



# CITY AND BOROUGH OF SITKA

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

## Meeting Agenda City and Borough Assembly

*Mayor Mim McConnell  
Deputy Mayor Matt Hunter  
Vice-Deputy Mayor Phyllis Hackett, Pete Esquiro, Mike Reif,  
Benjamin Miyasato and Aaron Swanson*

*Municipal Administrator: Mark Gorman  
Municipal Attorney: Robin L. Koutchak  
Municipal Clerk: Colleen Ingman, MMC*

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Tuesday, September 23, 2014

6:00 PM

Assembly Chambers

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### REGULAR MEETING

I. CALL TO ORDER

II. FLAG SALUTE

III. ROLL CALL

IV. CORRESPONDENCE/AGENDA CHANGES

[14-194](#) Airport Long Term Parking and Alaska Marine Highway Schedule

*Attachments:* [Airport Parking 7 Day Correspondence](#)

[AMH Correspondence](#)

[14-193](#) Reminders & Calendars

*Attachments:* [Reminders and Calendars](#)

V. CEREMONIAL MATTERS

*Assembly Member Mike Reif - Recognition*

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

*None Pre-Scheduled*

VII. PERSONS TO BE HEARD

*Public participation on any item off the agenda. All public testimony is not to exceed 3 minutes for any individual, unless the mayor imposes other time constraints at the beginning of the agenda item.*

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

*All matters under Item IX Consent Agenda are considered to be routine and will be enacted by one motion. There will be no separate discussion of these items. If discussion is desired, that item will be removed from the Consent Agenda and will be considered separately.*

- A**    [14-185](#)    Approve the minutes of the September 9, 2014 Assembly meeting  
*Attachments:* [Consent & Minutes](#)
- B**    [14-192](#)    Reappoint Gwen Lazzarini and appoint Lisa Baugher to terms on the Police and Fire Commission  
*Attachments:* [MOTION Appointments](#)  
[Appointments P&F](#)
- C**    [14-189](#)    Award a Design/Build Contract to CBC Construction Inc. for Net Shed and Jarvis Street Roofs and transfer funds (\$10,000) - Bid \$185,500  
*Attachments:* [Bid Award CBC Construction](#)

**X. UNFINISHED BUSINESS:**

- D**    [ORD 14-29](#)    Authorizing the extension of the lease of the land at 323 Seward Street to November 1, 2046 to White Elephant Shop, Inc.  
*Attachments:* [MOTION ORD 14-29](#)  
[ORD 14-29 White Elephant Lease docs](#)  
[Breedlove Ltr White E Lease](#)  
[Scott Harris Letter White E](#)
- E**    [ORD 14-32](#)    Proposing to amend Title 1, Administration, of the SGC by adding Section 1.04.90 Use of City Seal  
*Attachments:* [MOTION ORD 14-29](#)  
[ORD 14-32 City Seal](#)

**XI. NEW BUSINESS:**

- F**    [14-187](#)    Decision on whether to allow any sales tax free day(s) following the Thanksgiving Holiday and set day(s)  
*Attachments:* [Sales Tax Free Day\(s\)](#)  
[Small Business Saturday Tax Free Day](#)
- G**    [14-188](#)    Convene as the Board of Adjustment - Consider a Conditional Use Permit filed by Brian Jardine for a two-bedroom Bed & Breakfast at 105

Shelikof Way

**Attachments:** [BOA MOTIONS](#)

[Jardine CUP B&B](#)

[Putz ltr re Jardine CUP](#)

[BOA Hearing Outline](#)

*Reconvene as the Assembly*

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

**Attachments:** [General Fund Transfers](#)

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

**Attachments:** [Grant Allocation Process](#)

**XII. PERSONS TO BE HEARD:**

*Public participation on any item on or off the agenda. Not to exceed 3 minutes for any individual.*

**XIII. EXECUTIVE SESSION**

*None Scheduled*

**XIV. ADJOURNMENT**

*Colleen Ingman, MMC  
Municipal Clerk  
Publish: 9-19-14*



## Legislation Details

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**File #:** 14-194      **Version:** 1      **Name:**  
**Type:** Correspondence      **Status:** AGENDA READY  
**File created:** 9/18/2014      **In control:** City and Borough Assembly  
**On agenda:** 9/23/2014      **Final action:**  
**Title:** Airport Long Term Parking and Alaska Marine Highway Schedule  
**Sponsors:**  
**Indexes:**  
**Code sections:**  
**Attachments:** [Airport Parking 7 Day Correspondence](#)  
[AMH Correspondence](#)

Date	Ver.	Action By	Action	Result
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THE STATE  
of **ALASKA**  
GOVERNOR SEAN PARNELL

Department of Transportation  
and Public Facilities

SOUTHEAST REGION  
Regional Director's Office

6860 Glacier Highway  
PO Box 112506  
Juneau, Alaska 99811-2506  
Main: 907.465.1763  
Toll free: 800-575-4540  
Fax: 907.465.2016  
TTY-DDD 800-770-8973

September 15, 2014

Mr. Mark Gorman  
Municipal Administrator  
City and Borough of Sitka  
100 Lincoln Street  
Sitka, Alaska 99835

Dear Mr. Gorman,

A handwritten signature in black ink that reads "Mark".

This is in response to your recent letter concerning providing for more long term parking at the Sitka Airport.

After discussing this issue with our maintenance staff SE Region has no objection to designating the last row of parking in the paved lot (immediately adjacent to the existing unpaved long term parking area) to "long term" parking.

Please have your staff coordinate with Steve Bell, our Airport Manager/Sitka Station Foreman in the delineation of this row for long term parking. I am hesitant to provide additional spaces out of the short term parking area because we have had issues arise in the past with public parking encroaching on the leased rental car area due to perceived insufficient short term parking.

As always, we welcome the opportunity to better manage the Sitka Airport with the City and Borough of Sitka.

Sincerely,

A handwritten signature in black ink that reads "Albert H. Clough".

Albert H. Clough, P.G.  
Director SE Region

cc:

Pat Kemp, P.E., Commissioner  
Greg Patz, SE Region Maintenance Superintendent  
Steven Bell, SE Region Sitka Airport Manager/ Foreman

*"Keep Alaska Moving through service and infrastructure."*



# City and Borough of Sitka

100 Lincoln Street Sitka, Alaska 99835

*Coast Guard City, USA*

September 9, 2014

Commissioner Pat Kemp  
Alaska Department of Transportation and Public Facilities  
P.O. Box 112500  
Juneau, AK 99811-2500

Dear Commissioner Kemp:

Thanks again for coming to Sitka for the Sawmill Creek Road completion celebration and meeting with City and Borough of Sitka staff. We appreciated your and Al Clough's time. It was good to have an opportunity to discuss common interests.

I would appreciate DOTPF's response to the City's "low hanging fruit" request to increase long-term (7 day) parking adjacent to the Sitka Airport. Since the paved airport parking area is never full, can DOTPF approve the public again using the last row of parking in the paved area of the parking lot immediately adjacent to the unpaved long-term parking area for seven-day parking? Better yet, will it be possible for the City to designate both that row and the one facing it in the paved area for seven-day parking? Please let us know, so that the number of seven-day parking spaces near the airport can be increased.

Your assistance to improve long-term parking near the airport terminal would be greatly appreciated.

Sincerely,

Mark Gorman  
Municipal Administrator



# City and Borough of Sitka

100 Lincoln Street Sitka, Alaska 99835

*Coast Guard City, USA*

September 18, 2014

Captain John F. Falvey, Jr., General Manager

Alaska Marine Highway System

[dot.amhs.comments@alaska.gov](mailto:dot.amhs.comments@alaska.gov) RE: Comment --AMHS Summer 2015 Proposal

Dear Captain Falvey:

Every spring City and Borough of Sitka (CBS) comments on the proposed Winter AMHS schedule, requesting a minimum of two north and two south ferries per week, but only receives one northbound and two southbound for seven months of the year. Each fall, CBS comments that the peak Summer season starts in JUNE, not July, and Sitka needs a minimum of two north and two south ferries per week in May, June, and September, but the schedule remains the same—one mainline north and south, augmented by four Fairweather shuttles in June.

Meanwhile, Lynn Canal receives eight ferries per week during May, June and September and five stops during the Winter schedule. This is a matter of deployment, not vessel availability. Sitka's 9,000 residents and large number of visitors could generate much greater ridership during the shoulder seasons with greater ferry frequency and connectivity, just as they could in winter with many groups having to fly to/from events because ferry service to Sitka is so infrequent. The lack of service to Sitka compared to other ports is a continuing inequity. Please consider the following Summer 2015 schedule modifications:

1. Summer AMHS schedule should begin in June, not July. The July and August Summer schedule provides excellent service, but June is an equally busy summer month.
2. Please provide a minimum of two north and two south mainlines to Sitka in May, June (until June is returned to the Summer schedule), and September. The visitor season begins in April and ends in October, and visitors need connectivity throughout the region, including Sitka. Sitka needs to receive a similar level of service as does Lynn Canal and other mainline ports—not one third or less.

If these requests aren't granted, CBS would appreciate a detailed explanation. Thank you.

Sincerely,

Mark Gorman, Municipal Administrator

cc: Senator Stedman  
Representative Kreiss-Tomkins

*Providing for today ... preparing for tomorrow*



THE STATE  
of **ALASKA**  
GOVERNOR SEAN PARNELL

## Department of Transportation and Public Facilities

ALASKA MARINE HIGHWAY SYSTEM  
Office of the General Manager

7559 North Tongass Highway  
Ketchikan, Alaska 99901-9101  
Main: 907.228.7250  
Fax: 907.228.6875

9/9/2014

Dear Community Advisory Group Members:

It is time to begin the public review process for the next Alaska Marine Highway System scheduling cycle. The proposed schedule patterns that will be reviewed will cover the summer 2015 schedule.

The schedule patterns that are being proposed are based on an assumed funding level for FY16 similar to the FY15 operating budget. The operating plan has been designed to meet the essential needs for community service, staying within available funding, and maintaining regulatory and safety standards for the vessels.

Please take the time to review and comment on this proposal paying particular attention to any need for special events scheduling. Be sure to give the name of the event, date, location, and arrival and departure times needed for each special event.

Please provide your written comments prior to September 23, 2014. Information may be faxed to 907-586-8365 or emailed to [dot.amhs.comments@alaska.gov](mailto:dot.amhs.comments@alaska.gov). A teleconference to hear comments and consider adjustments is scheduled for Thursday, September 25, 2014 at 10:00 a.m. for Southeast schedules and at 1:30 p.m. for Southwest and Southcentral schedules. The meeting will be held in Ketchikan at the Alaska Marine Highway's Marine Engineering Facility, 7037 North Tongass Highway for participants wishing to attend in person.

The toll free number to participate in both teleconferences is: 1-800-315-6338. **Please note the changed conference code: 03902#.** The link to access the proposed schedule patterns is: <http://www.dot.state.ak.us/amhs/share/schedule/considerations.pdf>.

It is the policy of the Department of Transportation & Public Facilities (DOT & PF) that no person shall be excluded from participation in, or be denied benefits of any and all programs or activities we provide based on race, religion, color, gender, age, marital status, ability, or national origin, regardless of the funding source including Federal Transit Administration, Federal Aviation Administration, Federal Highway Administration and State of Alaska Funds.

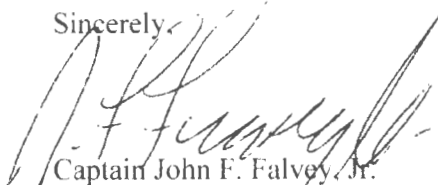
*"Keep Alaska Moving through service and infrastructure."*



The State of Alaska Department of Transportation & Public Facilities (DOT & PF) complies with Title II of the Americans with Disabilities Act of 1990. Individuals with disabilities who may need auxiliary aids, services, and/or special modifications to participate in this public meeting should contact AMHS Operations Manager, Capt. Tony Karvelas at (907) 228-7252 and TDD (907) 269-0743, TTY 1-800-770-8793, Alaska Relay, Voice: 7-1-1 or 1-800-770-8255 no later than September 09 to make any necessary arrangements.

If you have any additional questions or need additional information, please contact the AMHS Operations Manager, Tony Karvelas, at (907) 228-7252 or (907) 617-4277.

Sincerely,



Captain John F. Falvey, Jr.  
General Manager

ENCLOSURES:

Draft FY16 Operating Plan 15.07  
Proposed Vessel Deployment  
Calendars of Events  
Weekly Vessel Pattern Graphs

DISTRIBUTION:

All Southeast Alaska Mayors  
All Southcentral Alaska Mayors  
All Southwest Alaska Mayors  
Alaska Travel Industry Association  
ARDORS  
Commercial Shipping Companies  
CVBs  
DOT/PF Southeast Regional Director  
Marine Transportation Advisory Board  
Managers, AMHS Terminals  
Masters, AMHS Vessels  
Unions  
IBU  
MM&P  
MEBA  
Tlingit & Haida Central Council  
S.E. Alaska Tribal Government Advisory Committee  
Governor's Office, Office of Management and Budget  
Governor's Office, Deputy Chief of Staff

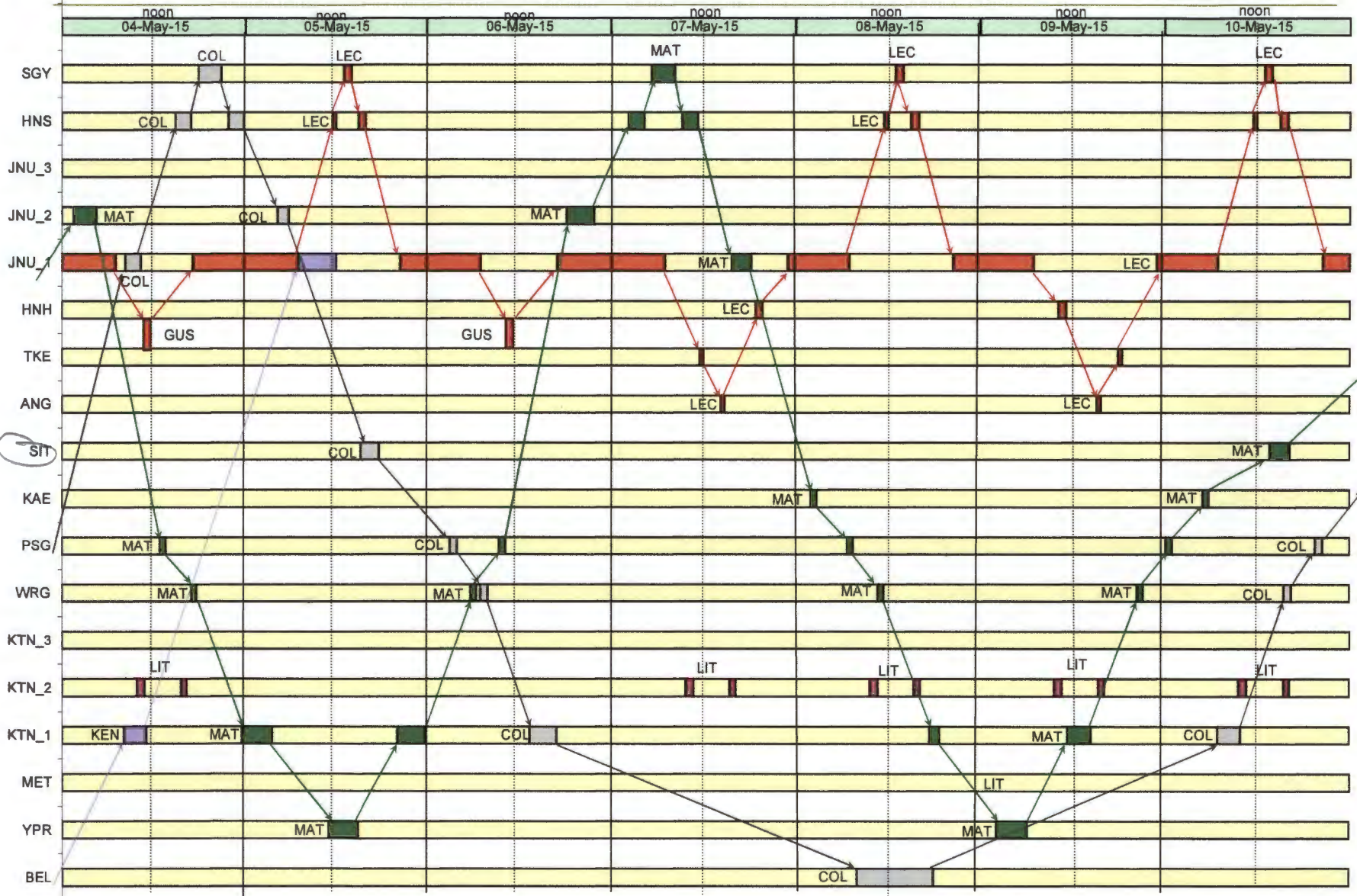
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SE Summer 2015 May 1-15

DRAFT

Revised 12-29-2007

MONDAY TUESDAY WEDNESDAY THURSDAY FRIDAY SATURDAY SUNDAY



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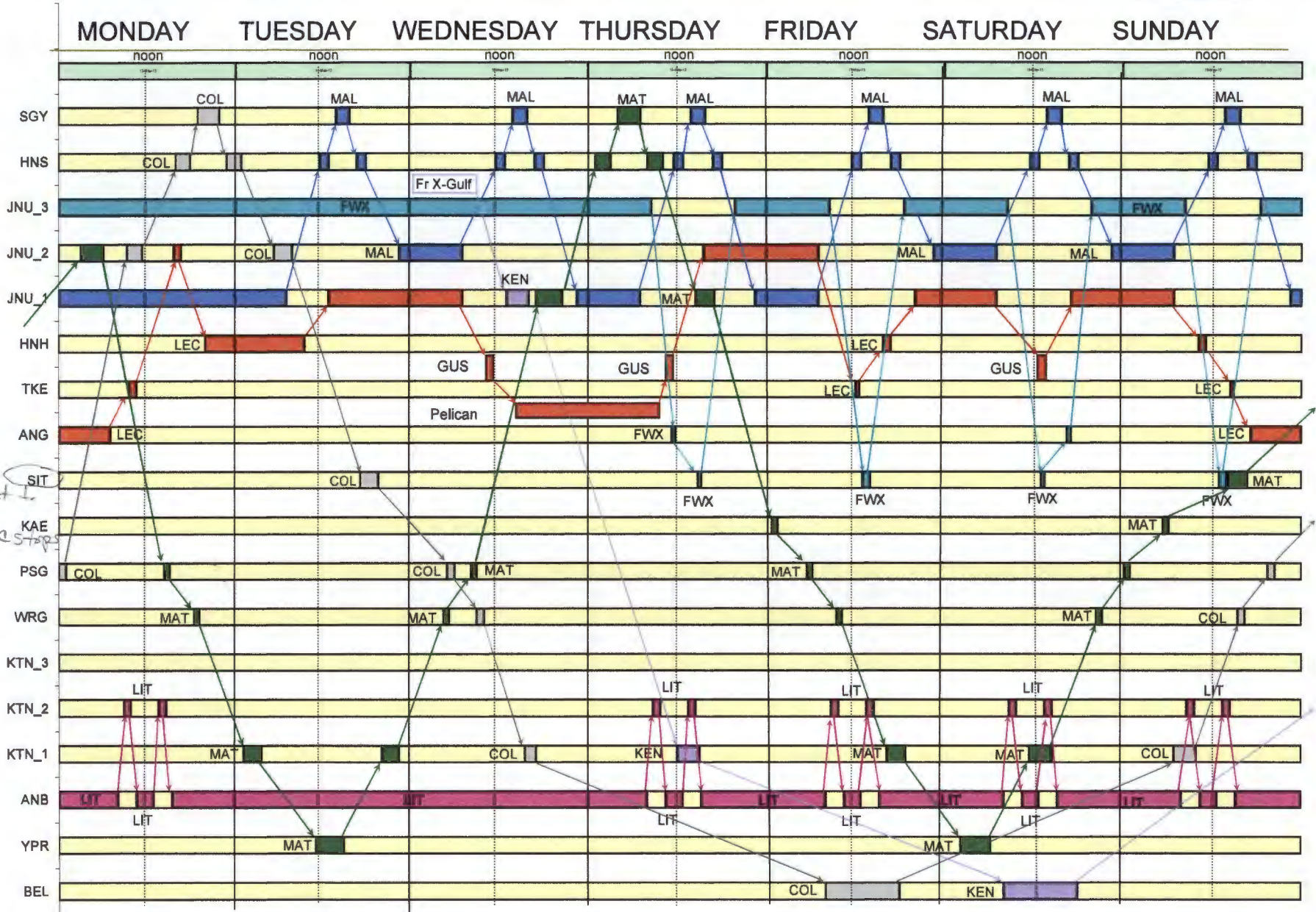
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DRAFT

SE Summer 2014 mid-May - June Wk 1 & 3

DRAFT

Revised 08-21-2014



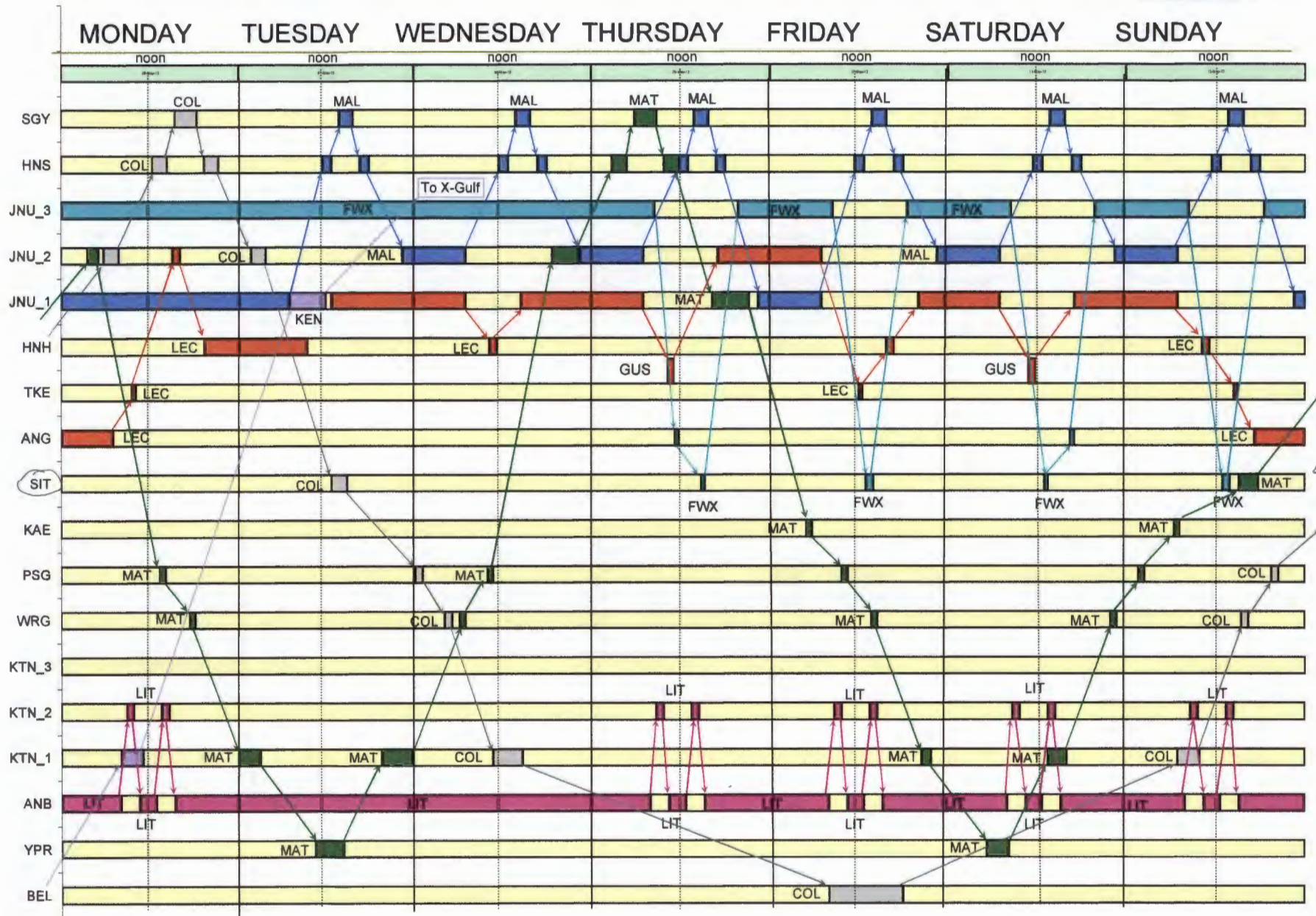
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SE Summer 2014 mid- May - June Wk 2 & 4

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Revised 08-20-2014

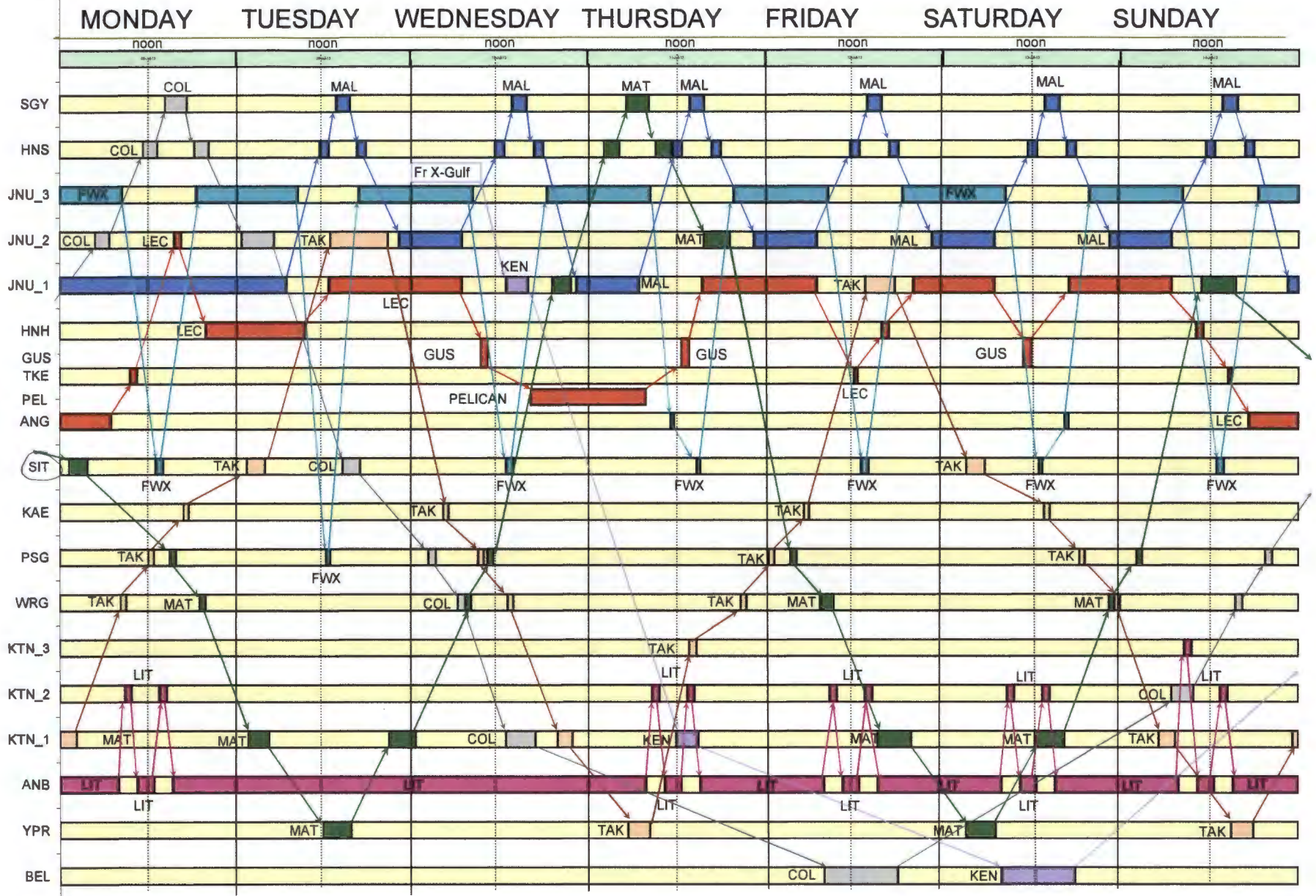


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SE Summer 2015 JUL-AUG Wk 1 & 3

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Revised 08-20-2014

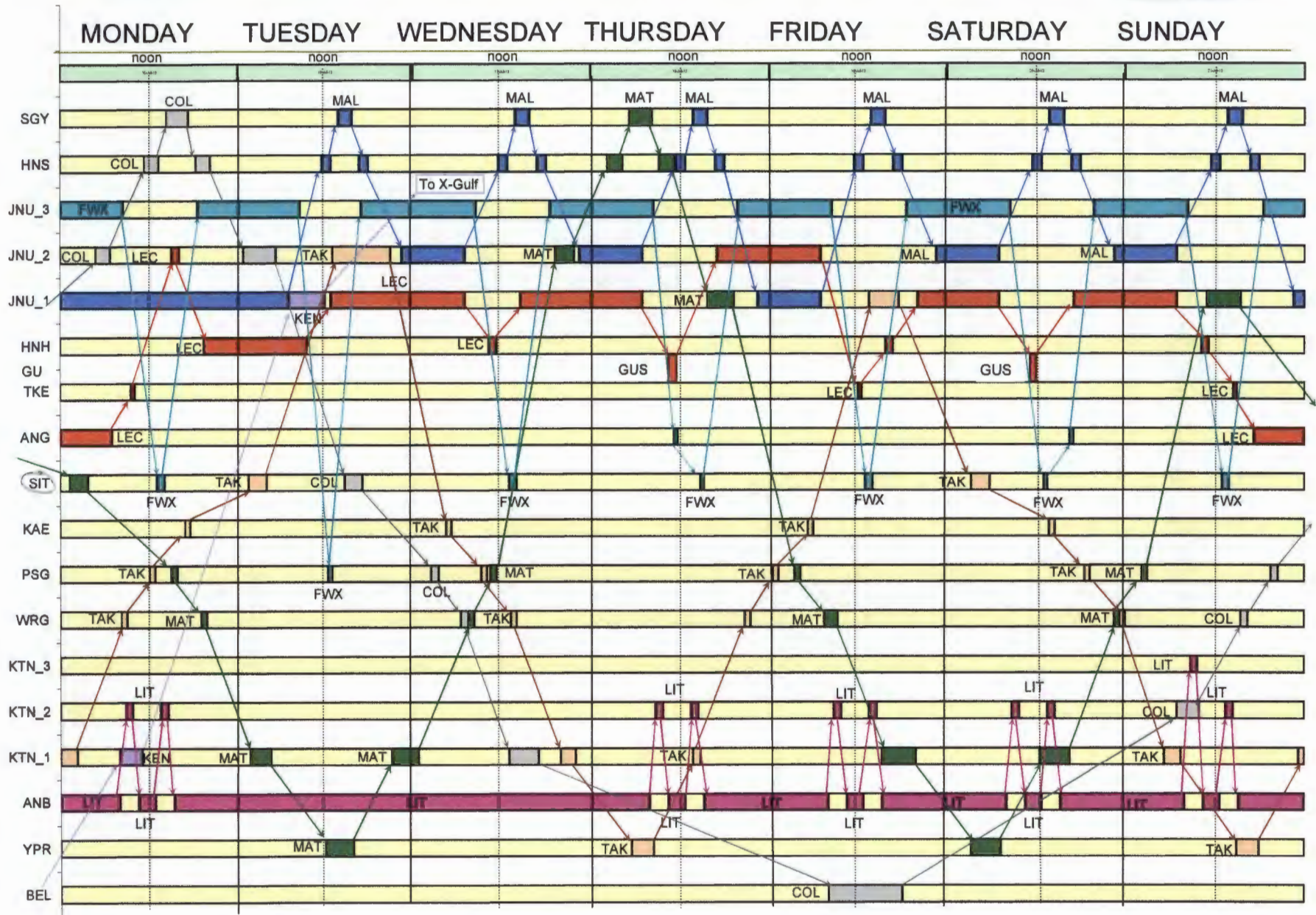


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SE Summer 2015 JUL- AUG Wk 2 & 4

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Revised 08-20-2014

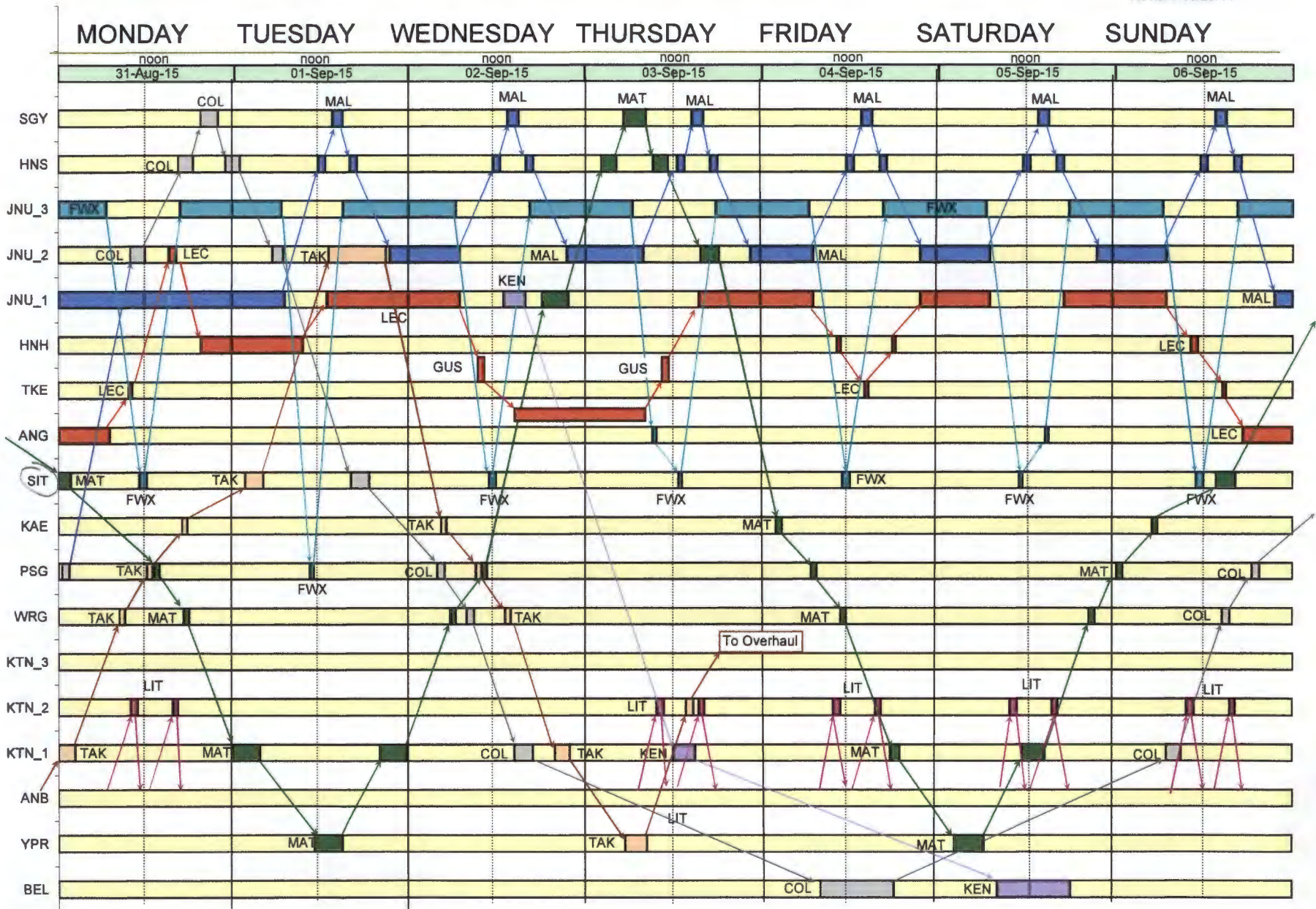


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SE Summer 2015 Sept 1-15

DRAFT

Revised 08/25/14

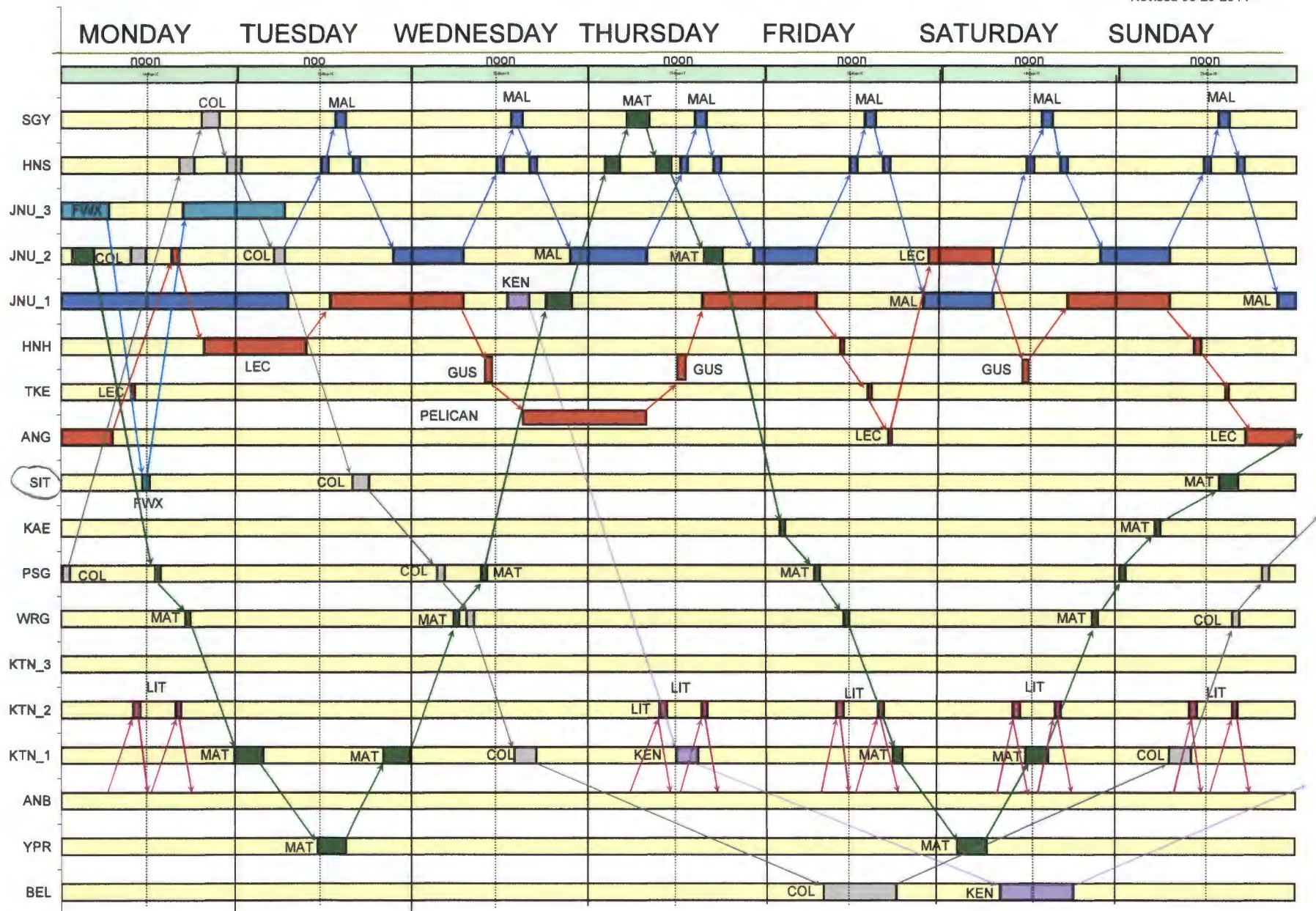


DRAFT

SE Summer 2015 Sept 15-30

DRAFT

Revised 08-29-2014







## Legislation Details

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File #: 14-193      Version: 1      Name:  
Type: Correspondence      Status: AGENDA READY  
File created: 9/18/2014      In control: City and Borough Assembly  
On agenda: 9/23/2014      Final action:  
Title: Reminders & Calendars  
Sponsors:  
Indexes:  
Code sections:  
Attachments: [Reminders and Calendars](#)

Date	Ver.	Action By	Action	Result
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# REMINDERS

<u>DATE</u>	<u>EVENT</u>	<u>TIME</u>
Tuesday, September 23	Regular Meeting	6:00 PM

Tuesday, October 7	Regular Municipal Election [Polls open 7:00 AM – 8:00 PM]	
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Tuesday, October 14	<b>Work Session</b>	<b>5:00 PM</b>
	<b>Municipal Solutions Report</b>	
	Regular Meeting	6:00 PM
Newly elected sworn in under New Business		

Absentee Voting officially begins on Monday, September 22<sup>nd</sup>  
M-F.

## Assembly Calendar

2013    Jan    Feb    Mar    Apr    May    Jun    Jul    Aug    Sep    Oct    Nov    Dec    2015

**September 2014**

Sunday		Monday		Tuesday	Wednesday	Thursday	Friday	Saturday
31	Aug	1	Sep	2	3	4	5	6
				7:00pm Planning 7:00pm School	7:00pm Library Board 6:00pm Police and Fire	12:00pm - 1:30pm SEDA Board Meeting		
7		8		9	10	11	12	13
				6:00pm Reg Assembly Mtg	6:00pm Historic Preservation 6:00pm Port & Harbors Commission	12:00pm LEPC 12:00pm Parks & Rec		
14		15		16	17	18	19	20
		McConnell		McConnell 12:00pm Tree/Landscape 7:00pm Planning 7:00pm School	McConnell 6:30pm STA	McConnell		
21		22		23	24	25	26	27
McConnell		McConnell		McConnell 6:00pm Regular Assembly Mtg	McConnell	McConnell 6:30pm Hospital Board	Hunter	Hunter
28		29		30	1	Oct	2	3
Hunter				1:00pm SCVB Board	7:00pm Library Board 6:00pm Police and Fire	12:00pm - 1:30pm SEDA Board Meeting		4

## Assembly Calendar

2013    Jan    Feb    Mar    Apr    May    Jun    Jul    Aug    Sep    Oct    Nov    Dec    2015

**October 2014**

Sunday		Monday	Tuesday	Wednesday		Thursday	Friday	Saturday	
28	Sep	29	30	1	Oct	2	3	4	
Hunter			1:00pm SCVB Board	7:00pm Library Board 6:00pm Police and Fire		12:00pm - 1:30pm SEDA Board Meeting		Reif	
5		6	7	8		9	10	11	
Reif		Reif	Reif Municipal Election 7:00pm School 7:00pm Planning - Meeting at Fire Hall	Reif 6:00pm Historic Preservation 6:00pm Port & Harbors Commission		Reif 12:00pm LEPC 12:00pm Parks & Rec	Reif		Reif
12		13	14	15		16	17	18	
Reif		Reif	Reif 5:00pm Tentative Worksession: Municipal Solutions Report 6:00pm Reg Assembly Mtg	6:30pm STA					
19		20	21	22		23	24	25	
			12:00pm Tree/Landscape 7:00pm Planning 7:00pm School			6:30pm Hospital Board			
26		27	28	29		30	31	1	Nov
			1:00pm SCVB Board 6:00pm Regular Assembly Mtg						



## Legislation Details

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File #: 14-185      Version: 1      Name:  
Type: Item      Status: AGENDA READY  
File created: 9/11/2014      In control: City and Borough Assembly  
On agenda: 9/23/2014      Final action:  
Title: Approve the minutes of the September 9, 2014 Assembly meeting  
Sponsors:  
Indexes:  
Code sections:  
Attachments: [Consent & Minutes](#)

Date	Ver.	Action By	Action	Result
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# **CONSENT AGENDA**

## **POSSIBLE MOTION**

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**I MOVE TO APPROVE THE CONSENT AGENDA  
CONSISTING OF ITEMS A, B, & C**

I wish to remove Item(s) \_\_\_\_, \_\_\_\_, \_\_\_\_

**Roll call vote required**

**REMINDER – Read aloud a portion of each item being  
voted on that is included in the consent vote.**

If this item is pulled from the consent agenda the following motion would be in order:

**POSSIBLE MOTION**

**I MOVE TO** approve the minutes of the September 9, 2014 Assembly meeting.



# CITY AND BOROUGH OF SITKA

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

## Minutes - Draft City and Borough Assembly

*Mayor Mim McConnell  
Deputy Mayor Matt Hunter  
Vice-Deputy Mayor Phyllis Hackett, Pete Esquiro, Mike Reif,  
Benjamin Miyasato and Aaron Swanson*

*Municipal Administrator: Mark Gorman  
Municipal Attorney: Robin L. Koutchak  
Municipal Clerk: Colleen Ingman, MMC*

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Tuesday, September 9, 2014

6:00 PM

Assembly Chambers

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### REGULAR MEETING

I. CALL TO ORDER

II. FLAG SALUTE

III. ROLL CALL

**Present:** 7 - McConnell, Hunter, Hackett, Esquiro, Reif, Swanson, and Miyasato

IV. CORRESPONDENCE/AGENDA CHANGES

Hackett noted she had received an email from a citizen regarding the dangers of cell phone use while driving. Hackett suggested the Health Needs Commission and Police and Fire Commission look into this matter and provide a recommendation to the Assembly.

Administrator Gorman provided a status report on the Baranof Warm Springs Dock project, administration of fees and management of the dock.

Michael Harmon, Public Works Director, answered questions regarding the Edgecumbe Drive Reconstruction project.

- A 14-180 Reminders and Calendars
- B 14-181 Public Works Monthly Report
- C 14-182 Electrical Department Monthly Report

V. CEREMONIAL MATTERS

- D 14-183 Childhood Cancer Awareness Month



Mayor McConnell read a proclamation recognizing September as Childhood Cancer Awareness month.

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

With the start of a new school year, Tim Fulton, Sitka School Board Clerk, provided a report to the Assembly and gave a brief overview of new staff at the District. Fulton also reviewed Board goals and District goals.

**VII. PERSONS TO BE HEARD**

Richard James spoke to the issue of parking tickets and suggested an Assembly member had used their position as an to have a recent parking ticket dismissed. Hackett came forward and indicated she had followed the appeal process outlined in Sitka General Code and the ticket was dismissed due to no signage.

Bobbi Daniels expressed concern that the citizens and businesses of Sitka were struggling and reiterated her comments from the August 26 Assembly meeting.

