa@cityofsitka.com; hillhouse@cityofsitka.com; jimdinley@cityofsitka.com
Subject: RE: Zoning of Kasiana Island in question
Date: Mon, 19 Jul 2010 09:37:49 -0800

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We look forward to answering any questions that are directed to us on the 27th.

Thanks for the interest in this case...

wells

Colleen Ingman

From: Christian Fabian [chrisfab@hotmail.com]
Sent: Thursday, July 15, 2010 4:47 PM
To: wells@cityofsitka.com
Cc: Melissa Henshaw; hillhouse@cityofsitka.com; sara@cityofsitka.com; colleen@cityofsitka.com; jimdinley@cityofsitka.com; assembly@cityofsitka.com
Subject: RE: Zoning of Kasiana Island in question

Dear Wells,

Thank you for your email. In answer to your statements:
"Both by the Sitka General Code, and, well litigated land use case law,"
Please provide case numbers for decisions that support your statement.

"the zoning map has different standing."
Please cite Code section that supports your statement

"The Intent language is...not controlling of the zoning map."
Please cite Code section supporting your view that this Code section
would take precedence over Code section 22.04.040.

Sincerely,

Christian Fabian

Come check me out on MySpace at <http://www.myspace.com/christianfabian>

From: wells@cityofsitka.com
To: chrisfab@hotmail.com
CC: melissa@cityofsitka.com; hillhouse@cityofsitka.com; sara@cityofsitka.com; colleen@cityofsitka.com
Subject: RE: Zoning of Kasiana Island in question
Date: Thu, 15 Jul 2010 15:58:50 -0800

Hi Christian,

Thanks for the email...

I am behind on correspondence this week since the Planning Office had a GIS consultant in town from New England for most of the week, and, a plan preparation deadline this afternoon.

The zoning map is a parallel to the zoning ordinance text. Both by the Sitka General Code, and, well litigated land use case law, the zoning map has different standing. The Intent language is not regulatory and is not controlling of the zoning map.

The approval process for Kasiana Island Subdivision was unusual for Sitka since there was significant debate, at various levels, over the potential impact on the herring spawning habitat in the cove. The discussion did not include the rezoning of the parcel to LI Large Island district.

The Planning Office has reviewed your appeal provided to the Clerk's Office dated July 14th, 2010. No appeal was necessary since the role of the Planning Commission is to make recommendations to the Assembly on conditional use permits.

The Assembly is scheduled to hold a hearing on the conditional use permit on July 27th.

Thanks again,

wells

From: Christian Fabian [mailto:chrisfab@hotmail.com]
Sent: Friday, July 09, 2010 5:11 PM
To: wells@cityofsitka.com
Cc: Melissa Henshaw; hillhouse@cityofsitka.com; jimdinley@cityofsitka.com
Subject: RE: Zoning of Kasiana Island in question

Dear Wells,

Thank you for your response.

It's not a question for me of being satisfied or not satisfied; an argument is specious if it lacks proof, so I am requesting the documentation for your argument. If I'm wrong, I'm wrong and that's fine—but so far I have not seen any City Code cited to prove the zone

indicated on the map (which is a graphic) overrules the language of the code. The City Code actually contains text disproving what you are claiming:

22.04.040 Interpretation and application of provisions

C. In case of any ambiguity or difference of meaning and inconsistencies between the text and any illustrations or other graphics, the text throughout this title shall control.

We should be able to see the relevant code regulating zoning changes on a map. The fact that the map of Kasiana Island, which is subject to the revision of the Code text, was not revised is puzzling. Was it simply an oversight that did not get corrected? The fact that this change, mandated by the Code, was not done at the appropriate time in 2004 has

created a confusing and conflicting situation.

22.04.040 states very clearly how to deal with this situation. What you are referring to as my "view" is actually just a statement of 22.04.040. What I would like to see is your "view" as clearly backed by the code.

I appreciate your acknowledgment of my right to disagree or agree, however that has nothing to do with the legal framework governing this situation—I am quoting from the Code which governs zoning and it is very clear. All the confusion in previous meetings could have been avoided if the facts had been clearly stated to the applicant, citizens

and members of the commission.