**VIII. REPORTS**

Mayor - Reported she had met with Zuill Bailey and Kayla Boettcher about Sitka Summer Music Festival activities, met with new Library Director Robb Farmer and his wife, met with the playground committee members working on improving the playground between the Sage Building and tennis courts, met with Senator Begich and attended the Chamber lunch where he was the speaker, attended the monthly SEDA meeting, and a special SCVB meeting. Upcoming meetings/activities include: attending the Carnival Miracle inaugural visit September 12, attending Southeast Conference next week in Wrangell and then a CLT Conference.

Administrator - Reported a final draft from Municipal Solutions would be ready by September 25 and suggested an Assembly worksession on October 14, announced the new captain of Search and Rescue was Lance Ewers, reported the Blue Lake project was ahead of schedule, the Solar generator had been tested and was ready for use.

Municipal Attorney - reported Mike Gatti would have a report on taxation issues completed soon.

Liaisons - Swanson attended Police and Fire Commission and reported the Commission wanted to take a look at signage in the Harbors, Hackett attended the Sitka Community Hospital Board meeting and reported the new CEO would begin employment soon. Reif noted the Investment Committee would hold a meeting later this month. Hunter stated the Port and Harbors Commission would meet September 10.

Clerk - reported Absentee in-person voting for the municipal election would begin at City Hall on September 22 and continue through October 6.

Other - Hunter reiterated the implications of texting and driving. Mayor McConnell reported Alaska Housing Finance Corporation was offering a Home Choice class September 10 and 11. A certificate from this class was needed if interested in purchasing a Community Land Trust home.

**a. Mayor, b. Administrator, c. Attorney, d. Liaison Representatives, e. Clerk, f. Other****IX. CONSENT AGENDA**

- A 14-175** Approve the Minutes of the August 26, 2014 Assembly Meeting
- This item was **APPROVED** on the Consent Agenda.
- B RES 14-12** Approving the submittal of an application to the Transportation Security Administration (TSA) for grant funding to design improvements to the TSA screening room
- This item was **APPROVED** on the Consent Agenda.
- C RES 14-13** Requesting that the regulations covering the use of herbicides along Alaska Roadways be amended to provide for public comment
- Hackett urged the public to be informed of this issue. Mayor McConnell noted the subject would be talked about at the upcoming Southeast Conference meeting.
- A motion was made by Hunter that this item be APPROVED. The motion PASSED by the following vote.**
- Yes:** 7 - McConnell, Hunter, Hackett, Esquiro, Reif, Swanson, and Miyasato
- D RES 14-14** Approving CBS to submit an Alaska Energy Authority Renewable Energy Grant Application for a Heat Pump Project at the Wastewater Treatment Plant
- Public Works Director, Michael Harmon; Municipal Engineer, Dan Tadic; and Senior Engineer, David Longtin answered questions regarding the heat pump project. Harmon reported the present heat source for the building was diesel.
- A motion was made by Reif that this item be APPROVED. The motion PASSED by the following vote.**
- Yes:** 7 - McConnell, Hunter, Hackett, Esquiro, Reif, Swanson, and Miyasato
- X. UNFINISHED BUSINESS:**
- E ORD 14-27** ORD 14-27 A: Amending SGC at section 4.12.020 entitled "Property Subject to Tax" to increase the biennial motor vehicle registration tax to be used for municipal roads and municipal roads infrastructures such as sidewalks, gutters, bike lanes, sub grade and drainage systems. Alternatively, the Assembly will place on the October 2015 municipal election some form of a tax ballot measure (e.g. sales, fuel, and property) that will produce revenues commensurate with the fees that would be generated by this proposed vehicle tax registration fee ordinance. The increased tax revenues will be dedicated to supporting the maintenance of the CBS roads. If the tax ballot measure is passed

the vehicle registration fee outlined within this ordinance will not be implemented.

**Sponsors:** Reif, Hunter and Hackett

Wayne Dye spoke in support of the ordinance. He stated the tax would specifically be used for roads.

Richard Doland expressed concern that Sitka was losing site of its priorities. As a contractor, this would be an added cost he would need to pass on to his clients.

Bruce Conine spoke against the ordinance. Conine, operator of a seasonal tourist business, personally can't afford the additional tax and didn't want to have to pass it on to his clients.

Meg Williams spoke against the ordinance citing there was a certain demographic that didn't drive much but owned registered vehicles and could not afford the additional fees.

Reif asked what the yearly cost would be for all residential roads (not major roads) to be switched back to gravel. Public Works Director, Michael Harmon, noted to maintain the existing road system as it was today would cost \$2.7 million a year. If the residential roads were turned to gravel the amount would be reduced to \$1.6 Million, but Harmon reminded the quality of life would also be different.

Jay Sweeney, Chief Financial and Administrative Officer, noted between \$400,000 and \$500,000 would be generated from the tax and reminded there were a lot of determining factors to the final number.

Mayor McConnell suggested this issue would be a good task for the Strategic Planning Commission to explore, however, members were needed for the Commission and she encouraged folks to apply. She also stated she looked forward to Mr. Gatti's report on taxation issues.

Hackett urged the public to review the Public Works Road System Master Planning & Funding Strategies study created by Public Works Director, Michael Harmon. Hackett noted this topic had been a recurring issue since she had been an Assembly member and urged folks to become involved and work together to find solutions.

Reif shared this was an issue when he was on the Assembly 20 years ago and reminded the proposed ordinance was only a partial solution.

Miyasato reiterated if the ballot measure mentioned were to pass the tax would not be implemented. He encouraged citizens to offer their input and come together to work towards a solution.

**A motion was made by Hunter to POSTPONE this ordinance until the Assembly meeting (tentatively October 14) after Mr. Gatti's report was presented. The motion PASSED by the following vote.**

**Yes:** 4 - McConnell, Hunter, Hackett, and Swanson

**No:** 3 - Esquiro, Reif, and Miyasato

Hackett felt there were better options and didn't want to settle for something that could be better.

Miyasato, Reif, and Esquiro spoke in opposition to the postponement.

**XI. NEW BUSINESS:**

**New Business First Reading**

**F ORD 14-29** Authorizing the extension of the lease of the land at 323 Seward Street to November 1, 2046 to White Elephant Shop, Inc.

Jan Nelson, White Elephant Shop volunteer, spoke in support of the ordinance.

Reif asked what would happen in the future if the White Elephant Shop were no longer a non-profit and if there should be a clause in the lease. Municipal Attorney, Robin Koutchak, indicated she would need to research the issue.

Esquiro spoke to the letter received from nearby White Elephant Shop property owners and the problems with the use of the access easement. Planning Director, Wells Williams, stated while there was an issue with the easement the matter was unrelated to the lease renewal. Williams noted the easement could not be blocked. Jan Nelson said the Shop had gone to great efforts to lessen impacts to the nearby property owners.

Hackett reminded the community of the value of the White Elephant Shop.

**A motion was made by Reif to POSTPONE this ordinance to allow time for the Municipal Attorney to research if the City would be protected in the event the White Elephant Shop ceased to exist as a non profit. The motion FAILED by the following vote.**

**No:** 7 - McConnell, Hunter, Hackett, Esquiro, Reif, Swanson, and Miyasato

**A motion was made by Hunter that this ordinance be APPROVED on FIRST READING. The motion PASSED by the following vote.**

**Yes:** 7 - McConnell, Hunter, Hackett, Esquiro, Reif, Swanson, and Miyasato

**G ORD 14-32** Proposing to amend Title 1, Administration, of the SGC by adding Section 1.04.90 Use of City Seal

Hunter expressed appreciation to the Municipal Clerk for being proactive.

**A motion was made by Hackett that this Ordinance be APPROVED on FIRST READING. The motion PASSED by the following vote.**

**Yes:** 7 - McConnell, Hunter, Hackett, Esquiro, Reif, Swanson, and Miyasato

**H ORD 14-31** Proposing to amend Title 2, Administration, of the SGC by amending Section 2.40.040 Initiative and Referendum to properly reflect the State of Alaska Constitution Article IX, Section 7 that citizen initiative

shall not be used to make or repeal appropriations; and proposing to amend the Home Rule Charter of the CBS, Article VI. Section 6.01 to properly reflect the State of Alaska Constitution Article XI, Section 7 that citizen initiatives shall not be used to make or repeal appropriations; and submitting to the voters that Charter amendment for ratification PULLED

This item was pulled from the agenda. No action was taken.

**I RES 14-15** Submitting CBS FY 2016 State Legislative Priorities to the State of Alaska and 2015 Legislature

Hackett thanked Government Relations Director, Marlene Campbell, and Administrator Mark Gorman for redoing the layout and prioritization of projects.

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

**Yes:** 7 - McConnell, Hunter, Hackett, Esquiro, Reif, Swanson, and Miyasato

**Additional New Business Items**

**J 14-177** Discussion/Direction on a Community Playground

Hackett clarified the group would like to take one of the three tennis courts at Crescent Harbor and incorporate that into the playground and make it ADA accessible and safe. Hackett said it was the intent of the group to raise the funds on their own and the group was not asking the City for funds at this time.

Administrator Gorman stated this had been a priority of the City for years, however, there had not been funding available. If the Assembly was agreeable, Gorman suggested CBS staff engage the community in the planning process and come back together before the Assembly. With no objection, the Assembly agreed to have Gorman proceed.

**K 14-176** Award FY15 General Fund Non-Profit Grants

Assembly members read their individual recommendations for each organization beginning with the Human Services category.

Mayor McConnell recused herself from the Cultural & Educational Services and Community Development categories.

**A motion was made by Reif to award the following in the Cultural & Educational Services category and Community Development category:**

**Alaska Longline Fishermen's \$1,750  
Alaska Sustainable Fisheries Trust \$1,000  
Greater Sitka Arts Council \$4,667  
Pioneers of Alaska Sitka Igloos 12 and 22 \$750  
Sitka Sound Science Center \$3,083  
Sitka Summer Music Festival \$4,417  
The Island Institute, Inc. \$3,083  
The SEER School \$1,250**

Alaska Arts Southeast, Inc. DBA Sitka Fine Arts Camp \$9,167  
 Sitka Community Development Corporation \$2,667  
 Sitka Trail Works \$8,166

The motion PASSED by the following vote.

Yes: 6 - Hunter, Hackett, Esquiro, Reif, Swanson, and Miyasato

Recused: 1 - McConnell

Sitka Local Foods Network representative Maybelle Filler and Beth Kindig urged the Assembly to support their request.

**A motion was made by Miyasato to award the following in the Human Services category:**

Brave Heart Volunteers \$14,714  
 Sitka Counseling and Prevention Services, Inc. \$7,714  
 Sitka Local Foods Network \$3,429  
 Southeast Alaska Independent Living \$8,357  
 The Salvation Army Alaska Sitka Corps \$13,929  
 Youth Advocates of Sitka, Inc. \$1,857

Yes: 7 - McConnell, Hunter, Hackett, Esquiro, Reif, Swanson, and Miyasato

Youth Advocates of Sitka Clinical Director, Libby Stortz, spoke in support of the their proposal.

**L 14-179**

Approve Gary Paxton Industrial Park (GPIP) Board of Directors request to reimburse the GPIP Enterprise Fund for expenses directly related to facilitating the sale of raw water - \$71,970 requested

Administrator Gorman reported it was his recommendation to go forward and look at the request at the end of the fiscal year.

**A motion was made by Reif to approve this item. After hearing from staff, Reif withdrew his motion. No action was taken.**

**XII. PERSONS TO BE HEARD:**

Dave Nuetzel commented the funding of roads should be generated from a gas tax or property tax. As Director of Southeast Alaska Independent Living he spoke against reverting roads back to gravel as this action would make roads inaccessible to some and reduce the quality of life in Sitka.

Beth Kindig wondered if there was a way to increase the width of the bike lane on Sawmill Creek Road. It was suggested she contact the Department of Transportation.

Maybelle Filler commented on the lack of ferry service for Sitka.

**XIII. EXECUTIVE SESSION**

None.

**XIV. ADJOURNMENT**

A motion was made by Miyasato to ADJOURN. Hearing no objection the meeting ADJOURNED at 9:03PM.

ATTEST: \_\_\_\_\_  
Colleen Ingman, MMC  
Municipal Clerk



## Legislation Details

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File #: 14-192      Version: 1      Name:

Type: Appointment      Status: AGENDA READY

File created: 9/11/2014      In control: City and Borough Assembly

On agenda: 9/23/2014      Final action:

Title: Reappoint Gwen Lazzarini and appoint Lisa Baugher to terms on the Police and Fire Commission

Sponsors:

Indexes:

Code sections:

Attachments: [MOTION Appointments](#)  
[Appointments P&F](#)

Date	Ver.	Action By	Action	Result
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Should this item be pulled from the consent the following motion would be in order:

**POSSIBLE MOTION**

**I MOVE TO** reappoint Gwen Lazzarine and Appoint Lisa Baugher to terms on the Police and Fire Commission.



**Application for Appointment to Boards, Committees, and Commissions**  
**: City and Borough of Sitka**

Board/Commission/Committee: Police & Fire  
 Name: GWEN LAZZARINI Daytime Phone: 747-7884  
 Address: 503 BARANOF ST Evening Phone: 747-7884  
 Email Address: foggy lady@ak.net Fax Number: \_\_\_\_\_  
 Length of Residence in Sitka: 10 yrs Registered to vote in Sitka?  Yes  No  
 Employer: Retired

Organizations you belong to or participate in:

*Nothing at this time.*

Explain your main reason for applying:

*See attached*

What background, experience or credentials will you bring to the board, commission, or committee membership?

*See attached*

Please attach a letter of interest, outline, or resume which includes your education, work, and volunteer experience that will enhance your membership.

→ (To be considered, your application must be complete AND be accompanied by one of the above supporting documents.)

Date: 9-2-14 Signature: Gwen Lazzarini

Your complete application and resume should be returned to the Municipal Clerk's Office by noon on the Wednesday prior to an advertised Assembly meeting. Applications received after the deadline will be considered but will not be included in the Assembly packets for review prior to appointment.

Appointments are normally made during open session of an Assembly meeting, however, Assembly members may vote to discuss applicant(s) in closed executive session. In this case, do you wish to be present when your application is discussed?  Yes  No

Return to:  
 Sara Peterson, Deputy Clerk  
 100 Lincoln Street  
 Fax: 907-747-7403  
 Email: sara@cityofsitka.com

September 2, 2014

Assembly members:

**Pre-Sitka volunteer experience**

Before moving to Sitka in 2004, I lived in Seattle. Following early retirement, I volunteered with my local fire department doing office work and making requested house calls to seniors for a fall-prevention safety assessment within their home. I also volunteered at my local police department for the same five years doing office work along with being trained to become a victim assistant. At the police or family's request I would go to the scene on deaths, suicides, rapes and domestic violence incidents to be of help to the family and/or survivors where needed.

**Sitka Volunteer Experiences**

Once in Sitka, I began my community involvement on the SCH board working with three CEO's over a six year period; joined the Police & Fire Commission and stayed about 5 or 6 years, enjoyed working with the public and their varied issues; served a short time at LEPC as I didn't feel involved. I joined the Tourism Commission, worked as board chair on Sitka's signage project until health reason forced me to resign. I found this project to be challenging and fun. For 6 years, I was a summer volunteer at the O'Connell Bridge kiosk, sharing information, suggestions and advice to passengers that tendered to the bridge. Nothing like telling hundreds of visitors "where to go and being thanked."

**Education, work Experience**

I graduated from Bradley Univ in IL way back in 1963. I spent my early working years working in the Chicago loop working in a large CPA firm. I married and had a son and became a stay at home mother, which was the norm back in the day. Following my solo move to Seattle, I worked in the advertising for a large food distributor to Seattle area grocery stores. Following lay-offs, I switched to being a sales exec. to a high-end food brokerage firm, working with grocery stores, advertising and promotions.

**Why am I qualified?**

I am a logical thinking person and do not let emotions get in the way of my decision-making. I enjoy being part of a discussion and the process of making the commission and/or board function with more clarity and in finding solutions. I miss being part of Sitka's running dialog and want to re-engage.



Gwen Lazzarini



**Application for Appointment to Boards, Committees, and Commissions  
City and Borough of Sitka**

Board/Commission/Committee: Police/Fire  
 Name: Lisa Baugher Daytime Phone: 620-441-7322  
 Address: 1711 Sawmill Creek Rd Evening Phone: same  
 Email Address: lisa@longhornsalepen.com Fax Number: \_\_\_\_\_  
 Length of Residence in Sitka: 4 years Registered to vote in Sitka?  Yes  No  
 Employer: Self

Organizations you belong to or participate in:

Sitka Little League      AK State Troopers DV training  
Sitka Homeschoolers  
Sitka Assembly of God Worship Team

Explain your main reason for applying: At the last Police/Fire Commission meeting, conducting a sign inventory and updating signage was discussed. In addition to my police and fire experience, I was part of a sign inventory for the US Corps of Engineers. That experience could be put to use to help the City of Sitka update their signage.

What background, experience or credentials will you bring to the board, commission, or committee membership?

See attached resume

Please attach a letter of interest, outline, or resume which includes your education, work, and volunteer experience that will enhance your membership.

→ (To be considered, your application must be complete AND be accompanied by one of the above supporting documents.)

Date: 9/15/2014 Signature: Lisa Baugher

Your complete application and resume should be returned to the Municipal Clerk's Office by noon on the Wednesday prior to an advertised Assembly meeting. Applications received after the deadline will be considered but will not be included in the Assembly packets for review prior to appointment.

Appointments are normally made during open session of an Assembly meeting, however, Assembly members may vote to discuss applicant(s) in closed executive session. In this case, do you wish to be present when your application is discussed?  Yes  No

Return to:  
 Sara Peterson, Deputy Clerk  
 100 Lincoln Street  
 Fax: 907-747-7403  
 Email: sara@cityofsitka.com

# Lisa J. Baugher

1711 Sawmill Creek Rd. 620-441-7322  
Sitka, AK 99835 [lisa@longhornsalepen.com](mailto:lisa@longhornsalepen.com)

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## Education:

Missouri Western State College, St. Joseph, MO – B.S. Music Education –Vocal – 1986  
Missouri Western State College, St. Joseph, MO – B.S. Leisure Management – Outdoor – 1987  
Johnson County Community College, Overland Park, KS – Law Enforcement Academy – 1987 – Valedictorian

## Achievements:

FEMA – Emergency Management Institute – NIMS – IS 700 - 2013  
FEMA – Emergency Management Institute – ICS – IS 100 - 2013  
Anderson County KS Volunteer Fire Department – 1999 – 2002  
Kansas University Fire Service – Fire Fighter I Certification – 2001  
Best of the Trails Texas Longhorn Affiliate – Secretary – 1994 - 1997  
JCCC – State of Kansas Law Enforcement Commission Academy – 1987  
Missouri Teaching Certificate K-12 – Lifetime – 1986

## Experience:

**Web Designer/Owner**                      **Longhorn Designs**  
**Sitka, AK**                                      **2005 – Present**

- Consult with client and discuss issues related to betterment of website, target audience and about leading competitors in the field.
- Plan look and feel of the site with client to capture their personality and business needs.
- Design an attractive, user friendly website using Dreamweaver MX 2004 software utilizing HTML, CSS and Cold Fusion.
- Train client in use of site and administration functions.
- Create and process bookkeeping records such as invoicing, payments, receipts and tax records.
- Develop print ads and marketing of websites.

**Teacher**                      **Bluebird Ridge Christian Academy**  
**Sitka, AK**                      **1998 – Present**

- Selects all curriculum, teaching reading, language arts, social studies, mathematics, science, art, health, foreign language, physical education, music, etc.
- Instructs students in citizenship and basic subject matter.
- Develops instructional materials and provides individualized and small group instruction in order to adapt the curriculum to the needs of each student.
- Establishes and maintains standards of student behavior needed to achieve a functional learning atmosphere.
- Evaluates students' academic and social growth and keeps appropriate records.
- Participates in local homeschool group events to provide social stimulation and skills.

**Ranch Owner/Operator**                      **Bluebird Ridge Registered Texas Longhorns**  
**Maple City, Kansas**                      **1991 – 2013**

- Co-owned a herd approximately 60 head of Registered Texas Longhorn cattle.
- Responsible for birth records, management records, veterinarian records, brand numbers, registration applications, horn measurements, tax reports, etc.
- Marketed our ranch breeding program as well as individual animals.

- Prepared annual herd inventory report and price list as a marketing tool.
- Videoed, edited and mailed VHS and DVD pasture tour videos to inquiries and prospective clients.
- Contacted prospective clients and responded to sales inquiries via phone, email and hard copy.
- Developed and implemented an advertising campaign via print, email and website.
- Assisted in range management controlled burn procedures and safety practices, fire suppression techniques.
- Assisted in all other aspects of the ranch; veterinary, cattle management, fencing, etc.

**Municipal Court Clerk  
Paola, KS**

**City of Paola, KS  
1989 – 1993**

- Greeted and assisted the public with Municipal Court questions.
- Prepared tickets and citations for prosecution.
- Conducted Municipal Court proceedings, entered data and maintained docket books.
- Scheduled court dates and cases with officers, prosecutor, defense attorneys and defendants.
- Presented prosecutor with appropriate files and notes.
- Processed utility bills and filled in during absences of the Utility Billing Clerk and City Clerk.
- Compiled and prepared annual state and city reports.
- Filled in for dispatcher in Police Department as needed.

**Park Ranger  
Shawnee Mission, KS**

**Johnson County Park & Recreation District  
1987 – 1989**

- Ensured compliance with local and state laws and regulations using techniques extending from verbal or written warnings through citation and physical custody arrest.
- Performed all law enforcement duties to include road patrol, traffic enforcement and investigation of motor vehicle accidents.
- Issued citations, responded to emergency calls and took initial action necessary to preserve the peace, resolve problems and protect visitors and park resources.
- Served as interpreter and/or educator responsible for researching, preparing, and presenting formal interpretive and educational programs.
- Conducted interpretive programs to include; evening campfire programs, guided walks, demonstration talks, living history programs, life-time activity trips and school programs.
- Staffed nature center, completed sales transactions, provided informal interpretive contacts and assisted with interpretive projects.
- Conducted patrols via vehicle, horseback and on foot; Enforced creel and length limits of park waters
- Sold local fishing and boating permits and state fishing licenses.

**Park Ranger  
Pomona, Kansas**

**U.S. Army Corps of Engineers, Pomona Project,  
Summer 1986, 1987**

- Conducted special and scheduled patrol of project land and water areas including parks, campgrounds, beach, dam, leases, and lake.
- Responded to public inquiries and assisted park patrons in the use of the project.
- Collected campground user fees.
- Read weather instruments and recorded data in an appropriate format.
- Provided assigned maintenance on Project Lands.
- Collected survey information from park visitors as directed.
- Collected sign survey data for the entire project, including mapping and descriptions.
- Responded to emergency calls and assisted local law enforcement and ambulance personnel.



# POLICE AND FIRE COMMISSION

NAME	CONTACT NUMBERS	TERM STARTS	EXPIRES	CATEGORY
JOSEPH REEVES 313 Peterson St.	738-8067 c jreevesfam@yahoo.com	1/9/07 1/26/10 2/12/13	1/9/10 1/26/13 2/12/16	CHAIR
AARON WAMSLEY 205 Vitskari St.	738-8311 c tyrsis79@yahoo.com	2/12/13	3/13/15	VICE-CHAIR <i>Bickar's term</i>
DON JONES PO Box 6205	623-7066 c 623-0431 h d_caldwell_j@hotmail.com	8/28/12 10/7/13	10/26/13 10/7/16	<i>Duncan's term</i>
Sheldon Schmitt Police Chief	747-3349 sheldons@sitkapd.com			Staff Liaison
Dave Miller Fire Chief	747-1861 davem@cityofsitka.com			Staff Liaison
Aaron Swanson 1410 C Sawmill Crk Rd  <i>Alternate: Matthew Hunter 102 Remington Way</i>	747-5499 h 623-7869 c assemblyswanson@cityofsitka.com  <i>738-6851 c assemblyhunter@cityofsitka.com</i>			Assembly Liaison
Serena Wild Police Dept. Staff	747-3349 serenaw@sitkapd.com			Secretary

Established by Ordinance 83-579  
 Meet first Wednesday, 6 p.m. Harrigan Centennial Hall - Rousseau Room  
 5 members from public 3-year terms

**OATH OF OFFICE REQUIRED**

Revised: March 12, 2014



## Legislation Details

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File #: 14-189      Version: 1      Name:

Type: Item      Status: AGENDA READY

File created: 9/11/2014      In control: City and Borough Assembly

On agenda: 9/23/2014      Final action:

Title: Award a Design/Build Contract to CBC Construction Inc. for Net Shed and Jarvis Street Roofs and transfer funds (\$10,000) - Bid \$185,500

Sponsors:

Indexes:

Code sections:

Attachments: [Bid Award CBC Construction](#)

Date	Ver.	Action By	Action	Result
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## **POSSIBLE MOTION**



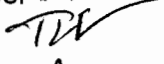
I move to approve the transfer of \$10,000 from Harbor Fund Undesignated Working Capital to Crescent Harbor Shelter Re-Roof (Project #90769) and approve award of the Design-Build contract for the Jarvis Control and Crescent Harbor Re-Roof Project to CBC Construction for \$185,500.


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## MEMORANDUM

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**To:** Mayor McConnell and Members of the Assembly  
Mark Gorman, Municipal Administrator

**From:** Michael Harmon, P.E., Public Works Director   
Dan Tadic, P.E., Municipal Engineer   
Ted Laufenberg, P.E., Engineer 

**Reviewed:** Tori Fleming, Contract Coordinator 

**CC:** Jay Sweeney, Chief Finance and Administrative Officer 

**Date:** September 16, 2014

**Subject:** Recommendation to award a Design-Build contract to Re-Roof Jarvis Control Building and Crescent Harbor Shelter to CBC Construction

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Background:

The Jarvis Substation Control Building Re-Roofing was budgeted through the Electric Department in 2013. The original flat (low slope) roof is leaking, under-insulated, and expensive to maintain, thus a shingled gable roof and added insulation are in this design to reduce annual operating and replacement costs.

The Crescent Harbor Shelter roof, is the original from the 1985 construction and is failing. Through Harbor Funding, it will be replaced with architectural shingles of the same style as the Harrigan Centennial and Kettleston Memorial facilities.

Analysis:

The Public Works Department received one proposal for this design-build project on September 10, 2014. The Request for Proposals was advertised in the Sitka Daily Sentinel, Juneau Empire and Anchorage Daily News in accordance with City and Borough of Sitka procurement policies. The proposal, which was deemed responsive, was from CBC Construction for a total sum of \$185,500.

Fiscal Notes:

*Electric Department- Jarvis Control Building Re-Roof* **original budget of \$120,000** and construction completion cost estimate totals \$103,880.

*Harbor Department- Crescent Harbor Shelter Re-Roof* **original budget of \$95,493** with an estimated construction and project management cost of \$105,400. **This budget line item is \$9,900 less than the expected cost.**

Recommendation:

**Transfer \$10,000 from Harbor Fund Undesignated Working Capital to Crescent Harbor Shelter Re-Roof (Project #90769) and approve award of the Design-Build contract for the Jarvis Control and Crescent Harbor Re-Roof Project to CBC Construction for \$185,500.**



## Legislation Details

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File #: ORD 14-29    Version: 1    Name:

Type: Ordinance    Status: SECOND READING

File created: 8/6/2014    In control: City and Borough Assembly

On agenda: 9/23/2014    Final action:

Title: Authorizing the extension of the lease of the land at 323 Seward Street to November 1, 2046 to White Elephant Shop, Inc.

Sponsors:

Indexes:

Code sections:

Attachments: [MOTION ORD 14-29](#)  
[ORD 14-29 White Elephant Lease docs](#)  
[Breedlove Ltr White E Lease](#)  
[Scott Harris Letter White E](#)

Date	Ver.	Action By	Action	Result
9/9/2014	1	City and Borough Assembly		
9/9/2014	1	City and Borough Assembly		
8/12/2014	1	City and Borough Assembly	REFERRED TO STAFF	

## **Suggested Motion**

I MOVE TO approve Ordinance 2014-29 on second and final reading.



# City and Borough of Sitka

100 Lincoln Street Sitka, Alaska 99835

*Coast Guard City, USA*

## MEMORANDUM

**To:** Mark Gorman, Municipal Administrator  
Mayor McConnell and Members of the Assembly

**From:** Wells Williams, Planning Director

**Subject:** Ordinance 2014-29

**Date:** August 5, 2014

Ordinance 2014-29 is on the Assembly agenda authorizing the extension of the lease of the parcel for the White Elephant Shop an additional thirty years.

The lease, for the municipally owned lot underneath the White E thrift shop, is currently scheduled to expire in November of 2016. The organization is considering making improvements to the building so they have requested an extension before they make major investments in the structure.

The property is zoned R-1. Any expansion of the thrift shop itself will go through the conditional use process.

The existing lease appears to go back, in numerous iterations, several decades. The procedures that were followed in previous extensions are unclear. As a result, the Planning Office drafted ordinance 2014-29 to formalize the lease extension.

Thank you.

CITY AND BOROUGH OF SITKA

ORDINANCE NO. 2014 - 29

AN ORDINANCE OF THE CITY AND BOROUGH OF SITKA, ALASKA  
AUTHORIZING THE EXTENSION OF THE LEASE OF THE LAND AT 323 SEWARD  
STREET TO NOVEMBER 1, 2046 TO WHITE ELEPHANT SHOP, INC.

1. **CLASSIFICATION.** This ordinance is not of a permanent nature and is not intended to become a part of the Sitka General Code.

2. **SEVERABILITY.** If any provision of this ordinance or any application thereof to any person or circumstance is held invalid, the remainder of this ordinance and application thereof to any person or circumstances shall not be affected thereby.

3. **PURPOSE.** The purpose of this ordinance is to facilitate the continued lease of the land underneath the White Elephant thrift shop for an additional thirty years. The City and Borough Assembly recognizes the considerable contributions the organization makes to the community through the revenues from the thrift store. The extension of the lease would provide an additional degree of certainty, encourage building improvements on the site, and further assist the special community asset known as the White E.

4. **ENACTMENT.** NOW, THEREFORE, BE IT ENACTED by the Assembly of the City and Borough of Sitka.

A. The leasing of approximately the 10,000 square foot parcel known as a Portion of Lots 7, 8, C9, and C10 of Block 8 of US Survey to White Elephant Shop Inc. is hereby authorized with the following terms:

- 1) The parcel is valued at \$116,000.
- 2) The annual lease payments shall be \$1.00 a year consistent with the current lease.
- 3) The lease shall expire on November 1, 2046 which represents a thirty year extension of the lease that would otherwise expire on November 1, 2016.
- 4) The lease may be extended after November 1, 2046 for two five year increments by simple motion of the City and Borough Assembly.

B. The Administrator is authorized to execute a lease document consistent with the terms of this ordinance, SGC Title 18 that governs municipal leases, and, existing municipal policies.

5. **EFFECTIVE DATE.** This ordinance shall become effective on the day after the date of its passage.

**PASSED, APPROVED, AND ADOPTED** by the Assembly of the City and Borough of Sitka, Alaska this 23<sup>rd</sup> day of September 2014.

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**ATTEST:**

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Colleen Ingman MMC,  
Municipal Clerk

---

Mim McConnell, Mayor

**Sitka White Elephant Shop, Inc.**  
323 Seward St. P.O. Box 6571  
Sitka, Alaska 99835  
907 747 3430

City/Borough of Sitka  
100 Lincoln St  
Sitka, AK 99835  
ATTN: Mark Gorman, City Administrator

July 15, 2014

RE: The Sitka White Elephant Shop, Inc. Lease Renewal

Dear Mr. Gorman:

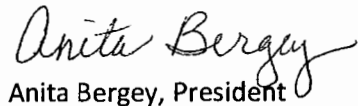
The Sitka White Elephant Shop (WES) lease is due to expire November 2016. Per our lease, the Board of Directors submit this letter as a formal request for a lease renewal at this time. We are happy to have shared a (nearly) 50 year partnership with the City of Sitka, and look forward to many more years, working to serve Sitkans in need. Each lease in the past (since 1966), has been for a ten year period and *"At the option of the lessee, given in writing not less than 90 days prior to the expiration of this lease shall be extended for another ten years"* (per the original lease agreement). We would request a minimum of ten years but would prefer a 20-30 year lease, as it becomes more necessary to invest in infrastructure. In order for the Board of Directors to plan more effectively for the future we request a renewal at this time.

As you know, Sitka is one of the few first class cities to lack a department of health and social services. As it happened, groups such as the Sitka WES have stepped in to provide that support that would otherwise fall on the City and the community. Please see our attached list of the charities we have contributed to over the years. As you know, we serve an essential part of serving those in need such as emergencies from house or boat fires, and affordable clothes and household goods for Sitka's families.

The WES will continue to develop a sustainable plan that serves Sitkans and maintains the value of volunteerism and donations for charity. The WES is clearly a central institution to Sitkans, and we are aware that the community relies on continued services through our agency.

We look forward to working with you in the same historic tradition of a strong partnership and good faith in all of our past exchanges. Thank you so much for your timely response. Please feel free to contact us for a meeting or additional information.

Respectfully,

  
Anita Bergay, President



**Sitka White Elephant Shop Inc.**

The following are the dollar amounts given to organizations. Some are over a period of several years and some just one year. This from 1992 through 2014, for 23 years.

	Years	
Art Change, Inc		500.00
Babies & Books	12	7,950.00
Baranof Elementary-1 <sup>st</sup> grade books	17	30,830.00
Baranof & Keet Gooshi Heen-Breakfast	10	14,500.00
Betty Eliason Child Care Center	14	31,500.00
Brave Heart	14	81,400.00
Coast Guard Spouses Assoc.		265.00
Kattleson Library	19	34,700.00
Mt Edgecumbe Preschool	21	46,430.00
Operation Starfish		500.00
Sheldon Jackson Child Care Center	7	20,300.00
Sitka Community School-SCORE & School	20	92,200.00
Sitka Counseling & Prevention Services	17	55,300.00
Sitka Fine Arts Camp	17	40,750.00
Sitka Head Start		4,285.00
Sitka Sound Science Center		2,200.00
Sitka Youth Court		200.00
Sitkans Against Family Violence	22	42,280.00
SAIL	8	14,400.00
Swan Lake Senior Center	23	126,888.00
Three to Five Preschool	14	56,300.00
Ventures	11	28,200.00
Youth Advocates		25,448.00
Sitka Holiday Dinners		3,200.00
Easter Group		3,500.00
Young Life		10,300.00
Big Brother/Big Sister	8	20,350.00
Hames Center		3,000.00
Keet Art& Intn'l Fair		2,250.00
A M S E A		8,000.00
Chess Club		1,000.00

Y A B A H		3,000.00
Pacific High School		11,620.00
Raven Radio		750.00
Salvation Army		1,050.00
S T A		2,050.00
Alice Machesney Bike Rack		100.00
Sitka Bicycle		1,900.00
Girl Scouts		1,745.00
Tlingit & Haida Parents		500.00
Sitka Skippers		1,550.00
Sitka High Art Class		100.00
Sitka High School Student Council		500.00
SE Enrichment Resource		2,000.00
SE AK Indian Cultural Center		1,000.00
Center for Community	14	56,200.00
Mt Edgecumbe FTA	12	16,700.00
N A T I V E	10	15,500.00
Pioneer Home		2,519.99
Sitka Cancer Survivors		2,800.00
Sitka Community Hospital Foundation		6,100.00
SE AK Women in Fisheries		4,500.00
SE Enrichment Center		4,000.00
Super Saturdays		18,150.00
A N B		2,000.00
Kimsham Ball fields		5,000.00
Friends of Sitka Health Center		5,803.00
N A C O P		5,000.00
SEARHC Daycare		500.00
Sitka Historical Society		1,000.00
Sitka Volunteer Fire Dept		12,500.00
Performing Art Center		500.00
Sitka Community Hospital Auxiliary		2,050.00
AK Marine Safety		525.00
Pregnancy Aid		2,550.00
Sitka Community Hospital		4,200.00
Sitka Home School		200.00
SEREMS		4,000.00
Marine Mural Project		300.00
Baranof Playground		10,000.00

AK Net/Domestic Violence	500.00
Civil Air Patrol	2,000.00
Chamber of commerce	2,000.00
Sitka Adult Education UAS	400.00
UAS Adult Education	4,310.00
Baby Quilt Project	1,000.00
SEARHC Patient Activities	250.00
Sitka Parent Network	700.00
Sitka Safe Start Initiative	1,569.00
Community Involved Policing Unit	500.00
Stratton Library	3,004.00
Sitka Teen Center	14,745.00
SE AK Native Women	200.00
SHS Girls Fast Pitch Softball	500.00
Community Band	500.00
PARENTS	3,600.00
Pioneer Home Auxiliary	1,000.00
AK Raptor Center	750.00
Sitka Friends of Dance	500.00
SART	1,500.00
NAEYC	500.00
Santa's Helpers	200.00
Sitka Safety Net	1,550.00
AK Center Adaptive Technology	2,000.00
Easter Seal Society	1,000.00
Special Ed Sitka Schools	1,800.00
Baranof Barracudas	300.00
Sitka Explorers 4H club	500.00
Alaska Health Fair	200.00
SEARHC CDU	169.99
JV Softball	500.00
Sitka Little League	3,000.00
Sitka Physically Challenged	500.00
Blatchley Discovery Week	2,000.00
Greater Sitka Arts Council	600.00
Sitka Conservation Society	3,150.00
Sitka School Elementary Counseling	2,800.00

**Total**

**1,079,686.98**

*Individual Assist* 121,500.19  
 1,201,197.07

**SITKA WHITE ELEPHANT SHOP INCORPORATED  
LEASE EXTENSION AND RENEWAL**

This lease extension is between the City and Borough of Sitka, 100 Lincoln Street, Sitka, Alaska 99835 hereinafter LESSOR and Sitka White Elephant Shop Incorporated, P.O. Box 6571, Sitka, Alaska 99835, a non-profit corporation, successor to Sitka-Mt. Edgecumbe Chapter Inc. Of Alaska Crippled Childrens Assn., hereinafter LESSEE.

**WHEREAS**, On October 19, 1966 Lessor and Lessee entered into a "Lease" for the property commonly known as 323 Seward Street, more specifically described in the Lease and its extensions; and

**WHEREAS**, The lease was extended on April 24, 1969, October 24, 1976, April 23, 1996 and November 1, 2006; and

**WHEREAS**, The present lease is to terminate November 1, 2016; and

**WHEREAS**, Lessor and Lessee wish to extend the lease until November 1, 2046 which is a thirty (30) year extension for purposes of aiding Lessee, White Elephant Shop Incorporated, a non-profit, in securing funding for making improvements to the shop.

**NOW THEREFORE**, in consideration of the above premises and in consideration of the mutual promises contained below and in the Lease and its previous extensions, the parties agree as follows:

1. **TERM**: The term of the Lease is extended until November 1, 2046
2. **PREMISES**: The property covered by the Lease is 323 Seward Street, as more specifically described in the original lease and its extensions.
3. **CONDITIONS**: All other conditions and terms of the Lease and its extensions shall remain in full force and effect, subject to the following amendments:
  - a. The yearly rent shall be \$1.00. Subject to adjustment as previously provided in the Lease.
  - b. Paragraph 5 is amended to increase the minimum amount of general liability to \$500,000 and to require that Lessor be included as a named insured.
  - c. If at any time Lessee ceases to operate on these premises as a non-profit, Lessor reserves the right, upon thirty (30) days notice, to terminate this lease and will be entitled to possession of all leasehold improvements.
  - d. Notice shall be given to the addresses noted above.

4. DEFAULT: Failure by Lessee to comply any term or condition of the Lease or its extension shall be cause for termination if such failure continues after thirty days written notice by Lessor.

**WHITE ELEPHANT SHOP, INC.**

**CITY AND BOROUGH OF SITKA**

\_\_\_\_\_  
Title: \_\_\_\_\_

\_\_\_\_\_  
Mark Gorman, Municipal Administrator

**STATE OF ALASKA**                    )  
                                                  ) ss.  
**FIRST JUDICIAL DISTRICT**    )

On this \_\_\_\_ day of \_\_\_\_\_, 2014, \_\_\_\_\_ on behalf of or as agent for, White Elephant Shop Incorporated, whose identity are personally known to me or proved to me on the basis of satisfactory evidence, signed this Lease Agreement and affirms by signing this document to be authorized to sign and does so freely and voluntarily.

\_\_\_\_\_  
Notary Public for Alaska  
My Commission Expires: \_\_\_\_\_

**STATE OF ALASKA**                    )  
                                                  ) ss.  
**FIRST JUDICIAL DISTRICT**    )

On this \_\_\_\_ day of \_\_\_\_\_, 2014, Mark Gorman, Municipal Administrator of the City and Borough of Sitka, Alaska, a municipal corporation organized under the laws of the State of Alaska, signs this Lease Agreement on its behalf, and affirms by signing this document to be authorized to sign on its behalf, and does so freely and voluntarily.

\_\_\_\_\_  
Notary Public for Alaska  
My Commission Expires: \_\_\_\_\_

# LEASE EXTENSION AND RENEWAL

This lease extension is between the City and Borough of Sitka, 100 Lincoln Street, Sitka, Alaska 99835 hereinafter LESSOR and Sitka White Elephant Shop Incorporated, P.O. Box 553, Sitka, Alaska 99835, a non-profit corporation, successor to Sitka-Mt. Edgecumbe Chapter Inc. Of Alaska Crippled Children's Assn., hereinafter LESSEE.

WHEREAS, on October 19, 1966, Lessor and Lessee entered into a lease for the property commonly known as 323 Seward Street, more specifically described in the lease and its extensions; and

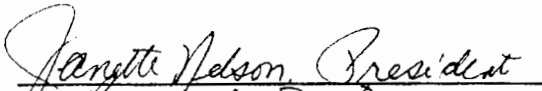
WHEREAS, the lease was extended on April 24, 1969 and October 24, 1976; and

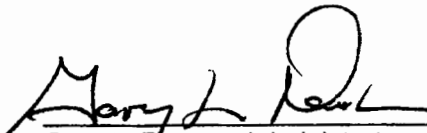
WHEREAS, the lease term, as extended, presently runs until November 1, 1996, and Lessor and Lessee wish to again extend the term.

NOW THEREFORE in consideration of the above premises and in consideration of the mutual promises contained below and in the lease and its previous extensions, the parties agree as follows:

1. TERM: The term of the lease is extended until November 1, 2006.
2. PREMISES: The property covered by the lease is 323 Seward Street, as more specifically described in the original lease and its extensions.
3. CONDITIONS: All other conditions and terms of the lease and its extensions shall remain in full force and effect, subject to the following amendments:
  - a. The yearly rental shall be \$1.00. Subject to adjustment as previously provided.
  - b. Paragraph 5 is amended to increase the minimum amount of general liability to \$500,000 and to require that Lessor be included as a named insured.
  - c. Notice shall be given to the addresses noted above.
4. DEFAULT: Failure by Lessee to comply any term or condition of the lease or its extension shall be cause for termination if such failure continues after thirty days written notice by Lessor.

DATED this 23 day of April, 1996.

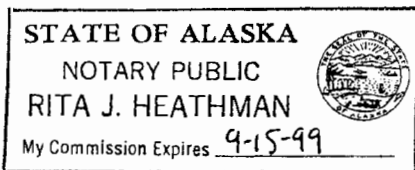
  
 \_\_\_\_\_  
 Janette Nelson, President  
 Board of Directors  
 White Elephant Shop Incorporated  
 P.O. Box 553  
 Sitka, Alaska 99835

  
 \_\_\_\_\_  
 Gary L. Faxton, Administrator  
 City and Borough of Sitka  
 100 Lincoln Street  
 Sitka, Alaska 99835

STATE OF ALASKA                    )  
                                                  )ss.           MUNICIPAL ACKNOWLEDGMENT  
FIRST JUDICIAL DISTRICT        )

THIS CERTIFIES that on the 23<sup>rd</sup> day of April, 1996, before me, a Notary Public in and for the State of Alaska, personally appeared GARY L. PAXTON, to me know and known to me to be the person whose name is subscribed to the foregoing lease and after being first duly sworn according to law, he stated to me under oath that he is the Administrator of the City and Borough of Sitka, Alaska, a corporation organized under the laws of the State of Alaska, that he has been authorized by said corporation to execute the foregoing lease on its behalf and he executed the same freely and voluntarily as the free act and deed of said corporation.

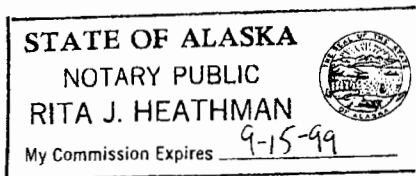
WITNESS my hand and official seal the day and year in this certificate first above written.



Rita J. Heathman  
Notary Public for Alaska  
My Commission expires: 9-15-99

STATE OF ALASKA                    )  
                                                  )ss.  
FIRST JUDICIAL DISTRICT        )

THIS IS TO CERTIFY that on this 23<sup>rd</sup> day of April, 1996, before me the undersigned, a Notary Public in and for the State of Alaska duly commissioned and sworn, personally appeared Janette Nelson, to me known to be the person who executed the above and foregoing instrument, and acknowledged to me that he/she signed and sealed the same freely and voluntarily.



Rita J. Heathman  
Notary Public for Alaska  
My Commission expires: 9-15-99

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LEASE EXTENSION AND RENEWAL

This lease extension, made this 25th day of October 1976

between the

CITY AND BOROUGH OF SITKA

successor to the City of Sitka, Box 79, Sitka, Alaska, hereinafter called the Lessor, and

SITKA - MT. EDGE CUMBE CHAPTER, INC.

of

ALASKA CRIPPLED CHILDREN'S ASSN.,

a non-profit corporation with a mailing address of Box 377, Sitka, Alaska, hereinafter called the Lessee,

WITNESSETH:

It is mutually agreed between the parties that the lease made on the 19th day of October, 1966, as extended by the lease extension of April 24, 1969, by and between the parties hereto concerning the premises described herein, is confirmed in every respect, except that this renewal is to terminate November 1, 1996.

The monthly rental for this renewal period shall be \$300.00 per annum. All other conditions and terms of the original 1966 lease shall remain in effect with the exception that any further extension or renewal shall be at the sole option of lessor.