You are not correct in your third to last paragraph of this email. LI very clearly does not allow a commercial rock quarry and LI does apply to Kasiana Island, as proved in 22.04.040. I will attach the violations one more time.

It is not good zoning to have the zoning code and the zoning map in conflict. Why didn't you have the planning commission address this back in 2004 at the time of the subdivision. At this point in time section 22.16.120 and section 22.16.135 are in conflict with the zoning map. It would have been up to you to point this out to the planning commission. There is no reason why Kasiana with 21 total lots should be in the GI zone when 22.16.120 and 22.16.135 say that 7 lots or more should be in the LI zone functioning when it was time to show the documents I presented.

If the planning office is responsible for maintaining the zoning maps I have to ask you again why did the panel did not address this issue? Was it presented to them? Did they vote on it? Where there any questions regarding this issue? These are questions I would like to have answered.

Your last sentence indicates that the office is doing me a favor by answering my numerous requests. May I remind you that the planning office is a public office and is there for the citizens of this town. I am, as a responsible citizen, obligated to voice my concerns and will continue to do so till my questions are answered.

Thank you for your time,

Christian

From: wells@cityofsitka.com
To: chrisfab@hotmail.com
CC: melissa@cityofsitka.com; hillhouse@cityofsitka.com
Subject: RE: Zoning of Kasiana Island in question
Date: Fri, 9 Jul 2010 14:27:08 -0800

Hi Christian...

Thanks for the email...

The Planning Office responded clearly to your earlier email. My apologies if you are not satisfied with the response.

The GI zoning for Kasiana Island has not changed since 2002. The GI zoning remains in place.

A zoning map amendment, approved consistent Sitka General Code Sections 22.30.350 through SGC 22.30.380, would have been required for the map amendment to occur.

It appears that it is your view that the Intent language for the GI General Island and LI Large Island districts automatically required the initiation and approval of the map amendment process when the Kasiana Island Subdivision was approved.

With respect, there is nothing in the Intent language that requires this map change to occur. There is not a requirement that the subdivision of the parcel, which is regulated under Title 21 of the Sitka General Code, result in a map amendment. There is not a requirement in the Intent language that the subdivider initiate a zoning map amendment. There is also not a requirement in the Intent language that the municipality initiate and approve a map amendment.

You certainly have the right to disagree with this plain reading of the zoning code.

Since the language in both the GI and LI Intent language is similar as both list residential land uses, and, Natural Resource Extraction is a conditional use in both zones, it is unclear how the argument pertains to the Kasiana conditional use request.

The answer to your final question is that the Planning Office is responsible to the maintenance of zoning maps.

The Planning Office has made every effort to respond to your numerous requests for information.

Thank you.

Wells Williams

From: Christian Fabian [mailto:chrisfab@hotmail.com]
Sent: Thursday, July 08, 2010 3:41 PM
To: wells@cityofsitka.com
Cc: Melissa Henshaw; hillhouse@cityofsitka.com; jimdinley@cityofsitka.com
Subject: RE: Zoning of Kasiana Island in question

Hi Wells,

Thanks for responding to the email.

I still would like to see written proof to what you are referring to. Where are the City guidelines who describing your mentioned scenario ? what section ? what code, paragraph etc,

Concerning to what's going on I want to see written proof of what you are quoting.

I assume that there is a map showing Kasiana zoned as GI. But why did this hasn't changed when the Island was divided up in 2004 ? The new code was written in 2002. Who was responsible at that time and why did this person or group did not make the change on the map accordingly ? The map has to be updated and reflecting the facts of what is happening NOW, present time ! Otherwise the map is outdated and needs to be updated.

Here are the facts we are dealing with:

There ARE 19 Lot's on the Island right now. The language states clearly that an island more then 7 lot's is considered LI. The Island IS residential NOW. "Whenever feasible" will be out weighted by facts since this will leave no room for 'interpreting'.

The language might not include words of change but say what IS. Again, the facts are not represented on the map, so, the map is old since the code describes what IS.