The property leased is described as follows:

All of Lot 7 and that fractional part of Lots 8, C-9 and C-10 of Block 8, U. S. Survey 1474, Tract A, Townsite of Sitka, Alaska, more fully described as:

Beginning at the most southerly corner of Lot 7, Block 8, as Corner No. 1 of this description; thence N 46° 45' E along the northerly line of Seward Street, 106.62 feet to Corner No. 2; thence N 28° 14' W, 94.54 feet to Corner No. 3; said corner being identical with Corner No. 4 of deed description in Book 18, Page 161, Record of Deeds, recorded in the office of the Magistrate, Ex-Officio Recorder, Sitka, Alaska; thence S 55° 50' W, 97.32 feet to Corner No. 4; thence S 19° 02' 30" E, 49.99 feet to Corner No. 5; thence S 29° 53' E, 62.80 feet to Corner No. 1, the true point of beginning, containing 10,559 square feet of area.



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The above-described parcel is subject to a 20-foot easement for access purposes lying parallel with the easterly boundary of the above-described tract.

IN TESTIMONY WHEREOF, the said parties have set their hands and seals on the day and year first above written in this instrument.

CITY AND BOROUGH OF SITKA, ALASKA

By: *Fermin Gutierrez*  
Fermin Gutierrez,  
Administrator

ATTEST:

*Myrtle V. Flynn*  
Myrtle V. Flynn, Municipal Clerk.

CORPORATE ACKNOWLEDGEMENT

UNITED STATES OF AMERICA )  
STATE OF ALASKA ) ss.

THIS IS TO CERTIFY that on this 25 day of October 1976, before me the undersigned Notary Public in and for the State of Alaska, duly commissioned and sworn, personally appeared FERMIN GUTIERREZ, Administrator, and MYRTLE V. FLYNN, Municipal Clerk, to me known to be the persons 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 therein mentioned and that they are familiar with the Seal of the City and Borough of Sitka, Alaska, and their authority to execute the above instrument is recorded in the Minutes of the Assembly meeting of the City and Borough of Sitka, Alaska, Book 4, Page 14, and that the seal affixed thereto is the seal of the City and Borough of Sitka, Alaska.

WITNESS MY HAND AND OFFICIAL SEAL on the day and year in this certificate first above written.

*Perce S. Hallgren*  
Notary Public for Alaska.  
My Commission Expires: 10/14/78

L E A S E

THIS INDENTURE made this 19 day of Oct, 1966, between the CITY OF SITKA, ALASKA, a municipal corporation with the mailing address of Box 950, Sitka, Alaska, hereinafter called lessor and SITKA-MT. EDGE CUMBE CHAPTER, INC. OF ALASKA CRIPPLED CHILDREN'S ASSN., INC. a non-profit corporation with the mailing address of Box <sup>377</sup> ~~578~~ <sup>Sitka</sup> ~~Edgecumbe~~, Alaska, hereinafter called lessee.

PROPERTY LEASED

The lessor hereby demises and leases unto the lessee the following described tract of ground:

All of lot 7 and that fractional part of lots 8, C-9 and C-10 of Block 8, U.S. Survey 1474, Tract A, Townsite of Sitka, Alaska, more fully described as: Beginning at the most Southerly corner of lot 7, Block 8 as Corner No. 1 of this description; thence N 46°45' E along the northerly line of Seward St. 106.62 feet to Corner No. 2; thence N 28°14' W, 94.54 feet to Corner No. 3; said Corner No. 3 being identical with Corner No. 4 of deed description in Book 18, page 161, Record of Deeds, recorded in the Office of the Magistrate, Ex-officio recorder, Sitka, Alaska; thence S 55°50' W, 97.32 feet to Corner No. 4; thence S 19°02'30" E, 49.99 feet to Corner No. 5; thence S 29°53' E, 62.80 feet to Corner No. 1, the true point of beginning, containing 10,559 square feet or area.

The above described parcel is subject to a 20 foot easement for access purposes lying parallel with the Easterly boundary of the above described tract.

TERMS

To hold the premises hereby demised unto lessee, from the date of November 1, 1966, for a term of ten (10) years, the lessee pays therefor, THREE HUNDRED DOLLARS (\$300.00) annyally, payable in advance. Receipt of the first year's rental is acknowledged by the execution of this lease.

At the option of the lessee, given in writing not less than 90 days prior to the expiration of this lease shall be extended for another 10 years.

The annual rental is subject to adjustment at the time of such extension provided the appraised value of the adjoining property and property immediately across the street from the adjoining property (if any) has changed more than 25% during the previous 10 year period. Should said annual rental be subject to adjustment it shall be proportional to the average of the

appraised value of said adjoining property and that across the street from it at the time of the lease execution as compared with the said value at the time of modification. Request for lease modification may come from either party hereto.

CONDITIONS AND COVENANTS

The following conditions and covenants are mutually agreed to between the parties:

1. Lessee has no authority to incur liens or order materials on lessor's account and this provision shall be deemed a notice to third parties of non-responsibility on the part of the City for any such liens.

2. Any improvements to the premises made by lessee may be removed prior to or at the termination of lease, or within 90 days thereafter. If not removed, lessor shall have the option of keeping the improvements as its own or removing same from the premises, charging the costs thereof against the lessee.

3. The lessee may not assign this lease or underlet the said premises without written consent of lessor. Lessee may sublet small portions of improved space without obtaining further consent.

4. The lessor or his agents may at reasonable times, enter upon said premises to examine the condition of same.

5. Lessee agrees to save the lessor harmless (1) from any liability by reason of personal injury to any person or persons on or about the said premises; (2) from any liability of any sort caused by the lessor's negligence. Lessee shall furnish lessor evidence of public liability insurance in effect in the minimum amount of \$ 50,000.00.

6. Any notices to either party shall be mailed to the party named in the first paragraph herein unless written notice is given to the other party by the party changing its address to the other party.

IN TESTIMONY WHEREOF the said parties have hereunto set their hands and seals on the day and year first above written in this instrument.

*Handwritten notes:*  
boreja 28  
boby  
afsa bns

CITY OF SITKA, ALASKA

by: John W. Bonnell  
Mayor

ATTEST:

Margaret B. Edlough  
City Clerk

SITKA - MT. EDGE CUMBE CHAPTER, INC.  
of ALASKA CRIPPLED CHILDREN'S ASSN. INC.

by: Jim M. Ray  
President

ATTEST:

Anna Louise Pellett  
Secretary

CORPORATE ACKNOWLEDGEMENT

STATE OF ALASKA )  
                  )    ss.  
CITY OF SITKA    )

THIS CERTIFIES that on this 13<sup>th</sup> day of October,  
1966, before me, a Notary Public in and for the State of Alaska,  
personally appeared JOHN W. O'CONNELL and MARGARET B. FEDOROFF, to me  
known and known to me to be the persons whose names are subscribed to the  
foregoing deed, and after being first duly sworn according to law they  
stated to me under oath that they are the Mayor and City Clerk respectively  
of the City of Sitka, Alaska, a corporation organized under the laws of  
Alaska, that they have been authorized by said corporation to execute the  
foregoing deed on its behalf and they executed the same freely and volun-  
tarily as the free act and deed of said corporation.

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

Melba L. Bidelonef  
Notary Public for Alaska  
My commission expires Oct 12, 1968

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

On this 20<sup>th</sup> day of Oct., 1966, before me, a

Notary Public for the State of Alaska, personally appeared Doris M.

Sengebrough and Anna Louise Pellett  
to me known, who, being by me duly sworn, each for himself and not one

for the other, did depose and say that he resides at Sitka, Alaska, and

that Doris M. Sengebrough is the president of Sitka-NE Electric

Cooperative, Inc. of A.C.A. Co., Inc. and that Anna Louise Pellett  
is the secretary of the same

Corporation, of Sitka, Alaska

in the foregoing indenture named, and the seal thereto affixed is the seal

of the Corporation, and was so affixed by the authority of said Board, and

that by like authority they signed the same as president and secretary;

and they acknowledge the execution of said instrument to be the free

and voluntary act and deed of said Corporation by them, as president

and secretary, aforesaid, voluntarily done and executed.

IN WITNESS WHEREOF, I have hereunto set my hand and  
affixed my official seal the day and year in this certificate first above  
written.

Frank M. Edwards  
Notary Public for Alaska  
My commission expires: 3-22-68

Warren C. Christianson  
Attorney at Law  
Box 4  
Sitka, Alaska

LEASE EXTENSION

THIS LEASE EXTENSION, made this <sup>th</sup> 24 day of ~~March~~ *April*, 1969, between the City of Sitka, Alaska, a municipal corporation, with a mailing address of P. O. Box 950, Sitka, Alaska, hereinafter called the Lessor and Sitka-Mt. Edgecumbe Chapter, Inc. of Alaska Crippled Children's Assn., Inc., a non-profit corporation with a mailing address of P. O. Box 578, Mt. Edgecumbe, Alaska, hereinafter called the Lessee.

It is mutually agreed between the parties that the Lease made on the 19th day of October, 1966, by and between the parties hereto, concerning the premises described herein, is hereby confirmed in every respect, except that said Lease is to terminate on November 1, 1986, instead of November 1, 1976, as provided in the original Lease. All other conditions and terms of said Lease shall remain in full force and effect.

The property leased is as follows:

All of lot 7 and that fractional part of lots 8, C-9 and C-10 of Block 8, U.S. Survey 1474, Tract A, Townsite of Sitka, Alaska, more fully described as: Beginning at the most Southerly corner of lot 7, Block 8 as Corner No. 1 of this description; thence N 46°45' E along the northerly line of Seward St. 106.62 feet to Corner No. 2; thence N 28°14' W, 94.54 feet to Corner No. 3; said corner being identical with Corner No. 4 of deed description in Book 18, page 161, Record of Deeds, recorded in the Office of the Magistrate, Ex-officio recorder, Sitka, Alaska; thence S 55°50' W, 97.32 feet to Corner No. 4; thence S 19°02'30" E, 49.99 feet to Corner No. 5; thence S 29°53' E, 62.80 feet to Corner No. 1, the true point of beginning, containing 10,559 square feet or area.

The above described parcel is subject to a 20 foot easement for access purposes lying parallel with the Easterly boundary of the above described tract.

In testimony whereof, the said parties have set their hands and seals on the day and year first above written in this instrument.

CITY OF SITKA, ALASKA

BY: Les Shepard  
Mayor

ATTEST:

Margaret B. Federoff  
City Clerk

CORPORATE ACKNOWLEDGMENT

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

THIS IS TO CERTIFY that on this 25 day of March, 1969, before me the undersigned, a Notary Public in and for the State of Alaska, duly commissioned and sworn, personally appeared LES SHEPARD, Mayor, and MARGARET B. FEDEROFF, City Clerk, to me known to be the persons 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 therein mentioned and that they are familiar with the Seal of the City of Sitka, Alaska, and their authority to execute the above instrument is recorded in Minutes of the Council of the City of Sitka, Alaska, Book 6, page 229, and that the seal affixed thereto is the seal of the City of Sitka, Alaska.

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

Ray W. Hill Road  
Notary Public for Alaska  
My commission expires: 8/15/72







# City and Borough of Sitka

100 Lincoln Street Sitka, Alaska 99835

*Coast Guard City, USA*

## Notice of Public Hearings

The Assembly of the City and Borough of Sitka will hold a public hearing during a regular meeting scheduled Tuesday, September 23, 2014 on the following items:

**Public hearing and consideration of a lease extension for the White Elephant Shop located at 323 Seward Street. The request is for a lease extension of thirty (30) years. The applicant is Anita Bergey for the White Elephant Shop.**

The Assembly may take action on September 23, 2014. The Assembly meeting will begin at 6:00 pm in Harrigan Centennial Hall at 330 Harbor Drive in Sitka.

Interested residents are encouraged to make comments during the meeting and written comments can be submitted to the Municipal Clerk at 100 Lincoln Street.

U.S. RESERVE  
U.S. RESERVE  
210 SEWARD ST  
SITKA AK 99835

SITKA HERITAGE PROPERTIES, LLC  
APARTMENT, THE  
SITKA HERITAGE PROPERTIES, LLC  
1 MAKSOUTOFF ST  
SITKA AK 99835

KCCR PROPERTIES, LLC  
KCCR PROPERTIES, LLC  
P.O. BOX 614  
SITKA AK 99835

TELEPHONE UTILITIES OF NORTHLAND  
ATTN: TAX DEPT.  
TELEPHONE UTILITIES OF NORTHLAND  
600 TELEPHONE AVE, MS#8  
ANCHORAGE AK 99503

DOCK STREET BLDG. CORP.  
DOCK STREET BLDG. CORP.  
P.O. BOX 7920  
KETCHIKAN AK 99901

MICHAEL FINN  
FINN, MICHAEL, K.  
116 KNUTSON DR  
SITKA AK 99835

HEATH/G./CANDI  
BARGER/CHAMBERS/BARGER  
BARGER, HEATH, CHAMBERS, G. &  
BARGER, C.  
P.O. BOX 365  
SITKA AK 99835

SHEE ATIKA HOLDINGS LINCOLN ST, LLC  
SHEE ATIKA HOLDINGS LINC. ST, LLC  
315 LINCOLN ST, #300  
SITKA AK 99835

JAMES & JOYCE MARTIN JOINT LIVING  
TRUST  
MARTIN, JAMES, E./JOYCE, M.  
830 FRANKTON RD  
HOOD RIVER OR 97031

SNOWDEN GROUP, LLC  
SNOWDEN GROUP, LLC  
P.O. BOX 178  
SITKA AK 99835

CHRISTOPHER BOWEN  
BOWEN, CHRISTOPHER, S.  
310 MARINE ST  
SITKA AK 99835

LOYAL ORDER OF MOOSE, INC.  
LOYAL ORDER OF MOOSE  
337 LINCOLN ST.  
SITKA AK 99835

KAREN LUCAS  
LUCAS, KAREN  
218 OBSERVATORY ST  
SITKA AK 99835

DARRYL/BERNADET REHKOPF/RASMUSSEN  
REHKOPF, DARRYL/RASMUSSEN,  
BERNADETTE  
210 OBSERVATORY ST  
SITKA AK 99835

BARNABY/C.A. DOW/MARIE  
DOW, BARNABY & MARIE, CHRISTINE A  
6537 17TH AVE NE  
SEATTLE WA 98115

BRYAN/DANA HOWEY/JORGENSEN-HOWEY  
HOWEY, BRYAN & JORGENSEN-HOWEY,  
DANA  
P.O. BOX 506  
SITKA AK 99835

STEVEN/KARI FISH/JOHNSON  
FISH, STEVEN, T./JOHNSON, KARI, L.  
P.O. BOX 6448  
SITKA AK 99835

ELIZABETH/GEORG KILKEARY/HARDISON,III  
KILKEARY, ELIZABETH & HARDISON,  
GEORGE  
305 SEWARD STREET  
SITKA AK 99835

S & C/ M & G SHAFFER TRUST/TISHER  
SHAFFER, ST./CA./ TISHER, MI/GL  
315 SEWARD ST  
SITKA AK 99835

DOROTHY/SHERRIE BREEDLOVE  
BREEDLOVE, DOROTHY, L./SHERRIE, L.  
319-B SEWARD ST.  
SITKA AK 99835

WHITE ELEPHANT SHOP, INC.  
WHITE ELEPHANT(BLDG ONLY)  
WHITE ELEPHANT SHOP, INC.  
323 SEWARD ST  
SITKA AK 99835

R. SCOTT/LAURA HARRIS/KRONSPERGER  
HARRIS, R. SCOTT/KRONSPERGER, LAURA,  
L.  
325 SEWARD ST  
SITKA AK 99835

SCOJO, LLC  
WESTMARK SITKA  
SCOJO, LLC  
330 SEWARD ST.  
SITKA AK 99835

**Assembly Mailing  
September 12, 2014**



# City and Borough of Sitka

100 Lincoln Street Sitka, Alaska 99835

*Coast Guard City, USA*

## Notice of Public Hearings

The Assembly of the City and Borough of Sitka will hold a public hearing during a regular meeting scheduled Tuesday, September 9, 2014 on the following items:

**Public hearing and consideration of a lease extension for the White Elephant Shop located at 323 Seward Street. The request is for a lease extension of thirty (30) years. The applicant is Anita Bergey for the White Elephant Shop.**

First reading is September 9, 2014. The Assembly may take action on September 23, 2014.

The Assembly meeting will begin at 6:00 pm in Harrigan Centennial Hall at 330 Harbor Drive in Sitka.

Interested residents are encouraged to make comments during the meeting and written comments can be submitted to the Municipal Clerk at 100 Lincoln Street.

U.S. RESERVE  
U.S. RESERVE  
210 SEWARD ST  
SITKA AK 99835

SITKA HERITAGE PROPERTIES, LLC  
APARTMENT, THE  
SITKA HERITAGE PROPERTIES, LLC  
1 MAKSOUTOFF ST  
SITKA AK 99835

KCCR PROPERTIES, LLC  
KCCR PROPERTIES, LLC  
P.O. BOX 614  
SITKA AK 99835

TELEPHONE UTILITIES OF NORTHLAND  
ATTN: TAX DEPT.  
TELEPHONE UTILITIES OF NORTHLAND  
600 TELEPHONE AVE, MS#8  
ANCHORAGE AK 99503

DOCK STREET BLDG. CORP.  
DOCK STREET BLDG. CORP.  
P.O. BOX 7920  
KETCHIKAN AK 99901

MICHAEL FINN  
FINN, MICHAEL, K.  
116 KNUTSON DR  
SITKA AK 99835

HEATH/G./CANDI  
BARGER/CHAMBERS/BARGER  
BARGER, HEATH, CHAMBERS, G. &  
BARGER, C.  
P.O. BOX 365  
SITKA AK 99835

SHEE ATIKA HOLDINGS LINCOLN ST, LLC  
SHEE ATIKA HOLDINGS LINC. ST, LLC  
315 LINCOLN ST, #300  
SITKA AK 99835

JAMES & JOYCE MARTIN JOINT LIVING  
TRUST  
MARTIN, JAMES, E./JOYCE, M.  
830 FRANKTON RD  
HOOD RIVER OR 97031

SNOWDEN GROUP, LLC  
SNOWDEN GROUP, LLC  
P.O. BOX 178  
SITKA AK 99835

CHRISTOPHER BOWEN  
BOWEN, CHRISTOPHER, S.  
310 MARINE ST  
SITKA AK 99835

LOYAL ORDER OF MOOSE, INC.  
LOYAL ORDER OF MOOSE  
337 LINCOLN ST.  
SITKA AK 99835

KAREN LUCAS  
LUCAS, KAREN  
218 OBSERVATORY ST  
SITKA AK 99835

DARRYL/BERNADET REHKOPF/RASMUSSEN  
REHKOPF, DARRYL/RASMUSSEN,  
BERNADETTE  
210 OBSERVATORY ST  
SITKA AK 99835

BARNABY/C. A. DOW/MARIE  
DOW, BARNABY & MARIE, CHRISTINE A  
6537 17TH AVE NE  
SEATTLE WA 98115

BRYAN/DANA HOWEY/JORGENSEN-HOWEY  
HOWEY, BRYAN & JORGENSEN-HOWEY,  
DANA  
P.O. BOX 506  
SITKA AK 99835

STEVEN/KARI FISH/JOHNSON  
FISH, STEVEN, T./JOHNSON, KARI, L.  
P.O. BOX 6448  
SITKA AK 99835

ELIZABETH/GEORG KILKEARY/HARDISON,III  
KILKEARY, ELIZABETH & HARDISON,  
GEORGE  
305 SEWARD STREET  
SITKA AK 99835

S & C/ M & G SHAFFER TRUST/TISHER  
SHAFFER, ST./CA./ TISHER, MI/GL  
315 SEWARD ST  
SITKA AK 99835

DOROTHY/SHERRIE BREEDLOVE  
BREEDLOVE, DOROTHY, L./SHERRIE, L.  
319-B SEWARD ST.  
SITKA AK 99835

WHITE ELEPHANT SHOP, INC.  
WHITE ELEPHANT(BLDG ONLY)  
WHITE ELEPHANT SHOP, INC.  
323 SEWARD ST  
SITKA AK 99835

R. SCOTT/LAURA HARRIS/KRONSPERGER  
HARRIS, R. SCOTT/KRONSPERGER, LAURA,  
L.  
325 SEWARD ST  
SITKA AK 99835

SCOJO, LLC  
WESTMARK SITKA  
SCOJO, LLC  
330 SEWARD ST.  
SITKA AK 99835

**Assembly Mailing  
September 2, 2014**



# City and Borough of Sitka

100 Lincoln Street Sitka, Alaska 99835

*Come Grow! City USA*

## Notice of Public Hearings

The Assembly of the City and Borough of Sitka will hold a public hearing during a regular meeting scheduled Tuesday, August 12, 2014 on the following items:

**Public hearing and consideration of a lease extension for the White Elephant Shop located at 323 Seward Street. The request is for a lease extension of thirty (30) years. The applicant is Anita Bergey for the White Elephant Shop.**

First reading is August 12, 2014. The Assembly may take action on August 26, 2014.

The Assembly meeting will begin at 6:00 pm in Harrigan Centennial Hall at 330 Harbor Drive in Sitka.

Interested residents are encouraged to make comments during the meeting and written comments can be submitted to the Municipal Clerk at 100 Lincoln Street.

U.S. RESERVE  
U.S. RESERVE  
210 SEWARD ST  
SITKA AK 99835

SITKA HERITAGE PROPERTIES, LLC  
APARTMENT, THE  
SITKA HERITAGE PROPERTIES, LLC  
1 MAKSOUTOFF ST  
SITKA AK 99835

TELEPHONE UTILITIES OF NORTHLAND  
ATTN: TAX DEPT.  
TELEPHONE UTILITIES OF NORTHLAND  
600 TELEPHONE AVE, MS#8  
ANCHORAGE AK 99503

HEATH/G./CANDI  
BARGER/CHAMBERS/BARGER  
BARGER, HEATH, CHAMBERS, G. &  
BARGER, C.  
P.O. BOX 365  
SITKA AK 99835

SHEE ATIKA HOLDINGS LINCOLN ST, LLC  
SHEE ATIKA HOLDINGS LINC. ST, LLC  
315 LINCOLN ST, #300  
SITKA AK 99835

SNOWDEN GROUP, LLC  
SNOWDEN GROUP, LLC  
P.O. BOX 178  
SITKA AK 99835

SNOWDEN GROUP, LLC  
SNOWDEN GROUP, LLC  
P.O. BOX 178  
SITKA AK 99835

CHRISTOPHER BOWEN  
BOWEN, CHRISTOPHER, S.  
310 MARINE ST  
SITKA AK 99835

CRAIG/BRENDA SHOEMAKER  
SHOEMAKER, CRAIG, A./BRENDA, S.  
P.O. BOX 2174  
SITKA AK 99835

WILLIAM/IRENE FERGUSON  
FERGUSON, WILLIAM, G./IRENE, G.  
207 OBSERVATORY ST  
SITKA AK 99835

DORIK/CAROLYN MECHAU/SERVID  
MECHAU, DORIK/SERVID, CAROLYN  
P.O. BOX 2420  
SITKA AK 99835

WILLIAM/LIBBY STORTZ  
STORTZ, WILLIAM, A./LIBBY  
215 OBSERVATORY ST  
SITKA AK 99835

KAREN LUCAS  
LUCAS, KAREN, J.  
218 OBSERVATORY ST.  
SITKA AK 99835

OBSERVATORY, LLC  
OBSERVATORY, LLC  
P.O. BOX 1785  
SITKA AK 99835

RACHEL MYRON  
MYRON, RACHEL, E.  
P.O. BOX 53  
TENAKEE SPRINGS AK 99841

DARRYL/BERNADET REHKOPF/RASMUSSEN  
REHKOPF, DARRYL/RASMUSSEN,  
BERNADETTE  
210 OBSERVATORY ST  
SITKA AK 99835

BARNABY/C.A. DOW/MARIE  
DOW, BARNABY & MARIE, CHRISTINE A  
6537 17TH AVE NE  
SEATTLE WA 98115

BRYAN/DANA HOWEY/JORGENSEN-HOWEY  
HOWEY, BRYAN & JORGENSEN-HOWEY,  
DANA  
P.O. BOX 506  
SITKA AK 99835

STEVEN/KARI FISH/JOHNSON  
FISH, STEVEN, T./JOHNSON, KARI, L.  
P.O. BOX 6448  
SITKA AK 99835

ELIZABETH/GEORG KILKEARY/HARDISON, III  
KILKEARY, ELIZABETH & HARDISON,  
GEORGE  
305 SEWARD STREET  
SITKA AK 99835

S & C/ M & G SHAFFER TRUST/TISHER  
SHAFFER, ST./CA./ TISHER, MI/GL  
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WHITE ELEPHANT(BLDG ONLY)  
WHITE ELEPHANT SHOP, INC.  
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R. SCOTT/LAURA HARRIS/KRONSPERGER  
HARRIS, R. SCOTT/KRONSPERGER, LAURA,  
L.  
325 SEWARD ST  
SITKA AK 99835

DOROTHY/SHERRI BREEDLOVE  
BREEDLOVE, DOROTHY, L./SHERRI, L.  
319 SEWARD ST, #B  
SITKA AK 99835

SCOJO, LLC  
WESTMARK SITKA  
SCOJO, LLC  
330 SEWARD ST.  
SITKA AK 99835

**Assembly Mailing  
August 1, 2014**

JAMES & JOYCE MARTIN JOINT LIVING  
TRUST  
MARTIN, JAMES, E./JOYCE, M.  
830 FRANKTON RD  
HOOD RIVER OR 97031

August 27, 2014,

Members of the Assembly and Mr. Gorman,

With respect to Ordinance Number 2014-29 and the proposed extension of the lease between the City of Sitka and the White Elephant Shop, Inc. ("The White E"), we would like to submit these comments for your consideration:

As residents of Sitka, we appreciate the contributions made by the White Elephant Shop to the community and various organizations throughout Sitka. We believe in the mission of the White E. but have a dilemma with regard to the following comments. In no way do we mean to imply any negativity toward them but rather simply state a problem that exists with the location of the business.

Contained within each of the lease agreements between the City and the White Elephant Shop is the statement "*The above described parcel is subject to a 20 foot easement for access purposes lying parallel with the easterly boundary of the above described tract.*"

This is our **only** problem with the White Elephant Shop. This easement is our driveway. The residents that live behind the Shop are put at odds with them because the easement is where the Shop's drop-off zone is. We, the residents behind the White E., have asked for help in mitigating the problem and have even taken our problems to them through an attorney. The true problem is the definition of "easement" and who has use of such space. To give credit where credit is due, the White E. has put effort into our concerns and, to a small degree; their "fixes" have an effect *for a while*.

Regardless of the mission of the White Elephant Shop, they are a retail store. They are the **ONLY** retail establishment along Seward Street without designated parking spaces. Under normal circumstances their customer base parks along the length of Seward Street, in all the available parking lots, in every yellow "no parking" spot and, often times, in the lane to our homes (the easement). When the Shop is not open it is very common for people to use the lane (easement) for the purpose of dropping things off or checking the contents of the trash can. **THE EASEMENT IS THE DROP-OFF POINT FOR THE SHOP.** When Seward Street was undergoing repair, we asked the City to provide curb relief on the other side of the Shop in hopes that the White E. would relocate the drop-off location. There is now curb relief but the White E is not willing to relocate this function. Perhaps this is part of the "improvements" they wish to make.

In closing, the use of this easement is not a minor inconvenience to us. It is an ongoing issue, and we feel that making a comment to you is warranted.

Thank you for your time and consideration on this matter. We remain willing to discuss the issues and wish to maintain a positive relationship with our neighbor.

Sincerely,

Scott Harris, Laura Kronsperger 325 Seward St, Dorothy Breedlove, 319 Seward St.



RECEIVED  
SEP 17 2014

September 17, 2014

City & Borough of Sitka

Members of the Assembly,

With regard to the planned lease extension of the White Elephant Shop (White E) I offer these comments:

The White E. has, and still does a great service to the community and I believe that service is needed. However, I also believe they have outgrown their space. According to the memorandum from wells Williams dated August 5, 2014 they have plans on expanding. As the neighbor directly behind the White E. Shop I am concerned as to whether they plan on expanding upwards or back toward my lot line. The shop has no parking for its current customer base and utilizes any and all available parking spaces along Seward Street. This includes the surrounding businesses parking lots, the no parking zones along Seward Street and, more importantly to me the lane next to the White E. This lane is how I get to my home. The White E. has been in its current location for a very long time. The Shop sits in a Residential (R1) zone and yet I do not believe there are any conditional use permits on file. With any conditional use permit process I believe the neighbors would have a method to weigh in on the issues, parking being one of them. THIS process, the one to extend their lease for 30 years appears to be a work around on the conditional use issue. In looking at old drawings it should be noted that the present day structure is somewhat larger than those on file with the City. The rear of the White E. building is a mere 12 feet from my lot line. Also of note, the access easement to my property is to be 20 feet from the lot line and yet the White E. has painted on its drive a "no parking" space much smaller than the 20 feet required. In fact, it is common and accepted that as long as someone is parking near the building, outside the yellow painted pavement it is ok. This is inside the easement.

As long as there is money to extend (or grants available) I suggest the City lease the White E. a piece of the property as they did with Burgess Bauder. The White E. could ultimately purchase it as Burgess did in 2009 (I believe). There is history with this kind of arrangement. At such a location the White Elephant Shop would have all the parking they would need. A structure could be built that would better accommodate their customers. A single floor where the volunteers wouldn't have to climb the stairs to get the next seasons items would seem to be a good thing. An ongoing complaint by White E. staff about moving is that they would lose "walk-up" traffic. From years of watching the store I can attest to a very limited amount of true walk-up. It appears to be more of people getting dropped off nearby and walking in or people parking in the Seward Square Mall, Salon 264 or Northrim Bank parking lots and walking over. Then there are the people who park within the easement. With cars parked along Seward Street in both yellow, no parking zones (common practice) it is nearly impossible for my neighbor to get his big Ford 250 through and my smaller truck barely makes the turn. We are relegated to waiting in traffic for the vehicle to move. It is not uncommon to see White Elephant volunteers chit-chatting with their customers who are blocking our driveway while we wait to gain access

With a new location, and adequate parking this parking issue would be no issue at all. As for those without transportation the City could put up a bus stop next to the White E's new location allowing people to ride the bus to get to the shop.

In talking with other "thrift" store owners I am told that cruise ship employees routinely hire taxi services to get to their shops. This would certainly be the case with a new White E. location. It should be of note also that all these other thrift or consignment stores do not enjoy the same luxury as the White E in that they are paying the going rate for property and/or rents. I often wonder whether the closing of other long-standing businesses of a similar nature has anything to do with the costs of rent or property ownership. Like it or not, the White Elephant Shop is competing with other like businesses and a \$1.00 annual property lease.

My living room looks out on the back of the White E. It is not uncommon to see men urinating on the building in the rear. At one point, trying to settle the easement dispute with the White E. Shop we had a camera mounted on my fence. It not only caught the parking activity (lots of it at all times day and night) but also those people using the rear of the building as a smoking station and restroom. I pick up cigarette butts throughout the easement and in my property from this activity.

The trash can outside the White E is also an issue to address. This isn't so much a trash can as a place for people to obtain free items and it is common to see it on its side with people rummaging through it. Last week I saw a young man inside the can with a cell phone up to his ear holding items up to show his friend standing nearby. I believe the White E. throws good clothing away because they don't have space to display it. There is no other reason for this kind of activity. Much of what is in the trash can appears to be perfectly good, as evidenced by the sheer number of people who rummage through the can on a near daily basis. Next to the trash can is a "no donations today" sign that mostly goes unheeded. It is my opinion that there should never be a time when "no donations" are needed and that with a larger, single story facility on the old City shops property, with a designated secure drop-off zone and good parking I believe the items wouldn't be picked through before the volunteers get a chance to go through them and it would seem that sales would increase.

There is a well-documented history of infractions within the easement to my house. I went to the police station years ago and was given private impound forms to fill out. I was told by the Chief of Police to call when the lane is obstructed and complete the impound forms. I called and I filled out many of the forms. To the best of my knowledge no one was impounded. I was told people were contacted but who knows? When cars are in the yellow I have called and was told someone would look into it. I have never seen a parking ticket on any vehicle parked in these zones. That being said, to some degree the parking problems shouldn't be placed solely on the individual but rather on the business that is the root cause of these infractions. There are 4 vehicles associated with the 3 families that live beyond the lane (easement) and all rely on this driveway as access to their homes.

In closing I do not believe the White Elephant Shop should have a 30 year lease on this property, let alone expand on the existing structure particularly in a R1 zoned area. It is my opinion that they should move and better support their mission through a larger building with adequate parking.

Norothy Breedlove  
319 Seward St B

August 27, 2014,

Members of the Assembly and Mr. Gorman,

With respect to Ordinance Number 2014-29 and the proposed extension of the lease between the City of Sitka and the White Elephant Shop, Inc. ("The White E"), we would like to submit these comments for your consideration:

As residents of Sitka, we appreciate the contributions made by the White Elephant Shop to the community and various organizations throughout Sitka. We believe in the mission of the White E. but have a dilemma with regard to the following comments. In no way do we mean to imply any negativity toward them but rather simply state a problem that exists with the location of the business.

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Regardless of the mission of the White Elephant Shop, they are a retail store. They are the **ONLY** retail establishment along Seward Street without designated parking spaces. Under normal circumstances their customer base parks along the length of Seward Street, in all the available parking lots, in every yellow "no parking" spot and, often times, in the lane to our homes (the easement). When the Shop is not open it is very common for people to use the lane (easement) for the purpose of dropping things off or checking the contents of the trash can. **THE EASEMENT IS THE DROP-OFF POINT FOR THE SHOP.** When Seward Street was undergoing repair, we asked the City to provide curb relief on the other side of the Shop in hopes that the White E. would relocate the drop-off location. There is now curb relief but the White E is not willing to relocate this function. Perhaps this is part of the "improvements" they wish to make.

In closing, the use of this easement is not a minor inconvenience to us. It is an ongoing issue, and we feel that making a comment to you is warranted.

Thank you for your time and consideration on this matter. We remain willing to discuss the issues and wish to maintain a positive relationship with our neighbor.

Sincerely,

Scott Harris, Laura Kronsperger 325 Seward St, Dorothy Breedlove, 319 Seward St.



## Legislation Details

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File #: ORD 14-32    Version: 1    Name:

Type: Ordinance    Status: SECOND READING

File created: 9/3/2014    In control: City and Borough Assembly

On agenda: 9/23/2014    Final action:

Title: Proposing to amend Title 1, Administration, of the SGC by adding Section 1.04.90 Use of City Seal

Sponsors:

Indexes:

Code sections:

Attachments: [MOTION ORD 14-29](#)  
[ORD 14-32 City Seal](#)

Date	Ver.	Action By	Action	Result
9/9/2014	1	City and Borough Assembly		



City & Borough of Sitka  
**Municipal Clerk's Office**  
100 Lincoln Street, Sitka AK 99835  
Telephone: 907-747-1811 Fax: 907-747-4004



## Memorandum

To: Mayor and Assemblymembers  
Thru: Municipal Administrator Mark Gorman  
From: Colleen Ingman, Municipal Clerk  
Date: September 2, 2014  
Subject: Policy Language City Seal

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An incident happened recently in the state where a candidate used a city seal for campaign purposes. Current use of CBS seal is not codified. It is my advice that we codify its use similar to the State's language (listed below):

"Sec. 44.09.015. Use of seal without permission prohibited.

- (a) A person may not use or make a die or impression of the state seal for any advertising or commercial purpose, unless written permission has first been obtained from the lieutenant governor.
- (b) Violation of this section is a misdemeanor, and upon conviction is punishable by a fine of not more than \$500, or by imprisonment for not more than six months, or by both."

The attached ordinance clarifies official and prohibitive use of the city seal in detail.

Attachement

CITY AND BOROUGH OF SITKA

ORDINANCE NO. 2014-32

AN ORDINANCE OF THE CITY AND BOROUGH OF SITKA, ALASKA PROPOSING TO AMEND TITLE 1, ADMINISTRATION, OF THE SITKA GENERAL CODE BY ADDING SECTION 1.04.90 USE OF CITY SEAL

1. CLASSIFICATION. This ordinance is of a permanent nature and is intended to become a part of the Sitka General Code.

2. SEVERABILITY. If any provision of this ordinance or any application thereof to any person or circumstance is held invalid, the remainder of this ordinance and application thereof to any person or circumstances shall not be affected.

3. PURPOSE. The seal of the City and Borough of Sitka is maintained by the Municipal Clerk for official and appropriate purposes only. It represents the city's reputation for integrity and service to the public, so its usage must be protected. The purpose of this Section is to restrict use of the City Seal to official City business.

4. ENACTMENT. NOW, THEREFORE, BE IT ENACTED by the Assembly of the City and Borough of Sitka that:

A. Title 1, General Provisions, of the Sitka General Code is hereby amended by adding Section 1.04.90 to read as follows:

\* \* \*

1.04.90 Use of City Seal.

A. The official seal of the City and Borough of Sitka is a symbol of authority and jurisdiction of the city. As a valuable asset of the city and its citizens, the assembly seeks to insure that it is used only for appropriate purposes.

B. The municipal clerk shall have charge of the seal of the City and Borough of Sitka and shall affix the City Seal to all certificates required by law, by this Code, or by ordinance of the city. The municipal clerk may issue written permission for ceremonial or other permitted purposes as deemed appropriate by the clerk or assembly.

C. Municipal officers, employees, members of the assembly, and members of Municipal Boards and Commissions may use stationery and printed materials with the City Seal, or facsimile thereof, while acting within the scope of their office or employment.

D. Except as provided for in this Section, no person, other than the City and Borough of Sitka, shall reproduce, use, give away, sell, or distribute any seal or facsimile thereof purporting to be or represented to be the City Seal.

E. A person may not use or make a die or impression of the City seal for any

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advertising or commercial purpose.

F. Violation of this section is a misdemeanor, and upon conviction is punishable by a fine of not more than \$500, or by imprisonment for not more than six months, or by both.

\* \* \*

5. **EFFECTIVE DATE.** This ordinance shall become effective on the day after the date of its passage.

**PASSED, APPROVED, AND ADOPTED** by the Assembly of the City and Borough of Sitka, Alaska this 23<sup>rd</sup> day of September, 2014.

\_\_\_\_\_  
Mim McConnell, Mayor

**ATTEST:**

\_\_\_\_\_  
Colleen Ingman, MMC  
Municipal Clerk



## Legislation Details

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File #: 14-187      Version: 1      Name:

Type: Item      Status: AGENDA READY

File created: 9/11/2014      In control: City and Borough Assembly

On agenda: 9/23/2014      Final action:

Title: Decision on whether to allow any sales tax free day(s) following the Thanksgiving Holiday and set day (s)

Sponsors:

Indexes:

Code sections:

Attachments: [Sales Tax Free Day\(s\)](#)  
[Small Business Saturday Tax Free Day](#)

Date	Ver.	Action By	Action	Result
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## Potential Sales Tax Free Days for 2014

Friday, November 28

Saturday, November 29

I MOVE to authorize \_\_\_\_\_ as Sales Tax Free day(s) for 2014 noting the sales tax free day(s) will not be applicable to any sale of fuel, nor affect any sale which is part of a continuing obligation of the buyer to pay the seller over time.

*This action is actually 2 weeks overdue and should have taken place at your first meeting in September per SGC below. I had it flagged for September, but didn't realize it specified the first regular meeting in September, my apologies. Colleen.*

### **4.09.020 Collection of tax.**

A. The tax described in Section 4.09.010(A) is imposed on the purchaser and must be collected by the seller and paid to the city and borough of Sitka by the seller as provided in Section 4.09.270. The seller holds all taxes collected in trust for the city and borough of Sitka. The tax must be applied to the sales price.

B. The assembly at their first meeting of September each year shall consider whether to authorize any sales tax free day(s) that have historically followed Thanksgiving. If authorized the sales tax free day(s) will not be applicable to any sale of fuel, nor affect any sale which is part of a continuing obligation of the buyer to pay the seller over time.

#### **4.09.010 Levy of sales tax.**

A. There is levied a consumer's sales tax on sales, rents, and leases made in the city and borough of Sitka. This tax applies to sales, rentals, and leases of tangible personal property; sales of services sold within the city and borough of Sitka; sales of services performed wholly or partially within the city and borough of Sitka when the provision of such services originates or terminates within the city and borough of Sitka; and rentals and leases of real property located within the city and borough of Sitka. Notwithstanding any provision of law, air or sea charter services, provided a person or entity in the business of providing such charter services, are exempt from sales tax by the city and borough of Sitka if the charter does not commence and end within the city and borough of Sitka.

B. The rate of levy of the sales tax levied under subsection A of this section is five percent on sales made during the months of October, November, December, January, February, and March. The rate of levy of the sales tax levied under subsection A of this section is six percent on sales made during the months of April, May, June, July, August, and September.<sup>1</sup>

C. A flat rate of ten dollars per fish box shall be levied on the packaged fish and/or seafood caught or taken and retained by fish charter customers as part of the fish charter. This tax shall be paid by the fish charter customer, collected by whoever packages the fish and/or seafood caught or taken by the fish charter customer, and is in addition to any sales tax paid based on the cost of the charter. This tax is effective January 1, 2007. For purposes of this subsection, a "fish box" means any packaging by a fish charter operator or processor of fish and/or seafood caught or taken as part of the charter by a fish charter customer. The sales tax collected from this levy on fish boxes shall be deposited by the finance director in the following funds in the following ratios:

1. Thirty percent in the harbor fund;
2. Thirty percent in a fisheries enhancement fund, available to be used for any fisheries enhancement proposal upon approval of the proposal by the assembly; and
3. Forty percent in the general fund.

D. Except as provided in subsection C of this section, all moneys accumulated under the terms of this chapter shall be deposited by the finance director in the general fund of the city and borough of Sitka and shall be used for the general operating expenses of the city and borough of Sitka in such a proportion as deemed advisable from time to time by the assembly.



## WHAT IS SMALL BUSINESS SATURDAY?

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**Small Business Saturday** <sup>SM</sup> was created in 2010 in response to small business owners' most pressing need: more customers. Falling between Black Friday and Cyber Monday, it's a day to support the local businesses that create jobs, boost the economy and preserve neighborhoods around the country. It has since become a nation-wide, well-known celebrated event on the national calendar with support from, elected officials, public and private organizations and millions of Facebook users.

The fourth annual Small Business Saturday gave a boost to Main Street merchants and spurred millions of consumers to spend billions at independently-owned small businesses. This year Small Business Saturday will be held on November 29th and we are working to make it bigger than ever for small businesses.



## WHY SUPPORT SMALL BUSINESS SATURDAY?

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- Demonstrates commitment to the communities in which we do business
- Creates goodwill within the communities where our employees work and live
- When we support small business, jobs are created and local communities preserve their unique culture

## DID YOU KNOW?

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- The 23 million small businesses in America account for 54% of all U.S. sales <sup>1</sup>
- Small businesses provide 55% of all jobs and 66% of all net new jobs since the 1970s <sup>2</sup>
- 73% of local small business owners aware of Small Business Saturday said they make it a point to hire employees from their neighborhood <sup>3</sup>
- When you shop at independent, locally owned businesses, 52% of what you spend stays right in your community <sup>4</sup>

<sup>1,2</sup> U.S. Small Business Administration (2012)

<sup>3</sup> The American Express OPEN Small Business Saturday Consumer Pulse (2013)

<sup>4</sup> American Booksellers Association Indie Impact Study Series Conducted by Civic Economics (2011-2013)

## WHAT PEOPLE ACROSS THE NATION ARE SAYING ABOUT 2013 SMALL BUSINESS SATURDAY:

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"My shop saw a 40 percent increase in sales last small business Saturday, compared with the Saturday before Thanksgiving the year before and another 10% increase this year." - *Annie Taylor, Leona Sue's flower shop, Scott, LA*

"Today's been a really big volume for us. I think we've had more sales today and people just stopping in to check us out than we've had probably in the last six months!" - *Kimberly Gunn, Green Baybeez, De Pere, WI*

"I opened my doors at 9 a.m. and by 11 a.m. the store was full! The store saw about 60% more customers on Small Business Saturday compared to an average day." - *Brian Ohrberg, ZONworld, Des Moines, IA*

"Small Business Saturday is one of my best days of the year for sales, the store should bring in 75% more in sales than a typical Saturday." - *Sarah Taby, Vintage Shop, Carlisle, PA*

"One in five people made a purchase on Small Business Saturday and STORY saw double the foot traffic and double the sales on Small Business Saturday." - *Rachel Shechtman, STORY, New York, NY*

## 2013 SMALL BUSINESS SATURDAY FACTS:

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- Millions of consumers shopped at independently-owned small business spending \$5.7 billion on the day – up from \$5.5 billion in 2012
- Consumer awareness of Small Business Saturday jumped to 71 percent compared to 67 percent during the same period a year ago
- 43 U.S. Senators endorsed a resolution recognizing November 30, 2013 as Small Business Saturday and supporting efforts to encourage consumers to shop locally and increase awareness of the value of locally owned small businesses and the impact of locally owned small businesses on the economy of the United States
- Elected officials in all 50 states and Washington, D.C. – including President Obama and many senior government officials – championed Small Business Saturday
- Nearly 370 small business advocate groups, public and private organizations supported the nationwide initiative, up from 350 in 2012
- One hundred sixty-six corporations, including FedEx, Foursquare, Twitter and the United States Postal Service, banded together with American Express to promote shopping at small businesses for Small Business Saturday
- In November alone, more than 352,000 tweets were sent in support of Small Business Saturday, many using the hashtags #SmallBizSat and #ShopSmall, a 65% increase from the previous year

## JOIN THE COALITION:

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Building on the success of the previous three years, we plan to scale this year's Small Business Saturday by expanding the coalition of supporters and creating more local events around the country. This includes support from advocacy organizations that join the initiative to motivate constituents through incentives and offers to Shop Small on November 29, 2014.

The coalition will be led by Women Impacting Public Policy, a business advocacy organization representing small businesses. **Join Us!**

## CONTACT INFO:

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Jason Lalak, Vice President, Women Impacting Public Policy (WIPP) | Phone: (415) 434-4314 | Email: [JLalak@wipp.org](mailto:JLalak@wipp.org)

**Whereas**, the government of CITY, STATE, celebrates our local small businesses and the contributions they make to our local economy and community; according to the United States Small Business Administration, there are currently 23 million small businesses in the United States, they represent more than 99 percent of American employer firms, create more than two-thirds of the net new jobs, and generate 46 percent of private gross domestic product; and

**Whereas**, small businesses employ over 55 percent of the working population in the United States; and

**Whereas**, 89 percent of consumers in the United States agree that small businesses contribute positively to the local community by supplying jobs and generating tax revenue; and

**Whereas**, 87 percent of consumers in the United States agree that small businesses are critical to the overall economic health of the United States; and

**Whereas**, 93 percent of consumers in the United States agree that it is important for people to support the small businesses that they value in their community; and

**Whereas**, CITY, STATE supports our local businesses that create jobs, boost our local economy and preserve our neighborhoods; and

**Whereas**, advocacy groups as well as public and private organizations across the country have endorsed the Saturday after Thanksgiving as Small Business Saturday.

**Now, Therefore**, I, MAYOR NAME, Mayor of CITY, STATE do hereby proclaim, November 29, 2014, as:

***SMALL BUSINESS SATURDAY***

**And** urge the residents of our community, and communities across the country, to support small businesses and merchants on Small Business Saturday and throughout the year.



## Legislation Details

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File #: 14-188      Version: 1      Name:

Type: Item      Status: AGENDA READY

File created: 9/11/2014      In control: City and Borough Assembly

On agenda: 9/23/2014      Final action:

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

Sponsors:

Indexes:

Code sections:

Attachments: [BOA MOTIONS](#)  
[Jardine CUP B&B](#)  
[Putz ltr re Jardine CUP](#)  
[BOA Hearing Outline](#)

Date	Ver.	Action By	Action	Result
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## BOARD OF ADJUSTMENT

1)

**I MOVE TO CONVENE AS THE BOARD OF ADJUSTMENT**

2)

**HEARING NOW TAKES PLACE**

3)

**One possible motion as recommended by Planning Commission -**

**I MOVE TO deny a conditional use permit request filed by Brian Jardine for a Two-bedroom Bed and Breakfast at 105 Shelikof Way as recommended by the Planning Commission because a majority of the following required conditions and findings could not be met in accordance with that Commission. Further, in accordance with Sitka General Code the Planning Commission shall not recommend approval of a proposed development unless it can first meet the following findings, conditions and conclusions and further considers that the Planning Commission recommended denial of the conditional use permit because the majority of required findings cannot be met and neighborhood concerns cannot be mitigated. The Board of Adjustment supports the Planning Commission's decision and denies the conditional use permit; and request that they be made a part of the final decision of record: **(no need to read the actual findings)****

1. a. not be detrimental to the public health, safety, and general welfare;
  - b. not adversely affect the established character of the surrounding vicinity;
  - c. not be injurious to the uses, property, or improvements adjacent to, and in the vicinity of, the site upon which the proposed use is to be located.
2. That the granting of the proposed Conditional Use Permit is consistent and compatible with the intent of the goals, objectives and policies of the Comprehensive Plan and any

implementing regulation.

3. That all conditions necessary to lessen any impacts of the proposed use are conditions that can be monitored and enforced.

4. That the proposed use will not introduce hazardous conditions at the site that cannot be mitigated to protect adjacent properties, the vicinity, and the public health, safety and welfare of the community from such hazard.

5. That the conditional use will be supported by, and not adversely affect, adequate public facilities and services; or that conditions can be imposed to lessen any adverse impacts on such facilities and services.

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

**The City may approve, approve with conditions, modify, modify with conditions, or deny the conditional use permit. The city may reduce or modify bulk requirements, off-street parking requirements, and use design standards to lessen impacts, as a condition of the granting of the conditional use permit. In considering the granting of a conditional use, the assembly and planning commission shall satisfy themselves that the general criteria set forth for uses specified in this chapter will be met. The City may consider any or all criteria listed and may base conditions or safeguards upon them. The assembly and planning commission may require the applicant to submit whatever reasonable evidence may be needed to protect the public interest.**

**The general approval criteria are as follows:**

1. Site topography, slope and soil stability, geophysical hazards such as flooding, surface and subsurface drainage and water quality, and the possible or probable effects of the proposed conditional use upon these factors;
2. Utilities and service requirements of the proposed use, including sewers, storm drainage, water, fire protection, access and electrical power; the assembly and planning commission may enlist the aid of the relevant public utility officials with specialized knowledge in evaluating the probable effects of the proposed use and may consider the costs of enlarging, upgrading or extending public utilities in establishing conditions under which the conditional use may be permitted;
3. Lot or tract characteristics, including lot size, yard requirements, lot coverage and height of structures;
4. Use characteristics of the proposed conditional use that affect adjacent uses and districts, including hours of operation, number of persons, traffic volumes, off-street parking and loading characteristics, trash and litter removal, exterior lighting, noise, vibration, dust, smoke, heat and humidity, recreation and open space requirements;
5. Community appearance such as landscaping, fencing and screening, dependent upon the specific use and its visual impacts.

**Conditional uses.**

E. In evaluating the inputs of a proposed conditional use permit, the municipality may consider a commercial conditional use to be inappropriate for residential neighbors while



the same conditional use may be acceptable when it is located along an arterial or collector street. The additional vehicular traffic generated by conditional uses, such as professional offices, may not be able to be adequately mitigated in residential areas.

**1. Criteria to Be Used in Determining Impacts of Conditional Uses.**

- a. Amount of vehicular traffic to be generated and impacts of the traffic on nearby land uses.
- b. Amount of noise to be generated and its impacts on surrounding land uses.
- c. Odors to be generated by the use and their impacts.
- d. Hours of operation.
- e. Location along a major or collector street.
- f. Potential for users or clients to access the site through residential areas or substandard street creating a cut through traffic scenario.
- g. Effects on vehicular and pedestrian safety.
- h. Ability of the police, fire, and EMS personnel to respond to emergency calls on the site.
- i. Logic of the internal traffic layout.
- j. Effects of signage on nearby uses.
- k. Presence of existing or proposed buffers on the site or immediately adjacent the site.
- l. Relationship if the proposed conditional use is in a specific location to the goals, policies, and objectives of the comprehensive plan.
- m. Other criteria that surface through public comments or planning commission assembly review.

**YOU HAVE THE ABILITY TO COME UP WITH ALTERNATIVE MOTIONS FOLLOWING THE HEARING PROCESS**

**4)**

**1 MOVE TO RECONVENE AS THE ASSEMBLY IN REGULAR SESSION**

## MEMORANDUM

**To:** Mark Gorman, Municipal Administrator  
Mayor McConnell and Members of the Assembly

**From:** Maegan Bosak, Planner I *MB*

**Subject:** Jardine- Two bedroom Bed & Breakfast Conditional Use Permit

**Date:** September 12, 2014

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The Planning Commission is recommending denial of a conditional use permit request for operation of a two bedroom bed and breakfast filed by Brian Jardine at 105 Shelikof Way. Action on this item was taken at the August 19, 2014 Planning Commission meeting. The recommendation to deny the request, based on the following findings, passed unanimously 5-0.

Mr. Jardine owns a two-story house at 105 Shelikof Way. Jardine's property is part of a 3 lot subdivision. The property is accessed via an easement, shared with neighbors Mulligan and Grun, crossing Mulligan's property. Grun has a permit for a 2 bedroom bed and breakfast permit that was received in 1995. Neighbor's comments share concerns regarding traffic, parking and noise. Jardine has provided a parking plan delineating 4 available parking spots. The applicant has stated that they will provide transportation and breakfast as well as light snacks.

Brian Jardine also owns/operates A-Z Fishing Charters and has housed fishing guests in the past. Complaints regarding illegal operation of a "lodge" have been ongoing for many years. Neighborhood residents turned in a petition earlier this year to stop quasi lodges in R-1 zones, spurring this bed and breakfast permit request. Mr. Jardine was then asked to discontinue housing guests until a permit was granted. To date, the Planning Department and Robin Koutchak, Municipal Attorney, are working on updating the zoning code with new definitions of bed and breakfast and lodge.

The Planning Office has received multiple comments on this request and a number of citizens gave public testimony at the Planning Commission meetings. The Planning Department required additional public comment opportunities, extra meetings, due to the public interest.

The Planning Commission was unable to find that adjacent properties will not be adversely affected and neighborhood concerns cannot be mitigated.

**Recommendation:**

Deny the request based on the following findings.

**FINDINGS: 22.30.160 Planning commission review and recommendation.**

C. Required Findings for Conditional Use Permits. The planning commission shall not recommend approval of a proposed development unless it first makes the following findings and conclusions:

1. The City may use design standards and other elements in this code to modify the proposal. A conditional use permit may be approved only if all of the following findings can be made regarding the proposal and are supported by the record that the granting of the proposed conditional use permit will not:

a. be detrimental to the public health, safety, and general welfare;

**MOTION: M/S SPIVEY/WINDSOR** moved to approve that these findings can be met.

**ACTION: Motion FAILED unanimously 0-5** on a voice vote.

b. adversely affect the established character of the surrounding vicinity;

**MOTION: M/S WINDSOR/PARMELEE** moved to approve that these findings can be met.

**ACTION: Motion FAILED unanimously 0-5** on a voice vote.

c. be injurious to the uses, property, or improvements adjacent to, and in the vicinity of, the site upon which the proposed use is to be located.

**MOTION: M/S SPIVEY/WINDSOR** moved to approve that these findings can be met.

**ACTION: Motion FAILED unanimously 0-5** on a voice vote.

2. That the granting of the proposed Conditional Use Permit is consistent and compatible with the intent of the goals, objectives and policies of the Comprehensive Plan and any implementing regulation.

**MOTION: M/S SPIVEY/WINDSOR** moved to approve consistent with Comprehensive Plan 2.5.2 *To encourage commercial and industrial developments of a quality that does not adversely impact any adjacent recreational and residential areas.*

**ACTION: Motion FAILED unanimously 0-5** on a voice vote.

3. That all conditions necessary to lessen any impacts of the proposed use are conditions that can be monitored and enforced.

**MOTION: M/S POHLMAN/SPIVEY** moved to approve that these findings can be met.

**ACTION: Motion FAILED unanimously 0-5** on a voice vote.

4. That the proposed use will not introduce hazardous conditions at the site that cannot be mitigated to protect adjacent properties, the vicinity, and the public health, safety and welfare of the community from such hazard.

**MOTION: M/S SPIVEY/WINDSOR** moved to approve that these findings can be met.

**ACTION: Motion PASSED unanimously 5-0** on a voice vote.

5. That the conditional use will be supported by, and not adversely affect, adequate public facilities and services; or that conditions can be imposed to lessen any adverse impacts on such facilities and services.

**MOTION: M/S SPIVEY/POHLMAN** moved to approve that these findings can be met.

**ACTION: Motion PASSED unanimously 5-0** on a voice vote.

6. Burden of Proof. The applicant has the burden of proving that the proposed conditional use meets all of the criteria in Section B.

**MOTION: M/S SPIVEY/SESLAR** moved to approve.

**ACTION: Motion FAILED unanimously 0-5** on a voice vote.

The City may approve, approve with conditions, modify, modify with conditions, or deny the conditional use permit. The city may reduce or modify bulk requirements, off-street parking requirements, and use design standards to lessen impacts, as a condition of the granting of the conditional use permit. In considering the granting of a conditional use, the assembly and planning commission shall satisfy themselves that the general criteria set forth for uses specified in this chapter will be met. The City may consider any or all criteria listed and may base conditions or safeguards upon them. The assembly and planning commission may require the applicant to submit whatever reasonable evidence may be needed to protect the public interest.

**The general approval criteria are as follows:**

1. Site topography, slope and soil stability, geophysical hazards such as flooding, surface and subsurface drainage and water quality, and the possible or probable effects of the proposed conditional use upon these factors;
2. Utilities and service requirements of the proposed use, including sewers, storm drainage, water, fire protection, access and electrical power; the assembly and planning commission may enlist the aid of the relevant public utility officials with specialized knowledge in evaluating the probable effects of the proposed use and may consider the costs of enlarging, upgrading or extending public utilities in establishing conditions under which the conditional use may be permitted;
3. Lot or tract characteristics, including lot size, yard requirements, lot coverage and height of structures;
4. Use characteristics of the proposed conditional use that affect adjacent uses and districts, including hours of operation, number of persons, traffic volumes, off-street parking and loading characteristics, trash and litter removal, exterior lighting, noise, vibration, dust, smoke, heat and humidity, recreation and open space requirements;
5. Community appearance such as landscaping, fencing and screening, dependent upon the specific use and its visual impacts.

#### **22.24.010 Conditional uses.**

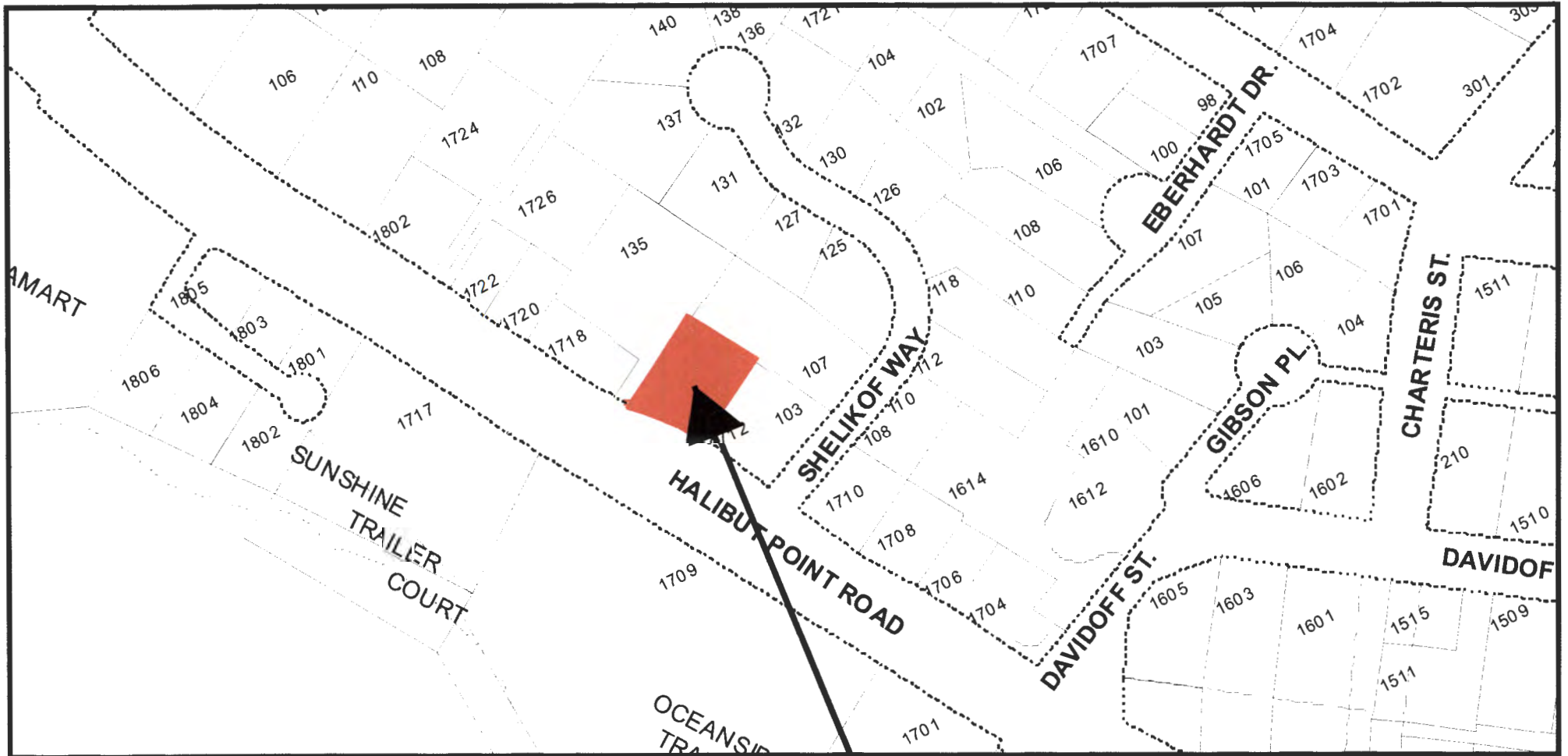
E. In evaluating the inputs of a proposed conditional use permit, the municipality may consider a commercial conditional use to be inappropriate for residential neighbors while the same conditional use may be acceptable when it is located along an arterial or collector street. The additional vehicular traffic generated by conditional uses, such as professional offices, may not be able to be adequately mitigated in residential areas.

#### **1. Criteria to Be Used in Determining Impacts of Conditional Uses.**

- a. Amount of vehicular traffic to be generated and impacts of the traffic on nearby land uses.
- b. Amount of noise to be generated and its impacts on surrounding land uses.
- c. Odors to be generated by the use and their impacts.
- d. Hours of operation.
- e. Location along a major or collector street.
- f. Potential for users or clients to access the site through residential areas or substandard street creating a cut through traffic scenario.
- g. Effects on vehicular and pedestrian safety.
- h. Ability of the police, fire, and EMS personnel to respond to emergency calls on the site.
- i. Logic of the internal traffic layout.
- j. Effects of signage on nearby uses.
- k. Presence of existing or proposed buffers on the site or immediately adjacent the site.
- l. Relationship if the proposed conditional use is in a specific location to the goals, policies, and objectives of the comprehensive plan.
- m. Other criteria that surface through public comments or planning commission assembly review.

**MOTION: M/S SPIVEY/WINDSOR** recommended denial of conditional use permit because the majority of required findings cannot be met and neighborhood concerns cannot be mitigated.

**ACTION: Motion PASSED unanimously 5-0** on a voice vote.



**Jardine**  
CUP- B&B  
105 Shelikof Way



**Jardine**  
CUP- B&B  
*105 Shelikof Way*



**JARDINE  
RESIDENCE**



**Jardine**  
CUP- B&B  
105 Shelikof Way





**Jardine**  
CUP - B&B  
105 Shelikof Way



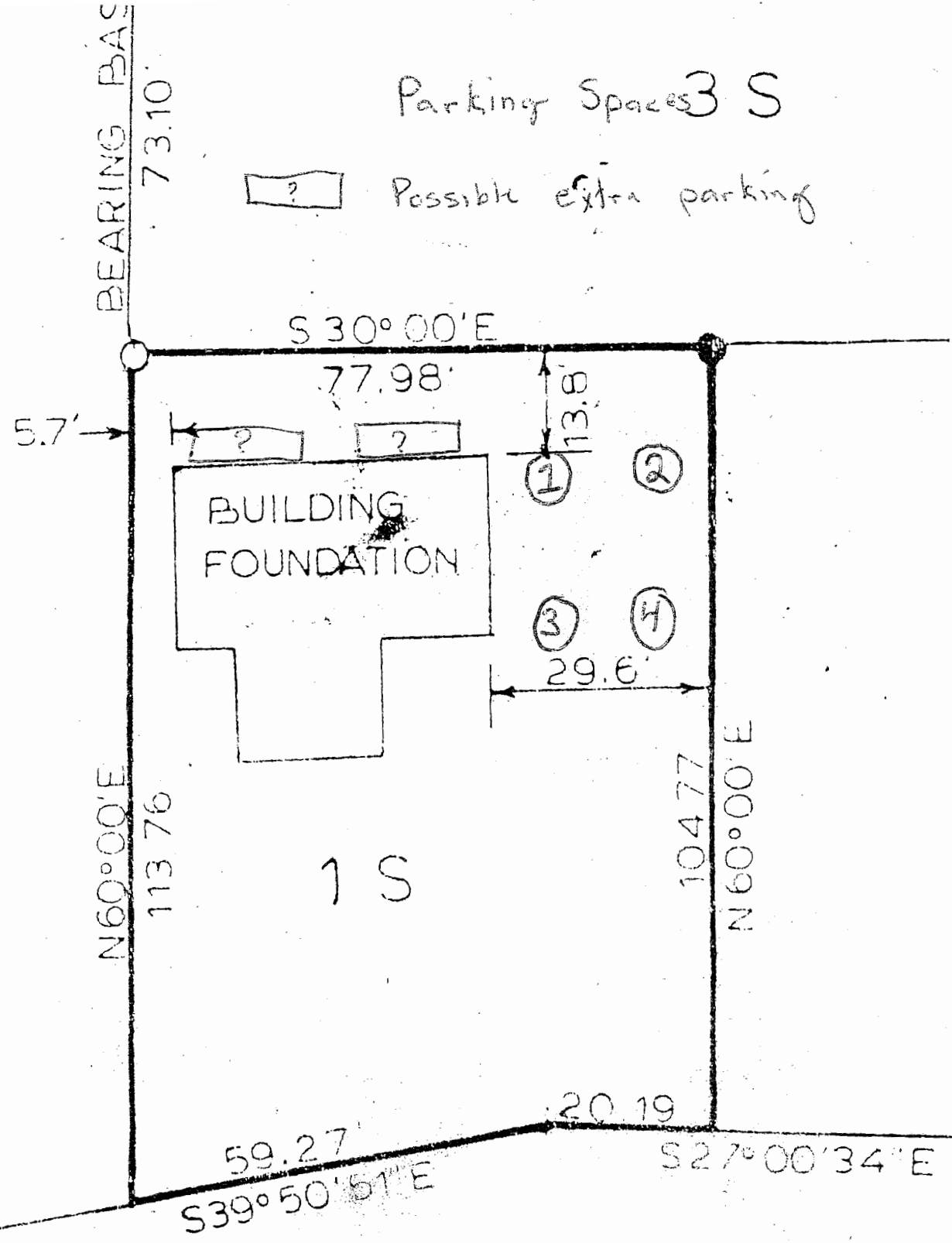
**Jardine**  
CUP- B&B  
*105 Shelikof Way*





Parking Spaces 3 S

□ ? Possible extra parking



CH

**Jardine**  
 CUP- B&B  
 105 Shelikof Way

April 15<sup>th</sup>, 2004

Dear Planning and Zoning Committee,

We are submitting this application in hopes of obtaining a conditional use permit for a Bed and Breakfast in a house that we are in progress of purchasing at 105 Shelikof. The home is owned by Theron and Therese Cole. The purchase of the home is contingent upon approval of the conditional use permit.

My parents are moving to Sitka and will assist me in running the Bed and Breakfast. I have been looking for a home to purchase for over a year now and recently made an offer on 105 Shelikof. We specifically chose this home to purchase because it appears to meet our needs and desire to run a Bed and Breakfast. We feel the home has good potential because of the size, number of bedrooms, condition and available exits.

Since we do not yet own the home we have not had the life safety inspection yet but will do so in the near future and make corrections if needed prior to opening our home to any guests. Our intentions are to be open to guests as soon as we can make the necessary modifications after the purchase of the home.

We plan to provide transportation for our guests so traffic should be minimized. There are currently 4 parking spaces and if needed we could modify a deck and create 2 additional parking spaces.

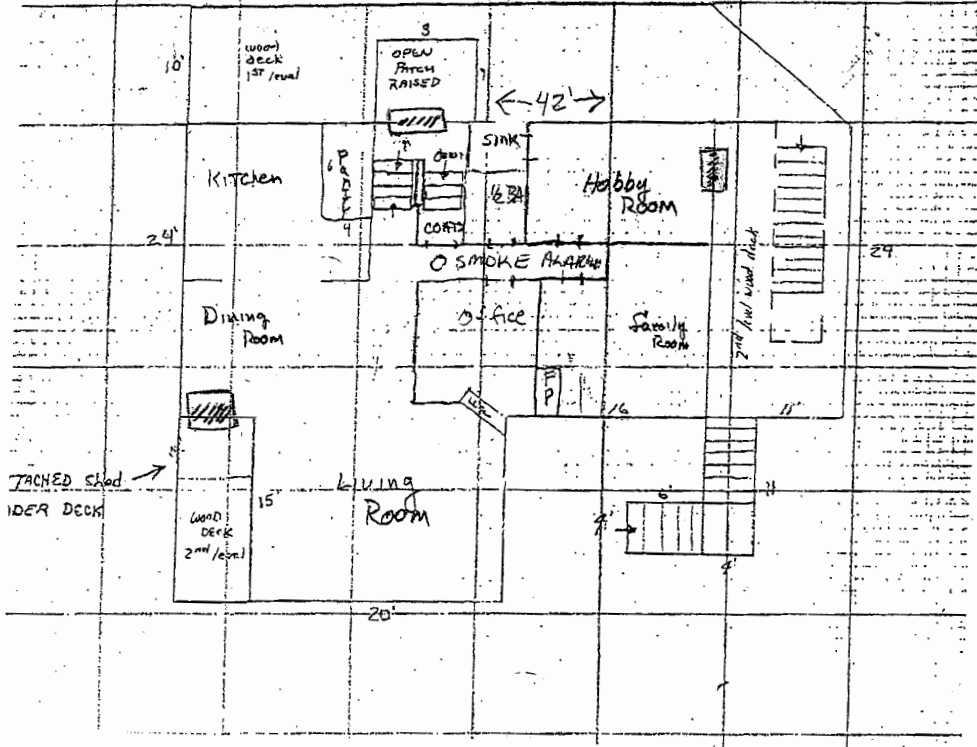
Thank you for your consideration of this application.

Sincerely,

A handwritten signature in cursive script that reads "Brian Jardine".

Brian Jardine

105 SHELKOF WAY  
UPPER LEVEL



JARDINE  
TWO GUESTROOM  
BED & BREAKFAST  
REQUEST  
105 SHELKOF WAY

← UPPER LEVEL  
NO GUESTROOMS

→ LOWER LEVEL

TWO GUESTROOMS



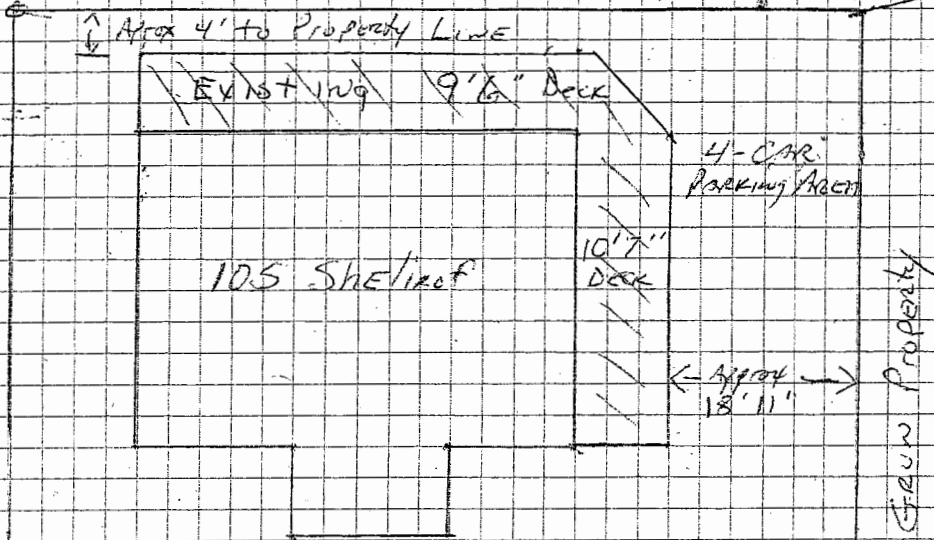
windown (3'10" x 3'10")  
(opening 1" x 1")

LOWER LEVEL

- Bedrooms
- windows
- Exits out of bedrooms
- Exits out of house

Mulligan Property

Drawn  
EASER

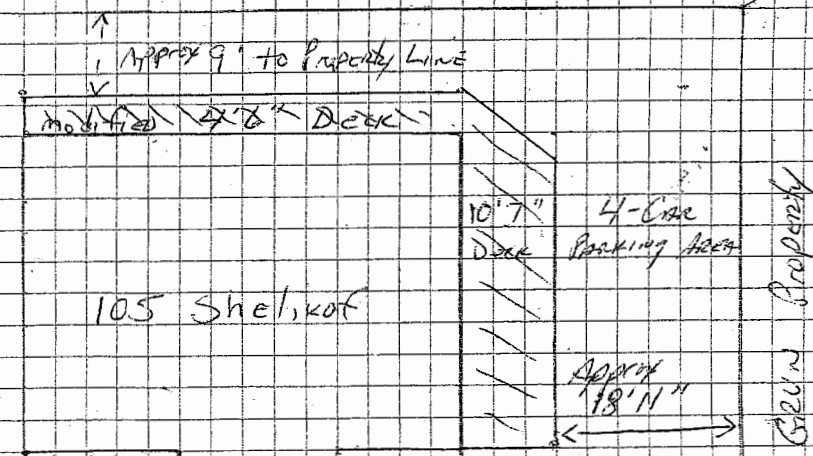


← EXISTING

# PARKING PLAN 105 SHELKOF

Mulligan Property

Drawn  
EASER

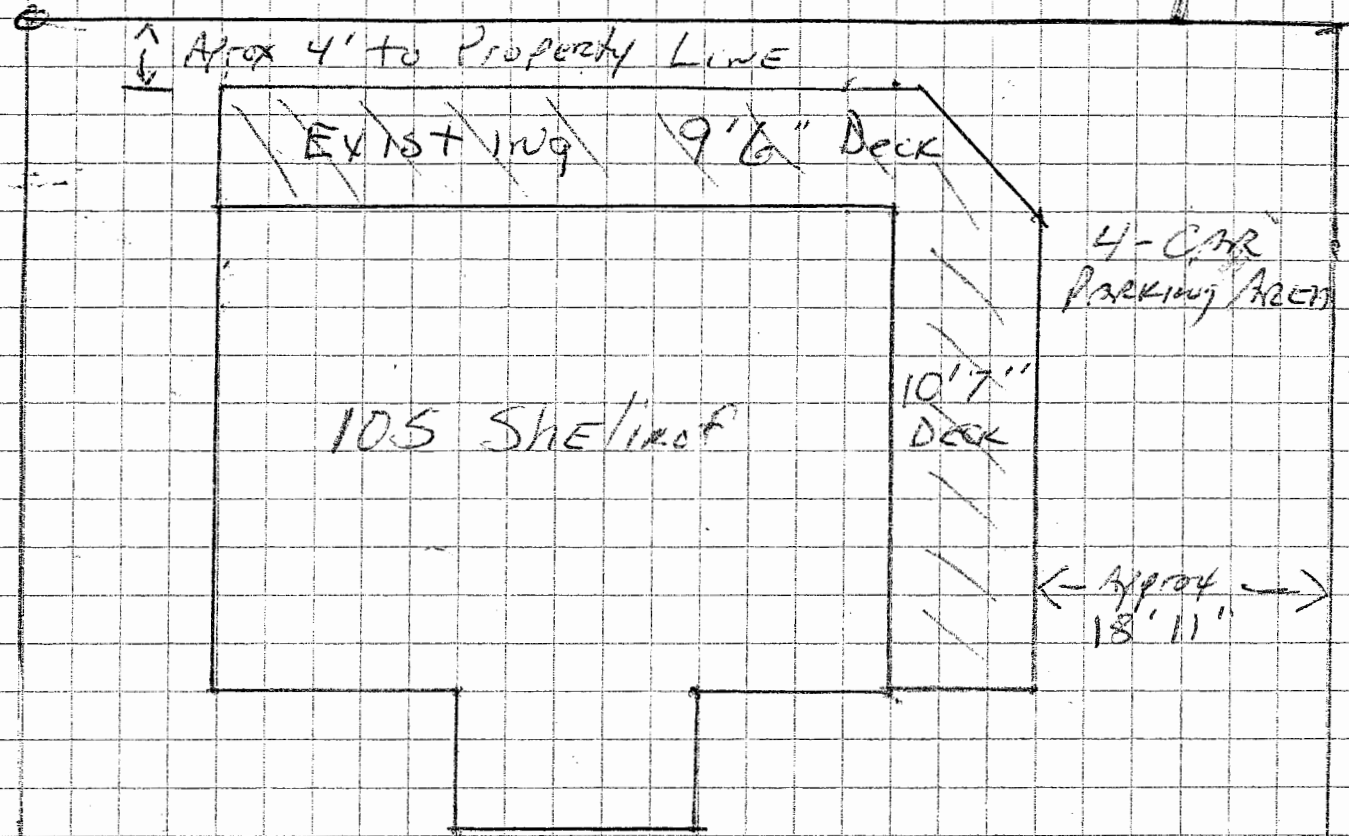


MODIFIED →



Mulligan Property

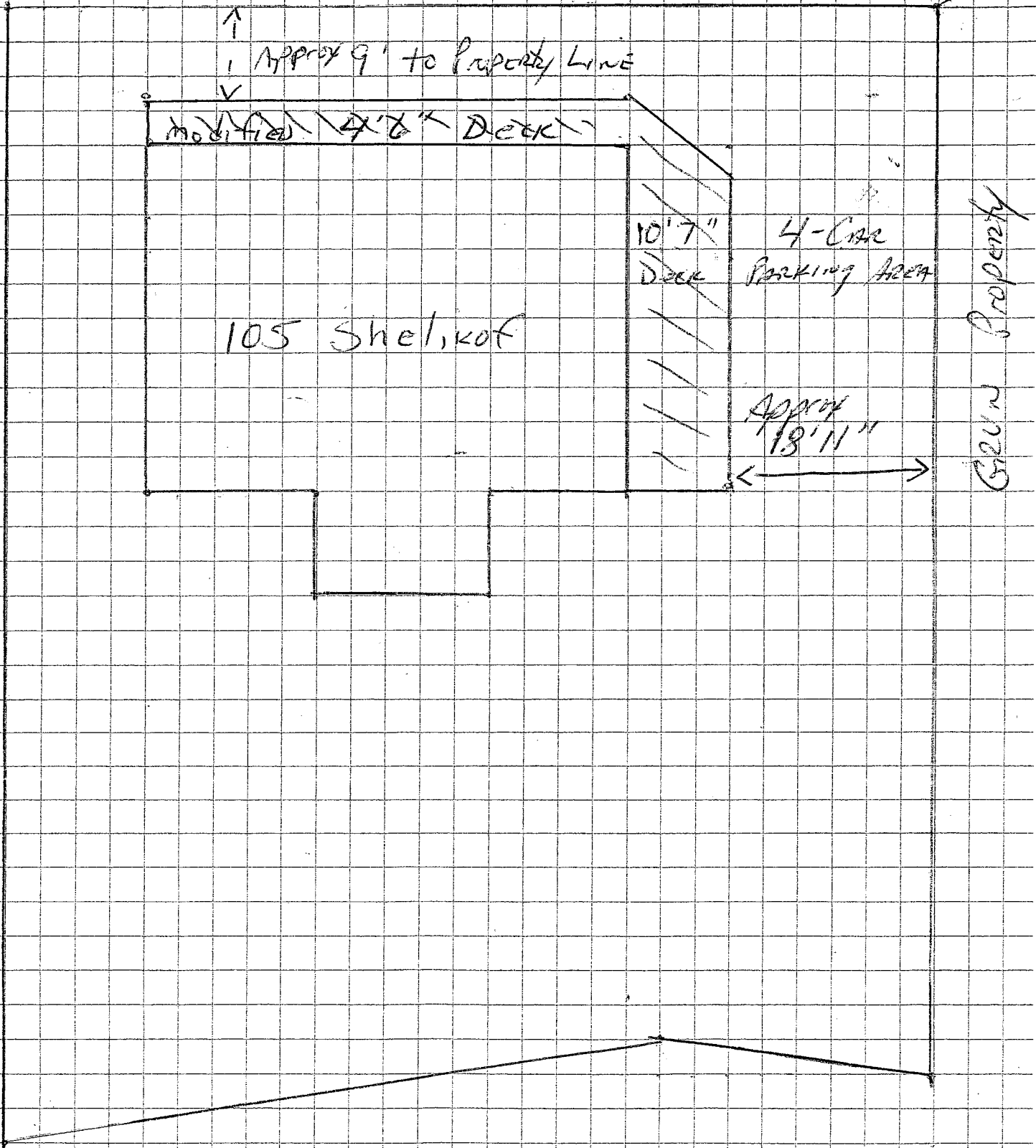
DRIVER  
EASEMENT



Green Property

EXISTING PARKING PLAS

DRIVEWAY  
ASSEMBLY  
↓ →



Modified Parking Plan

## Maegan Bosak

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**From:** Michelle Peterson [michellepeterson@live.com]  
**Sent:** Wednesday, August 13, 2014 1:15 PM  
**To:** maegan@cityofsitka.com  
**Subject:** Response to Memorandum of Law  
**Attachments:** img011.jpg; img012.jpg; img013.jpg; img014.jpg; img015.jpg; img016.jpg; img017.jpg; img018.jpg; img019.jpg; img020.jpg; img021.jpg; img022.jpg; img023.jpg; img024.jpg; img025.jpg; img026.jpg

To: Planning and Zoning Commission  
From: Brian Jardine  
Date: August 13, 2014  
Re: Conditional Use Permit Application, 105 Shelikof Way

This is a response regarding the Memorandum of Law submitted to the Planning and Zoning Commission by Robin L. Koutchak, CBS attorney.

In Ms. Koutchak's Memorandum of Law, she encourages the commission to review the past decisions of my previous applications "for the sake of consistency." I also encourage the commission to review the past reasons for denial in my application for a CUP.

I am applying for a CUP to operate a two room bed and breakfast. In chapter 22.24 of Special Use Permits, section B, item 3 states that "the number of bed and breakfast sleeping rooms per residence shall be limited to three rooms in an R-1 or related zone and five rooms in an R-2 or related zone." Number 11 states that "there shall be a minimum of **one** off street parking space for every three guestrooms in bed and breakfast establishments located in single family residential zones." I am only applying for a 2 room bed and breakfast and I have **four** off street parking spaces, which are located on my personal property. I have only had two vehicles for the past 10 years. I would encourage the commission to add an addendum to my CUP once granted, stating that my bed and breakfast may only have 2 vehicles on my property. I believe this would alleviate Mr. Mulligan's concerns that we would add traffic to our driveway, which is a shared easement between myself, Mr Mulligan, and the Ms. Grun.

Ms. Koutchak states that "the dispute involves a small cul-de-sac with three large homes, each having a view of the water." In her memorandum she goes into detail describing that Mr. Mulligan's home is the servient estate and that my home, and Ms. Grun's home are the dominate estates. Ms. Koutchak states that "the control of the easement has been recognized by previous commissions and the planning department. It was granted by the servient estate in **1997** "as long as the property is used for residential purposes."

This makes it sound like Mr. Mulligan granted the easement. Even being reported by Shannon Haughland, Daily Sitka Sentinel, Staff Writer in the newspaper, that Mr. Mulligan granted the easement in 1997. However there is an error in Ms. Koutchak's facts. Michael and Gloria Snowden granted the easement in a document recorded in Book 39, Page 516, on June 29, **1977**. In addition the grant of easement does not read as Ms. Koutchak represented. It actually reads "so long as said property is used for residential purposes." The Warranty Deed dated June 7th 1985, by and between Stephan W. Guymon and Karen Guymon, husband and wife, as grantors and Theron J. Cole and Therese L. Cole, husband and wife, as grantees, also is subject further to an easement agreement, including the terms thereof, as to a joint easement for the purposes of **driveway** access and water line, which agreement was recorded June 29th 1977 in Book 39 at page 516 of the records of the Sitka Recording District. The fact is: this easment is simply our shared driveway. Mr. Mulligan **did not**

grant this easement.

Ms. Koutchak notes that the servient estate (Mulligan) controls the easement. She cited LaBrenz v. Burnette 218 P.3d 993,1000 (Alaska 2009). I have attached a copy of LaBrenz v. Burnette, as Exhibit "A". LaBrenz is the servient estate and Burnette is the dominate estate. Burnette (dominate estate) won this case in both Superior Court and an appeals court.

This case proves that just because you are the servient estate you can not impose your "strong arm" and take away from the peaceful enjoyment of the dominate estates, nor can you use your standing as a servient estate to trespass, landscape or build on the dominate estate's private property. This case was about a landscaping argument between LaBrenz and the Burnettes. The Burnettes did not want Mr. LaBrenz to landscape their own private property. This case has no revelance to my request to open and operate a very small bed and breakfast. I have no desire to landscape or build a fence on Mr. Mulligan's property. **The scope of a servient estates authority is only for the maintenance of the easment.**

Ms. Koutchak states that "Any use beyond that and that which interferes with the servient estates quiet enjoyment, could be considered in a court of law, as "abuse of an easment". She goes on to list the primary factors that a court would look at to determine if the easment had been abused, such as intensity of use, scope of the estate, and interference with servient estates quiet enjoyment.

Ms. Koutchak goes into great detail to defend the servient estates rights, but makes no mention of any of the dominant estate rights. The servient estate is also not allowed to interfere with the dominate estates quiet enjoyment of the easement. If you are the servient estate, you are not "lord of the land". This does not give the owner of the servient estate total control of his neighbors, and had no application when a neighbor is applying for a CUP. We have a low intensity of use, we have a quiet and peaceful home, we have never been sited for a noise complaint, and we only have 2 vehicles. Mr. Mulligan is a commercial fisherman, and is rarely home in the summer, and even when he is home we have always been peaceful and respectful neighbors.

Ms. Koutchak sited, Price v Eastham, 254 P. #d 1121, 1129-30 (Alaska 2011). Price v Eastman. See attached "Exhibit B". Mr. Price had a small easment on his property which was used as a hiking trail by community members for many years. As the years went on, people started using their snow machines on the easment. Mr Price put up no trespassing signs. They were removed and this case went to Superior Court.

The way this case relates to Mr. Mulligan and myself, is that Mr. Mulligan is concerned we will now be using our shared easment as a super-highway which disturbs his peaceful enjoyment of his home. To ease his concerns, we will only operate 4 months a year. We will only have 2 vehicles. We will go outside with our guests at 6am to take them to the dock. We will return home by 4 pm. On average we currently and project to use the driveway only 4 or 5 times per day. Mr. Mulligan and his renter, on average use our shared driveway, more than we do. I know that this is well within the scope of R-1 Zoning behavior.

Ms. Koutchak's memorandum states, "Mulligan has a right to safe, quiet and peaceable enjoyment of his property by law and he has a right to demand that the City and Borough of Sitka enforce their code. The legal department and the administrator support that right." Ms. Koutchak also states, that "We have ten years of complaints by the servient estate, verified with photographs and testimony of Mulligan and a handful of others, that traffic at all times, noise both very early and very late, and parking in the summer months in a small cul-de-sac, is fairly intense and the scope of use by the dominate estates is beyond the intended R1 zoning allowance"

All of Mr. Mulligan's evidence and complaints are regarding the existing bed and breakfast which was in operation when Mr. Mulligan purchased his property. He purchased this home with full knowledge that a B&B was on a property next door to him. He also knew that said property was owned by someone who charter fishes. My CUP should not be denied because of Mr. Mulligan's complaints with another neighbor. Ms. Koutchak is pre-supposing that the approval of my bed and breakfast will cause un-due hardship on the neighborhood. The Law is not designed to judge who will and who won't commit a crime in the future, or who will and who won't uphold the laws of a conditional use bed and breakfast permit. I would like the opportunity to own and operate a bed and breakfast with no pre-supposed future wrong-doing. I have not in the past 10 years caused any un-due hardship on our neighborhood.

Ms. Koutchak is defending Mr. Mulligan and his concerns with his private property. They are using the easment as a way to demonstrate Mr. Mulligan's opposition to our proposed bed and breakfast. I have failed to see any demonstration of how the operation of our 2 bedroom bed and breakfast poses any detriment to the City and Borough of Sitka. Our proposed bed and breakfast is not detrimental to the health, safety and welfare of our neighbors, it does not adversely affect the character of the neighborhood and it is not injurious to other uses and improvements in the area.

Ms. Koutchak states, "Mulligan would at least have a private right of action against the servient estate of Jardine, and quite possibly against CBS for failing to follow our zoning code." Once again, this is another typo and error in Ms. Koutchak's facts. To clarify, I would like to point out that I am the **dominate** estate of Jardine.

The building administrator strongly encouraged me to reapply for my bed and breakfast permit after being denied 8 years ago in 2006. Megan at the planning department told me that less than two percent of CUP have been denied lately. The building administrator let me know that we had an entirely new planning and zoning commission since my application in 2006, and that none of them were friends of Mr. Mulligan and that none of them were his cronies from the Elks Club. (as in 2006) I was also led to believe that I would not be discriminated against this time.

Ms. Koutchak states that "one of the oldest doctrines of the law is called the unclean hands doctrine." She states that you "may not receive equitable relief unless you are innocent of wrongdoing and unfair conduct relating to the subject matter of his/her claim."

Ms. Koutchak is using the unclean hands "label". I believe she is deliberately creating a prejudice and is purposely smearing my request. She is using the "unclean hands doctrine", as if I have been convicted in a court of law. Every definition of this doctrine, I can find, relates to a Court of Law, not a "tribunal" as she inserts to the definition, in her memorandum. Last time I checked, I was not going in front of a judge and jury, but asking for a CUP. (See attached Exhibit C.)

I purchased my home in 2004. I introduced myself to my new neighbor, Mr. Mulligan. Upon finding out that I was a charter fisherman, he stated to me, "You are a disease and need to be wiped off the face of the planet." Since that date he has defamed my character with neighbors, local business owners, harbor users and members of the Elks Club. (Some of whom are my friends and just listen to him rant rather than argue with him.)

He stares and glares at me and my girlfriend, he photographs us from his bedroom window, and engages in intimidating behavior on a regular basis. On the basis of unclean hands, it is Mr. Mulligan who should not

recieve equitable relief in his claim. He is not lord of the driveway, and we have never created a disturbance in our neighborhood.

I would like to add that there is another term in law called "first point of wrong doing". In trying to determine who's right in a "he said/she said" game, it is clear that the first point of wrong doing was Mr. Mulligan when he told me, upon meeting him, that I was a disease.

Ms. Koutchak states that "For the Planning commission now to consider granting a CUP no matter what the conditions might be attached, would be against the code and public policy. It would also expose CBS and Jardine to a potential successful lawsuit by Mulligan. Past Commissions have found quite succinctly that 1) the request crosses an easment owed by a person who opposes it."

The easement is a shared driveway easement between three home owners. Mr. Mulligan is simply the servient estate. We all share the maintenance costs of our shared driveway. There is no other power awarded to Mr. Mulligan by being the servient estate. Ms. Koutchak also states that " 2) traffic, noise and parking cannot be mitigated." As mentioned before, in the past ten years, our property has not been the subject of any traffic, noise or parking complaints. The only neighbor in opposition of this CUP is Mr. Mulligan. The majority of the pictures he provides were from a family BBQ at the neighbors house, 8 or so years ago. We were not a party to that BBQ. We fail to see how pictures of a neighbors party 8 years ago, has anything to do with our request for a CUP. We have adequate parking, we are peaceable neighbors, we have the right to use our driveway.

Ms. Koutchak explaines that "there is already one B&B in this small area, constitutes a burden on the servient estate which this Commission and the planning department has heard loud and clear for many years. Mulligan has a right to a safe, quiet, and peaceable enjoyment of his property by law and he has a right to demand that the City and Borough of Sitka enforce their code."