Anyhow, please send me the written text and guidelines describing how the zoning text will be evaluated compared to the map and vice versa.

Thank you,

Christian

Come check me out on MySpace at <http://www.myspace.com/christianfabian>

From: wells@cityofsitka.com
To: chrisfab@hotmail.com
CC: melissa@cityofsitka.com; hillhouse@cityofsitka.com; jimdinley@cityofsitka.com
Subject: RE: Zoning of Kasiana Island in question
Date: Thu, 8 Jul 2010 14:06:05 -0800

Hi Christian...

The zoning code consists of two parts. The zoning text and the zoning map.

The zoning text went through a major rewrite in that was finished in August of 2002. The zoning map for island parcels was changed through a parallel process and a parallel ordinance.

The Intent language did not change the zoning map.

The Intent paragraph is a general statement of purpose.

Even in the highly unlikely scenario that someone can make a legal argument that Intent language is regulatory in nature, the paragraph you are referring to could not result in a change in the zoning map. The sentence you refer to includes the words " whenever feasible". It also does not include words directing that the zoning map be changed.

Hope this helps...

wells

From: Christian Fabian [mailto:chrisfab@hotmail.com]
Sent: Wednesday, July 07, 2010 11:49 AM
To: wells@cityofsitka.com
Cc: rdalexander@hotmail.com; stortz@acsalaska.net; toms.rogers@firstbankak.com; rjparmelee@gmail.com; jeremytwaddle@yahoo.com; melissa@cityofsitka.com; ssgencon@ptialaska.net; sara@cityofsitka.com; jimdinley@cityofsitka.com; hillhouse@cityofsitka.com
Subject: Zoning of Kasiana Island in question

Dear Wells,

I found the following in the Sitka General Code:

22.16.120 GI general island district.

A. Intent. The general island district is intended to replace the open general district. One of its goals is to protect the residential character of small subdivided islands while providing for commercial uses on small unsubdivided islands. The zoning district lines are intended to, whenever feasible, include unsubdivided islands of modest size and islands containing **six lots or less**.

22.16.135 LI large island district.

A. Intent. The large island district is intended to replace the open rural low density district. Its goals include protecting the residential character of the larger subdivided islands. It is intended to cover islands such as Middle Island, Long Island, and Galankin. **Islands with seven lots or more may be included in this zone.** An objective of this zone is to have developments served by access easements built to a defined standard and to have potential moorage areas identified.

(Ord. 02-1683 § 4 (part), 2002.)

Kasiana island is a large island with 19 lots. According to 22.16.120 and 22.16.135, an island with 7 lots or more is to be included in the LI zone. You instructed the Planning Commission that Kasiana is General Island (GI). I believe this is incorrect. Kasiana would have been GI when it was unsubdivided, but when the 19 lots were created, it would have moved to the LI zone.

The Planning Commission based their decision to approve a quarry on Kasiana on the assumption that the island was zoned GI. According to the Code, LI is much more restrictive than GI and is deemed "residential". The Planning Commission's decision last evening would have probably been different if it had thought that Kasiana was in the LI district.

Please tell me what section of the Sitka General Code you used to decide that Kasiana Island is in the GI zone ?

For your records I attached the 6 violations of a commercial rock quarry in a residential area.

Sincerely,

Christian Fabian

The New Busy is not the too busy. Combine all your e-mail accounts with Hotmail. [Get busy.](#)

The New Busy is not the old busy. Search, chat and e-mail from your inbox. [Get started.](#)

The New Busy think 9 to 5 is a cute idea. Combine multiple calendars with Hotmail. [Get busy.](#)

Hotmail is redefining busy with tools for the New Busy. Get more from your inbox. [See how.](#)

Colleen Ingman

From: Christian Fabian [chrisfab@hotmail.com]
Sent: Thursday, July 15, 2010 3:42 PM
To: sara@cityofsitka.com; colleen@cityofsitka.com
Cc: assembly@cityofsitka.com; hillhouse@cityofsitka.com; jimdinley@cityofsitka.com
Subject: RE: 22.30.220 Appeal to the planning commission
Attachments: Appeal7.pdf

Dear Colleen and Sara !