We all know that Mr. Mulligan is "loud and clear." Currently there are no denisty laws for Bed and Breakfast's in Sitka, and I hope that the Commission can see that this is just one more way Mr. Mulligan is trying to "wipe out the disease" of charter fishermen. With all the complaints of traffic, and noise, it is unclear to me why he never called the police department on me! And if he felt that there was an "abuse of an easment", how come he never sued me? Perhaps the answer is because we have never been loud, we have never abused the easment, and we are quiet and peaceful neighbors. Just like Mr. Mulligan, we would like the quiet and peaceful enjoyment of our estate, and the ability to conduct our affairs with the dignity of privacy.

I would hope that the legal department and administrator support our rights as well, not just that of Mr. Mulligan.

Brian Jardine

Exhibit "A"

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# LABRENZ v. BURNETT

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## Supreme Court of Alaska.

**Jeffrey LABRENZ, Appellant, v. Shane BURNETT and Jill Burnett, Appellees.**

**No. S-12770.**

**Decided: October 16, 2009**

Before: FABE, Chief Justice, EASTAUGH, CARPENETI, WINFREE, and CHRISTEN, Justices. Robert A. Sparks, Law Office of Robert A. Sparks, Fairbanks, for Appellant. William R. Satterberg, Jr., Law Offices of William R. Satterberg, Jr., Fairbanks, for Appellees.

### OPINION

#### I. INTRODUCTION

This appeal addresses a dispute between Jeffrey Labrenz and Shane and Jill Burnett over the use of land described in an easement. Labrenz has a driveway easement over the Burnetts' land, and in building his driveway, Labrenz installed decorative rocks, shrubs, trees, a fence, and a gate on the Burnetts' property. The superior court agreed with Labrenz that the slope of the Burnetts' land necessitated certain efforts to control erosion, but it found that many of Labrenz's improvements to the driveway easement were cosmetic in nature and ordered that they be removed. In addition, the superior court ordered Labrenz to move the fence and gate onto his own property. The superior court also permitted the Burnetts to use the easement to build a driveway to access the lower portion of their lot.

On appeal, Labrenz challenges the superior court's findings of fact as clearly erroneous and argues that his easement improvements were allowed under theories of contract and estoppel. He also contends that all of his improvements were reasonably necessary to protect his driveway from erosion and vandals. Because the evidence at trial supported the superior court's findings and the superior court's legal conclusions were not erroneous, we affirm the superior court's decision in all respects.

#### II. FACTS AND PROCEEDINGS

##### A. Facts

Jeffrey Labrenz and Shane and Jill Burnett own adjacent lots in the Sherwood Forrest Subdivision on Chena Ridge in Fairbanks. Lot 13A is owned by Labrenz, who also has an access easement over the lower portion of Lot 14A, owned by the Burnetts. Before the Burnetts owned Lot 14A, it was owned by Jeremy Riddle. The initial easement over Lot 14A was a thirty-foot-wide strip that was positioned during development of the subdivision by driving a bulldozer "along a path that was estimated, by eye, to be adequate for automobiles" to access Labrenz's property, Lot 13A.

Labrenz installed a driveway across Lot 14A to his property, and in the process, excavated outside of the driveway easement boundaries on Lot 14A. After it became apparent that Labrenz had over-excavated his easement, he and Riddle agreed on a replat of their adjoining lots, which was completed on May 4, 2004. Labrenz gave up a small portion of his lot in order to enlarge the easement area. In May 2004 Riddle sold Lot 14A to the Burnetts.

In addition to excavating his driveway easement in a manner that provided erosion controls, Labrenz landscaped it with light-colored rocks, shrubs, and spruce trees. Labrenz also placed a wire fence and gate on the easement, with a portion of the fence extending outside the easement on the Burnetts' property. The Burnetts objected to Labrenz's landscaping choices and the placement of the fence and gate on their property

**DID NOTHING, AS ATTORNEY GENERAL, TO PROTECT WOMEN IN THE MILITARY FROM SEXUAL ASSAULT**

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EXHIBIT A

and requested that they be removed. Labrenz refused and replaced the wire fence with a white vinyl fence after he was sued by the Burnetts.

#### B. Proceedings

In June 2005 Shane Burnett filed suit against Labrenz, claiming that Labrenz had made use of the Burnetts' land in excess of Labrenz's rights under the easement. Specifically, Burnett alleged that Labrenz had trespassed on the Burnetts' property by making use of a wider strip of land than the easement allowed and "wasting the property." In August 2005 Burnett requested that the superior court issue an order requiring the removal of the improvements that Labrenz had made to the easement and enjoining Labrenz from making any further improvements. In late October 2005, the superior court denied Burnett's motion for a preliminary injunction requiring removal of the improvements. Jill Burnett was added as a plaintiff in December of that year. In March 2006 the superior court ruled that the Burnetts could only assert claims that had been available to Riddle, the former owner who originally granted the easement to Labrenz.

The case went to trial on October 26, 2006. Labrenz argued that all of the landscaping was necessary to protect his driveway from erosion. He also claimed that the fence and gate were necessary to protect his driveway from vandalism by snow-machiners and four-wheelers who might come on the property and destroy the driveway. The Burnetts argued that Labrenz had landscaped the easement area of Lot 14A to match Labrenz's own landscaping so that it would look like Labrenz's property and contended that the light-colored rocks and shrubs were decorative in nature. The Burnetts further maintained that to the extent the rocks and plants protected against erosion, other less obtrusive options such as "hardy grass" were available. Riddle testified that he had never approved Labrenz's rocks and shrubs and that he believed Labrenz's gate and fence were temporary. The surveyor of the replat testified that the purpose of the replat was to accommodate the improvements Labrenz had installed on the easement.

At the conclusion of the trial, the superior court made oral findings, determining that while "there has got to be some erosion control" to prevent against runoff, the light-colored rocks bordering the driveway were "more for the decorative beauty of the landscaping." Though the superior court acknowledged that the threat of erosion presented a "serious issue," it found that the threat of vandalism was not "a realistic problem" and ordered the fence and gate to be moved onto Labrenz's property. It took under advisement the question whether the rocks and shrubs would have to be removed and replaced with other plantings to control erosion.

The superior court issued supplemental written findings and concluded that the rocks, shrubs, and trees were primarily decorative in nature and that the nature of the landscaping was not reasonable or necessary under the circumstances. The superior court ordered Labrenz to remove the shrubs, after which the Burnetts could landscape the easement "as they see fit." The superior court confirmed its earlier ruling that the fence and gate were to be moved onto Labrenz's property. Finally, the superior court ruled that the Burnetts would be permitted to use Labrenz's easement to access their own property, though the superior court warned that should the Burnetts damage Labrenz's driveway in developing their own access, they would be fully responsible for the damage.

Labrenz requested a new trial and clarification of the superior court's decision, as well as a stay of its order. The superior court denied both Labrenz's motion for a stay of judgment and his request for a new trial, but it issued a supplemental order addressing his request for clarification. It explained that improvements within the easement area must be reasonably related to the easement's purpose—that of a driveway. The superior court found that the decorative rocks, decorative shrubs, gate, and fencing placed on the easement were not reasonably related to the essential functions of the driveway and thus should be removed. Labrenz appeals.

#### III. STANDARD OF REVIEW

We review the superior court's factual findings under the clearly erroneous standard and will disturb those findings only "when we are left with a definite and firm conviction on the entire record that a mistake has been made." We review the superior court's legal conclusions de novo.

#### IV. DISCUSSION

##### A. The Superior Court Did Not Err in Finding That There Was No Express or Implied Contractual Agreement To Allow Labrenz's Rocks, Shrubs, Gate, and Fence.

Labrenz first argues that the superior court's findings are clearly erroneous "because the Burnetts are bound by the agreement reached between Labrenz and [Riddle] to expand the driveway easement to protect [Labrenz's] improvements." The parties stipulated to the admission of a written statement from the surveyor who conducted the replat of Lots 13A and 14A, rather than calling him as a witness. Labrenz relies on the surveyor's proffered testimony that

Mr. Riddle knew of Mr. Labrenz's gate/fence, plantings, rock and improvements in the easement area and the purpose of the agreement for the replat was to accommodate the improvements that [Labrenz] had installed in the access easement area; and that [Labrenz] paid for part of the replat costs.



Exhibit  
"A"

Labrenz argues that this testimony conclusively "establishes that Riddle knew of [Labrenz's] improvements in the easement" and "that a purpose of the agreement between Riddle and [Labrenz] for the replat was to accommodate or protect the improvements that [Labrenz] had installed in the access easement area." Yet as the Burnetts persuasively argue, the "intent of the parties regarding the extent of protection granted by the replat can best be determined by the testimony" of Riddle and Labrenz. The Burnetts concede that at the time of the replat, Riddle knew of Labrenz's improvements in the easement, but they highlight Riddle's testimony that he believed that Labrenz's gate and fence were temporary and that he never gave Labrenz approval for the rocks and shrubs.

Labrenz maintains that by entering into a stipulation that the superior court could consider the surveyor's written statement, the Burnetts "removed the trial court's ability to assess demeanor and determine credibility and they should be bound by their stipulation." But an exchange at trial reveals that the stipulation reflected only an agreement as to what the surveyor would say if called to the stand. When questioned by the superior court about admitting the surveyor's written statement by stipulation, the Burnetts' attorney responded, "obviously we'll argue [but] we are acknowledging that [is] his testimony."

The superior court heard evidence that the replat was not intended to approve all of Labrenz's improvements to the easement. Riddle testified that he had never approved Labrenz's rocks and shrubs and that he knew of Labrenz's gate and fence but believed that they were temporary. Thus the superior court's finding that there was no express agreement to allow Labrenz's decorative improvements, gate, and fence was not clearly erroneous.

Labrenz also argues that the replat amounted to an implied contract to protect his easement improvements. Labrenz relies on *Cluff v. Nana-Marriott*, in which we recognized that "[t]he existence of an implied contract must be determined by considering all the factors in light of the surrounding circumstances." Labrenz argues that "the actions of the parties . . . clearly demonstrate[ ] that the purpose of the replat was to protect the improvements installed in the easement." He also points to the fact that Riddle "never objected to any of [the] improvements, including the ditch-rock or shrubs." But under Alaska law, an implied contract "exists only when there is mutual assent between parties." : As we have observed, an implied contract "arises where the court finds from the surrounding facts and circumstances that the parties intended to make a contract but failed to articulate their promises." : In such a case, "the court merely implies what it feels the parties really intended." : Although Labrenz testified that he "assumed that he paid for the replat for the expansion of the driveway easement to protect all of his improvements," the superior court also heard testimony from Riddle explaining his understanding that Labrenz's gate and fence were temporary and that he never gave Labrenz approval for the rocks and shrubs. Given the conflict in the evidence regarding the intent of the parties, the superior court did not err in declining to find an implied contract between Labrenz and Riddle to protect all of Labrenz's improvements to the driveway easement.

#### B. The Superior Court Did Not Err When It Refused To Apply the Doctrine of Estoppel Against the Burnetts.

Labrenz next argues that the superior court's findings are inadequate "because they fail to [include] any findings concerning Labrenz's position that [the] Burnetts['] proposed actions were barred by quasi or equitable estoppel." Labrenz contends that the doctrine of quasi or equitable estoppel should be applied against the Burnetts because Riddle's failure "to object to the improvements he admit[ted] he knew were installed in the easement" created a situation where Labrenz "reasonably believe[d] that the replat was being performed to protect [his] improvements." Labrenz claims that he reasonably relied on "Riddle's silence and lack of objection" to his detriment and that he "paid thousands of dollars for a replat that [he] reasonably believed was intended to protect his improvements."

Quasi estoppel "precludes a party from taking a position inconsistent with one he has previously taken where circumstances render assertion of the second position unconscionable," - while "[e]quitable estoppel results from an assertion of a position, expressly or by implication, which is reasonably relied on by the opposing party to his detriment." - As discussed above, the superior court heard testimony from Riddle that he believed that Labrenz's gate and fence were temporary and that he never gave Labrenz approval for the rocks and shrubs. And as the Burnetts point out, the purpose of the replat "was not to allow Labrenz to landscape [the] Burnett [s'] property to Labrenz's liking, but was rather to cure a previously unauthorized encroachment onto [the] Burnett[s'] property." Thus, the superior court did not err when it declined to rule that the Burnetts' requested relief was barred by the doctrine of quasi or equitable estoppel.

#### C. The Superior Court Did Not Err in Finding That Some of Labrenz's Easement Improvements Were Not Reasonable and Necessary To Protect Labrenz's Driveway.

The superior court recognized the steep nature of the land in question and found that reasonable use of Labrenz's easement could include back-sloping to aid in channeling water and runoff, as well as installation of minimal rocks or plants to achieve additional water control. But the superior court found that the light-colored landscaping rocks, decorative shrubs, and white vinyl fence were not a reasonable use of the easement on the Burnetts' land. The superior court found that the primary purpose of the rocks and shrubs was decorative and that less intrusive means were available to help with erosion prevention. Labrenz challenges

Exhibit A

the superior court's factual findings that some of his improvements were not reasonable and necessary to protect the driveway.

1. The superior court's oral findings did not contradict its written findings.

Labrenz first argues that the superior court's findings are clearly erroneous because its "oral findings directly contradict [its] written findings." But a review of the superior court's oral and written findings reveals that they are not contradictory. The superior court made oral findings at the conclusion of the trial, recognizing that although Labrenz was responsible for "some really excellent landscaping" and "there has got to be some erosion control," the rocks placed by Labrenz along the driveway's border "may not have runoff implications" and were "more for the decorative beauty of the landscaping." The superior court then indicated that it was not yet prepared to require the removal of the rocks and shrubs and that it "want[ed] to think about that a little more."

In its written findings, the superior court again recognized the steep nature of the land in question and found that reasonable use of Labrenz's easement could include back-sloping to aid in channeling water and runoff, as well as installation of some rock and plantings for water control purposes. But the superior court found that installing light-colored landscaping rocks, decorative shrubs, and white vinyl fence was not a reasonable use of the easement on the Burnetts' land because they were primarily decorative in nature. The superior court's written findings thus did not contradict but rather supplemented its oral findings and explained them in more detail.

2. The superior court's findings that some of Labrenz's improvements were primarily decorative in nature and thus not reasonable and necessary to the easement were supported by the evidence.

Labrenz next argues that the superior court erred because it ordered the removal of the rocks and shrubbery as primarily decorative despite its finding "that the rock and shrubs are a reasonable manner of erosion control." Labrenz relies on our decision in *Simon v. State*, where we considered a landowner's challenge to the State's relocation of a highway within a right-of-way. . . We concluded that as long as the State's changes were reasonably necessary to improve the highway, the statutory easement allowed the State to relocate the highway anywhere within 150 feet of the centerline of the original roadway. . . . Pointing to his own testimony that the purpose of the rocks and shrubs installed was to prevent erosion, Labrenz argues that like the improvements in *Simon*, his improvements were reasonably necessary.

Yet a careful reading of the case cited by Labrenz reveals that his improvements to the driveway easement are not supported by our decisions. Where specific parameters, including the length and width of an easement have been expressly set forth, "the easement is specific and definite." . . . In such a case "[t]he expressed terms of the grant or reservation are controlling . . . and consideration of what may be necessary or reasonable to the present use of the dominant estate are not controlling." . . . The plain meaning of the subdivision map of the property unambiguously describes the original thirty-foot easement, and the plain language of the replat states that it is "for [a] driveway to Lot 13A." But there are no provisions in the replat for a permanent fence, a permanent gate, or other improvements that are not necessary to the existence of a driveway. . . .

As the holder of the easement, Labrenz "may make unlimited reasonable use of the easement." . . . But Labrenz is only entitled to use the Burnetts' property "in a manner that is reasonably necessary for the convenient enjoyment of the servitude," . . . or, as the superior court framed the issue, to make "improvements within the easement area [that are] reasonably related to the easement purpose: that of a driveway."

Labrenz claims that the "Burnetts' objections that the improvements make the property look like it is part of [Labrenz's] lot, without any evidence showing the improvements are unnecessary or unreasonable, cannot trump reasonable necessity." Given the steep nature of the land, it was reasonable for Labrenz to include features to control the threat of erosion. . . . But Labrenz was not entitled to interfere unreasonably with the Burnetts' enjoyment of their own property. . . . As the Restatement recognizes, in determining "what constitutes unreasonable interference with the enjoyment of the servient estate, aesthetic considerations may be relevant." . . .

The superior court heard evidence showing that certain aspects of Labrenz's landscaping were decorative in nature and thus not "reasonably related to the essential functions of [Labrenz's] driveway." Labrenz claimed that the rocks and shrubs on his driveway were necessary to prevent erosion. Yet Shane Burnett testified that other houses in the neighborhood use grass to control erosion on hillsides steeper than the property in question, and the superior court also heard testimony by Riddle that erosion on the hillside could be controlled using grasses. Thus, the superior court did not err in finding that some of Labrenz's easement improvements were not reasonable and necessary to protect Labrenz's driveway.

3. The superior court did not fail to sufficiently explain its reasoning as required by Alaska Civil Rule 52.

Labrenz also challenges the findings on the ground that the superior court did not explain its reasoning sufficiently as required by Alaska Civil Rule 52. In *Sullivan v. Subramanian* we explained the superior court's duty under Rule 52(a):

Exhibit  
"A"

[T]he trial court had a duty . . . to find the facts specially and state separately its conclusions of law thereon. This rule required the court to deal adequately with and state with clarity what it finds as facts and what it holds as conclusions of law. The findings and conclusions should be so clear and explicit as to give the Supreme Court a clear understanding of the basis for the decision made.[19]

In this case, the superior court's findings are quite detailed and allow for meaningful appellate review. The superior court did not disregard Labrenz's testimony as Labrenz claims but rather did not agree with Labrenz's version of events or his legal arguments. For example, the superior court found that it was not Riddle's intent to approve all of Labrenz's improvements and subsequently bind the Burnetts, relying on Riddle's testimony that he only became aware of Labrenz's improvements after they were completed, that he believed that Labrenz's gate and fence were temporary, and that he never gave Labrenz approval for the rocks and shrubs. In addition, the superior court found that the rocks and shrubs were decorative in nature and not reasonably necessary for the easement purpose after it heard the testimony of the Burnetts and Riddle and conducted a site visit. The superior court's written order provides citations to the trial transcript after each of its findings. The findings of the superior court also addressed and resolved all critical issues and claims of the case and are therefore sufficiently detailed under Civil Rule 52(a).

4. The superior court's finding that there was not a significant threat of vandalism to Labrenz's property is supported by the testimony at trial.

In finding that Labrenz must move his gate and fence off of the Burnetts' property, the superior court acknowledged that there is "always that risk" of damage from vandals and that Labrenz's desire to protect his property was understandable. Yet the superior court found that Labrenz could effectively protect his property simply by moving the gate to his property line.

Labrenz argues that the superior court's finding that there is no current risk of vandalism that would justify Labrenz's fence and gate on the Burnetts' property as being reasonably necessary is clearly erroneous because the finding "[was] not based on evidence admitted at the trial." Labrenz claims that the superior court based its finding on "personal knowledge of the character and history of the subdivision" and that this "undisclosed prior knowledge of the character of the area in question" calls its conclusions into question. Labrenz also contends that the superior court's finding is "contrary to the evidence admitted at trial," including Labrenz's own testimony that he observed damage left by trespassers and that neighbors had called to warn him about vandals on snow-machines and four-wheelers.

In its findings, the superior court addressed Labrenz's concerns about vandals and noted that previous vandalism had been in a lower area of the subdivision. But the trial court also noted a decline in the use of motorized vehicles in the area. Any knowledge that the superior court had of the area was not dispositive as other witnesses testified that there had not been any problems with trespassers vandalizing the property in the past. Thus, the superior court's findings were not "contrary to the evidence admitted at trial"; rather the superior court was simply not persuaded by Labrenz's testimony.

D. The Superior Court Did Not Err in Finding That the Burnetts Are Allowed To Use the Easement To Access the Bottom Part of Their Property.

The superior court found that the Burnetts have a right to make reasonable use of the driveway easement on their land. Labrenz argues that the superior court failed to address whether the Burnetts' plan "to construct a new driveway[ ] is reasonable under the circumstances." Labrenz also argues that the "Burnetts' construction of a new driveway into lot 14A through the easement is a violation of the [replat] agreement between Labrenz and Riddle." Yet the Burnetts persuasively argue that their construction of a new driveway to access the lower portion of their lot is not a violation of the replat agreement because "nothing in the replat revokes [their] right to access their property, including the easement." Furthermore, "[t]he owner of the servient estate may utilize the easement area in any manner and for any purpose that does not unreasonably interfere with the rights of the easement holder." . . .

The superior court heard testimony from Shane Burnett that he would like to access the lower portion of his lot but that the slope of the land makes it difficult to reach the lower portion from his existing driveway. The superior court also heard testimony and visited the property, and it determined that the Burnetts' plan for a second driveway to access a different part of their lot was reasonable and was not precluded by the replat agreement. . . . Its findings are not clearly erroneous.

E. The Superior Court Showed No Bias Against Labrenz.

After the superior court issued its supplemental written findings in May 2007, Labrenz requested a new trial and sought clarification of the superior court's decision. The superior court then issued a supplemental order regarding Labrenz's request for clarification, stating:

[Labrenz's] own unreasonable stance has led him to this situation. Despite being given a practical and equitable opportunity to remove and salvage the plants and landscaping materials at issue, he chose to continue flogging the poor expired beast before this court. [Labrenz's] energies would be better put to use in

determining how he might best reuse the materials previously consigned to this driveway, rather than besting [the Burnetts].

Labrenz claims that the superior court "expressed animosity" toward him, "demonstrat[ing a] deep commitment to the Burnetts' view of the facts." Labrenz also characterizes the superior court's remarks as an "unjustifiable, angry diatribe." Labrenz cites to the Alaska Code of Judicial Conduct ... and Ogden v. Ogden, where we remarked that appearance of impropriety is defined "by an objective standard—one that asks not whether a judicial officer displayed actual bias but whether the conduct would create in reasonable minds a perception that the judge's ability to carry out judicial responsibilities with integrity, impartiality and competence is impaired." ... But as we have repeatedly cautioned, "judicial bias should not be inferred merely from adverse rulings." ... The record does not reveal any improper actions or bias on the part of the superior court that would require us to remand the case to a different judge as Labrenz requests.

#### V. CONCLUSION

Because a number of Labrenz's easement improvements were not reasonably necessary to protect his driveway from erosion and vandals and because the Burnetts are legally entitled to use the easement on their property, we AFFIRM the judgment of the superior court in all respects.

#### FOOTNOTES

1. Martens v. Metzgar, 591 P.2d 541, 544 (Alaska 1979).
2. E.A. v. State, Div. of Family & Youth Servs., 46 P.3d 986, 989 (Alaska 2002).
3. 892 P.2d 164, 171 (Alaska 1965).
4. Altman v. Alaska Truss & Mfg. Co., 677 P.2d 1215, 1226 (Alaska 1983).
5. Martens v. Metzgar, 524 P.2d 666, 672 (Alaska 1974) (quoting Hill v. Waxberg, 237 F.2d 936, 939 (9th Cir.1956)).
6. Id. (quoting Hill, 237 F.2d at 937).
7. Dressel v. Weeks, 779 P.2d 324, 329 (Alaska 1989) (alteration and internal quotation marks omitted).
8. Krize v. Krize, 145 P.3d 481, 486 n. 19 (Alaska 2006) (internal quotation marks omitted).
9. 996 P.2d 1211, 1212 (Alaska 2000).
10. Id. at 1213.
11. Andersen v. Edwards, 625 P.2d 282, 286 (Alaska 1981) (internal quotation marks omitted).
12. Id. (internal quotation marks omitted).
13. See Kennedy v. Bodi, Mem. Op. & J. No. 3934, 1991 WL 11657237, at \*3 (Alaska, July 17, 1991) ("Because we find that the plain language of Plat 85-40 does not contemplate use of the easement for an above-ground cable such as the Bodis', we believe that the cable constitutes an unreasonable use of the easement.").
14. Id. at \*2 (citing Andersen, 625 P.2d at 286).
15. Restatement (Third) of Prop.: Servitudes § 4.10 (2000).
16. See id. § 4.10 cmt. d ("The first step in determining whether the holder of an easement is entitled to make a particular use challenged by the owner of the servient estate is to determine whether the use falls within the purposes for which the servitude was created.").
17. See id. § 4.10 cmt. h ("[T]he easement holder may not use it in such a way as to interfere unreasonably with enjoyment of the servient estate. What constitutes unreasonable interference will depend largely on the circumstances, particularly the purpose for which the servitude was created and the use of the servient estate made or reasonably contemplated at the time the easement was created.").
18. Id.
19. 2 P.3d 66, 69 (Alaska 2000) (internal quotation marks omitted). In Mapco Express, Inc. v. Faulk, 24 P.3d 531, 538-39 (Alaska 2001), we remarked that "[t]wo major principles emerge from our past decisions concerning Civil Rule 52(a). A trial court's findings are sufficiently 'clear and explicit' if they (i) allow for meaningful appellate review and (ii) resolve all critical issues and disputes between the parties."
20. Jon W. Bruce & James W. Ely, Jr., The Law of Easements and Licenses in Land § 8.20, at 8-60 (2009); accord 7 Thompson on Real Property § 60.04(b)(1) (David A. Thomas ed., 2d ed.2006).

Exhibit  
"A"

Exhibit  
A


21. The superior court instructed the Burnetts that if they develop a driveway that uses Labrenz's easement, they will be responsible for ensuring that the development reasonably protects Labrenz's driveway. The Burnetts concede that should they choose to develop their new driveway "in a manner outside of the court's instructions, Labrenz would then have a possible unreasonable interference or waste claim."

22. Alaska Code of Judicial Conduct Canon 2(A) states that "[i]n all activities, a judge shall . avoid impropriety and the appearance of impropriety, and act in a manner that promotes public confidence in the integrity and the impartiality of the judiciary."

23. 39 P.3d 513, 516 (Alaska 2001) (emphasis and internal quotation marks omitted).

24. Tillmon v. Tillmon, 189 P.3d 1022, 1027 n. 13 (Alaska 2008); see also DeNardo v. Maassen, 200 P.3d 305, 311 (Alaska 2009) ("Our past holdings demonstrate that neither interpretations of the law nor adverse rulings alone are sufficient to require recusal." (footnotes omitted)); Wasserman v. Bartholomew, 38 P.3d 1162, 1171 (Alaska 2002) ("Disqualification was never intended to enable a discontented litigant to oust a judge because of adverse rulings made." (internal quotation marks omitted)); Pride v. Harris, 882 P.2d 381, 385 (Alaska 1994) ("Indeed, every judge, when he hears a case or writes an opinion must form an opinion on the merits and often an opinion relative to the parties involved. But this does not mean that the judge has a personal bias or prejudice." (alterations and internal quotation marks omitted)).

FABE, Chief Justice.

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Exhibit B

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FindLaw Caselaw Alaska AK Supreme Ct PRICE v. EASTHAM

## PRICE v. EASTHAM

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### Supreme Court of Alaska.

**Thomas E. PRICE, Jr., Appellant, v. Mike EASTHAM, Veldon "Spud" Dillon, Lorraine Templeton, Bruce Turkington, Lee Krumm, La Velle Dillon, Bob Fenex, Carol Fenex, Bruce Willard, Linda Willard, Butch Bullard, Gordon Grebe, Diane Grebe, Eric Overson, Sam Matthews, Nancy Matthews, Ray Kranich, Eilene Wythe, Jack Alexander, Sue Alexander, Rick Alexander, Reed Alexander, Dave Sanders, Shirley Sanders, Greg McCullough, Lloyd Moore, Penny Moore, Tammy Hagan, Chuck Hagan, Kate Mitchell, Ben Mitchell, Ronnie Morrison, Barb Hrenchir, Mike Hrenchir, Gus Weber, Rita Weber, Bob Simcoe, Mark Jacobs, Barb Jacobs, Sharon Thompson, Rick Thompson, Fred Thompson, Connie Thompson, Mike Devaney, Rick Anderson, Dave Weber, Mark Robl, Terry Robl, Toras Fisk, Dave Boone, Marasha Boone, George Eschin, Jim Bills, Mike O'Malley, Joe O'Malley, Bill Markel, Gordon Berg, Floyd Newkirk, Karl Horst, Robert Pelky, Robert Plymire, Don Blackwell, Valda Ziemelis, Randy Whitehorn, Connie Whitehorn, Willie Bishop, Hans Albertson, Bill Sampson, Mike Arno, Allen Englebretson, Rodney McLay, Jim Spencer, Jimmy Spencer, Joe Wright, Jason Kinnard, Amy Kinnard, Sam Wright, Paul Budge, Brian Bellamy, Rick Wise, Nathan Wise, John Wise, Jacob Wise, Marty Wise, Jake Ellyson, Carol Ellyson, Bill Sheldon, Leroy Cahana, Sr., Doris Cabana, Larry Cabana, Dawn Cabana, and Scott Connelly, Appellees.**

No. S-11647.

Decided: February 3, 2006

Before: BRYNER, Chief Justice, MATTHEWS, EASTAUGH, FABE, and CARPENETI, Justices. Thomas E. Price, Jr., pro se. Michael Hough, Homer, for Appellees.

### OPINION

#### I. INTRODUCTION

In *Price v. Eastham* (*Price I*), we held that a public prescriptive easement had been established and remanded the case to the superior court for a determination of the easement's scope. In *Price I*, we discussed the question of scope in some detail, remarking that "[c]ourts have restricted the scope of prescriptive easements significantly to limit the burden on the servient estate" and suggesting that the superior court was "free to impose restrictions upon the easement consistent with the Restatement (Third) [of Property: Servitudes], including . . . limiting use to certain seasons, prescribing the width of the easement, and specifying the precise uses that may be made of the easement."

Upon remand, the superior court issued an order stating that the easement was to be sixteen feet in width and including a corresponding legal description. Because the order does not satisfy Alaska Rule of Civil Procedure 52(a) and therefore does not permit meaningful review, we remand for a determination of the precise scope of the easement in light of this opinion. We additionally affirm the superior court's refusal to condition the scope of the easement upon approval of a modification to Price's Farm Conservation Plan.

#### II. FACTS AND PROCEEDINGS

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Exhibit  
B

This case concerns the scope of an easement along a seismic trail crossing the property of Thomas E. Price. The trail was used without incident for many years (since at least 1956) until the late 1990s when trail traffic increased to the point of interfering with Price's quiet enjoyment of his land. Price posted the trail with "No Trespassing" signs in the winter of 1998-99. He replaced the signs each time unknown persons removed them. A group of snowmachine drivers eventually sued Price to settle the dispute.<sup>5</sup>

In its February 9, 2000 decision, the superior court found that a right-of-way existed under 43 U.S.C. § 932, Revised Statute (RS) 2477 and, in the alternative, that a prescriptive easement existed over Price's property.<sup>6</sup> The RS 2477 issue had not been raised by the parties at trial.<sup>7</sup> Regarding the scope of the RS 2477 right-of-way, the superior court stated only the general direction of the trail; clarified that it may be used for any purpose consistent with public travel; and declared its width to be "that width established by the traditional use of the trail, but in no place is the right of way narrower than is safe for two snowmachines to pass each other, nor wider than the original width of the seismic trail."<sup>8</sup>

In Price I, we held that the superior court's failure to give the parties notice and an opportunity to be heard at trial on the RS 2477 issue violated due process rights and we therefore reversed the superior court's finding of an RS 2477 right-of-way.<sup>9</sup> But we concluded that a public prescriptive easement had been established over Price's property.<sup>10</sup> Since the only relevant discussion of the easement's scope by the superior court concerned the RS 2477 right-of-way, we remanded the case to the trial court to establish the scope of the prescriptive easement.<sup>11</sup> In so doing, we cited to sections 4.1 and 4.10 of the Restatement (Third) of Property: Servitudes, discussed the range of relevant factors, and provided case law to guide the inquiry upon remand.<sup>12</sup>

After the hearing on remand, the superior court issued an order consisting of a single sentence stating that the easement was to be sixteen feet wide and containing a legal description of its general direction including the start and end points. Price now appeals.

### III. DISCUSSION

The most important of Price's arguments on appeal is his complaint that the trial court failed to comply with the requirement of Civil Rule 52(a) that the superior court's order contain specific findings of fact and conclusions of law to permit meaningful review.<sup>13</sup> A superior court's findings are sufficiently "clear and explicit" to satisfy Civil Rule 52(a) if they resolve all critical areas of dispute in the case and are sufficiently detailed to allow for meaningful appellate review.<sup>14</sup> In particular, the superior court must provide findings sufficient to give a clear understanding of the grounds upon which it reached its decision.<sup>15</sup>

In our conclusion in Price I, we suggested that the superior court was "free to impose restrictions on the easement consistent with the Restatement (Third) and this decision, including, for example, limiting use to certain seasons, prescribing the width of the easement, and specifying the precise use that may be made of the easement."<sup>16</sup> The order issued by the superior court makes no reference to any limitations to be placed on the easement nor does it explain its reasoning in these terms.

Appellees argue that a common sense reading of the record supports the superior court's order and that a "precise" delineation of the easement was in fact provided by the superior court in its provisions as to width and length of the easement. But in Price I we provided guidance on the types of limitations to be considered by the superior court. Unfortunately, the conclusory nature of the superior court's finding is insufficient for us to determine whether the superior court meaningfully considered restrictions on the easement scope. Moreover, Price's evidentiary showing in the hearing on remand raises the question whether appellees are attempting to change the way they are using the easement. Because a change in the use of a prescriptive easement could significantly affect the scope of the easement, we now discuss the legal principles and types of facts required to determine whether appellees' present use of the trail is in line with the use that established the prescriptive easement in the first place.<sup>17</sup>

#### A. It Was Error for the Superior Court To Fail To Make Findings Sufficient To Allow Meaningful Review of its Reasoning Concerning the Precise Scope of the Easement.

In its decision of February 9, 2000, the superior court acknowledged the basic question that drives this case: what is the proper response when a public prescriptive easement is properly established by a relatively small number of people but is subsequently subject to a dramatic increase in the numbers of those who wish to use it?

This question implicates two separate inquiries: (1) how to delineate the scope of a prescriptive easement at the moment of perfection; and (2) whether a given change or expansion in the scope of that easement is permissible. The two inquiries are inseparable because the original scope of the easement must be fully understood before the second inquiry may begin. The second inquiry requires a comparison be made between the uses made of the easement when it was perfected and the proposed new use.<sup>18</sup>

In Price I, we provided guidance to the superior court on both inquiries.<sup>19</sup> We began by noting that "[b]ecause an easement directly affects ownership rights in the servient tenement, judicial delineation of the extent of an easement by prescription should be undertaken with great caution."<sup>20</sup> In citing this language, we echoed the

Regarding the first inquiry, the Restatement directs that a prescriptive easement's scope should be determined by the nature of the adverse use that led to its creation in the first place.<sup>21</sup> In *Price I*, we cited the Restatement provision stating that the focus of the inquiry should be placed on the servient estate owner's reasonable expectations.<sup>22</sup> In particular, the inquiry must consider what the servient estate owner "should reasonably have expected to lose by failing to interrupt the adverse use before the prescriptive period had run."<sup>23</sup>

Once the original use and purpose for which the easement was created is understood, the second inquiry begins. The second inquiry must compare the new uses to the old uses of the easement.<sup>24</sup> The comparison is undertaken to answer the question whether a new or challenged use of the easement falls within the purpose for which the easement was originally created.<sup>25</sup> In this inquiry, the Restatement urges courts to balance the interests of the servient and dominant estate holders as well as take conservation and neighborhood preservation concerns into account.<sup>26</sup> When a change in the use of a prescriptive easement is involved, the Restatement stresses caution, stating that the "degree of change permitted for a prescriptive easement is generally less than that for an expressly created easement."<sup>27</sup>

In making this second inquiry, the Restatement further notes that conflicts between the original and new uses frequently present factual issues as to "how broadly or narrowly the purpose should be defined, whether the proposed change is reasonably necessary, whether it is of the sort that should have been contemplated by the parties, how much damage or interference is likely to ensue, and whether it is reasonable."<sup>28</sup>

At the evidentiary hearing below and on appeal, *Price* has attempted to address these factors.<sup>29</sup> *Price's* main argument is that when compared with previous uses, the establishment of a parking lot and the sudden increase in snowmachines combined to create a use of the trail well outside of his reasonable expectations. In the hearing on remand, *Price* tried to present evidence concerning the establishment of a new parking lot near the trail. The superior court stopped *Price*, stating that the goal of the hearing was to determine the scope of the easement and, crucially, refused to consider the motivations of the appellants in changing the use of the easement. But the Restatement (Third) does direct the courts to include an inquiry into the motivations behind any change proposed by the easement holder in the use of the easement.<sup>30</sup>

*Price's* argument depends in large part on the date this easement was perfected. The emphasis in the inquiry is on whether the challenged use can be shown to have been conducted continuously for at least ten years. In this case, the ten-year period should be measured back ten years from the first attempt to block its use. Since *Price* posted the trail with "No Trespassing" signs in the winter of 1998-99, the date of perfection (in retrospect) is 1988-89. According to the two-step analysis of the Restatement, the superior court must first examine the uses of the easement made in 1988-89 and then proceed to compare them with later uses of the trail.

*Price's* argument therefore hinges on the factual inquiry as to whether the use of the trail changed dramatically in 1996. In the record before us, there is evidence to suggest a significant change in use. In its opinion of February 9, 2000, the superior court notes that evidence in the record suggests that the trail was used only occasionally for many years by a small number of people. It is uncontroverted that a parking lot was subsequently established in 1996 near the trailhead of the easement and a new trail linking the parking lot to the original trail was established soon thereafter. *Price* provides evidence to show that before the establishment of the parking lot, the public had used other trails to access the Caribou Hills development. *Price's* witness in the hearing on remand also expressed his opinion that the only reason the trail goes where it does is because of the new parking lot.

*Price* also complains that his estate is being unreasonably burdened by the present use of the trail. During the hearing on remand, the superior court first mistook *Price's* presentation of evidence showing increased use, erosion and environmental damage to his estate as an attempt to dispute the establishment of the easement and then questioned the relevance of his evidence on environmental erosion. But *Price's* evidence concerning environmental damage to his estate is germane to the issue of easement scope. The Restatement approach directs the courts to take conservation and neighborhood preservation concerns into account when balancing the interests of the dominant and servient estate holders.<sup>31</sup> *Price's* evidence of erosion damage occurring in recent years could also suggest that the change in use has been both significant and unexpected when compared to previous uses.

To address the Restatement's emphasis on the reasonable expectations of the landowner,<sup>32</sup> *Price* points out that he did not feel the need to dispute the use of the trail prior to 1998 precisely because that use was sporadic and did not interfere with his operations on the land. To forestall any argument that he sat on his rights with regard to this new use of the easement, *Price* also takes pains to point out that he protested the non-consensual increase in use of the trail (by posting "No Trespassing" signs) within two years of the establishment of the parking lot and well within the ten-year prescriptive period.

In short, *Price's* position is that the purpose for which the trail was expanded (and marked and groomed for the first time) after 1996 was to accommodate the increased traffic from the parking lot. He argues that this purpose is quite different from the purpose for which the original easement was established, that is, occasional



recreational use and access to three residences. He places particular emphasis on how the trail went from a normal trail to a "snowmachine superhighway" quite suddenly. Price's argument echoes the analysis in several cases in which an increase in intensity, frequency, and manner of use—particularly a sudden increase in traffic—on an easement due to circumstances beyond the reasonable expectations of the servient estate-owner was held to be impermissible.<sup>34</sup>

In response to Price's arguments, Eastham provides a list of people who over the last forty years have used the trail for various purposes, including for access to Caribou Lake residences as well as for recreational uses. But Eastham does not cite to evidence in the record that would demonstrate a lack of change in the type or intensity of use of the easement. Eastham also fails to argue or point to evidence supporting a conclusion that even if the uses are new, they are substantially similar to previous uses and, therefore, fall well within Price's expectations.<sup>35</sup>

On the other hand, Eastham does point to evidence concerning the variety of the trail's uses that go to the issue of seasonality as well as to evidence indicating the present width of the trail and industry standards concerning the width of snowmachine trails. In response to Price's argument that the snowmachiners can use a different trailhead, one that is in the process of being established by the Homer Soil and Water District, Eastham cites to evidence showing that the trail over Price's land leads to three other trails and allows access to different directions. Eastham uses this evidence to argue that the trail over Price's land is therefore distinct from and serves different purposes from the proposed trailhead. Eastham also refers us to evidence to show that this proposed trailhead is three miles away from the present parking lot and, as it is illegal to drive snowmachines along the road, is not useful to the snowmachiners.

It is of course the function of the superior court to judge witness credibility and weigh conflicting evidence.<sup>36</sup> If, as in this case, most of the evidence is oral testimony, or if the superior court's factual determinations depend largely on conflicting testimony, then the superior court's greater ability to assess witness credibility requires deferential review by this court.<sup>37</sup> But the superior court must nonetheless make its findings with sufficient specificity that we may review both the grounds for its decision and its application of the law to the facts.

We therefore remand the case for a determination of the scope of the easement in light of the analysis contained in sections 4.1 and 4.10 of the Restatement and our discussion in Price I. The analysis should also examine changes in the use of the easement since 1988–89. In undertaking this analysis, the superior court may, in its discretion, conduct additional evidentiary hearings concerning the changes in frequency, intensity, and manner of use of the easement.<sup>38</sup>

#### B. The Superior Court Did Not Err When It Refused To Condition the Scope of the Prescriptive Easement upon Approval of Appellees' Application for a Modification of Price's Farm Conservation Plan.

Price also argues that the superior court should have conditioned the use of the prescriptive easement on Eastham's first securing approval from the relevant regulatory authorities for a modification to Price's Farm Conservation Plan.<sup>39</sup> Eastham argues that this is a new argument and therefore impermissible upon appeal.

We have stated that we "will not consider on appeal new arguments which (1) depend on new or controverted facts; (2) are not closely related to appellant's arguments at trial; and (3) could not have been gleaned from the pleadings, unless the new issue raised establishes plain error."<sup>40</sup> On the other hand, we have also noted that the pleadings of pro se litigants should be held to less stringent standards than those of lawyers<sup>41</sup> and have explained that the briefs of pro se litigants are to be read "generously."<sup>42</sup>

In this case, Price did not make his Farm Conservation Plan argument at the trial court level or upon appeal in Price I and failed to raise this issue at the remand hearing after our decision in Price I. Thus, he has failed to preserve this claim on appeal.<sup>43</sup> Moreover, even if Price had mentioned this argument during the hearing on remand, his failure to raise the argument in Price I would still preclude him from raising the issue for the first time in this appeal.<sup>44</sup> As we have noted, an appeal "should narrow the issues in a case, not expand them."<sup>45</sup>

#### IV. CONCLUSION

The evidence presented in the record is well suited to answer the question presented in Price I, that is, whether an easement over Price's land existed in the first place. But it is presently not in a form proper to the precise delineation of the scope of the easement in light of the direction provided by us in Price I or by the Restatement (Third).

To determine the scope of the public prescriptive easement on Price's land, the superior court must make specific factual findings regarding the dates to be ascribed to the prescriptive period; the original purpose and use of the easement; any changes that have been made in the use of the easement; and, finally, the reasonableness of that change, taking into account such factors as the speed of the changes in use, damage to the estate, and the reasonable expectations of the servient landowner. Therefore, we REMAND the case to the superior court for such findings and both parties should prepare to address the factors at issue.

Exhibit B

FOOTNOTES

1. 75 P.3d 1051, 1059 (Alaska 2003).
2. *Id.*
3. *Id.*
4. Civil Rule 52(a) states in pertinent part: "In all actions tried upon the facts without a jury or with an advisory jury, the court shall find the facts specially and state separately its conclusions of law thereon."
5. The plaintiff in the trial court was originally the organization Snomads, Inc. Michael Eastham's amended complaint substituted ninety-one individual plaintiffs for the Snomads.
6. To clarify, the trial court did not discuss the prescriptive easement or its scope in its initial decision of February 9, 2000. However, it did hold that a prescriptive easement existed over Price's land in its denial of Price's motion for reconsideration on the original RS 2477 ruling. Price, 75 P.3d at 1053.
7. *Id.*
8. *Id.* at 1056.
9. *Id.* at 1056-57.
10. *Id.* at 1058-59.
11. *Id.*
12. Alaska R. Civ. P. 52(a); cf. *Fyffe v. Wright*, 93 P.3d 444, 456 (Alaska 2004); *Ilardi v. Parker*, 914 P.2d 888, 892 (Alaska 1996).
13. *Mapco Express, Inc. v. Faulk*, 24 P.3d 531, 537 (Alaska 2001).
14. *Ilardi*, 914 P.2d at 892.
15. Price, 75 P.3d at 1059.
16. In *Murray v. Murray*, we faced a situation similar to the procedural facts in Price. 856 P.2d 463 (Alaska 1993). In *Murray I*, a divorce case, we remanded the case to the superior court to make findings sufficient to distinguish between marital and separate property. The trial court's subsequent opinion did not set out the analysis regarding the categorization of property called for in Alaskan case law, but named certain assets and deemed them separate property in a conclusory fashion. As a result, we remanded the case a second time. *Id.* at 466. In our decision, we provided guidance as to the kinds of findings the superior court would need to make in order to answer the questions raised by the case. *Id.* at 466-68; see also *H.C.S. v. Cmty. Advocacy Project of Alaska, Inc. ex rel. H.L.S.*, 42 P.3d 1093, 1101 (Alaska 2002) (court also finds trial court findings insufficient and gives guidance as to what facts must be found to answer the inquiry).
17. Price, 75 P.3d at 1058 n. 40; Restatement (Third) of Prop.: Servitudes § 4.10 cmt. d (2000).
18. Price, 75 P.3d at 1058-59.
19. *Id.* at 1058 (citing *Wright v. Horse Creek Ranches*, 697 P.2d 384, 388 (Colo.1985)).
20. Restatement (Third) of Prop.: Servitudes § 4.10 cmt. b (2000).
21. *Id.* § 4.1 cmt. a.
22. Price, 75 P.3d at 1058 n. 39 (citing Restatement (Third) of Prop.: Servitudes § 4.10 cmt. d (2000)).
23. Price, 75 P.3d at 1058 (citing Restatement (Third) of Prop.: Servitudes § 4.10 cmt. d (2000)).
24. Restatement (Third) of Prop.: Servitudes § 4.10 cmt. h (2000).
25. *Id.* § 4.10 cmt. c (2000); see also *Andersen v. Edwards*, 625 P.2d 282 (Alaska 1981).
26. Restatement (Third) of Prop.: Servitudes § 4.10 cmt. h (2000). Comment h states: "Although generally easements are permitted to evolve along with the properties they serve, the outcome in individual cases may depend on how fast the transition is taking place in the area and whether the easement was created by grant or prescription. The degree of change permitted for a prescriptive easement is generally less than that for an expressly created easement. In balancing the interests of the dominant and servient estate

Exhibit B

27. *Id.*

28. *Id.* § 4.10 cmt. c.

29. In *Price I*, we provided the superior court guidance in the application of these principles in the form of case law exemplifying the rule that subsequent uses of an easement must be reasonably related to uses made during the prescriptive period. *Price* at 1058 nn. 37, 40, 41, 42 and cases cited therein. In several of these cases, section 478 of the Restatement (First) of Property is relied upon as a guide for discussion. See e.g., *Twin Peaks Land Co. v. Briggs*, 130 Cal.App.3d 587, 593-95, 181 Cal.Rptr. 25 (1982); *Wright v. Horse Creek Ranches*, 697 P.2d 384, 388-89 (Colo.1985); *Benner v. Sherman* 371 A.2d 420, 422 (Maine 1977). Section 478 states that in ascertaining whether a particular use is permissible under an easement created by prescription, a comparison must be made between such use and the use by which the easement was created with respect to (a) their physical character, (b) their purpose, and (c) the relative burden caused by them upon the servient tenement. Restatement (First) of Prop. . . . § 478 (1944) ("Factors in Ascertaining Extent of Easements Created by Prescription"). *Price* uses this terminology in his brief, but we use the language of the Restatement (Third).

30. Restatement (Third) of Prop.: Servitudes § 4.10 cmts. f, g, h (2000).

31. *Id.* § 4.10 cmts. f, h.

32. *Id.* § 4.1 cmt. h.

33. *Id.* § 4.10 cmt. f; see also *Gibbens v. Weisshaupt*, 98 Idaho 633, 570 P.2d 870, 876 (1977) (holding that an increase in degree of use due to commercial activities and additional residences on the dominant tenement is an unreasonable expansion of prescriptive easement); *Gutcheon v. Becton*, 585 A.2d 818, 822 (Me.1991) (holding that increased use did not burden servient estate because there was no evidence of increased noise or other effluence associated with traffic); *Leffingwell Ranch, Inc. v. Cieri*, 276 Mont. 421, 916 P.2d 751, 757 (1996) (holding that subdivision of ranch parcel into 174 units resulted in overburden of easement created for access to three homesteads); *Cote v. Eldeen*, 119 N.H. 491, 403 A.2d 419, 420-21 (1979) (holding that daily commercial use of easement by large trucks exceeded scope of prescriptive easement since prior use was occasional and non-commercial).

34. See *Wright v. Horse Creek Ranches*, 697 P.2d 384, 388 (Colo.1985) (holding that development altering the physical characteristics of a road imposed additional and non-consensual burdens on the estate and was an impermissible change of use); *Block v. Sexton*, 577 N.W.2d 521, 525-26 (Minn.App.1998) (holding that extent of prescriptive easement should not be enlarged beyond objects originally contemplated); *Hash v. Sofinowski*, 337 Pa.Super. 451, 487 A.2d 32, 35 (1985) (noting that court should act with care in determining the width of a prescriptive easement).

35. If *Eastham* can show that snowmachiners were using the trail at as high a rate as they now use it before the establishment of the parking lot and for at least ten years, then *Price* cannot complain that the challenged use is outside of his expectations. If *Eastham* cannot make this showing, then *Price* is protected from an invasive use of his land because he acted promptly and did not sit on his rights. This balance between the establishment of potentially beneficial new uses and the preservation of the rights of landowners is exactly that which the Restatement seeks to establish. Cf. Restatement (Third) of Prop.: Servitudes § 4.10 cmt. c (2000).

36. *In re Adoption of A.F.M.*, 15 P.3d 258, 262 (Alaska 2001).

37. *Vezey v. Green*, 35 P.3d 14, 19-20 (Alaska 2001).

38. *Murray*, 856 P.2d at 466.

39. *Price* owns only the agricultural interest in his land. *Price*, 75 P.3d at 1057. *Price* argues that since he must prepare and submit a proposed amendment to his Farm Conservation Plan whenever he wishes to change his use of the land, the users of the prescriptive easement should be forced to do the same.

40. *Krossa v. All Alaskan Seafoods, Inc.*, 37 P.3d 411, 418-19 (Alaska 2001).



41. *Breck v. Ulmer*, 745 P.2d 66, 75 (Alaska 1987) (citing *Haines v. Kerner*, 404 U.S. 519, 520, 92 S.Ct. 594, 30 L.Ed.2d 652 (1972)).

42. *Hymes v. Deramus*, 119 P.3d 963, 965 (Alaska 2005).

43. See *Sea Lion Corp. v. Air Logistics of Alaska, Inc.*, 787 P.2d 109, 115 (Alaska 1990).

44. Cf. *State, Comm. Fisheries Entry Comm'n v. Carlson*, 65 P.3d 851, 873 (Alaska 2003); *Univ. of Alaska v. Simpson Bldg. Supply Co.*, 530 P.2d 1317, 1323-24 (Alaska 1975).

EXHIBIT B

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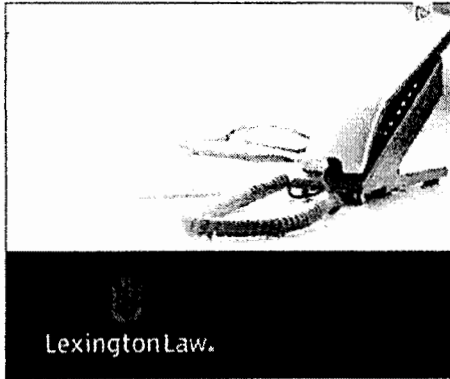
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*exhibit c*

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**Unclean Hands Law & Legal Definition**



The clean hands doctrine is a rule of law that someone bringing a lawsuit or motion and asking the court for equitable relief must be innocent of wrongdoing or unfair conduct relating to the subject matter of his/her claim. It is an affirmative defense that the defendant may claim the plaintiff has "unclean hands". However, this defense may not be used to put in issue conduct of the plaintiff unrelated to plaintiff's claim. Therefore, plaintiff's unrelated corrupt actions and general immoral character would be irrelevant. The defendant must show that plaintiff misled the defendant or has done something wrong regarding the matter under consideration. The wrongful conduct may be of a legal or moral nature, as long as it relates to the matter in issue.

For example, if a seller sues a customer for payments on a contract, defendant may claim plaintiff has unclean hands because he fraudulently induced him to sign the contract. A court of equity will not decide issues of fairness and justice if it is shown that the person asking for such justice has acted wrongly in regard to the issue at hand. In another example, when a brokerage firm claimed that its confidential client information was being pilfered by the competition, the court held that the firm did not come to court with "clean hands" since the court found that firm demonstrated a similar lack of regard for the competitor's confidential client information when it snared the same broker six years earlier.

The doctrine has often been applied in the context of family law issues, specifically in cases of financial misconduct. Fraudulent conduct has been a factor in awarding support and division of property, among other issues.

**Definition List**

- [Unclassified Modernisms](#)
- [Unclaimed Assets](#)
- [Unconditional Security](#)
- [Unconform Contract](#)
- [Unbundling Rules](#)
- [» Unclean Hands](#)
- [Uncollected Funds](#)
- [Uncompensated Injured Losses](#)
- [Unconditional](#)
- [Unconditional Cash](#)
- [Unconditional Delivery](#)

**Related Terms**

- [Terms with 'Unclean' or 'Hands'](#)
- [Clean Hands Doctrine](#)
- [Dirty Hands Doctrine](#)
- [Strong Hands \(Complicities\)](#)
- [Weak Hands \(Security\)](#)

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Exhibit  
C

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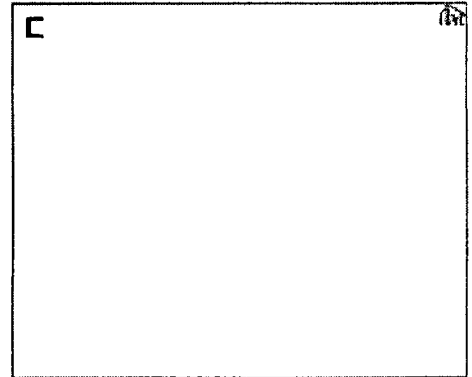
## unclean hands

n. a legal doctrine which is a defense to a complaint, which states that a party who is asking for a judgment cannot have the help of the court if he/she has done anything unethical in relation to the subject of the lawsuit. Thus, if a defendant can show the plaintiff had "unclean hands," the plaintiff's complaint will be dismissed or the plaintiff will be denied judgment. Unclean hands is a common "affirmative defense" pleaded by defendants and must be proved by the defendant. Example: Hank Hardnose sues Grace Goodenough for breach of contract for failure to pay the full amount for construction of an addition to her house. Goodenough proves that Hardnose had shown her faked estimates from subcontractors to justify his original bid to Goodenough.

See also: [affirmative defense \(Default.aspx?selected=2363\)](#)

The People's Law Dictionary by Gerald and Kathleen Hill (Default.aspx?review=true#hill) Publisher Fine Communications

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PRESENTED BY BIG VOODOO

## Memorandum of Law

To: Planning and Zoning Commission

From: Robin L. Koutchak, CBS attorney *RK*

Date: August 1, 2014

Re: Conditional Use Permit Application, 105 Shelikof Way

---

The Planning Commission is being asked to review a Conditional Use Permit (CUP) for a bed and breakfast in an R1 zone at 105 Shelikof Way.

A thorough review of the history of this request indicates a previous CUP at this location with this same applicant was denied in 2006. A similar application in 2004 was withdrawn by the applicant prior to formal denial. The commission is urged to review the past decisions in these applications for the sake of consistency, portions of which are attached. There has been no material change to the application request or the neighborhood since the prior requests.

The dispute involves a small cul-de-sac with three large homes, each having a view of the water. Richard Mulligan, at 107 Shelikof has the largest estate, which overlooks both 105 and 101. Mulligan's estate is what is known in property law as "the servient estate". That is, he has the largest estate and the other two estates in the cul-de-sac, 105 (Jardine) and 101 (LaVonne Grun) have "the dominant estates". In property law, the servient estate is the estate which grants an easement to other estates that need access to their property. The properties that need access are called the "dominant estates". In other words, Jardine and Grun (dominant estates) must cross Mulligan's property (servient estate) in order to access their houses. In no way does the legal term "dominant estate" mean that the two estates "dominate" the servient estate with the use of the easement. In fact, the servient estate (Mulligan) controls the easement. LaBrenz v. Burnett, 218 P.3d 993, 1000 (Alaska 2009). The purpose of the easement in this R1 zone is quite simply "a driveway." This control of the easement has been recognized by previous commissions and the planning department. It was granted by the servient estate in 1997 "as long as the property is used for residential purposes." Any use beyond that and that which interferes with the servient estates quiet enjoyment, could be considered in a court of law, as "abuse of an easement". Primary factors a court will look at in determining abuse of the easement are (1) the intensity of use and (2) the scope of the estate served by the easement and 3) interference with the servient estates quiet enjoyment. Restatement (Third) of Property: Servitudes, sec. 4.13 (1994), Price v. Eastham, 254 P. #d 1121, 1129-30 (Alaska 2011). *William B. Stoebuck & Dale A. Whitman, The Law of Property Sec. 8.9, at 461 (3d ed. 2000).*

As a matter of law, this is fairly straight forward.

We have ten years of complaints by the servient estate, verified with photographs and testimony of Mulligan and a handful of others, that traffic at all times, noise both very early and very late, and parking in the summer months in this small cul-de-sac, is fairly intense and the scope of use by the dominant estates is beyond the intended R1 zoning allowance. The CUP for

Grun was granted in 1995 for a 2 bedroom B&B. Mulligan moved into his house after that date. Mulligan would at least have a private right of action against the servient estate of Jardine, and quite possibly against CBS for failing to follow our zoning code.

Jardine is requesting a CUP for a two bedroom bed and breakfast. He was denied a permit in 2006 for a three bedroom bed and breakfast. He also runs a fishing charter business. It could be argued, simply based on observed traffic patterns at his house by several neighbors, that he is running a *de facto* lodge. In April, the city administrator sent a notice to Jardine of CBS's concern that he was running a Bed and Breakfast or Lodge out of his home. He was asked to respond and he did not. A second letter was sent in June to Mr. Jardine and again, he did not respond. (These letters are attached and it is expected the city administrator will be available for comment or questions at the planning commission meeting.) Due to the lack of concern shown by Jardine, he was asked to come and meet with the city administrator and members of the city's finance and planning departments. At this meeting in mid-June, he at first denied that he had anyone other than friends and family staying with him fishing. He then admitted, when questioned on the truthfulness of such a statement, based on his website but also common knowledge among the harbor users, business owners, employees and others in the community (including the administrator himself with personal knowledge), that he had "about 100 paying charter guests staying at his house a season." Jardine was told at that time that the city finance department could audit his business to determine if he was paying proper and accurate taxes. SCG 4.09.410 authorizes the city to audit any business as a matter of course. He was instructed by letter that he was to cease operations until the matter was resolved. Anecdotally, from observations by other neighbors, (besides Mulligan, who has been out fishing most of this time) harbor users and business owners, Jardine has not stopped housing people at his house, for his charter operation, despite being ordered to stop by the city administrator.

One of the oldest doctrines of law is called the "unclean hands doctrine" which holds as a rule of law that someone bringing a lawsuit or motion or asking the court (or tribunal of any sort) for equitable relief must be innocent of wrongdoing or unfair conduct relating to the subject matter of his/her claim. Jardine has, it is believed, run this *de facto* lodge for almost ten years even after repeated denials. The doctrine does not require that suitors have led blameless lives but it does require that a person act fairly and without deceit as to the controversy in issue. Knaebel v. Heiner, 663 P.2d 551, 554 (Alaska 1983).

For the Planning commission now to consider granting a CUP, no matter what conditions might be attached, would be against the code and public policy. It would also expose CBS and Jardine to potential successful lawsuit by Mulligan. Past Commissions have found quite succinctly that 1) the request crosses an easement owned by the person who opposes it and 2) traffic, noise and parking cannot be mitigated. Nothing has changed since the applications in 2004 and 2006 in this regard related to the servient estate.

Grun's property is not at issue – but Jardine's application, for the property immediately next door – can hardly be discussed without noting the traffic and noise from 101. Although Grun at 101 Shelikof has a permit for a 2 bedroom Bed and Breakfast, her web site and her meeting and conversations with the City administrator would indicate, along with the



photographs and testimony of Mulligan and others with personal knowledge, that in conjunction with her fishing charter business, she has been running a *de facto* Lodge. This must be considered by the Planning and Zoning commission – not to single out Grun – but because it *adds to the burden already suffered by the servient estate* (Mulligan).

The law department would urge the Planning Commission that it is not necessary for this CUP application to evaluate the distinction and definitions between Lodge and Bed and Breakfast. (That will be addressed by the legal department and planning department soon). Jardine has applied for a Bed and Breakfast permit and even if we were to take his word that this is all he wanted to use it for (and evidence shows otherwise), it still should be denied on the basis that the previous Commissions have denied the request for these reasons: 1) abuse of an easement granted by the servient estate and 2) non-ability to mitigate safety, traffic, parking and noise issues.

SGC 22.16.015 addresses prohibited uses which cause excessive disturbances in R1 zones that are not in keeping with the character and stated intent of the district. SGC 22.24.010 (E) (1) discusses criteria used to evaluate CUP applications: vehicular traffic, amount of noise, hours of operation, existing buffers, fire and emergency vehicle operations, and traffic layout.

That there already is one B & B in this small area, constitutes a burden on the servient estate which this Commission and the planning department has heard loud and clear for many years. Mulligan has a right to safe, quiet and peaceable enjoyment of his property by law and he has a right to demand that the City and Borough of Sitka enforce their code. The legal department and the administrator support that right.



# City and Borough of Sitka

100 Lincoln Street Sitka, Alaska 99835

*Coast Guard City, USA*

June 26, 2014

Brian Jardine  
105 Shelikof Way  
Sitka, AK 99835

Dear Mr. Jardine,

Thank you for meeting with us to discuss concerns regarding a potential charter/ B&B operation at your property at 105 Shelikof Way. We appreciate your time and willingness to share details of your business.

As you know, the property is zoned R-1 Single Family and Duplex. A conditional use permit has not been approved for either a bed and breakfast or a short term rental. In order to offer lodging to charter customers at this location, a permit must be granted.

We look forward to assisting you through the conditional use permit process. Feel free to contact the Planning Office with any questions.

\* Please refrain from housing paying charter customers until a permit to do so has been approved.

Thank you.

Mark Gorman  
Municipal Administrator

Cc:  
Planning Department  
Robin Koutchak, Municipal Attorney

June 2, 2014

Brian Jardine  
105 Shelikof Way  
Sitka, AK 99835

Dear Mr. Jardine,

As you were previously notified in writing on 4/14/14, multiple concerns have been received by the City of Sitka Administrators Office regarding a potential charter/ B&B operation at your property at 105 Shelikof Way.

As you know, the property is zoned R-1 Single Family and Duplex. A conditional use permit has not been approved for either a bed and breakfast or a short term rental. Any commercial use of the property that does not comply with the home occupation requirements would constitute a zoning violation.

Please respond with a written description of the use if the property within fifteen (15) days of receipt of this letter.

The Municipality will evaluate the response along with other information and determine the appropriate course of municipal action.

Thank you.

Mark Gorman  
Municipal Administrator

Cc:  
Planning Department  
Robin Koutchak, Municipal Attorney



# City and Borough of Sitka

100 Lincoln Street Sitka, Alaska 99835

*Coast Guard City, USA*

April 14, 2014

Brian Jardine  
105 Shelikof Way  
Sitka, Alaska 99835

Dear Mr. Jardine,

The Administrators Office has received concerns about a potential charter operation at your property at 105 Shelikof Way.

As you know, the property is zoned R-1 Single Family and Duplex. A conditional use permit has not been approved for either a bed and breakfast or short term rental. Any commercial use of the property that does not comply with the home occupation requirements would constitute a zoning violation.

As a result, we are requesting that you provide us with a written description of the use of the property within fifteen (15) days of the receipt of this letter.

The Municipality will evaluate the response along with other information and determine the appropriate course of action.

Thank you.

Mark Gorman  
Municipal Administrator

Cc:  
Planning Department  
Robin Koutchak, Municipal Attorney

Planning



# City and Borough of Sitka

100 Lincoln Street Sitka, Alaska 99835

*Coast Guard City, USA*

April 3, 2014

Dear Concerned Residents:

I am in receipt of your signed complaint concerning alleged violations of commercially run charter businesses in an (R-1) zone, assumedly your neighborhood.

My office, the municipal attorney and the planning department, are more than willing to investigate your complaint and review the pertinent zoning codes and related issues. In order to facilitate this we need specific information on which charter businesses are functioning in your neighborhood. Once we have this information we will initiate our investigation and review process.

Sincerely,

Mark C. Gorman

Cc: Richard Mulligan 107 Shelikof Way  
Michelle Putz, 131 Shelikof Way  
Marie Laws, 140 Shelikof Way  
Molly E. Kitka, 135 Shelikof Way  
Ken Buxton, 108 Shelikof Way  
Robby Jarvill, 137 Shelikof Way  
Heather Albertson, 126 Shelikof Way  
Shirley Truitt, 130 Shelikof Way  
Dylan Swanberg, 112 Shelikof Way  
Joseph Schwantes, 125 Shelikof Way

03/24/14

In order for the Sitka assembly to create the proper enforcement legislation regulating illegal Charter Houses operating in our residential area a petition is needed. By signing this petition you're showing disapproval of commercially run charter businesses in a ( R1) area. The majority of Charter Businesses are located in Commercial Zones. Examples: Alaska Premier Charters, Dove Island Lodge, Kingfisher, L&M, Alaska Adventures, Big Blue, Sitka Point Lodge, Wild Strawberry to name a few.

Richard Mulligan 107 Shelikof way  
RICHARD MULLIGAN

Michelle K. Potz, Michelle Potz 131 Shelikof way

Marie Laws 140 Shelikof way MARIE LAWS

Walter Kitcher 135 Shelikof way - Molly E KITCHER

Ken Buxton 108 SHELIKOF way Ken Buxton

Robby Jarvill 137 Shelikof way Robby Jarvill

Heather Albertson 126 Shelikof way Heather Albertson

Shirley Pruitt 130 Shelikof way Shirley Pruitt

Dylan Swanberg 112 Shelikof way Dylan Swanberg

Joseph Schwartz 125 Shelikof way Joseph Schwartz

BEFORE THE BOARD OF ADJUSTMENT  
FOR THE CITY AND BOROUGH OF SITKA

2006

IN THE MATTER OF THE )  
APPLICATION OF )  
BRIAN JARDINE AND )  
JOYANN DUNNAVANT FOR A )  
CONDITIONAL USE PERMIT )  
FOR A TWO GUESTROOM )  
BED AND BREAKFAST )  
\_\_\_\_\_ )

FINDINGS OF FACT AND DECISION

The Sitka City and Borough Assembly (“Assembly”), sitting as the Board of Adjustment pursuant to Sitka General Code (“SGC”) 22.30.060, 22.30.170, and 22.30.180, heard testimony on March 15, 2006 and voted unanimously, denying the motion to approve a conditional use permit to applicants Brian Jardine and Joyann Dunnivant (“Applicants”) for a two guestroom bed and breakfast at 105 Shelikof Way, Sitka, Alaska.

The Assembly denied the conditional use permit for the reasons set out below, for the same reasons the Planning Commission unanimously recommended denial of the conditional use permit in accordance with SGC 22.30.050F and SGC 22.30.160C, and based on review of the record and testimony at the Board of Adjustment hearing. The reasons for the denial were as follows, with the Assembly making the following findings:

1. The request crosses an easement owned by an individual who opposes it;
2. A privacy wall will not mitigate concerns over noise; and
3. Traffic concerns cannot be mitigated.

The Assembly issues this Findings of Fact and Decision. This Findings of Fact and Decision constitutes the final decision of the Assembly acting as the Board of Adjustment. Any appeal from this Findings of Fact and Decision must be filed in Superior Court within 30 days of

the date this Findings of Fact and Decision is signed, in accordance with SGC 22.30.210 and 22.30.240.

DATED this \_\_\_\_\_ day of March, 2006

\_\_\_\_\_  
Deputy Mayor Doris Bailey

ATTEST:

\_\_\_\_\_  
Colleen Pellett, MMC  
Municipal Clerk



2006

MOTION, by Dapceвич to amend to not fund the increases for the Human Resource Director, the Deputy Clerk and Parks and Recreation Manager by deleting the related amount of money that pertain to each adjustment.

Motion on the amendment FAILED on a 2-5 roll call vote with Stelzenmuller and Dapceвич in favor.

The main motion PASSED on a 6-1 roll call vote with Dapceвич opposed.

Item V  
ORD. 2006-06

MOTION, by Sherrod to approve Ordinance 2006-06 on second reading amending Title 22 Zoning of the SGC to make a number of clarifications and revisions.

Wells explained that Paragraph G would allow you to put something up that was ancillary to your business and you have to go through the conditional use process.

MOTION, by Dapceвич to amend the Enactment Section, Item G to read "Revise footnote 8 to Table 22.16.015-6 Retail and Business Uses that applies to the Central Business District to read "Kiosks, outdoor restaurants, portable structures such as food stands and other temporary structures including mobile food carts on wheels, are conditional uses."

Motion on the amendment FAILED on a 3-4 roll call vote with Skannes, Bailey and Dapceвич voting in favor.

The main motion PASSED on a 6-1 roll call vote with Dapceвич voting against.

**XI. NEW BUSINESS:**  
**Board of Adjustment**

MOTION, by Holst to convene as the board of adjustment.

Motion PASSED by unanimous consent

Item W  
CUP B&B Jardine/Dunnavant

MOTION, by Bailey to approve the conditional use permit for a two-guestroom bed and breakfast at 105 Shelikof Way filed by Brian Jardine and Joyann Dunnavant.

Brian Jardine said he has done everything he can to please his neighbors, but he doesn't think it is possible. He specified his is only a part-time operation and all the houses running up to his have rentals. He is even willing to add an additional parking place even though he has sufficient parking now.

Reiko Mulligan who lives at 107 Shelikof is totally against this as it goes across his property. He asserted that the applicant is in the charter business and that is where this is going.

Williams pointed out for him to have a rental he would have to provide extra parking.

Jardine mentioned that he did talk with DOT to see if he could get access from below and build stairs, but he was told he would not be allowed because he already had access.

Bailey read the Planning Commission findings.

Motion FAILED on a 0-7 roll call vote.

MOTION, by Dapcevich to direct the city attorney to draw up the Facts and Findings based on the denial of the Planning and Zoning Commission for the mayor's signature.

Motion PASSED on unanimous consent.

Item X  
CUP B&B Boyd Didrickson

MOTION, by Stelzenmuller to approve the conditional use permit for a two-guestroom bed and breakfast filed by Boyd Didrickson with the following conditions: 1) The maximum occupancy of the bed and breakfast shall be two guests per room with one child; 2) a Fire and Life Safety Inspection must be satisfactorily completed prior to occupancy of the bed and breakfast; and 3) the applicant shall contact the Planning Office by February 21, 2007, for a review.

Mayor Dapcevich stepped down as he believed he could not be objective. Skannes objected. However, Bailey pointed out that bias in a board of adjustment hearing is a legal reason to step down.

Pete Karras has lived on this street for years and strongly opposes this conditional use permit.

Adeline Jacobs lived in Sitka for 64 years and is a sister-in-law to Bertha Karras. She spoke to speed limits, buses and other problems.

Williams brought up that if this passes, Mr. Didrickson still has some hurdles to overcome to be active within one year.

Motion PASSED on a 5-1 roll call vote with Bailey opposed.

Reconvene

MOTION, by Stelzenmuller to reconvene as the Assembly in regular session.

Motion PASSED by unanimous consent.  
Mayor took back the gavel.

Item Y  
Land Sale

MOTION, by Stelzenmuller to grant preliminary approval so that the applicants can move forward and have a subdivision plat prepared for properties adjacent Verstovia Avenue and owned by Trevor Webb, Amy Johnson, and Paul and Carolyn McArthur.

Stelzenmuller spoke against this; he doesn't believe the Planning and Zoning Commission has had enough input; he objects to the price. He would like to see it developed and would like to see a plan to do that. Williams explained that the value came from the assessor.

Bailey pointed out that this would raise the tax rolls. Bailey would support Planning Commission work or deferral on this. Sherrod believes some middle ground might be appropriate and 40' seems a bit excessive; he wondered if 20' would suffice.

2006

**Jardine Three Guestroom Bed and Breakfast**

105 Shelikof Way  
February 21, 2006

For the third time, we have the Jardine Bed & Breakfast request before the Planning Commission. It has been almost 2 years since the Jardine's have been trying to get a Bed & Breakfast permit for their home on Shelikof Drive.

**Jardine Three Guestroom Bed and Breakfast**

105 Shelikof Way  
May 17th, 2005

The Jardine bed and breakfast request is back on the Planning Commission agenda after it was deferred at the last Planning Commission meeting. Rico Mulligan, whose home overlooks the property was out fishing and asked for the delay.

Tuesday night, staff will reacquaint the board with the layout of the parcels. Our recollection is that there are two Planning Commissioners who were not on the commission when the issue was discussed last year.

Although the request was controversial last year, there is actually more opposition to the request this go around. The Jardine property is served by an access and utility easement that goes through the Mulligan and the Grun lots. The proximity of the homes in this closed three lot neighborhood makes the potential for impacts of the bed and breakfast higher than normal.

We'll brief you on the history and the neighborhood characteristics before the board takes testimony. After hearing from the applicant and the public, the board will then be in a position to make a recommendation to the Assembly if it likes.

Findings will be suggested by staff following the outcome of any Planning Commission motion.

Thanks.

**Jardine Three Guestroom Bed and Breakfast**

105 Shelikof Way  
May 3<sup>rd</sup>, 2005

The Jardine three guestroom bed and breakfast request is back on the Planning Commission after the applicants declined not to pursue the completion of the approval process last spring.

The request involves a bed and breakfast on a private driveway that is shared by Ricko Mulligan and LaVonne Grun. Ms. Grun was granted a bed and breakfast conditional use permit several years ago.

City and Borough of Sitka  
PLANNING AND ZONING COMMISSION  
Minutes of Meeting  
February 21, 2006

2006

**Present:** Chair Pat Hughes, Tom Rogers, Brian McNitt, Don Alexander, Bob Goss, Planning Director Wells Williams, Planning Assistant Sara Russell, and Secretary Maria Finkenbinder

**Members of the Public:** Dennis Hicks, John Stein, Joyann Dunnivant, Brian Jardine, Rico Mulligan, LaVonne Grun, Molly Kitka, David Voluck (teleconference), Victor Scarano, Shane Snyder, Steve Clayton, Pete Karras Sr., Adelaide Jacobs, Lureen Stedman, Scott Saline, Boyd Didrickson, Harold & Barbara Stocker

**CONDITIONAL USE PERMIT  
2-GUESTROOM BED AND BREAKFAST  
105 SHELKOF WAY  
BRIAN JARDINE AND JOYANN DUNNAVANT**

*Public hearing and consideration of a conditional use permit request for a two guestroom bed & breakfast at 105 Shelikof Way. This request is filed by Brian Jardine and Joyann Dunnivant. The property is also known as Lot 15 of the Gibson, Kitka, Snowden Subdivision.*

Mr. Williams said that this is the third time the Jardine Bed & Breakfast request is before the Commission. He pointed out that the original request was filed when the Jardines were in the process of purchasing their home from Theron and Therese cole. The sale of the home was contingent upon the Jardines receiving a conditional use permit to operate a bed and breakfast. Given the controversy surrounding the request, they did not pursue the completion of the approval process in spring of 2004 but still ended up buying the house. In spring of 2005, they filed another request which continued to receive opposition from the neighbors. Mr. Williams further noted that the Jardines have since changed their request from three guestrooms to two but the issues remain such as parking, traffic and safety, and privacy. He added that some of the neighbors' position has shifted but Mr. Mulligan, on whose property the Jardines' access and utility easement runs through, presents a greater standing in opposing the request.

Mr. Jardine informed the Board that since they first filed their request, they have been trying to resolve all the issues and to address the neighbors' concerns. For instance on parking, they plan to fill in the seaward side of the property to add more maneuver ability in the parking area which could accommodate up to 6 vehicles. To address the privacy concerns of their adjacent neighbor, Molly Kitka, they plan to put up a privacy wall between the two properties. To reduce the amount of traffic going up and down the drive, they plan to provide transportation to their client.

Mr. Jardine stressed that they are willing to go for a six-month operation instead of the standard 12 months. He added that every time they try to resolve one issue, another issue comes up. He also pointed out that everyone in their neighborhood has a potential income from owning their homes, either from rentals or from B&B operations.

\* Mr. Mulligan of 107 Shelikof Way pointed out that the Jardines signed documents with the full knowledge that the property will be used for residential purposes only, not commercial. He reiterated his concerns on increase traffic, child safety, and noise in the neighborhood, pointing out that charter clients are here to party.

Ms. Grun of 103 Shelikof Way stepped forward to inform the Board that she is rescinding her signature from the petition that was submitted to the Commission. She expressed support to the Jardines' request.



# City and Borough of Sitka

100 Lincoln Street • Sitka, Alaska 99835

## MEMORANDUM

TO: John Stein, Municipal Administrator  
Mayor Dapceвич and Members of the Assembly

FROM: Wells Williams, Planning Director

SUBJECT: Jardine Two Guestroom Bed and Breakfast Conditional Use Request  
105 Shelikof Way

DATE: March 8, 2006

The Planning Commission is unanimously recommending denial of a two-guestroom bed and breakfast conditional use request filed by Brian Jardine and Joyann Dunnivant. The property is located on a private easement off of Shelikof Way. The board's action was taken on February 21<sup>st</sup>, 2006.

The request dates back to May of 2004 when it was originally a three-guestroom application. It has been controversial from its inception. The applicant pulled it before the Planning Commission took action that year, and, later pulled it again after the Planning Commission recommending denial in 2005.

The Jardine house was bought from T. Cole a couple of years ago. It is served by a private driveway that runs across Rico Mulligan's lot.

It is located next to a bed and breakfast that was approved for LaVonne Grun before Mr. Mulligan bought his home. The location of the property on a private easement that crosses another property makes the request fairly unusual.

The application has generated heated support and opposition over the past few years. Petitions and counter petitions have been submitted. At this point, next door neighbor Lavonne Grun supports it. Rico Mulligan, whose land contains Jardine's driveway, is adamantly opposed due to potential traffic generation. Molly Kitka, who lives on the other side of the Jardine property from Ms. Grun, has expressed strong opposition since there have been noise and privacy problems in the past.

The Planning Commission unanimously voted against the request finding that 1) the request crosses an easement owned by an individual who opposes it, 2) a privacy wall will not mitigate concerns over noise, and, 3) traffic concerns cannot be mitigated.

**RECOMMENDED ACTION:**

Deny the request based on the findings of the Planning Commission.

~~Point FF Denied Based on finding by Planning Commission~~

2004

As long standing members of the Planning Commission will recall, the Jardine request is full of controversy and intrigue. There have been a series of concerns about the Jardines prematurely operating the bed and breakfast. Concerns have surfaced about the parking on the private easements. The number of clients in the Grun bed and breakfast has been a point of contention. And, Molly Kitka who lives in an adjacent house has raised privacy concerns.

The best thing we can do is to go through each of these issues one by one.

It is highly doubtful that the Planning Commission will be in a position to make a recommendation Tuesday night.

### **Jardine Three Guestroom Bed and Breakfast**

105 Shelikof Way

June 7, 2004

On May 17<sup>th</sup> there appeared to be some discussion about recommending approval of a two guestroom bed and breakfast.

If that is the case, potential conditions are:

1. A mandatory one year review in March of 2005 with the applicant being required to submit a narrative outlining how the facility operated through February 15, 2005.
2. Two guests per guestroom.
3. Operation limited to May 1<sup>st</sup> through September 30<sup>th</sup>.
4. Creation of an additional parking space in front of the house by August 3, 2004. (By the applicant's statements, Mr. Jardine and his parents will be living in the house. The four parking spaces are two deep. It is reasonable to have the owner, parents, and the guests all have straight in parking so that vehicles don't have to be moved around everytime someone comes and goes, or, a cab drops off clients).

While condition #4 is purely a suggestion, it's the closest staff can come to meeting the board's concerns about a turning radius.

### **Jardine Three Guestroom Bed and Breakfast**

105 Shelikof Way

May 17<sup>th</sup>, 2004

As we expected, there has been a fair amount of activity on the Jardine request since the last meeting. Staff has done a substantial amount of deed research, talked to Brian Jardine, their realtor, Terry Cole, looked at the property, and located as built. We have included the readily reproducible information in your packet along with a color aerial photo.

The findings of the research include the following --

1. LaVonne Grun was granted a two guest room bed and breakfast permit in 1995. She was also granted the previously mentioned zero setback for a parking deck in 1997. There is no useful information on the parking issue in her B&B file.

2. There is an access and utility easement that appears to serve the now Cole and Grun property that goes through the Mulligan property. The easement was granted in 1997. The easement is in effect as long as the properties are used for residential purposes. The terms "residential purposes" are not defined.
3. Staff has been unable to locate a parking agreement between the two Reeder families who owned the Grun house (Steve Reeder) and the Mulligan house (Fred Reeder), and, the Coles. While we thought the agreement may have been developed, we can find no evidence that one was recorded and Mr. Mulligan says it was never mentioned to him.
4. There is a 29 foot distance between the exterior wall of the Cole house and their property line. 10 or 11 feet of this distance is taken up by decks and walkways. This leaves two parking space widths between the side of the Cole house and their property line.
5. The wood deck along the front of the Cole house comes very close to their "front" property line. The perimeter of the deck is actually mounted on what appears to be a concrete footing. Little is known about the extent of the footing or what would be involved in removing the deck to make room for additional parking in front of the house as Mr. Jardine has suggested.
6. There is nine feet, or one parking space width, between the Grun house and their side property line.

Some of the documents and diagrams in your packet have been included at the request of the Jardines.

Mr. Mulligan did submit a letter, and, additional photo the afternoon of May 12<sup>th</sup> since he may be commercial fishing the night of the meeting. He told staff he opposes the request and informed Mr. Jardine of this opposition when Jardine contacted him on the evening of May 11<sup>th</sup>. His concerns are laid out in his hand written letter. He has also provided a photo of cars parked in front of the Grun home taken May 1, 2004.

Staff can walk through this information at Monday night's meeting if the board feels a verbal review is useful. We can also simply answer questions.

It is important for full disclosure to state the obvious that the Planning Director worked closely with Mr. T. Cole for close to nine years. The personal friendship with T. and Terry Cole have contributed to the challenging nature of this application.

Terry Cole indicated to staff that some of the cars in the photos may have been from the Cole family.

After the reviewing the information, a motion is in order recommending approval. A separate motion on findings can be made to support an affirmative or negative vote.

### **Jardine Three Guestroom Bed and Breakfast**

105 Shelikof Way

May 3, 2004



Richard Mulligan  
107 Shelikof Way  
Sitka, Alaska 99835

July 11, 2014

Dear Members of the Planning Commission,

Brian Jardine is asking for a conditional use permit for a Bed and Breakfast in a cul-de-sac at 105 Shelikof Way. I live at 107 Shelikof Way. He applied for this same permit in 2004 and it was rejected on the basis of lack of parking.

Since that time he has been running a charter fishing lodge out of the house with no permits. I have pictures of the traffic. It's loud and disruptive and he does this in the summer months from June to September. I would expect him to say that he just has friends and family that come fishing, as he has said that in the past. And he may well have some that do, however, he maintains a web site at [www.a-zsportfishingcharters.net](http://www.a-zsportfishingcharters.net) which sets out the rates he charges and states that it includes all lodging and meals. See attached copies of these web pages that were printed on July 11, 2014. He does have a charter fishing license but he has no other license with the city.

The area is zoned R-1 which is a single family and duplex residential area. This is the most restrictive area in zoning.

SGC 22.16.040 (A) (1) "This district is intended primarily for single-family or duplex residential dwellings at moderate densities, but structures and uses required to serve recreational and other public needs of residential areas are allowed as conditional uses subject to restrictions intended to preserve the residential character of the R-1 district."

The applicant has shown hand drawings and survey drawings that would suggest he believes they can accommodate 4 cars being parked alongside their house, the pictures they provide in their packet would show there is not room for 4 cars.

The code addresses parking as follows:

SGC 22.20.100 Off Street Parking requirements. (C) recommends each off street parking space be 10 feet by 20 feet, exclusive of access drives or aisles and no less than 9 ft by 18 ft.

(D) (1) states that for single or multi family dwellings, the parking facilities "shall" be located on the same lot or building site as the building they are required to serve.

(G) (1) Residential uses. 2 parking spaces per unit are required.

SGC 22.24.010 Conditional Uses.

(B) Provisions for Bed and Breakfasts.

11. There shall be a minimum of one off-street parking space for every three guest rooms in a bed and breakfast located in a single family residential zone.

The applicant then states in his application that they would only use their two vehicles to transport guests for fishing, shuttling them to their boat - their intent as to parking is not clear -- whether they plan to enlarge their area by taking down part of their deck to accommodate more cars or they will not allow more cars to be parked there.

The application also states that they will only serve light snacks and beverages in addition to breakfast, which is what a bed and breakfast is supposed to be. However, the website for this establishment makes it clear that all meals were provided. The change from a lucrative lodge and fishing charter service they were providing, to that of a bed and breakfast "to generate a little more income and to have a place for some of our client's" would be a big departure from what has been happening at this house. It's hard to believe given the rate structure that is listed on the business website, and the fact that this is Mr. Jardine's livelihood, that this change to a "B and B" is nothing more than window dressing to accomplish running an illegal lodge with less oversight by the city. (Public records request pending, will supplement at meeting, see letter attached June 26, 2014 Administrator to Jardine.)

Irrespective of any parking issues, SGC 22.16.015 states that prohibited uses are uses which cause or may be reasonably expected to cause, an excessive disturbance not in keeping with the character and stated intent of this district. SGC 22.24.010 (E) (1) lists criteria to be used in determining impacts of conditional uses. Among them are the amount of vehicular traffic, amount of noise on surrounding land uses, hours of operation, ability of police and fire to respond to emergencies, logic of internal traffic layout, and presence of existing buffers. My opinion is that it is noisy, there is a lot of traffic and cars parked in this small cul-de-sac already, the hours of operation start early (like 4 am) and go late (with more noise) and there are no "buffers" to protect my property from the noise and traffic generated by the two businesses on this cul-de-sac.

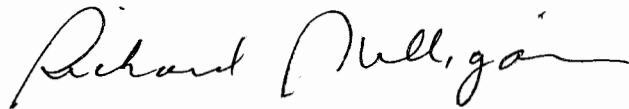
Although "Vonnie's" is not the subject of this application, the planning commission must take into account that there is an on-going business already, within feet of both the Jardine house and my house. This small cul-de-sac already has a B and B across the street ("Vonnie's" 101 Shelikof), which also runs a charter business and could easily be classed as a Lodge by any definition other than what is currently (and poorly defined) in our code. See attached letter from the city administrator to LaVonne Grun. Allowing "one more bed and breakfast" will allow the increased noise and traffic I have been enduring since 2005. The noise and traffic generated from

both parcels already causes me to lose the quiet enjoyment of my house and property. I believe that if I were to try to sell my house, the fact that two noisy, crowded "lodges" are being run would seriously impact my investment and the value of my house – in what would otherwise be a quiet cul-de-sac with only three residents, all having a nice view of the water. I have a deck with a hot tub and a view that I rarely get to utilize because of the constant traffic. The day starts at 4 am when the vans load up the excited "clients" and their fishing equipment and continues on through the night when the clients come back and barbecue and party. Jardine, the current applicant has been doing the same exact thing as Vonnie's and will continue to do so, should this application be granted. It adversely affects the established character of the surrounding neighborhood. That is why so many people in the neighborhood signed the complaint that was forwarded to the administrator. It appeared that Jardine stopped taking in guests after the administrator told me he had told Jardine he could be audited by the city, however, I was out fishing for 10 days and it appears he now has client's staying at the house again.

I urge you to reject the application for the B and B on the grounds previously stated. The planning commission has the power and authority to order the planning director to do a sight inspection of this house (SGC 22.30.340), which on information and belief, will show that the applicant has the house set up as a lodge. I believe a sales tax audit as authorized by the SGC 4.09.410 will have the same conclusion.

Very sincerely,

Richard Mulligan

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



# City and Borough of Sitka

100 Lincoln Street Sitka, Alaska 99835

*Coast Guard City, USA*

June 26, 2014

Brian Jardine  
105 Shelikof Way  
Sitka, AK 99835

Dear Mr. Jardine,

Thank you for meeting with us to discuss concerns regarding a potential charter/ B&B operation at your property at 105 Shelikof Way. We appreciate your time and willingness to share details of your business.

As you know, the property is zoned R-1 Single Family and Duplex. A conditional use permit has not been approved for either a bed and breakfast or a short term rental. In order to offer lodging to charter customers at this location, a permit must be granted.

We look forward to assisting you through the conditional use permit process. Feel free to contact the Planning Office with any questions.

Please refrain from housing paying charter customers until a permit to do so has been approved.

Thank you.

Mark Gorman  
Municipal Administrator

Cc:  
Planning Department  
Robin Koutchak, Municipal Attorney

# A-Z SPORTFISHING CHARTERS, LI

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*Quality Fishing & Halibut Charters - Sitka, Alaska*

Welcome to and enjoy a Sitka, Alaska fishing charter with A-Z Sportfishing Charters.

Sitka, Alaska is home to some of the best saltwater fishing in the world. According to the Alaska Department of Fish and Game, Sitka boasts some of the best catch rates for both salmon fishing and halibut fishing in Alaska. Our guest on our halibut fishing charters have caught halibut over 350 pounds. Our guests on our salmon fishing charters have caught salmon over 70 lbs. Lingcod and yellow-eye are also found in abundance.



Join us to fish and explore our beautiful Sitka, Alaska waterfront community. We are located on the outside of the Inside Passage, and are only accessible by air or sea, however, we have a full service airport with service directly to Seattle, via Alaska Airlines.

A typical day for your Sitka, Alaska salmon and halibut fishing trip, starts with a hearty breakfast. Then it's a short ride to the boat for a full day of salmon fishing and halibut fishing in Sitka, Alaska. At 6:00 am we will head to the fishing grounds, and start with fishing for Alaska salmon. We usually spend half the day salmon fishing and the other half of the day halibut fishing. Then it is back to the dock by 4:00 p.m. At the helm is Brian Jardine, a licensed U.S. Coast Guard captain. He has been charter fishing in Sitka, Alaska for the past 17 years. Brian will do everything he can to ensure you have an unforgettable salmon and halibut fishing experience.

Rates (per person, Double Occupancy)	Package Includes:	Get in Touch
3 nights/2 days fishing.....\$1,500.00	Transportation to and from the airport and daily boat trips.	907-738-2732
4 nights/3 days fishing.....\$2,050.00	All lodging accommodations and meals	brian@a-
5 nights/4 days fishing.....\$2,600.00	Approx. 10 hours of guided fishing per day	zsportfishingcharters.com
6 nights/5 days fishing.....\$3,060.00	All fishing equipment and tackle, including rain gear	Contact Us
Full day fish.....\$285.00	All licenses and king salmon stamps	
1/2 day fishing.....\$185.00	Custom fish processing in which fish is filleted, portion sized to your specifications, vacuum sealed then blast frozen and packed in airline-approved boxes for travel	

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# A-Z SPORTFISHING CHARTERS, LL

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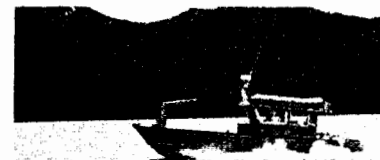
## About Us

**Brian Jardine** is the owner and operator of A-Z Sportfishing Charters, LLC.

- 100 ton U.S. Coast Guard Masters license
- Lived Sitka Alaska for 15 years
- Fishes commercially for Salmon, Halibut, Shrimp, Black Cod, and Herring
- First Aid and CPR certified
- Went to Sheldon Jackson College, in Sitka
- Bachelors Degrees in Marine Biology, Fisheries Science, Wildlife Management, and Aquaculture



The **Black Pearl** is a 26' Osprey powered by a **KAD-43 Volvopenta diesel engine**. The vessel has a heated cabin and head with a V-berth. This boat fishes up to five people comfortably.