Keith Nyitray from Kasiana(s) Island seconds this appeal. Correction in the headline, please use this version if possible, if not...fine as well,

Christian Fabian

Come check me out on MySpace at <http://www.myspace.com/christianfabian>

From: chrisfab@hotmail.com
To: sara@cityofsitka.com; colleen@cityofsitka.com
CC: assembly@cityofsitka.com; hillhouse@cityofsitka.com; jimdinley@cityofsitka.com
Subject: 22.30.220 Appeal to the planning commission
Date: Wed, 14 Jul 2010 16:33:53 -0400

Dear Colleen and Sara !

Please see attached pdf for Appeal to the planning commission. I will also mail you a hard copy today.

Nice to meet you a few days ago,

Sincerely,

Christian Fabian

The New Busy is not the too busy. Combine all your e-mail accounts with Hotmail. [Get busy.](#)

The New Busy think 9 to 5 is a cute idea. Combine multiple calendars with Hotmail. [Get busy.](#)

Colleen Ingman

From: Susan Litman [litman.susan@gmail.com]
Sent: Monday, July 19, 2010 4:55 PM
To: colleen@cityofsitka.com
Cc: assembly
Subject: Kasiana Island
Attachments: Kasiana Island- Sitka Zoning Code references.doc

Dear Assembly Members,

I am concerned about the Planning Commission's recent decision to approve an industrial use on a residential island.

I believe that the Commission was not provided with all the necessary information from the Sitka General Code that pertained to the conditional use request. The Commission was not provided with either 22.16.120 or 22.16.135 which says that the **residential character of subdivided islands must be protected** while providing for commercial use on **unsubdivided** islands. In fact, at the June 1 planning meeting the minutes reveal on page three - "Mr. Williams confirmed that the goal of the commission is to mitigate issues related to mining while allowing the property owners to make use of their property." This statement implies that the mining is allowed and that the commission needed only to try to lessen the impacts. In actuality, by code residential use is the protected use on subdivided islands and any commercial use on any island needs to be evaluated using 22.24.010 Evaluation and Approval or Denial of Conditional Use Applications for Island Properties.

22.24.010 states that specific conditional uses may be appropriate that are well designed and/or have low impact and may enhance surrounding properties and may not create any impacts. This does not describe the proposed quarry. The code says that conditional uses on other properties may be totally inappropriate due to concerns such as impacts on adjacent properties, lack of vegetative or distance buffers, noise generation... If adequate mitigation cannot be accomplished applications may be denied.

According to 22.24.010, there are a number of items listed that must be evaluated. Of particular concern are:
1) location on the lot or island.

A commercial quarry is an industrial use. One might possibly approve a mining operation on a residential island if it was located a great distance from residential lots. The proposed two quarry lots share a boundary with residential lots. In fact, the new quarry wall will be only 25 feet from the boundary line with Lot 13 owned by Mr. Fabian. Where would one ever find an industrial mining operation located 25 feet from a residential lot?

2) Generation of noise

The noise level will be will be many times greater than on any residential lot. There will be blasting 3 or 4 times a week. There will also be the extremely loud continuous noise of track drills run by large diesel air compressors, excavators, dump trucks, back hoes, front end loaders, etc. The quantity of rock that will be drilled, blasted, sorted, stockpiled, emptied into dump trucks and loaded onto barges will fill between 10,000 to 15,000 ten yard dump trucks (150,000 cu yd/10 cu yd = 15,000 ten yd dump trucks). Islands are quiet places. Sound carries great distances over the water. The amount of noise created for a period of 18 months from 7 am to 7 pm cannot be considered to "protect the residential characteristics" of Kasiana Island or neighboring islands (Finn Island). The Martin's home is located a distance of 350 feet directly across the small cove from the proposed use. The rock face of the quarry wall will direct the sound towards their property. There is no comparison between the level and duration of noise created by a rock mining operation and lodge or similar use.

3) Number of employees.