The **Tawnya Faith** is a custom built 32' aluminum boat that fishes up to six people. The boat has a spacious heated cabin, it is also equipped with twin **Honda 225** four stroke engines.

### Rates (per person, Double Occupancy)

3nights/2days fishing.....\$1,500.00  
 4nights/3days fishing.....\$2,050.00  
 5nights/4days fishing.....\$2,600.00  
 6nights/5days fishing.....\$3,060.00  
 Full day

### Package Includes:

Transportation to and from the airport and daily boat trips.  
 All lodging accommodations and meals  
 Approx. 10 hours of guided fishing per day  
 All fishing equipment and tackle, including rain gear  
 All licenses and king salmon stamps

### Get In Touch

907-738-2732  
 brian@a-zsportfishingcharters.com  
 Contact Us

fish.....\$285.00	Custom fish processing in which
1/2 day	fish is filleted, portion sized to
fishing.....\$185.00	your specifications, vacuum sealed then blast frozen and packed in airline-approved boxes for travel

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# A-Z SPORTFISHING CHARTERS, LLC

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## Services

A typical day of fishing with us starts at 5 a.m. with a hearty breakfast. Then it's a short ride down to the boats for a full day of fishing.

The boats leave the dock at 6 a.m. on their way to the fishing grounds. We start with fishing for salmon. We will usually spend half of the day on salmon and the other half of the day on halibut. Then it's back to the dock by 4 p.m.

Also if you want to, you can spend the day or half of the day getting crab and shrimp.

### Rates (per person, Double Occupancy)

3 nights/2 days fishing.....	\$1,500.00
4 nights/3 days fishing.....	\$2,050.00
5 nights/4 days fishing.....	\$2,600.00
6 nights/5 days fishing.....	\$3,060.00
Full day fish.....	\$285.00
1/2 day fishing.....	\$185.00

### Package Includes:

Transportation to and from the airport and daily boat trips.  
 All lodging accommodations and meals  
 Approx. 10 hours of guided fishing per day  
 All fishing equipment and tackle, including rain gear  
 All licenses and king salmon stamps  
 Custom fish processing in which fish is filleted, portion sized to your specifications, vacuum sealed then blast frozen and packed in airline-approved boxes for travel

### Get In Touch

907-738-2732  
 brian@a-zsportfishingcharters.com  
 Contact Us

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# A-Z SPORTFISHING CHARTERS, LI

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## Prices

At the helm is Brian Jardine, a licensed U.S. Coast Guard Captain. He has a 100-ton Masters License and has been an Alaskan resident for the last fifteen years. Brian has fished commercially for salmon, halibut, black cod, herring, and shrimp.

### Rates (per person, double occupancy)

3 nights/2 days fishing.....	\$1,500.00
4 nights/3 days fishing.....	\$2,050.00
5 nights/4 days fishing.....	\$2,600.00
6 nights/5 days fishing.....	\$3,060.00
Full day fish.....	\$285.00
1/2 day fishing.....	\$185.00



Parties of 2 or less who do not want to share charter with another party, there may be an additional fees.. For fishing only

A \$500.00 deposite per angler is required to secure dates.

Methods of payment include: cash, check, and money order, or credit cards.

### Package Includes:

- Transportation to and from the airport and daily boat trips
- All lodging accommodations and meals
- Approx. 10 hours of guided fishing per day
- All fishing equipment and tackle, including rain gear
- All licenses and king salmon stamps
- Two 50 lb. boxes of airline-approved, vacuum-sealed fish per person, 100lbs per person

*Package price does not include airfare, sales tax, or gratuity*



Rates (per person, Double Occupancy)	Package Includes:	Get In Touch
3nights/2days fishing.....\$1,500.00	Transportation to and from the airport and daily boat trips. All lodging accommodations and meals	907-738-2732 briana@zsportfishingcharters.com Contact Us
4nights/3days fishing.....\$2,050.00	Approx. 10 hours of guided fishing per day	
5nights/4days fishing.....\$2,600.00	All fishing equipment and tackle, including rain gear	
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1/2 day fishing.....\$185.00		

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# A-Z SPORTFISHING CHARTERS, LLC

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## Fish



### Yellow Eye Rockfish

Yellow Eye rockfish are the most well known and prized of the rockfish species. They can reach up to 3 feet, which also makes them one of the largest rockfish species. They have been known to grow to be 120 years old. They are firm and lean with mild and delicious flavor.



### King Salmon

King salmon (Chinook) are the largest species in the salmon family. They are also the state fish. Kings caught in Sitka average 25' to 35lbs., with the record in Alaska for a sportfish caught King being 97.2 lbs. The peak season for Kings is May thru July, but these salmon are caught all the way through the end of August. According to the Alaska Department of Fish and Game, Sitka is the home of Alaska's largest recreational marine King salmon fisheries.



### Coho Salmon

Coho salmon (Silver) fishing is fun and exciting. These salmon are known for their fierce runs and aerobic displays. Coho commonly range in size from 8 to 15 lbs., although they can reach up to 36 lbs. Getting into a school of frenzied "Crazy Coho", is definitely an experience you will never forget.



Lingcod

Lingcod are known as being one of the ugliest but best tasting fish in Alaska. Lings average 25 to 35 lbs but have been caught at 70 lbs.



Halibut Fishing

Halibut fishing is exceptional in southeast Alaska, and the waters off Sitka. Halibut are the largest of all the flatfishes. While catching a 50 to 150 lb halibut is quite common, we have been know to catch 300lb plus fish. The state record for the largest halibut caught sportfishing is currently 459 lbs. The small market size fish are called "chickens" while the larger ones are referred to as "barn doors". Sitka supports one of the largest recreational halibut fisheries.

Black Rockfish

Often caught while halibut fishing, Black Rockfish are fun to catch and put up a good fight for their size. They are smaller than the Yellow Eye and taste delicious. They can weigh up to 11 lbs.

Rates (per person, Double Occupancy)

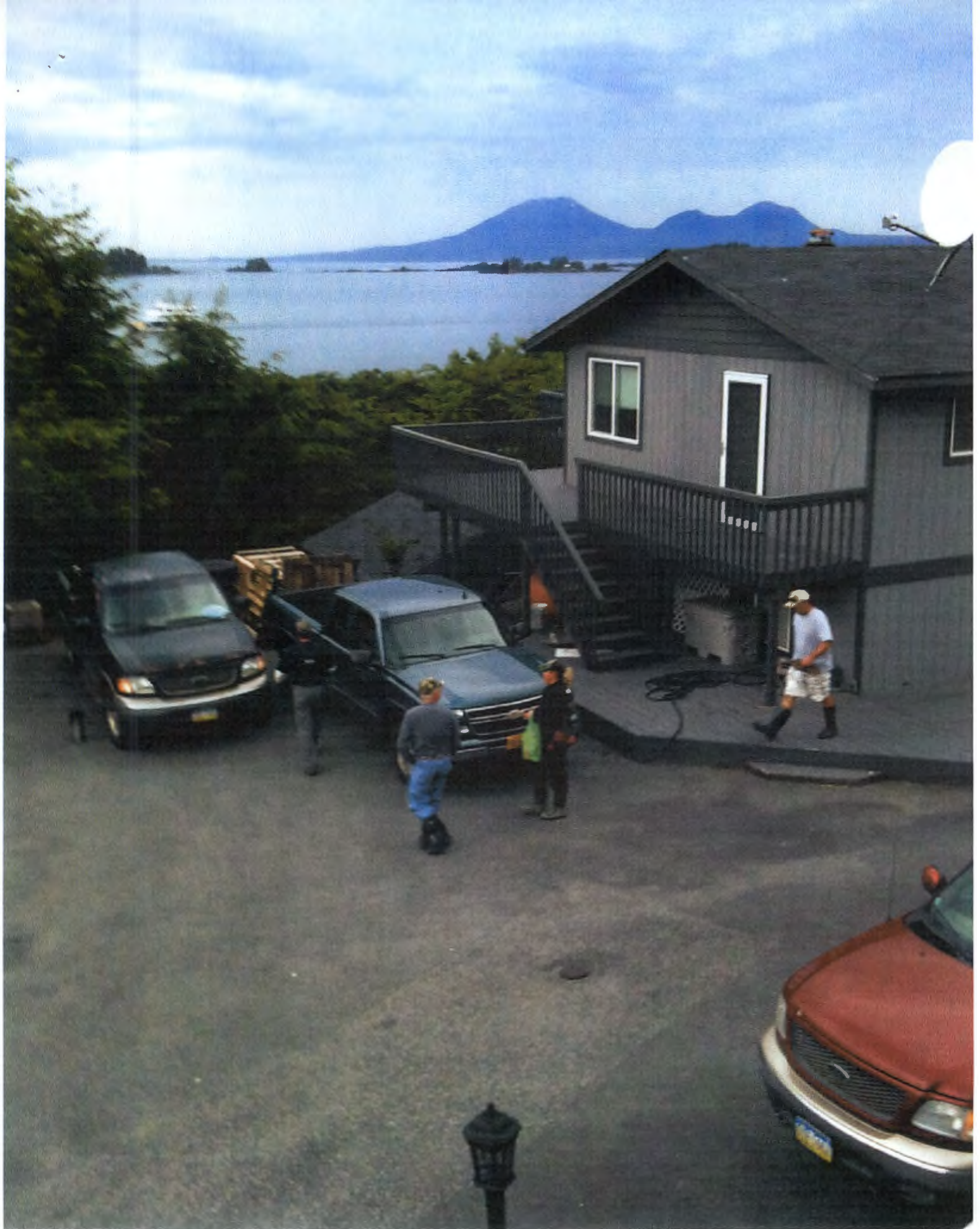
3nights/2days  
fishing.....\$1,500.00  
4nights/3days  
fishing.....\$2,050.00  
5nights/4days  
fishing.....\$2,600.00  
6nights/5days  
fishing.....\$3,060.00  
Full day  
fish.....\$285.00  
1/2 day  
fishing.....\$185.00

Package Includes:

Transportation to and from the airport and daily boat trips.  
All lodging accommodations and meals  
Approx. 10 hours of guided fishing per day  
All fishing equipment and tackle, including rain gear  
All licenses and king salmon stamps  
Custom fish processing in which fish is filleted, portion sized to your specifications, vacuum sealed then blast frozen and

Get In Touch

907-738-2732  
brian@a-  
zsportfishingcharters.com  
Contact Us



JARDINE'S LOADING UP 5:20 AM



DIFFERENT GROUP 5:30AM

## Maegan Bosak

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**From:** Michelle Putz [michelleputz@yahoo.com]  
**Sent:** Thursday, July 10, 2014 7:53 AM  
**To:** maegan@cityofsitka.com; michelleputz@yahoo.com  
**Subject:** Comments for July Sitka Planning Commission Meeting

Maegan,

Please share the following comments at the July Sitka Planning Commission meeting as our comments (Michelle Putz and J. Perry Edwards, owners of the home at 131 Shelikof Way, Sitka, AK 99835) on the hearing for a 2-bedroom bed and breakfast conditional use permit at 105 Shelikof Way.

If you would like to talk to us or ask us about anything we have said, you may call us at home at 747-2708.

Perry and I appreciate the neighbors for making this effort to obtain the legal right to provide two rooms as a bed and breakfast in Sitka. We recognize that owning a home in Sitka is expensive and that a home business can help to make it more affordable.

We admit that we do not know all the rules and regulations related to bed and breakfasts, rentals, charter lodges, charter fishing, taxes, and enforcement of these rules and regulations. We also don't know if the City has the true ability or authority to enforce any of these rules and regulations, nor if they have the political will to enforce their own regulations. And we follow the rules, expect others to follow the rules, and expect someone to enforce the rules when they are not followed.

Since we and our neighbors recently complained about charter lodging in our neighborhood, the neighbors at 105 Shelikof Way built a flower "arbor" on the side of their deck that blocks the view of their deck (and to some degree, we expect it blocks the view from their deck). Because of the arbor, we are no longer able to see people on their deck. This occurred in late June/early July 2014.

Prior to the arbor, my spouse and I had a partial view of the deck at 105 Shelikof Way. We also have a view of the home's front door. My spouse and I personally observed many dozens of different people using the deck and coming and going during the summers, each of them coming and leaving in groups of 2-8 people, changing out regularly, leaving together early in the mornings and coming back usually later in the afternoon, all of them adults, never children, almost all of them older men, and all of them taking photos. While this doesn't conclusively prove that they were running a charter out of their home, it certainly resembled what you'd expect from a charter business. We all have house guests, but the regularity of the visitors, their make-up, group size, behavior, etc. all point to these guests using the house as temporary lodging and potentially as part of a charter fishing business. This has been occurring in 2014, 2013, and 2012.

During the winters we have seen and been told that the house has been rented out and, at times, seemed unused.

As far as we can remember, a request for a bed and breakfast conditional use permit was requested, considered and turned down over 2 years ago. We do not remember the circumstances for why that was turned down.



The driving/parking area around the houses in this tiny cul-de-sac are small and tight. There is no true turn-around space. The deck of this house comes out right to the black top and there appears to be little parking space.

We are unsure of whether there are permanent residents (i.e. people that live there for 4-6 months or more). The lock on the front door is a combination lock. From our observations, it appears that different people regularly come and go.

If there was going to be true and regular enforcement of Sitka code and regulations and strong consequences levied for not following those regulations, then I would suggest that this is not a good location for a bed and breakfast or charter business, or other short-term lodging, because of the lack of parking and turn-around space. However, I don't believe Sitka's code or regulations are strong enough nor have enough "teeth" to enforce the rules when we tell a property owner that they have been denied a permit. I also don't believe that there is enough political will to support enforcement of "permit denied."

Since the City already seems to be allowing this business and my husband and I have little expectation that it will stop, we prefer that the City, and the neighbors through the review process, have some level of review and enforcement by granting and enforcing a 2-bedroom bed and breakfast permit. We also prefer that the business be recognized so that it is required to pay it's rightful amount of taxes to help support community facilities and services.

We do have one additional concern if the permit is granted: the house is a 5-bedroom house, what will limit them from renting out/using more than two rooms for a bed and breakfast? What will stop them from using all five rooms as a bed and breakfast? And how will this be enforced?

Thank you for listening to and considering our concerns. You may share these concerns publicly and with the Assembly.

Sincerely,

/s/ Michelle K. Putz and /s/ J. Perry Edwards

131 Shelikof Way, Sitka, AK 99835

[michelleputz@yahoo.com](mailto:michelleputz@yahoo.com)

**Jardine**  
CUP- B&B  
105 Shelikof Way

**CITY AND BOROUGH OF SITKA**  
**PLANNING DEPARTMENT**  
SHORT-TERM RENTAL &  
BED & BREAKFAST APPLICATION

Short-Term Rental Fee	\$100.00
Bed & Breakfast Fee	\$ 35.00
(per Guestroom)	
* plus current city sales tax *	

APPLICANT'S NAME: Brian R. Jardine  
PHONE NUMBER: 907-747-3188 / 907-738-2796  
MAILING ADDRESS: 105 Shelikof Way, Sitka AK

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

PROJECT ADDRESS: 105 Shelikof Way, Sitka AK  
LEGAL DESCRIPTION Lot: 15 Block: \_\_\_\_\_  
Subdivision: Gibson, Kitka Snowden  
U.S. Survey: \_\_\_\_\_ Zoning Classification: R-1 MH

*Michelle  
907-738-2732*

State all reasons for justifying request: We would like to include a bed and breakfast in our home, to generate a little more income, and to have a place for some of our clients.

Describe how the facility will be operated, what meals will be served, and how guests will be transported. (This information may be provided on a separate sheet).  
Breakfast, light snacks and beverages such as coffee, tea and sodas will be served.  
our guests will be transported around town and to and from the airport in one of our two vehicles. Only the rare instance, a guest does have his or her own vehicle.\*

Anticipated start date: Preferably as soon as possible, with the majority being May thru August of the year 2015.

\*one of ours will park elsewhere, this case might happen about once per season. (over)

What months of the year the facility will be in operation:  
and August

May, June, July

Drawing of the **interior** layout showing:

1. Size and location of rooms
2. Types of facilities in the rooms
3. Windows and exits
4. Location of smoke alarms and fire extinguishers
5. Guestrooms specifically delineated on the plans

Drawing of the **exterior** site plan showing:

1. Dimensions of the home
2. How the house sits on the lot
3. Location of parking



Check if facility is not fully constructed at the time of the application



Check if Life Safety Inspection has already been completed. If not, please contact the Building Department at 747-1832 to schedule an appointment. This Inspection is to certify that the residence complies with life and fire safety code aspects.

***Bed and Breakfast applicants shall be aware that only limited cooking facilities such as small toaster ovens, microwaves, and refrigerators are allowed and those appliances must be outside of guestrooms.***

***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: *Br Jordan*

Date: 6-29-2014

SIGNATURE OF OWNER: \_\_\_\_\_

Date: \_\_\_\_\_

*(If different from the applicant)*

**CITY AND BOROUGH OF SITKA  
Planning Commission  
Minutes of Meeting  
August 19, 2014**

**Present:** Richard Parmelee (Chair), Chris Spivey (Vice-Chair), Debra Pohlman (Member) Darrell Windsor (Member), Terrance Seslar (Member), Wells Williams (Planning Director), Maegan Bosak (Planner I)

**Members of the Public:** Scott Brylinsky, Tom and Lisa Sadler-Hart, Kay Turner, Lynne Brandon

Chair Parmelee called the meeting to order at 7:01 p.m.

**Roll Call:**

**PRESENT:** 5 –Parmelee, Spivey, Pohlman, Windsor, Seslar

**Consideration of the Minutes from the August 5, 2014 meeting:**

**MOTION: M/S SPIVEY/POHLMAN** moved to approve the meeting minutes for August 5, 2014.

**ACTION:** Motion **PASSED** unanimously 5-0 on a voice vote.

**The evening business:**

**CONDITIONAL USE PERMIT- 2 BEDROOM BED AND BREAKFAST  
LOT 1-S GIBSON/KITKA/SNOWDEN SUBDIVISION  
BRIAN JARDINE**

*Planning Commission deliberation of a two bedroom bed and breakfast conditional use permit filed by Brian Jardine at 105 Shelikof Way. The property is also known as Lot 1-S Gibson/Kitka/Snowden Subdivision. The owner of record is Shannon J. Jardine and Brian R. Jardine.*

Planning Director Williams describes the process up to this point. Jardine's request is for conditional use permit for a 2 bedroom bed and breakfast. The public comment period is over and this meeting is specifically for Commissioner deliberation, findings and motions.

**COMMISSIONER DELIBERATION:** Commissioner Seslar researched Jardine's website and found that changes were being made by the applicant, even though he stated previously that he was not able to do so. Commissioner Spivey says that the Administrator asked the applicant to stop housing clients and he failed to do so. Furthermore, Spivey says the Municipal Attorney brings up many valid points and he is not willing to approve something that could create legal problems for the City. Commissioner Windsor says that this property is acting as a lodge which is not permitted. Commissioner Pohlman says she can't ignore that a neighbor is claiming he is adversely affected.

**FINDINGS: 22.30.160 Planning commission review and recommendation.**

C. Required Findings for Conditional Use Permits. The planning commission shall not recommend approval of a proposed development unless it first makes the following findings and conclusions:

1. The City may use design standards and other elements in this code to modify the proposal. A conditional use permit may be approved only if all of the following findings can be made regarding the proposal and are supported by the record that the granting of the proposed conditional use permit will not:

a. be detrimental to the public health, safety, and general welfare;

**MOTION: M/S SPIVEY/WINDSOR** moved to approve that these findings can be met.

**ACTION: Motion FAILED unanimously 0-5** on a voice vote.

b. adversely affect the established character of the surrounding vicinity;

**MOTION: M/S WINDSOR/PARMELEE** moved to approve that these findings can be met.

**ACTION: Motion FAILED unanimously 0-5** on a voice vote.

c. be injurious to the uses, property, or improvements adjacent to, and in the vicinity of, the site upon which the proposed use is to be located.

**MOTION: M/S SPIVEY/WINDSOR** moved to approve that these findings can be met.

**ACTION: Motion FAILED unanimously 0-5** on a voice vote.

2. That the granting of the proposed Conditional Use Permit is consistent and compatible with the intent of the goals, objectives and policies of the Comprehensive Plan and any implementing regulation.

**MOTION: M/S SPIVEY/WINDSOR** moved to approve consistent with Comprehensive Plan 2.5.2 *To encourage commercial and industrial developments of a quality that does not adversely impact any adjacent recreational and residential areas.*

**ACTION: Motion FAILED unanimously 0-5** on a voice vote.

3. That all conditions necessary to lessen any impacts of the proposed use are conditions that can be monitored and enforced.

**MOTION: M/S POHLMAN/SPIVEY** moved to approve that these findings can be met.

**ACTION: Motion FAILED unanimously 0-5** on a voice vote.

4. That the proposed use will not introduce hazardous conditions at the site that cannot be mitigated to protect adjacent properties, the vicinity, and the public health, safety and welfare of the community from such hazard.

**MOTION: M/S SPIVEY/WINDSOR** moved to approve that these findings can be met.

**ACTION: Motion PASSED unanimously 5-0** on a voice vote.

5. That the conditional use will be supported by, and not adversely affect, adequate public facilities and services; or that conditions can be imposed to lessen any adverse impacts on such facilities and services.

**MOTION: M/S SPIVEY/POHLMAN** moved to approve that these findings can be met.

**ACTION: Motion PASSED unanimously 5-0** on a voice vote.

6. Burden of Proof. The applicant has the burden of proving that the proposed conditional use meets all of the criteria in Section B.

**MOTION: M/S SPIVEY/SESLAR** moved to approve.

**ACTION: Motion FAILED unanimously 0-5** on a voice vote.

The City may approve, approve with conditions, modify, modify with conditions, or deny the conditional use permit. The city may reduce or modify bulk requirements, off-street parking requirements, and use design standards to lessen impacts, as a condition of the granting of the conditional use permit. In considering the granting of a conditional use, the assembly and planning commission shall satisfy themselves that the general criteria set forth for uses specified in this chapter will be met. The city may consider any or all criteria listed and may base conditions or safeguards upon them. The assembly and planning commission may require the applicant to submit whatever reasonable evidence may be needed to protect the public interest.

**The general approval criteria are as follows:**

1. Site topography, slope and soil stability, geophysical hazards such as flooding, surface and subsurface drainage and water quality, and the possible or probable effects of the proposed conditional use upon these factors;
2. Utilities and service requirements of the proposed use, including sewers, storm drainage, water, fire protection, access and electrical power; the assembly and planning commission may enlist the aid of the relevant public utility officials with specialized knowledge in evaluating the probable effects of the proposed use and may consider the costs of enlarging, upgrading or extending public utilities in establishing conditions under which the conditional use may be permitted;
3. Lot or tract characteristics, including lot size, yard requirements, lot coverage and height of structures;
4. Use characteristics of the proposed conditional use that affect adjacent uses and districts, including hours of operation, number of persons, traffic volumes, off-street parking and loading characteristics, trash and litter removal, exterior lighting, noise, vibration, dust, smoke, heat and humidity, recreation and open space requirements;
5. Community appearance such as landscaping, fencing and screening, dependent upon the specific use and its visual impacts.

## 22.24.010 Conditional uses.

E. In evaluating the inputs of a proposed conditional use permit, the municipality may consider a commercial conditional use to be inappropriate for residential neighbors while the same conditional use may be acceptable when it is located along an arterial or collector street. The additional vehicular traffic generated by conditional uses, such as professional offices, may not be able to be adequately mitigated in residential areas.

### 1. Criteria to Be Used in Determining Impacts of Conditional Uses.

- a. Amount of vehicular traffic to be generated and impacts of the traffic on nearby land uses.
- b. Amount of noise to be generated and its impacts on surrounding land uses.
- c. Odors to be generated by the use and their impacts.
- d. Hours of operation.
- e. Location along a major or collector street.
- f. Potential for users or clients to access the site through residential areas or substandard street creating a cut through traffic scenario.
- g. Effects on vehicular and pedestrian safety.
- h. Ability of the police, fire, and EMS personnel to respond to emergency calls on the site.
- i. Logic of the internal traffic layout.
- j. Effects of signage on nearby uses.
- k. Presence of existing or proposed buffers on the site or immediately adjacent the site.
- l. Relationship if the proposed conditional use is in a specific location to the goals, policies, and objectives of the comprehensive plan.
- m. Other criteria that surface through public comments or planning commission assembly review.

**MOTION: M/S SPIVEY/WINDSOR** recommended denial of conditional use permit because the majority of required findings cannot be met and neighborhood concerns cannot be mitigated.

**ACTION: Motion PASSED unanimously 5-0** on a voice vote.

This request and recommendation will be forwarded to the Assembly. Materials can still be submitted and notices will go out to the adjacent neighborhood.

### **CONDITIONAL USE PERMIT- DAYCARE/KINDERGARTEN IN R-1 ZONE LOT 1 WESTOVER SUBDIVISION EMILY DAVIS**

*Public hearing and consideration of a daycare conditional use permit filed by Emily Davis at 304 Baranof Street. The property is also known as Lot 1 Westover Subdivision. The owner of record is John and Karen Thielke.*

Bosak provides a staff report summarizing the conditional use permit request and concerns that were heard at the last meeting. The request is across from Baranof Elementary. It was most recently the Boys and Girls Club and professional offices. Staff feels the applicant should formalize their request so that Commissioners can proceed with their deliberations. Mary

Wegner, Sitka School Superintendent, submitted a letter with concerns that was included in the packets for review.

**APPLICANT:** Paul and Emily Davis step forward. Ms. Davis states that two classrooms will be sufficient with a living unit above for teacher. The applicant stresses that they want to make sure parking does not add to Baranof Elementary School congestion. Davis states she is happy to revise application if need. She also states that the lot next to the building should be marked as a private lot because it is confusing.

Williams asks about drop off and pick-ups. Davis plans to use the side lot of the building and the historically reserved spaces in the public lot. Commissioner Windsor asks about walking school kids from Baranof to the facility. Davis again stresses that they don't want to conflict with Baranof Elementary school hours. She would walk students from school to the learning center, reducing the cars in the area. Commissioners voice concerns over congestion.

Williams asks if Davis has worked with Baranof Elementary on the congestion schedule and specifically the signing out process. Davis has no association with the district but has sign in/out protocol with parents. Davis says she is happy to work with the district. Her number one goal is the safety of children.

**COMMISSIONER DELIBERATION:** Commissioner Parmelee asks Davis to talk with teachers and staff regarding drop off protocol. Davis asks if there is a conditional use permit with the building already as it was used as the Boys and Girls Club. Williams says that the extension of the permit would have to include plans that were exactly the same as the prior after school program. Mr. Davis exclaims that Ms. Davis is just trying to earn a living and work within the parameters. Williams ask Mr. Davis to lower his voice – everyone is working hard to go through all the details of the permit.

Commissioner Spivey says the application continues to change. Now they want to just do an after school program?

Dan Tadic, Municipal Engineer, says that the public parking lot will be used for construction materials and machinery storage for next summer's road projects. The lot is the only area to store the materials.

Davis says she can withdrawal application however every daycare application will come back before the Commission.

**PUBLIC COMMENT:** No public comment.

This request will be back on the September 2<sup>nd</sup> Planning Commission agenda.

**ZONING TEXT CHANGE  
COMMERCIAL HOME HORTICULTURE  
TOM AND LISA SADLER-HART**

*Public hearing and consideration of a zoning text change to revise SGC 22.16.015-6 to make commercial home horticulture a permitted use in the R-1, R-1 MH, R-2, R-2 MHP, GI and LI zones and revise SGC 22.08.195 Commercial home horticulture definition to clarify it allowing for the sale of products produced on site and to allow for the construction of accessory buildings. The applicant is Lisa Sadler-Hart and Tom Hart.*

Williams describes the zoning text change and definition change request.



**APPLICANT:** Tom Hart and Lisa Sadler-Hart come forward to share idea. They hope to increase economic benefit for food growers while increasing neighborhood access to fruits and vegetables. They are open to all discussions and understand that the process could take a while to flush out all the details. They also have concerns over increased traffic in neighborhoods and individual “garden stands” and what they should look like.

Williams is excited as this could be a new movement in Sitka. Sadler-Hart has done beautiful work throughout the community.

**COMMISSIONER DELIBERATION:** Commissioner Pohlman asks about conditional use permit process. Pohlman brings up fertilizer odor issues. What is the Commission going to do to include checks and balances? She asks about chicken coops.

Discussion over traffic generation and how this would affect R-1 neighborhood issues. Spivey says this could become like never ending garage sales and in the downtown area that could be a problem.

Sadler-Hart asks if traffic is the issue or the producible amount of food on the lots.

Spivey says it is mainly parking. Discussion on prohibitions on streets that are a lane and a half or properties under 50 ft wide. Commissioner Windsor says if it’s a small lot they won’t be able to grow enough to sell. Commissioner Seslar says perhaps the garden stand could be based on the size of the property.

Discussion over a time limit. Possibly one weekend per month or once a week.

Sadler-Hart states they would mainly take place June through September or during the growing season.

Various items such as orders, lockbox system and hours of operation come up.

Williams asks if we should include limiting greenhouses in the discussion. Specifically sizing and proximity to property lines.

Pohlman comments that this goes back to commercial uses in residential areas. How can we mitigate impacts? Perhaps another permitting process.

**PUBLIC COMMENT:** No public comment.

Request will be back for discussion at September 2<sup>nd</sup> Planning Commission meeting.

## **DISCUSSION**

### **CRESCENT HARBOR PARK PLAYGROUND EXPANSION**

#### **KAY TURNER**

*Discussion on proposed expansion of the Crescent Harbor Park Playground located on Lincoln Street next to Crescent Harbor by Kay Turner.*

Bosak describes details of the request. The idea was supported at the Historic Preservation Commission meeting.

**APPLICANT:** Kay Turner and Lynne Brandon come forward to answer questions. Turner says that a new playground is needed in Sitka and that the cause was recognized as a health summit goal. This playground would be ADA accessible and sustainable. Brandon states that the equipment will include games and encourage imaginative play. Park will be Sitka themed and have a neutral color scheme.

**COMMISSIONER DELIBERATION:** Commissioner Spivey asks about parking. Brandon says that the City has taken over maintenance on the lot across the street on SJ campus. Parking is also available at Crescent Harbor.

**PUBLIC COMMENT:** No public comment.

**MOTION: M/S SPIVEY/WINDSOR** moved to make a motion of recommendation to the Assembly on behalf of the proposed expansion of the Crescent Harbor Park Playground located on Lincoln Street next to Crescent Harbor by Kay Turner.

**ACTION:** Motion **PASSED unanimously 5-0** on a voice vote.

**PLANNING DIRECTOR'S REPORT:** No report.

**PUBLIC COMMENT:** No public comment.

**ADJOURNMENT:**

**MOTION: M/S SPIVEY/SESLAR** moved to adjourn at 9:17 pm.

**ACTION:** Motion **PASSED unanimously 5-0** on a voice vote.

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**Richard Parmelee, Chair**

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**Maegan Bosak, Secretary**

**CITY AND BOROUGH OF SITKA  
Planning Commission  
Minutes of Meeting  
August 5, 2014**

**Present:** Chris Spivey (Vice-Chair), Debra Pohlman (Member), Darrell Windsor (Member), Terrance Seslar (Member), Wells Williams (Planning Director), Maegan Bosak (Planner I)

**Members of the Public:** Scott Brylinsky, Paul and Emily Davis, Mary Wegner, Paul Haavig

Chair Spivey called the meeting to order at 7:02 p.m.

**Roll Call:**

**PRESENT:** 4 –Spivey, Pohlman, Windsor, Seslar

**ABSENT:** 1 -Parmelee

**Consideration of the Minutes from the July 15, 2014 meeting:**

**MOTION: M/S WINDSOR/SESLAR** moved to approve the meeting minutes for July 15, 2014.

**ACTION:** Motion **PASSED unanimously 4-0** on a voice vote.

**The evening business:**

**CONDITIONAL USE PERMIT- 2 BEDROOM BED AND BREAKFAST  
LOT 1-S GIBSON/KITKA/SNOWDEN SUBDIVISION  
BRIAN JARDINE**

*Public hearing and consideration of a two bedroom bed and breakfast conditional use permit filed by Brian Jardine at 105 Shelikof Way. The property is also known as Lot 1-S Gibson/Kitka/Snowden Subdivision. The owner of record is Shannon J. Jardine and Brian R. Jardine.*

Planner I, Bosak, describes the progression of the two bedroom B&B request. Bosak describes the small subdivision and access easement. The two bedrooms will be in the lower level and living spaces are on the upper floor. This is the last public comment hearing, the next meeting will be specifically for Commissioner deliberation, findings and a motion. No new comments were received other than a letter submitted by the Municipal Attorney.

Robin Koutchak, Municipal Attorney, asks if there were any questions of her memorandum of law. No questions from Commissioners.

**APPLICANT:** Brian Jardine and Michelle Peterson, feel that the City is giving legal advice on behalf of the neighbor. Previous issues have been of noise and parking but there hasn't been any filed complaints. They have four parking spaces per the reason of permit denial in 2006. Peterson, feels that the Municipal Attorney is representing Mr. Mulligan rather than the

community interest. They feel that this is not a property problem but a problem between charter operators vs. commercial fishing. Neighbor is making threatening comments to the applicants. Commissioner Spivey asks if there is any new information pertaining to the request. Jardine discusses pictures passed around at the end of the last meeting showcasing the available parking. Applicants discuss that they have the requirements for the permit. They are requesting the permit for 3.5-4 months. They are willing to work with anyone. Peterson states that Mr. Mulligan is out fishing in the summers and they only wish to operate the B&B during that season.

Williams describes the next meeting and future Planning Commission and Assembly processes. The applicant can provide information from their Attorney for the next packet. Assembly public comment is tentatively scheduled for September 9<sup>th</sup>.

**PUBLIC COMMENT:** No public comment.

Permit request scheduled for the August 19<sup>th</sup> meeting. Williams reminds that the August 19<sup>th</sup> Planning Commission meeting will be at the Sitka Fire Hall.

**CONDITIONAL USE PERMIT- DAYCARE/KINDERGARTEN IN R-1 ZONE  
LOT 1 WESTOVER SUBDIVISION  
EMILY DAVIS**

*Public hearing and consideration of a daycare conditional use permit filed by Emily Davis at 304 Baranof Street. The property is also known as Lot 1 Westover Subdivision. The owner of record is John and Karen Thielke.*

Bosak provides a staff report explaining the conditional use permit request. The request is across from Baranof Elementary. It was most recently the Boys and Girls Club and professional offices. Davis recently opened the Pacific Learning Center downtown. Plans for new facility show daycare service for up to 35 children. Staff feels parking and pick up/drop off plans should be discussed in depth. Staff Contacted both Sitka School District Superintendent and new Baranof principal for their input.

Request will be scheduled for multiple meetings to make contact with school district.

**APPLICANT:** Emily and Paul Davis come forward to describe request. Primary focus will be on infant care and after school programming. Davis feels that this location would be perfectly suited for after school programming. Two licensed teachers will be residing upstairs. Willing to adjust hours to prevent congestion. The location also offers a backyard which would encourage outdoor activities. Williams asks how many classrooms Davis plans on having? Davis states 3 classrooms as it is hard to tell demand at this time. Will be dependent on how many children, ages, etc. Williams explains that CBS code states there must be 1 parking space per classroom plus two for the upstairs dwelling unit. They may need to apply for a parking variance. The reserved spaces in the adjacent public lot are not legal parking spaces for this facility. Davis has illustrated three parking spaces on the side of the building. Williams describes history of this building and parking provisions. Commissioner Windsor asks about fence and if it is on the property line?

Paul Davis states the two intended residents do not have cars. Williams says they still need the required spots but it will provide more availability for drop offs and pick ups.

**COMMISSIONER DELIBERATION:** Commissioner Pohlman asks hours of operation and how they can be staggered. Paul Davis says at their current location they are cognizant and considerate of traffic and congestion. Bosak asks Davis to expand on Harbor Drive location. Davis says that she does not want to add school age children to the first location, as it would change the atmosphere and create chaos.

Pohlman states the traffic is an issue for other local business i.e. the Elks around school times. This new institution is bringing up an old issue. Pohlman suggests bringing up issue of parking in general. Williams suggests focusing specifically on this issue and this property.

Williams also states that input needs to be heard from school representatives and we should wait for school to start so Commissioners can see congestion issues.

Commissioner Spivey talks about congestion and says it is awful.

Davis plans to rent the space but worries that it will not be available after multiple meetings. Davis also states that there will be more students walking from Baranof to the center, limiting parking needs. Spivey asks if students will be collected and escorted? Davis says that would make the most sense. She would like to work with the school as best as possible. Applicants thought this building would be the best due to the location across from Baranof Elementary. Commissioner Seslar asks about late arrival parents and possible congestion.

Windsor clarifies that conditional use permits stay with the buildings. Williams says yes but they are also based on plans submitted. Specific to business and unlikely that another person would come in and use the same business plan.

**PUBLIC COMMENT:** Mary Wegner, Superintendent of Sitka School District, says she's happy to work with the applicant.

Permit will be scheduled for discussion at the August 19<sup>th</sup> and September 2<sup>nd</sup>.

## **VARIANCE REQUEST**

### **LOT 7 ETHEL SUBDIVISION**

#### **RANDY HITCHCOCK FOR STEVE ATKINSON**

*Public hearing and consideration of a variance request at 725 Alice Loop filed by Randy Hitchcock. The applicant is requesting a front setback from 20 feet to 16 feet to allow for a covered front porch on a new construction home. The property is also known as Lot 7 Ethel Staton Subdivision. The owner of record is Steve Atkinson.*

Bosak describes front setback request. Foundation is in compliance with setback requirements however the front porch will extend into front setback. Bosak reminds Commission of prior variances approved on Alice Loop and terrain/lot size. Applicant has already gone through Historic Preservation Commission. Located in a waterfront zone.

**APPLICANT:** Steve Atkinson, via phone from Huntington Beach, CA, shares plans for new construction home. He didn't realize it in planning stage but lot was mismeasured and so they are before the Commission asking for a reduction of four feet.

Williams says there are no questions. Residential area with no impacts.

**COMMISSIONER DELIBERATION:** No questions.

**PUBLIC COMMENT:** No public comment.

Williams describes known historical site and historical nature of the area, therefore the applicant was required to go through Historic Preservation Commission.

**MOTION: M/S WINDSOR/POHLMAN** move to approve the following findings:

1. That there are special circumstances to the intended use that do not apply generally to the other properties, specifically the topographic constraints;
2. The variance is necessary for the preservation and enjoyment of a substantial property right of use possessed by other properties but are denied to this parcel;
3. That the granting of such a variance will not be materially detrimental to the public welfare or injurious to the property nearby parcels of public infrastructure;
4. That the granting of such a variance will not adversely affect the Comprehensive Plan. It is in line with Comprehensive Plan 2.3.1 *To guide the orderly and efficient use of private and public land in a manner that maintains a small-town atmosphere, encourages a rural lifestyle, recognizes the natural environment, and enhances the quality of life for present and future generations without infringing on the rights of private landowners* and 2.3.4 *To minimize and resolve conflicts, between residential, commercial, recreational and industrial land uses.*

**ACTION: Motion PASSED unanimously 4-0** on a voice vote.

**MOTION: M/S WINDSOR/POHLMAN** move to approve a variance request at 725 Alice Loop filed by Randy Hitchcock. The applicant is requesting a front setback from 20 feet to 16 feet to allow for a covered front porch on a new construction home. The property is also known as Lot 7 Ethel Staton Subdivision. The owner of record is Steve Atkinson.

**ACTION: Motion PASSED unanimously 4-0** on a voice vote.

**VARIANCE REQUEST  
LOT 12 ETHEL STATON SUBDIVISION  
PAUL HAAVIG**

*Public hearing and consideration of a variance request at 745 Alice Loop filed by Paul Haavig. The applicant is requesting a side setback from 10 feet to 8 feet to allow for eaves on a new construction home. The property is also known as Lot 12 Ethel Staton Subdivision. The owner of record is Paul Haavig.*

Bosak describes details of variance request at 745 Alice Loop. Haavig is requesting a side setback from 10 feet to 8 feet. In most residential zones, this request would go through the administrative variance process. However due to the waterfront zoning, administrative variances are not permitted. Bosak describes specific covenants relative to the subdivision, including garages. New construction home request will go before Historic Preservation Commission next week, at August meeting.

Williams describes Shee Atika's intent in the creating the Ethel Staton subdivision as a waterfront zone. Most flexible zone that could allow for condominiums or boat storage.

**APPLICANT:** Paul Haavig says that the setback variance is specifically for the eaves and gutters. When originally placing the home on the lot plan, they followed the 80 foot front width however the middle of the lot only measures 78 feet wide. Asking for two foot variance on one side.

**COMMISSIONER DELIBERATION:** No questions.

**PUBLIC COMMENT:** No public comment.

**MOTION: M/S WINDSOR/SESLAR** move to approve the following findings:

1. That there are special circumstances to the intended use that do not apply generally to the other properties, specifically the irregular shape of the parcel and presence of water at the rear of the property;
2. The variance is necessary for the preservation and enjoyment of a substantial property right of use possessed by other properties but are denied to this parcel;
3. That the granting of such a variance will not be materially detrimental to the public welfare or injurious to the property nearby parcels of public infrastructure, specifically that an 8 foot setback will be maintained;
4. That the granting of such a variance will not adversely affect the Comprehensive Plan. It is in line with Comprehensive Plan 2.3.1 *To guide the orderly and efficient use of private and public land in a manner that maintains a small-town atmosphere, encourages a rural lifestyle, recognizes the natural environment, and enhances the quality of life for present and future generations without infringing on the rights of private landowners* and 2.3.4 *To minimize and resolve conflicts, between residential, commercial, recreational and industrial land uses.*

**ACTION:** Motion **PASSED unanimously 4-0** on a voice vote.

**MOTION: M/S WINDSOR/SESLAR** move to approve a variance request at 745 Alice Loop filed by Paul Haavig. The applicant is requesting a side setback from 10 feet to 8 feet to allow for eaves on a new construction home. The property is also known as Lot 12 Ethel Staton Subdivision. The owner of record is Paul Haavig.

**ACTION:** Motion **PASSED unanimously 4-0** on a voice vote.

**PLANNING DIRECTOR'S REPORT:** August 19<sup>th</sup> Planning Commission meeting will be held at the Sitka Fire Hall.

**PUBLIC COMMENT:** No public comment.

**ADJOURNMENT:**

**MOTION: M/S POHLMAN/WINDSOR** moved to adjourn at 8:23 pm.

**ACTION:** Motion **PASSED unanimously 4-0** on a voice vote.

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**Chris Spivey, Vice-Chair**

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**Maegan Bosak, Secretary**

**CITY AND BOROUGH OF SITKA**  
**Planning Commission**  
**Minutes of Meeting**  
**July 15, 2014**

**Present:** Richard Parmelee (Chair), Darrell Windsor (Member), Terrance Seslar (Member), Wells Williams (Planning Director), Maegan Bosak (Planner I)

**Members of the Public:** Richard Doland, Chad and Kelly Goeden, Hans Von Rekowski, Ken Buxton, Dan Tadic (Municipal Engineer)

Chair Parmelee called the meeting to order at 7:01 p.m.

**Roll Call:**

**PRESENT:** 3 –Parmelee, Windsor, Seslar

**Consideration of the Minutes from the June 17, 2014 meeting:**

**MOTION: M/S WINDSOR/SESLAR** moved to approve the meeting minutes for June 17, 2014.

**ACTION:** Motion **PASSED unanimously 3-0** on a voice vote.

**The evening business:**

**VARIANCE REQUEST**  
**LOT 54 GAVAN SUBDIVISION**  
**SAM SKAGGS**

*Public hearing and consideration of a variance request at 504 Charteris Street filed by Sam Skaggs. The request is to reduce the side setback from 8 feet to 3 feet for a new construction house. The property is also known as Lot 54 Gavan Subdivision. The owner of record is Samuel D. Skaggs.*

Planner I, Bosak, describes the applicant's request. Skaggs is back before the Board with revised building plans requesting a side setback variance from 8 feet to 3 feet. Bosak describes the eagle permit and the location. Bosak reads public comment from Jay and Amy Sweeney.

**APPLICANT:** Via phone, Sam Skaggs, educates the Board on the extremely challenging site. Most of the lot is unbuildable, however they plan to build on a pounded piling foundation, going down approximately 20-25 feet. The plan is for a small home, a 30x30 ft. two story. Skaggs reviews the eagle permit and the ability to "take" two eagles which he is trying not to do. He is a conversationalist and waiting for the eagles to leave before working on the land so not to disturb them. He reminds the Commission that there are no eagle nests on the property and they aren't looking to remove trees to the west as they are a wind barrier. Skaggs is trying to build an earthquake safe house. The lot is disadvantaged due to the old city water line at the front. Richard Doland, Doland Built Homes, explains that excavation depths will be fairly negligible. No shot rock will be used only digging for footings. Doland approximates less than two feet of actual digging down.



Williams asks Skaggs to elaborate on his Sitka roots. Skaggs replies that he doesn't think this should have any bearing on the variance but he has been heavily involved in Sitka for many years. He looks forward to being a full time resident.

**PUBLIC COMMENT:** Dan Tadic, Municipal Engineer, says that Skaggs has worked with Engineer Dave Longtin on waterline easement and they appreciate his willingness to compromise with CBS.

**COMMISSIONER DELIBERATION:** No Commissioner questions.

**MOTION: M/S WINDSOR/SESLAR** move to approve the following findings:

1. That there are special circumstances to the intended use that do not apply generally to the other properties, specifically the rear of the property being unbuildable and the waterline crossing the front;
2. The variance is necessary for the preservation and enjoyment of a substantial property right of use possessed by other properties but are denied to this parcel;
3. That the granting of such a variance will not be materially detrimental to the public welfare or injurious to the property nearby parcels of public infrastructure, specifically public infrastructure is enhanced due to the arrangement of the waterline;
4. That the granting of such a variance will not adversely affect the Comprehensive Plan. It is in line with Comprehensive Plan 2.3.1 *To guide the orderly and efficient use of private and public land in a manner that maintains a small-town atmosphere, encourages a rural lifestyle, recognizes the natural environment, and enhances the quality of life for present and future generations without infringing on the rights of private landowners.*

**ACTION:** Motion **PASSED unanimously 3-0** on a voice vote.

**MOTION: M/S WINDSOR/SESLAR** move to approve a variance request at 504 Charteris Street filed by Sam Skaggs. The request is to reduce the side setback from 8 feet to 3 feet for a new construction house. The property is also known as Lot 54 Gavan Subdivision. The owner of record is Samuel D. Skaggs.

**ACTION:** Motion **PASSED unanimously 3-0** on a voice vote.

**CONDITIONAL USE PERMIT- 2 BEDROOM BED AND BREAKFAST  
LOT 1-S GIBSON/KITKA/SNOWDEN SUBDIVISION  
BRIAN JARDINE**

*Public hearing and consideration of a two bedroom bed and breakfast conditional use permit filed by Brian Jardine at 105 Shelikof Way. The property is also known as Lot 1-S Gibson/Kitka/Snowden Subdivision. The owner of record is Shannon J. Jardine and Brian R. Jardine.*

Planner I, Bosak, describes the two bedroom B&B request. Home is accessed on shared easement with neighbors Grun and Mulligan. Bedrooms are located on the bottom story of the home, living space is up above. Long history of property applying for permit and not granted. Neighborhood petition over concern of noise and traffic, prompted a meeting between City Officials and Jardine. Mr. Jardine owns a fishing charter business, A-Z Fishing Charters, and it could be presumed that those clients have been or could be renting rooms. Williams suggests that the Planning Commission takes a minimum of two meetings. Bosak reads two public

comments- from Michelle Putz and Richard Mulligan. Williams shares that neighbor Grun has a two bedroom bed and breakfast permit currently.

**APPLICANT:** Brian Jardine, says there is plenty of room for four parking spaces. Traffic will not increase or decrease. Past permit was not granted due to parking but parking is accounted for. He is aware of the permit regulations and he is willing to follow those. Permit will hold him accountable and City will get taxable revenue. Jardine only plans to operate for a few months out of the year. Mr. Mulligan also has a rental contributing to traffic on the easement. Jardine is looking to forward his business and make it lucrative. Would like bed and breakfast to run mid-May through September 1st. He drives trucks during the winter down south for additional income. He is willing to compromise and work with anyone who is willing to work with him.

Williams showcases pictures of parking on overhead screen for Commissioners. Jardine explains that he would just like to make a little extra income. Rather than start a neighborhood feud, they would like the opportunity to run the permit in accordance with the law.

**COMMISSIONER DELIBERATION:** Commissioner Windsor asks if there are clients staying there now? Jardine responds that he has friends staying with him. "Have you had clients in the past?" Windsor asks. Yes, we have. Jardine explains that they haven't been charging for the lodging only for the fishing. That's why they are going through this permit process is so they can make more money, specifically for the lodging. Jardine states that he is just looking for an opportunity to work within whatever boundaries the Board deems necessary. He is willing to look at a one year permit or whatever they say. There are children that visit the home.

Commissioner Seslar says that the website clearly states this is for lodging. Jardine responds that they lodge guests around town in hotels, etc. and that the website is very outdated. It shows a boat that Jardine no longer owns. Jardine only owns one boat. They have asked that the website be changed.

Windsor asks is the lodging referring to people staying at hotels? Jardine says that it is standard language and if its guys that he hunts with they will come up and stay with him and he charges the \$275 fishing fee only. After the meeting with the City, Jardine says he understands that this is not the way they would like to see it done. They are willing to work with all parties. They can show hotel receipts.

**PUBLIC COMMENT:** Mike Steinberg, 127 Shelikof Way, says they look directly down at Jardine's driveway. Steinberg thinks it is important to note that Jardine is trying to start and operate a legitimate business in Sitka. It takes a lot of different pieces. He wants Jardine to be part of the tax base. Steinberg is also a charter boat operator and it impacts his bottom line as he could then keep guests there or take guests out that are staying with Jardine. He doesn't see a lot of traffic in and out of the house. There aren't additional vehicles coming in and out. He says Vonnies B&B doesn't affect him. He wants to see this become a legitimate and legal business.

Molly Kitka, 155 Shelikof Way, has a little bit of concern. Her major concern was her own privacy. Jardine did put up a laddice screen to protect her privacy and to keep guests from looking off the deck into her house. They have been lodging people at their home for the last 10 years. She would like to know how the City plans to monitor the permit. How can it be determined the 3 bedrooms aren't being rented out rather than 2? She feels Jardine needs to prove himself before being granted a permit.

Williams is unaware of how this permit could be monitored. Seslar asks specifically about sales tax and if this could work as an enforcement agent. Williams does not know of any Planning Commission across the country that gets involved in company financials. Sales tax records are confidential records. Bosak says that bed tax reporting could be a means.

Windsor asks Ms. Kitka which house is hers. She describes proximity and past noise issues. She wants Planning Commission to have all the information – she is neither for or against permit. Her one concern was her privacy- traffic doesn't concern her. She wants forthrightness and honesty.

Jardine says he would like the opportunity to prove that he can operate within the rules. The website is out of date and not accurate. He is just asking for the opportunity to prove himself.

Ken Buxton, 108 Shelikof Way, says he's not indifferent but he would like to be fair and see things done right. He is available to answer questions. He voiced problems with Grun's operation but those seem to have been resolved. He's lived there for three years. Windsor asks him if he would notice any increase of traffic? No, he hasn't noticed any increase. There are two sides to every story. He wanted to hear them both and then make a decision on his own.

Richard Mulligan, 107 Shelikof Way, states he is totally against this request. There is already an established business that is out of control. Mulligan passes out photos to the Planning Commission of guests coming and going from Jardines and Grun's. Mulligan is afraid it is just going to get worse. Morning traffic between 4:30-5 am wakes him and his family up. Mulligan has submitted a records request for information he will provide to the Board. Parmelee asks how long he has lived there- 14 years. Pictures show gatherings between Grun's and Jardine's guests/captains – excessive traffic and noise. Jardine's guests do not park on Mulligan's property. Jardine points out that only one of the pictures is of his house.

Mike Steinberg, 127 Shelikof Way, again approaches the Board and says in the last 5 years he has seen Jardine put a new roof on the house, new deck, clean up the lot and general improvements. Thus increasing the value of his home and the entire neighborhood.

LaVonne Grun, 101 Shelikof Way, supports Jardine's right to operate a B&B and finds it offensive that she has been brought into this situation. She has a B&B and operates within the City guidelines. She says this is not about traffic or noise but operation of a charter fishery. It is about a commercial issue and Mr. Mulligan's dislike and hatred towards their sportfishing industry.

Jardine says that Mulligan's photos show that Jardine is providing adequate parking. Past request was turned down due to parking and that should not be a factor this time.

Williams reminds Board that the staff recommendation is to close public hearing and schedule it again at the next meeting.

Windsor asks about the petition. It will be included in the next packet. Williams says petition was against charter businesses in the neighborhood not specific properties.

Request will be scheduled again for August 5<sup>th</sup>.

**VARIANCE REQUEST  
LOT 3 STOCKER SUBDIVISION**

## CHAD AND KELLY GOEDEN

*Public hearing and consideration of a variance request at 2012 Cascade Creek Road filed by Chad and Kelly Goeden. The request is to reduce the side setback from 8 feet to 2 feet for construction of a new garage. The property is also known as Lot 3 Stocker Subdivision. The owner of record is Chad and Kelly Goeden.*

Bosak provides staff report commenting on the layout of the lot with the proposed two car garage. All property lines are side setbacks as it does not front a right of way. Bosak provides history of old waterline and issues that may arise for the applicants. Request went through the Development Review Committee and staff didn't foresee any issues. Applicants will be required to sign waiver releasing liability from any future erosion or drainage issues. Bosak reads comment asking for hydrologist study from Gary Olsen.

**APPLICANT:** Chad and Kelly Goeden share the planned location of the new two car garage. Coming out on the diagonal from the house. Points out the shed will be removed and garage will be built in its place. Creek follows the old water line which is not on Goeden's property. There will be no additional excavation on the site. They point out the location of the garage on the overhead.

Williams describes old city water line. He says requests like this are fairly common. Williams says waterline will never be used again and property behind the lot is wetlands.

Chad Goeden shares his appreciation for Planner I, Bosak. He states she was knowledgeable, kind and gives government officials a good name.

**PUBLIC COMMENT:** Neighbor, Hans Von Rekowski, 2010 Cascade Creek Road, shares concern of possible landslides in the area as seen in the past. He wants an engineered report to ensure additional weight will not create new slides.

Williams asks if Goeden plans to cut into the bank at all? No, they don't plan any additional excavation of the property.

**COMMISSIONER DELIBERATION:** Commissioner Parmelee asks Municipal Engineer, Tadic, if he knows the area? Tadic replies that he is not that familiar with it but the waterline is old WWII era. He knows that some areas of the line have collapsed and that there is still limited water draining through. He doesn't see any concerns.

**MOTION: M/S WINDSOR/SESLAR** move to approve the following findings:

1. That there are special circumstances to the intended use that do not apply generally to the other properties, specifically the limited building pad due to terrain;
2. The variance is necessary for the preservation and enjoyment of a substantial property right of use possessed by other properties but are denied to this parcel, specifically the implied right to construct a garage in an R-1 zone;
3. That the granting of such a variance will not be materially detrimental to the public welfare or injurious to the property nearby parcels of public infrastructure, specifically that the construction of the proposed garage will not increase the footprint and construction will not adversely affect the abandoned waterline;
4. That the granting of such a variance will not adversely affect the Comprehensive Plan. It is in line with Comprehensive Plan 2.3.1 *To guide the orderly and efficient use of private and public land in a manner that maintains a small-town atmosphere,*

*encourages a rural lifestyle, recognizes the natural environment, and enhances the quality of life for present and future generations without infringing on the rights of private landowners.*

**ACTION:** Motion **PASSED unanimously 3-0** on a voice vote.

**MOTION: M/S WINDSOR/SESLAR** move to approve a variance request at 2012 Cascade Creek Road filed by Chad and Kelly Goeden. The request is to reduce the side setback from 8 feet to 2 feet for construction of a new garage. The property is also known as Lot 3 Stocker Subdivision. The owner of record is Chad and Kelly Goeden.

**ACTION:** Motion **PASSED unanimously 3-0** on a voice vote.

**CONDITIONAL USE PERMIT- SHORT-TERM RENTAL  
LOT 18, BLOCK 11, SIRSTAD ADDITION NO. 2  
CHRIS BALOVICH**

*Public hearing and consideration of a short-term rental conditional use permit filed by Chris Balovich at 713 Lake Street. The property is also known as Lot 18, Block 11, Sirstad addition No. 2. The owner of record is Christopher Balovich and Shelly Vaughn.*

Bosak gives staff report commenting on location, building layout and access to the possible short term rental. The applicant has had the apartment for family and friends and would an additional income source. No meals or transportation will be provided.

Commissioner Windsor states that he has worked on the applicant's home in the past.

**APPLICANT:** Owner and applicant, Chris Balovich, comes forward to share his intent with the Commission. He has grown children and family members that often visit and he would like to be able to rent the apartment on a short term basis in between those times. Currently used as a long term rental. The one bedroom apartment is fully furnished. No meals or transportation will be provided. There is a private driveway on the side of the home and plenty of parking. Fire/Life safety inspection has already been completed.

**PUBLIC COMMENT:** No public comment.

**COMMISSIONER DELIBERATION:** No Commissioner questions.

**MOTION: M/S WINDSOR/SESLAR** move to approve the following findings:

1. The Planning Commission finds that the recommended conditional use permit
  - a. Will not be detrimental to public health, safety or welfare;
  - b. Will not adversely affect the surrounding character;
  - c. Will not be injurious to uses or property in the immediate vicinity;
2. Is consistent with Comprehensive Plan policy 2.5.2 I Encourage the development of facilities to accommodate visitors without significant impacts on residential properties;
3. That all conditions necessary to lessen impacts can be monitored and enforced;
4. Will not introduce hazardous conditions on the site;
5. Is adequately supported by public facilities and services;
6. The applicant has met the burden of proof; and
9. The Planning Commission finds that the general approval criteria have been met and the Planning Commission has evaluated the criteria set forth in 22.24.010 which is the

criteria for conditional uses that deal with hours of operation and location along collector streets.

**The general approval criteria are as follows:**

1. Site topography, slope and soil stability, geophysical hazards such as flooding, surface and subsurface drainage and water quality, and the possible or probable effects of the proposed conditional use upon these factors;
2. Utilities and service requirements of the proposed use, including sewers, storm drainage, water, fire protection, access and electrical power; the Assembly and Planning Commission may enlist the aid of the relevant public utility officials with specialized knowledge in evaluating the probable effects of extending public utilities in establishing conditions under which the conditional use may be permitted;
3. Lot or tract characteristics, including lot size, yard requirements, lot coverage and height of structures;
4. Use characteristics of the proposed conditional use that affect adjacent uses and districts, including hours of operation, number of persons, traffic volumes, off-street parking and loading characteristics, trash and litter removal, exterior lighting, noise, vibration, dust, smoke, heat and humidity, recreation and open space requirements;
5. Community appearance such as landscaping, fencing and screening, dependent upon the specific use and its visual impacts.

**1. Criteria to be used in determining impacts of conditional uses:**

- a. Amount of vehicular traffic to be generated and its impacts of the traffic on nearby land uses;
- b. Amount of noise to be generated and its impacts on surrounding land uses;
- c. Odors to be generated by the use and their impacts;
- d. Hours of operation, not different that a traditional residential use;
- e. Location along a major or collector street;
- f. Potential for users or clients to access the site through residential areas or substandard street creating a cut through traffic scenario;
- g. Effects on vehicular and pedestrian safety;
- h. Ability of the Police, Fire, and EMS personnel to respond to emergency calls on the site;
- i. Logic of the internal traffic layout;
- j. Effects of signage on nearby uses;
- k. Presence of existing or proposed buffers on the site or immediately adjacent the site;
- l. Relationship if the proposed conditional use in a specific location to the goals, policies, and objectives of the Comprehensive Plan;
- m. Other criteria that surface through public comments or Planning Commission Assembly review.

**ACTION: Motion PASSED unanimously 3-0** on a voice vote.

**MOTION: M/S WINDSOR/SESLAR** move to approve a recommendation of approval to the Assembly for a short-term rental conditional use permit filed by Chris Balovich at 713 Lake Street. The property is also known as Lot 18, Block 11, Sirstad Addition No.2. The owner of record is Christopher Balovich and Shelly Vaughn.

**ACTION: Motion PASSED unanimously 3-0** on a voice vote.

Commission discussion over the difference between CBS definitions of a Lodge and Bed and Breakfast. Williams states that staff will be working to update the definitions in the future.

**PLANNING DIRECTOR'S REPORT:** No report.

**PUBLIC COMMENT:** No public comment.

**ADJOURNMENT:**

**MOTION: M/S WINDSOR/SESLAR** moved to adjourn at 9:17 pm.

**ACTION: Motion PASSED unanimously 3-0** on a voice vote.

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**Richard Parmelee, Chair**

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**Maegan Bosak, Secretary**



# City and Borough of Sitka

100 Lincoln Street Sitka, Alaska 99835

*Coast Guard City, USA*

## Notice of Public Hearings

The Assembly of the City and Borough of Sitka will hold a public hearing during a regular meeting scheduled Tuesday, September 23, 2014 on the following items:

**Public hearing and consideration of a two bedroom bed and breakfast conditional use permit filed by Brian Jardine at 105 Shelikof Way. The property is also known as Lot 1-S Gibson/Kitka/Snowden Subdivision. The owner of record is Shannon J. Jardine and Brian R. Jardine.**

The Assembly may take action on September 23, 2014. The Assembly meeting will begin at 6:00 pm in Harrigan Centennial Hall at 330 Harbor Drive in Sitka.

Interested residents are encouraged to make comments during the meeting and written comments can be submitted to the Municipal Clerk at 100 Lincoln Street.



**Two bedroom bed & breakfast conditional use permit at 105 Shelikof Way:**

The applicant is requesting a conditional use permit for a two bedroom bed and breakfast at 105 Shelikof Way. This would allow the applicant to rent out up to two bedrooms. The applicant also owns a fishing charter business. Off-street parking spaces are available. The property is zoned R-1 Residential. The R-1 single-family and duplex District is intended primarily for single-family or duplex residential dwellings at moderate densities, but structures and uses required to serve recreational and other public needs of residential areas are allowed as conditional uses subject to restrictions intended to preserve the residential character of the R-1 district.

FLORENCE WELSH

WELSH, FLORENCE, M.  
1614 DAVIDOFF ST.  
SITKA AK 99835

JACOB/LISA HODGES

HODGES, JACOB & LISA  
1706 HALIBUT POINT RD  
SITKA AK 99835

BRENT BUCKLAND  
OCEANSIDE TRAILER COURT  
BUCKLAND, BRENT  
P.O. BOX 646  
SITKA AK 99835

BRENT BUCKLAND  
OCEANSIDE TRAILER COURT  
BUCKLAND, BRENT  
P.O. BOX 646  
SITKA AK 99835

EUGENE BARTELL

BARTELL, EUGENE, S.  
P.O. BOX 353  
SITKA AK 99835

OCEAN MAYO

MAYO, OCEAN, W.  
2800 SAWMILL CREEK RD  
SITKA AK 99835

GERALDINE COPELAND

COPELAND, GERALDINE  
1708 HALIBUT POINT RD  
SITKA AK 99835

BRIAN/SHANNON JARDINE

JARDINE, BRIAN/SHANNON  
105 SHELKOF WAY  
SITKA AK 99835

LAVONNE GRUN

GRUN, LAVONNE, M.  
P.O. BOX 741  
SITKA AK 99835

RICHARD MULLIGAN

MULLIGAN, RICHARD, D.  
107 SHELKOFF WAY  
SITKA AK 99835

MICHAEL/SHEILA STENBERG

STENBERG, MICHAEL, R./SHEILA  
127 SHELKOF WAY  
SITKA AK 99835

JOSEPH/MICKEY SCHWANTES

SCHWANTES, JOSEPH/MICKEY  
P.O. BOX 2674  
SITKA AK 99835

KENNETH/KELLY BUXTON

KENNETH BUXTON, JR & KELLY BUXTON  
108 SHELKOF WAY  
SITKA AK 99835

KATHY SWANBERG

SWANBERG, KATHY, L.  
P.O. BOX 3053  
SITKA AK 99835

STANLEY FILLER

FILLER, JR., STANLEY, J.  
406 HOLLYWOOD WAY  
SITKA AK 99835

STANLEY FILLER

FILLER, STANLEY, J.  
P.O. BOX 777  
SITKA AK 99835

HEATHER/LEVI ALBERTSON

ALBERTSON, HEATHER & LEVI  
P.O. BOX 921  
SITKA AK 99835

GILBERT/SHIRLEY TRUITT

TRUITT, GILBERT/SHIRLEY  
P.O. BOX 1596  
SITKA AK 99835

GEORGE/ANNA WINTERS

WINTERS, ANNA, E.  
P.O. BOX 402  
SITKA AK 99835

KERMIT WHITTEMORE

WHITTEMORE, KERMIT, D.  
P.O. BOX 264  
SITKA AK 99835

WILLIAM/LAURA TIMMONS

TIMMONS, WILLIAM/LAURA  
180 GOSSETS TURN DR  
MIDDLETOWN RI 02842

MOLLY KITKA

KITKA, MOLLY  
P.O. BOX 922  
SITKA AK 99835

KERRY STROMME

STROMME, KERRY, O.  
1717 EDGE CUMBE DR.  
SITKA AK 99835

JAMES/MICHELLE EDWARDS/PUTZ

EDWARDS, JAMES & PUTZ, MICHELLE  
131 SHELKOF WAY  
SITKA AK 99835

GARY/CAROLYN JARVILL

C/O ERIC JARVILL  
JARVILL, GARY, L./CAROLYN, B.  
P.O. BOX 6286  
SITKA AK 99835

BERT/MARIE LAWS

LAWS, MARIE, M.  
P.O. BOX 2436  
SITKA AK 99835

GAIL/CHERYL STROMME

STROMME, GAIL, B./CHERYL, B.  
1717 EDGE CUMBE DR.  
SITKA AK 99835

LINN/TERRY SHIPLEY/BUTLER

SHIPLEY, LINN, W./ BUTLER, TERRY, L.  
38 GRACE LANE  
MONTESANO WA 98563

MICHAEL/TEAL WEST

WEST, MICHAEL, W./TEAL, L.  
209 CEDAR BEACH DR.  
SITKA AK 99835

JOYCE HEMNES

HEMNES, JOYCE  
106 BAHOVEC CT  
SITKA AK 99835

LAWRENCE/HONEY POITRA

POITRA, LAWRENCE, D./HONEY, LAURIE  
1730 HALIBUT POINT RD  
SITKA AK 99835

JANICE WEBB

WEBB, JANICE, A.  
1802 HALIBUT POINT RD  
SITKA AK 99835

SARAH BELL

BELL, SARAH  
1724 HALIBUT POINT RD  
SITKA AK 99835

**Assembly Mailing  
September 12, 2014**

**Jardine**  
CUP- B&B  
*105 Shelikof Way*

FLORENCE WELSH

WELSH, FLORENCE, M.  
1614 DAVIDOFF ST.  
SITKA AK 99835

JACOB/LISA HODGES

HODGES, JACOB & LISA  
1706 HALIBUT POINT RD  
SITKA AK 99835

BRENT BUCKLAND  
OCEANSIDE TRAILER COURT  
BUCKLAND, BRENT  
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GERALDINE COPELAND

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**P&Z Mailing**  
**August 8, 2014**

**Jardine**  
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**P&Z Mailing**  
**July 25, 2014**

**Jardine**  
CUP- B&B  
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**Planning Mailing**  
**July 3, 2014**

**Jardine**  
CUP- B&B  
*105 Shelikof Way*

## Colleen Ingman

---

**From:** Michelle Putz <michelleputz@yahoo.com>  
**Sent:** Wednesday, September 17, 2014 9:40 PM  
**To:** assembly; Mark Gorman  
**Subject:** Fw: Comments for July Sitka Planning Commission Meeting

Dear Assembly Members,

Perry and I live catercorner to the Jardine house. We do have concerns about the Jardine's request for a bed and breakfast permit. You may have already received the letter below in your packet. If not, I wanted to share the comments I provided in July to the Planning Commission with you. Please see the letter in the email to Maegan.

Our concerns remain substantially the same. Use seems to be continuing at some level. For example, recently we were "surprised" by a party of visitors (including, we heard moments later, Kevin Costner) as we were getting into our hot tub that directly faces the Jardine's.

I encourage you not to approve their request for a bed and breakfast permit. Further, I encourage and expect you to enforce this "No approval" with penalties. And if your ordinances need to be strengthened to support your enforcement, I expect you to move forward efforts to improve your ordinances and enforcement.

Sincerely,  
Michelle Putz  
131 Shelikof Way, Sitka, AK 99835

---

**From:** Michelle Putz [mailto:michelleputz@yahoo.com]  
**Sent:** Thursday, July 10, 2014 7:53 AM  
**To:** maegan@cityofsitka.com; michelleputz@yahoo.com  
**Subject:** Comments for July Sitka Planning Commission Meeting

Maegan,

Please share the following comments at the July Sitka Planning Commission meeting as our comments (Michelle Putz and J. Perry Edwards, owners of the home at 131 Shelikof Way, Sitka, AK 99835) on the hearing for a 2-bedroom bed and breakfast conditional use permit at 105 Shelikof Way.

If you would like to talk to us or ask us about anything we have said, you may call us at home at 747-2708.

Perry and I appreciate the neighbors for making this effort to obtain the legal right to provide two rooms as a bed and breakfast in Sitka. We recognize that owning a home in Sitka is expensive and that a home business can help to make it more affordable.

We admit that we do not know all the rules and regulations related to bed and breakfasts, rentals, charter lodges, charter fishing, taxes, and enforcement of these rules and regulations. We also don't know if the City has the true ability or authority to enforce any of these rules and regulations, nor if they have the political will to enforce their own regulations. And we follow the rules, expect others to follow the rules, and expect someone to enforce the rules when they are not followed.

Since we and our neighbors recently complained about charter lodging in our neighborhood, the neighbors at 105 Shelikof Way built a flower "arbor" on the side of their deck that blocks the view of

their deck (and to some degree, we expect it blocks the view from their deck). Because of the arbor, we are no longer able to see people on their deck. This occurred in late June/early July 2014.

Prior to the arbor, my spouse and I had a partial view of the deck at 105 Shelikof Way. We also have a view of the home's front door. My spouse and I personally observed many dozens of different people using the deck and coming and going during the summers, each of them coming and leaving in groups of 2-8 people, changing out regularly, leaving together early in the mornings and coming back usually later in the afternoon, all of them adults, never children, almost all of them older men, and all of them taking photos. While this doesn't conclusively prove that they were running a charter out of their home, it certainly resembled what you'd expect from a charter business. We all have house guests, but the regularity of the visitors, their make-up, group size, behavior, etc. all point to these guests using the house as temporary lodging and potentially as part of a charter fishing business. This has been occurring in 2014, 2013, and 2012.

During the winters we have seen and been told that the house has been rented out and, at times, seemed unused.

As far as we can remember, a request for a bed and breakfast conditional use permit was requested, considered and turned down over 2 years ago. We do not remember the circumstances for why that was turned down.

The driving/parking area around the houses in this tiny cul-de-sac are small and tight. There is no true turn-around space. The deck of this house comes out right to the black top and there appears to be little parking space.

We are unsure of whether there are permanent residents (i.e. people that live there for 4-6 months or more). The lock on the front door is a combination lock. From our observations, it appears that different people regularly come and go.

If there was going to be true and regular enforcement of Sitka code and regulations and strong consequences levied for not following those regulations, then I would suggest that this is not a good location for a bed and breakfast or charter business, or other short-term lodging, because of the lack of parking and turn-around space. However, I don't believe Sitka's code or regulations are strong enough nor have enough "teeth" to enforce the rules when we tell a property owner that they have been denied a permit. I also don't believe that there is enough political will to support enforcement of "permit denied."

Since the City already seems to be allowing this business and my husband and I have little expectation that it will stop, we prefer that the City, and the neighbors through the review process, have some level of review and enforcement by granting and enforcing a 2-bedroom bed and breakfast permit. We also prefer that the business be recognized so that it is required to pay it's rightful amount of taxes to help support community facilities and services.

We do have one additional concern if the permit is granted: the house is a 5-bedroom house, what will limit them from renting out/using more than two rooms for a bed and breakfast? What will stop them from using all five rooms as a bed and breakfast? And how will this be enforced?

Thank you for listening to and considering our concerns. You may share these concerns publicly and with the Assembly.

Sincerely,

/s/ Michelle K. Putz and /s/ J. Perry Edwards

131 Shelikof Way, Sitka, AK 99835

[michelleputz@yahoo.com](mailto:michelleputz@yahoo.com)

BOA – HEARING OUTLINE  
Conditional Use Permit

- I. Board of Adjustment (BOA) - Assembly (*SGC 22.30.060A*)
- A. Quasi-judicial – avoid *ex parte* contacts
  - B. Authority to approve or deny conditional use permits -*SGC 22.30.060A*<sup>1</sup>
  - C. Assembly’s Other Options - *SGC 22.30.170B.1*<sup>2</sup>
    - 1. Approve Planning Comm’n recommendation
    - 2. Approve with additional conditions
    - 3. Modify with or without applicant’s consent (some limitations)
    - 4. Deny application
    - 5. Remand –
      - a. Issues not covered
      - b. Procedural due process problems (new pertinent evidence)
- II. Review Criteria
- A. Assembly reviews Planning Comm’n recommended decision regarding conditional use permit applications – *SGC 22.30.050F*<sup>3</sup>

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<sup>1</sup> *SGC 22.30.060 Board of adjustment.*

*The assembly of the city and borough shall function as the board of adjustment with the authority to:*

*A. Approve or deny conditional use permits.*

\* \* \*

<sup>2</sup> *SGC 22.30.170 Assembly actions.* (emphasis added)

\* \* \*

*B. Decisions. The assembly shall make its decision by motion or ordinance as appropriate.*

*1. An assembly decision on a planning commission recommendation or following a public hearing shall include one of the following actions:*

*a. Approve as recommended.*

*b. Approve with additional conditions.*

*c. Modify, with or without the applicant’s concurrence; provided, that the modifications do not:*

*i. Enlarge the area or scope of the project.*

*ii. Increase the density or proposed building size.*

*iii. Significantly increase adverse environmental impacts as determined by the responsible official.*

*d. Deny (reapplication or resubmittal is permitted).*

*e. Deny with prejudice (reapplication or resubmittal is not allowed for one year).*

*f. Remand for further proceedings.*

<sup>3</sup> *SGC 22.30.050 Planning commission.*

*The planning commission shall be constituted in accordance with Chapter 2.18 of this code and the Sitka Home Rule Charter and shall have the responsibility of reviewing and acting on the following:*

\* \* \*

B. Planning Comm'n decision and recommendation in this case regarding conditional use permit applications subject to Assembly review

C. Nature of the review by Assembly – review recommended Findings of Fact and General Approval Criteria Considerations and proposed conditions made by Planning Commission regarding each conditional use permit application

1. **FF criteria– All criteria must be met (SGC 22.30.160C)**
  - a. Not detrimental to public health, safety, general welfare;
  - b. Not adversely affect established character of surrounding vicinity;
  - c. Not injurious to uses, property or improvements adjacent to or in vicinity;
  - d. Not inconsistent with Comprehensive Plan;
  - e. Conditions to lessen impacts are monitorable & enforceable
  - f. No hazardous conditions that cannot be mitigated regarding adjacent & vicinity properties ; and
  - g. Not adversely affect public facilities & services, or imposed conditions mitigate impact.
  
2. **General Approval Criteria Considerations (SGC 22.20.160C)**
  - a. Effects of the conditional use on site (topography, slope and soil stability) and geophysical hazards (flooding, surface and subsurface drainage, water quality);
  - b. Utilities and service requirements (sewers, storm drainage, water, fire protection, access and electrical power);
  - c. Lot or tract characteristics (lot size, yard requirements, lot coverage and height of structures);
  - d. Use characteristics that affect adjacent uses and districts (operating hours; number of persons, traffic, parking and loading, trash and litter removal, exterior lighting, noise, vibration, dust, smoke, heat and humidity, recreation and open space requirements); and
  - e. Community appearance (landscaping, fencing, screening).
  
3. **Proposed Conditions**

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*F. Recommendations on conditional use permit applications.*

\* \* \*

4. SGC 22.30.160C – Planning Comm’n decision requirements<sup>4</sup>

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<sup>4</sup> *SGC 22.30.160 Planning commission review and recommendation.* (emphasis added)  
*Planning commission decision and action authority is defined in Section 22.30.050.*

\* \* \*

C. *Required Findings for Conditional Use Permits. The planning commission shall not recommend approval of a proposed development unless it first makes the following findings and conclusions:*

1. *The city may use design standards and other elements in this code to modify the proposal. A conditional use permit may be approved only if all of the following findings can be made regarding the proposal and are supported by the record that the granting of the proposed conditional use permit will not:*
  - a. *Be detrimental to the public health, safety, and general welfare;*
  - b. *Adversely affect the established character of the surrounding vicinity; nor*
  - c. *Be injurious to the uses, property, or improvements adjacent to, and in the vicinity of, the site upon which the proposed use is to be located.*
2. *The granting of the proposed conditional use permit is consistent and compatible with the intent of the goals, objectives and policies of the comprehensive plan and any implementing regulation.*
3. *All conditions necessary to lessen any impacts of the proposed use are conditions that can be monitored and enforced.*
4. *The proposed use will not introduce hazardous conditions at the site that cannot be mitigated to protect adjacent properties, the vicinity, and the public health, safety and welfare of the community from such hazard.*
5. *The conditional use will be supported by, and not adversely affect, adequate public facilities and services; or that conditions can be imposed to lessen any adverse impacts on such facilities and services.*
6. *Burden of Proof. The applicant has the burden of proving that the proposed conditional use meets all of the criteria in subsection B of this section.*

*The city may approve, approve with conditions, modify, modify with conditions, or deny the conditional use permit. The city may reduce or modify bulk requirements, off-street parking requirements, and use design standards to lessen impacts, as a condition of the granting of the conditional use permit. In considering the granting of a conditional use, the assembly and planning commission shall satisfy themselves that the general criteria set forth for uses specified in this chapter will be met. The city may consider any or all criteria listed and may base conditions or safeguards upon them. The assembly and planning commission may require the applicant to submit whatever reasonable evidence may be needed to protect the public interest. The general approval criteria are as follows:*

1. *Site topography, slope and soil stability, geophysical hazards such as flooding, surface and subsurface drainage and water quality, and the possible or probable effects of the proposed conditional use upon these factors;*
2. *Utilities and service requirements of the proposed use, including sewers, storm drainage, water, fire protection, access and electrical power; the assembly and planning commission may enlist the aid of the relevant public utility officials with specialized knowledge in evaluating the probable effects of the proposed use and may consider the costs of enlarging, upgrading or extending public utilities in establishing conditions under which the conditional use may be permitted;*
3. *Lot or tract characteristics, including lot size, yard requirements, lot coverage and height of structures;*
4. *Use characteristics of the proposed conditional use that affect adjacent uses and districts, including hours of operation, number of persons, traffic volumes, off-street parking*

### III. BOA Procedure

#### A. Packet Review

1. Planning Comm'n FF and motions
2. Planning Comm'n minutes
3. Planning Comm'n record (written submissions)

#### B. Hearing (SGC 22.30.180)<sup>5</sup>

1. Follow Assembly procedures
2. Order
  - a. Staff
  - b. Applicant
  - c. Public
  - d. Rebuttal
    - i. Staff
    - ii. Applicant
  - e. Close evidentiary hearing – Deliberate
  - f. Make Findings of Fact & Decision
    - i. Planning Comm'n recommended Findings of Fact and conditions
    - ii. Modify FF and conditions (use *SGC 22.30.160C* criteria)

#### C. Burden of proof on Applicant (SGC 22.30.160C.6)<sup>6</sup>

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*and loading characteristics, trash and litter removal, exterior lighting, noise, vibration, dust, smoke, heat and humidity, recreation and open space requirements;*

5. *Community appearance such as landscaping, fencing and screening, dependent upon the specific use and its visual impacts.*

<sup>5</sup> *SGC 22.30.180 Procedures for public hearings.* (emphasis added)

*Public hearings shall be conducted in accordance with the hearing body's rules of procedure and shall serve to create or supplement an evidentiary record upon which the body will base its decision. The chair shall open the public hearing and, in general, observe the following sequence of events:*

*A. Staff presentation, including submittal of any administrative reports. Members of the hearing body may ask questions of the staff.*

*B. Applicant presentation, including submittal of any materials. Members of the hearing body may ask questions of the applicant.*

*C. Testimony or comments by the public germane to the matter. Questions directed to the staff or the applicant shall be posed by the chair at its discretion.*

*D. Rebuttal, response or clarifying statements by the staff and the applicant.*

*E. The evidentiary portion of the public hearing shall be closed and the hearing body shall deliberate on the matter before it.*

<sup>6</sup> *SGC 22.30.160 Planning commission review and recommendation.* (emphasis added)

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D. Assembly Options – See Section I.B above

IV. Actions after Assembly Decision

A. Remand - SGC 22.30.200<sup>7</sup>

B. Reconsideration - SGC 22.30.190<sup>8</sup>

C. Judicial Appeal (Superior Court – Sitka) - SGC 22.30240A<sup>9</sup>

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C. *Required Findings for Conditional Use Permits. The planning commission shall not recommend approval of a proposed development unless it first makes the following findings and conclusions:*

\* \* \*

6. *Burden of Proof. The applicant has the burden of proving that the proposed conditional use meets all of the criteria in subsection B of this section.*

<sup>7</sup> *SGC 22.30.200 Remand.*

*In the event the assembly determines that the public hearing record or record on appeal is insufficient or otherwise flawed, the assembly may remand the matter back to the hearing body. The assembly shall specify the items or issues to be considered and the time frame for completing the additional work. The assembly may hold a public hearing on a closed record appeal only for the limited purposes identified in the remand.*

<sup>8</sup> *SGC 22.30.190 Reconsideration.*

*A party to a public hearing or closed record appeal may seek reconsideration only of a final decision by filing a written request for reconsideration with the administrator within fourteen calendar days of the oral announcement of the final decision. The assembly shall consider the request at its next regularly scheduled meeting. If the request is denied, the previous action shall become final. If the request is granted, the assembly body may immediately revise and reissue its decision or may call for argument in accordance with the procedures for closed record appeals.*

<sup>9</sup> *SGC 22.30.240 Judicial appeal.*

A. *Appeals from the final decision of the assembly, or other city board or body involving Title 21 SGC, and for which all other appeals specifically authorized have been timely exhausted, shall be made to superior court within thirty days of the date the decision or action became final, unless another time period is established by state law or local ordinance.*

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## Legislation Details

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File #: 14-186      Version: 1      Name:

Type: Item      Status: AGENDA READY

File created: 9/11/2014      In control: City and Borough Assembly

On agenda: 9/23/2014      Final action:

Title: Approve transfer of available working capital in the General Fund to the Public Infrastructure Sinking Fund and Permanent Fund

Sponsors:

Indexes:

Code sections:

Attachments: [General Fund Transfers](#)

Date	Ver.	Action By	Action	Result
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## **POSSIBLE MOTION**

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**I move to approve a transfer of \$1,650,000 from the General Fund balance to the Public Infrastructure Sinking Fund and a transfer of \$600,000 to the Permanent Fund.**

### **4.45.020 Determination of the required balance of the public infrastructure sinking fund.**

Within ninety days after the start of each fiscal year, the administrator shall prepare an analysis of the general fund balance with an accompanying recommendation as to an amount of the general fund balance available for potential transfer to the public infrastructure sinking fund. This analysis shall first take into account any portions of the general fund restricted by Chapter 4.44A before recommending any further amounts for potential transfer to the public infrastructure sinking fund.

# Memo

**Thru:** Mark Gorman, Municipal Administrator

**To:** City and Borough of Sitka Assembly

**From:** Jay Sweeney, Chief Financial and Administrative Officer

**Date:** September 12, 2014

**Re: Transfer of General Fund Balance to Public Infrastructure Sinking Fund**

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On October 9, 2012, the Assembly approved Ordinance 12-30 on third and final reading. The ordinance established a new Chapter 4.45 of the Sitka General Code which in turn, created a Public Infrastructure Sinking Fund.

Section 4.45.020 of the SGC requires that the Administrator, within 90 days after the start of each fiscal year, prepare an analysis of the General Fund balance with accompanying recommendation as to how much is potentially available for transfer to the Public Infrastructure Sinking Fund.

## **Assumptions**

The analysis and associated recommendation are tied to key underlying assumptions as to what exactly composes fund balances, and, what is appropriate for transfer.

An undesignated General Fund balance encompasses the excess of assets over liabilities. This excess of assets may not necessarily be cash. For example, receivables, prepayments and inventories are assets that are not cash. Considering this, we have made key assumption that Administration would only consider the cash portion of the undesignated General Fund balance as being available for transfer.

In addition, a sizeable portion of the undesignated General Fund balance not available in cash, sales taxes collected but not yet remitted, are already planned to fund FY2015 General Fund operations. Accounting rules require that these uncollected sales taxes be accounted for as an asset, but they are not available in cash and are collected by the CBS during July and August.

## **Maintaining Buying Power of The Permanent Fund**

In fiscal year 2015, staff projects that more money will be withdrawn from the Permanent Fund than will be earned in the combination of dividends, interest, and increases in the market value of the Fund's investments.

As of June 30, 2014, the market value of the Permanent Fund was \$22,601,595. The Permanent Fund increased by \$2,533,847 in FY14, even after \$1,110,000 was transferred to the General Fund. This would account for an 18% return for the Fund in FY14. This return was as a result of a very favorable investment climate that is unlikely to repeat itself again in the future.

While FY14 investment performance was outstanding, it has been clear to staff that the annual transfer from the Permanent Fund to the General Fund, as mandated by the Sitka Home Rule Charter, is too high and has caused the buying power of the Permanent Fund to decline over the last 15 years.

Were the buying power of the Permanent Fund to have kept constant since 1999, the Permanent Fund should have a value in the range of \$31,400,000 today, as compared to its value of \$22,601,595. While it would be difficult to keep the Permanent Fund's buying power from ever declining (due to fluctuations in financial markets), it is clear that, when measured over a 15-year period, the annual take-out has been too high, at 6%.

Staff has two recommendations in response to this unsustainably high level of Charter-mandated withdrawals from the Permanent Fund. They are as follows:

(1). Request the Investment Advisory Committee provide a recommendation to the Administrator, for subsequent presentation to the Assembly, as to revised language for the Charter which would provide more flexibility for managing the amount of the annual transfer from the Permanent Fund, in order to more closely keep the buying power of the Permanent Fund constant.

(2). Transfer back the anticipated decline in the Permanent Fund in FY15 equivalent to the difference between the formulaic 6% average withdrawal and the anticipated return on the investments in the fund, for a total transfer of \$600,000.

#### **Ability To Respond To Unforeseen Issues**

Finally, staff does not believe it prudent to transfer every last dollar of otherwise undesignated cash out of the General Fund. While undesignated and available, cash assets in the General Fund are available to meet unforeseen contingency requirements, either in the current fiscal year or in future fiscal years. Furthermore, any cash transferred out of the General Fund reduces investment earnings on the cash; for every \$1 million transferred out, the revenue side of future budgets is reduced by \$22,000.

#### **Recommendations**

As the analysis shows, Administration's recommendation of an amount to transfer to the Public Infrastructure Sinking Fund is \$1,650,000.

In addition, it is Administration's recommendation to transfer \$600,000 to the Permanent Fund.

City and Borough of Sitka  
Administrator's Recommendation of Assets Available For Transfer  
to the Public Infrastructure Sinking Fund

FY14 Annual Operating Outlays Less Transfers	Divided By Four
\$ 22,338,043	\$ 5,584,511

Assets available for transfer to the public infrastructure sinking fund are computed as follows:

All assets	\$ 17,423,474
Less sales taxes collected but not yet remitted:	\$ (2,271,073)
Less advances and amounts due from other funds and component units	\$ (352,072)
Less total Liabilities	\$ (2,355,271)
Less nonspendable and committed fund balances	\$ (1,589,571)
<b>Less reserve for encumbrances</b>	\$ (181,406)
Less 90 days operating expenses designated for liquidity (from above)	\$ (5,584,511)
Less designated catastrophic emergency response	\$ (2,000,000)
Less FY13 Budget Carryovers (approved ORO 2014-28)	\$ (64,500)
Less Working Capital Designated For Library expansion	\$ (357,114)
Less Transfer To Permanent Fund	\$ (600,000)
Potential Assets Available For Transfer (Includes FY14 Surplus):	\$ 2,067,956

Administrator Recommended Transfer: \$ 1,650,000

FY13 Annual Outlays Less Transfers	Divided By Four
\$ 22,995,273	\$ 5,748,818

Assets available for transfer to the public infrastructure sinking fund are computed as follows:

All assets	\$ 16,852,590
Less sales taxes collected but not yet remitted:	\$ (2,048,126)
Less advances and amounts due from other funds and component units	\$ (491,285)
Less total Liabilities	\$ (2,161,068)
Less nonspendable and committed fund balances	\$ (1,452,108)
<b>Less reserve for encumbrances</b>	\$ (1,382,713)
Less 90 days operating expenses designated for liquidity (from above)	\$ (5,748,818)
Less designated catastrophic emergency response	\$ (2,000,000)
Less FY14 budget deficit	\$ (674,643)
Less FY14 ASEA, PSEA pay increases	\$ (240,610)
Assets Available For Transfer:	\$ 653,219

Sitka Permanent Fund	
Value of Permanent Fund, 6/30/13	\$ 20,213,781
FY14 Inflation	
Inflated Value:	\$ 20,591,779
Market value of Permanent Fund, 6/30/13	\$ 22,601,595
Excess Value Gained, FY14	\$ 2,009,816



## Legislation Details

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File #: 14-191      Version: 1      Name:  
Type: Item      Status: AGENDA READY  
File created: 9/11/2014      In control: City and Borough Assembly  
On agenda: 9/23/2014      Final action:  
Title: Discussion/Direction on the Non-profit Grant Allocation Process for FY 2016  
Sponsors:  
Indexes:  
Code sections:  
Attachments: [Grant Allocation Process](#)

Date	Ver.	Action By	Action	Result
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## Discussion/Direction

### Non-Profit Grant Application Allocation Process







City & Borough of Sitka

## Administration Office

100 Lincoln Street, Sitka AK 99835  
Telephone: 907-747-1808 Fax: 907-747-7403



# Memorandum

September 15, 2014

**To:** Assembly Members

**From:** Mark Gorman, Municipal Administrator

**Subject:** **Non-Profit Grant Application Process FY 2016**

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I would like to propose a framework for the Assembly's non-profit granting process. This is a revision from the one outlined in the email I sent you on September 10. This incorporates suggestions received from several Assembly members.

### **Public Participation:**

I recommend that applicants not be given the opportunity to promote their individual grant applications during this process. I believe this puts Assembly members in difficult positions as they hear compelling stories of need. Further, it reduces their ability to objectively rank and fund the applicants. There is only one professional grant review body Sitka Charitable Legacy that offers applicants an open mic to promote their grants. This process however is not the norm and each of the applicants is fully aware of this as they all have submitted numerous grants. Their opportunity to present their strong case is in their application. Moreover, the application is the best instrument by which the Assembly members can evaluate the proposal's merit. That being said, it may be appropriate for the Mayor read the brief grant description on each applicant.

To the extent that an Assembly member does not have any questions for the applicant allocations should be turned in to the Municipal Clerk's office the day before the meeting so that the fund amounts can be placed into a spread sheet and divided by the applicable number of members - at least four. If Assembly members do have any specific questions about the application, the applicant will be invited to speak to the issue and should only respond to the questions and not use it as a platform to promote their application.

**Fund Distribution:**

I recommend that for an applicant to receive funding a majority of the Assembly has to recommend some level of funding. I recommend this for two reasons: 1) this is how the Assembly functions for all of its other funding allocations, and 2) If an applicant receives less than four Assembly allocations, as a result of the averaging, the amount that they receive is significantly reduced from their request and puts in to doubt whether there is adequate funding to achieve the objectives stated in the application.

For the Assembly member(s) that has allocated funds to an applicant that gets less than a majority, the member is then allowed to redistribute that allocation to other applicants within that category during the meeting. This approach allows all Assembly members to fully exercise their allocation. The reallocation should not result in any applicant receiving more funding than they have requested in the application.

If the Assembly so directs, these proposed changes will be incorporated in to the FY 2016 application process and delineated in the application so that applicants are aware of the process.