This was never addressed in the application. There is a direct relationship between the number of employees and the number of vehicles and heavy equipment and machinery that will be operating simultaneously. The amount of time per day that there will be loud noise will increase as a result of an increase in the number of employees to run the equipment. In addition, more employees means more skiff traffic in the quiet cove. If the

applicants are actually planning on operating no more than a total of 18 months, they will need a good size crew which will negatively impact the residential characteristics of the island.

4) Visibility from adjacent uses including waterborne traffic.

The mining operation will directly change the view from the Martin's front windows as well as the view from Finn Island and other lots in the subdivision. The view now is of a "recovering" quarry where brush, alder and hemlock and spruce have grown up. I live on Galankin Island which was quarried 38 years ago. When we bought the island in 1982 (ten years after closure of the mining operation), the quarry was a huge scar on the landscape. It took 25 years for the landscape to begin to heal even after we planted seedlings to hurry up the process.. Today there are thin small spruce and hemlock trees, alder and berry bushes. Ten years after the quarrying there was only sparse berry bushes. The view from the Martin's property will be an ugly quarry scar for many years. Their view will be permanently altered and because of this the value of their property will undoubtedly decrease.

5) Use of man made or natural screening buffers.

The applicant says that they will be removing brush and trees on the water portion of the lot. The mining operation will not be screened from the waterside. In addition, the trees in the 25 foot buffer will blow down. The vegetation they will plant at the termination of the project will take many, many years to mature.

6) Distance from adjacent parcels or islands. The mining operation is located 25 feet from Mr. Fabian's residential lot. There is no way that 25 feet can be considered an adequate distance from an industrial quarry. If the quarry was 1000 feet away from residential lots the Assembly might consider approving the conditional use permit.

7) Removal of excessive amounts of vegetation.

The removal of the trees on the nob/hill and the removal of the top of the hill will result in considerable blow down of trees. On page 1 of Mr. Bevan's May 19 letter, he admits that the tree buffers will probably blow down.

When we bought Galankin Island ten years after the cessation of rock mining, there were no trees left standing for a distance of 40 to 100 feet from the quarry wall for 2/3 of the perimeter of the quarry. On the remainder of the island to the north, northwest and northeast there were no trees standing for a distance of 300 feet from the quarry perimeter. Over the next 10 years, more than half of the trees to the northwest fell to a distance of 500 feet (2 additional acres) from the quarry wall.

The prevailing strong winter storms come from the south causing the greatest tree loss on the north end of the properties. When the trees and hill 25 feet south of Mr. Fabian's lot line are removed he will undoubtedly lose a great number of his trees over time. Another factor that will add to his tree loss is the fact that the marshy swale drains through his lot. His land is very wet and therefore the trees are not as well rooted as the trees on Galankin Island were. When the nob/hill and trees on that hill are gone, his large trees will be newly exposed to the south storms and will fall.

A lot owner can cut trees and alter the terrain on a residential lot which may negatively impact his neighbor and it will be a civil matter between individuals. However, if a lot owner will be altering his property for commercial purposes which require a conditional use permit, it is the responsibility of the City, according to the Sitka Zoning Code, to make sure that there are no negative impacts to surrounding property.

Mr. Eddy appeared to sway some commission members during deliberations when he stated he planned to "smear the rock around" even if he did not get his permit. He stated that he had been bartering the rock that was on the two lots. If he blows up his hill and barter more than a small quantity of rock, it would still be considered a commercial venture requiring a conditional use permit. During deliberation, one commission member expressed the opinion that it would be better if the operation only lasted 18 months rather than an indeterminate amount of time blasting and moving the rock to change the terrain of the two lots if the permit was denied. But it is not the role of the commission to guess which scenario would be preferable. It is the role of the Planning Commission and the Assembly to ensure that the proposed project is in compliance with municipal codes.

22.24.010 states that if adequate mitigation on all the above items cannot be accomplished the conditional use

permit should be denied. It is not possible to mitigate the distance from adjacent parcels (by moving the quarry to another more distant location). It is not possible to mitigate the level of noise. It is not possible to mitigate the loss of trees on neighboring properties. It is not possible to mitigate the visual degradation of the lot to neighboring residential uses.

Neighboring residential property owners will suffer loss of "quiet enjoyment" of their property as well as loss of property value if this industrial conditional use is approved. I encourage the Assembly to deny this conditional use request.

Thank you,
Susan Litman

PS. I am attaching 22.16.120, 22.16.135 and 22.24.010

22.24.010

F. Evaluation and Approval or Denial of Conditional Use Applications for Island Properties. It is the intent of this code to recognize the unique qualities of islands within Sitka Sound and the substantial differences that exist between individual islands and island groups.

Specific conditional uses may be fully appropriate in certain circumstances and on specific parcels. Uses that are well designed and/or have low impact may enhance surrounding properties and may not create any impacts. Examples may include structures that are built on larger lots away from exterior property lines, uses that are placed in the middle of parcels, uses that do not materially increase activity of easements or moorage, uses where there is significant vegetative or terrain buffer between properties, and islands that are separated by substantial distances. In these cases, conditional use requests can and should be handled expeditiously.

Conditional uses on other properties may be totally inappropriate due to the concerns such as impacts on adjacent properties, lack of vegetative or distance buffers, noise generation, unmitigated increased usage of access easements, available moorage, location on parcels, and design.

1. Items to be considered in evaluating island conditional use permits include, but are not limited to the following:

- a. Location on the lot or island.
- b. Generation of noise.
- c. Numbers of guests and employees.
- d. Visibility from adjacent uses including waterborne traffic.
- e. Use of common access easements
- f. Availability of necessary moorage.
- g. Use of natural or manmade screening buffers.
- h. Availability of municipal power.
- i. Distance from adjacent parcels or islands
- j. Removal of excessive amounts of vegetation.

It is recognized that many applications may be strongly supported after using the above criteria

If adequate mitigation cannot be accomplished or items such as necessary infrastructure are not available, applications may be denied.

22.16.120 **GI general island district.**

A. Intent. The general island district is intended to replace the open general district. One of its goals is to protect the residential character of small subdivided islands while providing for commercial uses on small unsubdivided islands. The zoning district lines are intended to, whenever feasible, to include unsubdivided islands of modest size and islands containing six lots or less.

22.16.135 **LI large island district**

A. Intent. The large island district is intended to replace the open rural density district. Its goals include protecting the residential character of the larger subdivided islands. It is intended to cover islands such as Middle Island, Long Island, and Galankin. Islands with seven lots or more may be included in this zone. An objective of this zone is to have developments served by access easements built to defined standard and to have potential moorage areas identified.

Jon and Yvette Martin
PO Box 2906
Sitka Ak. 99835

July 14, 2010

Municipal Clerk City of Sitka,

Appeal of City of Sitka Planning Commission's decision to recommend approval of Conditional Use permit applied for by Tim Eddy and Rodger Sudnickovich of S&S Construction to Operate a commercial activity to extract rock and minerals on Kasiana Island.

We own lot 2 of 19 lots of the residential subdivision on Kasiana Island. We are more than half done with the construction of our dream home, which will be our primary residence. Allowing this project to go forward will result in a large negative impact on our family, our property values, and the property values of all of the property owners in this residential subdivision. A rock pit of this magnitude is completely unacceptable in a residential setting. The city code supports this. On the original application for the CUP was only to develop these two lots for better residential use.

Review of the record will reveal that this project is simply an industrial scale rock pit with minor rock pit mitigations expected on any typical rock pit developed anywhere. Concerns by the residents of Kasiana were not heard.

We believe that the planning commission's decision to support this commercial quarry operation is in violation of Sitka general code for the following reasons.

The code states that: (G), (U), 2004; Ord. 02-1683 § 4 (part), 2002.)
22.16.120 GI general island district.

A. Intent. The general island district is intended to replace the open general district. One of its goals is to protect the residential character of small subdivided islands while providing for commercial uses on small unsubdivided islands. The zoning district lines are intended to, whenever feasible, include unsubdivided islands of modest size and islands containing six lots or less.(Ord. 02-1683 § 4 (part), 2002.)22.16.135 LI large island district)

A. Intent. The large island district is intended to replace the open rural low-density district. Its goals include protecting the residential character of the larger subdivided islands. It is intended to cover islands such as Middle Island, Long Island, and Galankin. Islands with seven lots or more may be included in this zone....(Ord. 02-1683 § 4 (part), 2002.)

The question as why Kasiana is not considered a LI large island district since it has 19 lots, was asked during public comments. Mr. Williams cut it short by saying the maps say it is G1. The code states that if there is discrepancy between maps and wording that the wording in code rules, not the maps. Note that Kasiana has 19 lots.

The commission failed to address public concerns for the lack of adequate description of the project area and the lack of description of the project area following development. This concern was raised in all 3-commission meetings. The proponent repeatedly said it would be too difficult to describe how much rock they would remove and what the rock pit would look like when completed. The conditional use permit should have been denied at the first meeting on the basis of lack of information. The proponent simply brought in a map with a penned circle drawn around the area where up to 150,000 yards of large armor rock would be removed. At the final meeting, the proponent brought in an east-west cross section of the pit property. The western boundary of this cross section is state land and the eastern boundary is state tidelands. The proponent did not provide cross-sections to show how their operation would join adjacent property owners. In fact, what their cross section showed was their proposed development originally applied for which was stated intent was only to develop these two lots for better residential use. When in fact the purpose of the project changed to a commercial operation to extract the rock for a commercial company and had actually grown in size to the west, creating a rock face adjoining state lands which had not been previously considered.

The commission failed to require mitigations, required in the code, which are more stringent on a commercial activity in a residential setting than out in the general forest.

We believe the planning and zoning commission erroneously came to their conclusion to support this industrial operation in a residential area. We believe the proponent failed to show how their operation will protect the residential character (requirement of the city code). The intent of both these zones is clearly to protect the residential character of subdivided islands. Allowing a commercial rock quarry operation would severely impact the residential character, as well as property values.

When concerns were raised about settling ponds (eg.size,safety,herring and what would happen with these ponds at the end of the proposed project) one commissioner said, 'I don't want to speak for the proponent' then proceeded to speculate that he would imagine the proponent would do what's typically done in a rock pit development for settling ponds. This commissioner was in fact speaking on behalf of the proponent in responding to these public concerns. The proponent did state that safety fencing would be present during the project, but would not address what would happen to these ponds after project completion. In light of the high value herring fishery and the concern for our children's safety around settling ponds, this was a completely unacceptable answer.

We believe that the planning commission's decision to support this commercial quarry operation is in violation of Sitka general code. Sitka's general code says conditional uses on other properties may be totally inappropriate due to the concerns such as impacts on adjacent properties, lack of vegetative or distance buffers, noise generation, unmitigated increased usage of access easements, available moorage, location on parcels, and design.

1. Items to be considered in evaluating island conditional use permits include, but are not limited to, the following (Ord. 06-16 § 4, 2006; Ord. 05-16 § 4(O), (P), 2005; Ord. 04-60 § 4(F), PU/CS. Permitted on Unsubdivided Islands and Conditional Use on Subdivided Islands):

- a. Location on the lot or island.
- b. Generation of noise.
- c. Numbers of guests and employees.
- d. Visibility from adjacent uses including waterborne traffic.
- e. Use of common access easements.
- f. Availability of necessary moorage.
- g. Use of natural or manmade screening or buffers.
- i. Distance from adjacent parcels or islands.
- j. Removal of excessive amounts of vegetation.

H. Retail and Business Uses Table 22.16.015-6 Footnotes.

3. No industrial use shall be of a nature which is noxious or injurious to nearby properties by reason of smoke, emission of dust, refuse matter, odor, gases, fumes, noise, vibration or similar conditions.(Ord. 02-1683 § 4 (part), 2002.

The generation of noise and vibration from using explosives to blast rock 4-5 times a week, danger of fly rock to our person, or our home, which for our safety, we will have to leave the island during the blasting. The proposed quarry is to operate 6 days a week, 7am to 7pm, for 18 months generating noise from barge landings, excavators, and other heavy equipment used in operations of this type, employees at the quarry, along with the boats used to transport the workers, anchorages, 15,000 dump trucks of rock being loaded into dump trucks and on to a barge. There is odor from barges, trucks, diesel, and heavy machinery. The disruption of the quiet island life this residential island now has will be gone. The island and surrounding waters will be unsafe for walking, boating, or kayaking in the vicinity, the visual aspects of a rock quarry which we see from our deck, yard, and main living area of our home, as well from the water will be unsightly, the lasting effects of this disturbance will be evident for a very long time.

We testified at every meeting about our concern for protecting residential character. The commission did not address this concern. Not once, did the commission respond to this concern showing how they believe the proponent would address our concern. Not once did the commission place requirements that would directly address the city code requirement of protecting residential character. This proposed commercial development remains a rock pit with typical rock pit mitigations.

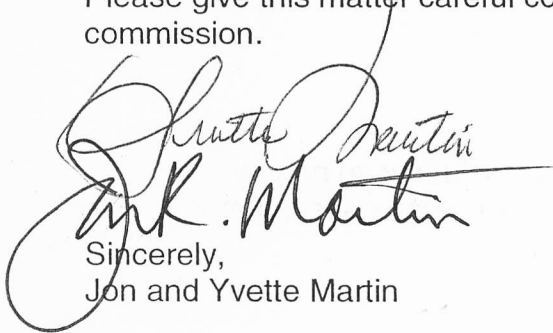
In the last meeting, the chair of the commission asks if they were ready to proceed to a vote, without any consideration of the many concerns raised by the public at that meeting. Again, in their rush to meet contractor deadlines, they elected to proceed. This resulted in them setting a special meeting to work out the wording, which was not

open for public comment. It also caused commissioners to speculate and in effect speak for the proponent as to how this development would occur.

We believe that the commission was more concerned with protecting S&S Construction's interest, in particular as it relates the numerous references during meetings to the immediate need for this rock for the airport expansion project.

The commission was clearly pressed by the deadline of hurrying their decision to meet the self imposed July 27 deadline for approval by the assembly, thereby giving S&S a competitive advantage for the airport construction project. This is what drove this project and the city's response from day 1.

Please give this matter careful consideration to reverse the decision of the City planning commission.

A handwritten signature in cursive script, appearing to read "Jon and Yvette Martin". The signature is written in dark ink and is positioned above the typed name.

Sincerely,
Jon and Yvette Martin

Colleen Ingman

From: robert rose [robertpotterrose@gmail.com]
Sent: Thursday, July 15, 2010 11:02 AM
To: assembly@cityofsitka.com
Subject: Kasiana Island Mining

Hello, my name is Robert Rose and I am a property owner on Middle Island. I hope the Assembly will choose to carefully review the conditional use permit for extensive rock excavation near the residential properties on Kasiana Island. There are some pertinent questions that haven't been answered in regards to whether our Planning Department has followed the proper procedures in protecting the rights of the land owners surrounding the site of the proposed excavation and rock removal. This permit is for a large scale commercial activity which in any estimate will have accute impacts for the surrounding neighbors in this residential zone. According to our City General Code the protection of the residential property owners rights should be carefully examined when a conditional use of this magnitude is allowed. As an island residential property owner I am deeply concerned that the Planning Department has not provided the necessary information that would allow the Planning Commission and the Assembly to make an appropriate decision in accordance with the rules and regulations that are in place to protect individual property owners. There are questions as to whether Kasiana Island was appropriately zoned by the Planning Department. According to definitions in the General Code Kasiana Island should be zoned Large Island which accentuates the residential use and requires strict measures to insure the protection of residences when conditional use permits are allowed. Why is this protection not being afforded the residences surrounding this site?

The City and the public at large may indeed benefit from allowing a quarry site such as this proposal to provide for commercial sales of rock that could be used for our airport runway extension. But this is not at all enough of a reason to forego following the City Code which is set up to protect individuals in just such cases. It is of the utmost importance that the City's departments follow the Code with due diligence. I would ask for the Assembly to require further clarifications from the Planning Department in regards to this permit to make sure this diligence has occurred. Thank you, Robert Rose