



City and Borough of Sitka

100 Lincoln Street • Sitka, Alaska 99835

Coast Guard City, USA

Planning and Community Development Department

AGENDA ITEM:

Case No: CUP 16-06
Proposal: Six-Month Review of a Specialized Instruction School at 213 Harbor Drive
Applicant: Terry and Gene Bartolaba
Owner: Terry and Gene Bartolaba
Location: 213 Harbor Drive
Legal: Lot 2 Wilmac Resubdivision
Zone: CBD Central Business District
Parcel ID: 1-0074-000
Existing Use: Educational Facility
Adjacent Use: Commercial, Public
Utilities: Existing
Access: Harbor Drive

KEY POINTS AND CONCERNS:

1. Safety of occupants
2. Progress toward meeting occupancy requirements

RECOMMENDATION:

Move to approve the 6-month review for the conditional use permit granted to Terry Bartolaba for a specialized instruction school at 213 Harbor Drive with the condition that the first floor is not occupied until approved by the Building Official. The property is also known as Lot 2 Wilmac Resubdivision. The owners of record are Gene and Terry Bartolaba.

ATTACHMENTS

Attachment A: Vicinity Map
Attachment B: Aerial Vicinity Map
Attachment C: Zoning Map
Attachment D: Site Plan
Attachment E: Subdivision Plat

Attachment F: Parcel Pictures
Attachment G: Update Documents
Attachment H: Minutes
Attachment I: Prior Staff Reports
Attachment J: Mailing List

Permit Operations Update

Terry Bartolaba was issued a conditional use permit for a specialized instruction school at 213 Harbor Drive on April 19, 2016. A condition of approval was that the Planning Commission would hold a 6-month review to assess progress made toward occupancy requirements.

On September 20, 2016, the Planning Commission held a 6 month review as directed by the April 19, 2016 motion. Bartolaba provided staff with a list of renovations that had been completed, and stated that the General Contractor was almost finished with the finish work. The Commission approved this 6-month review with the condition that another 6-month review would occur to assess progress toward occupancy requirements.

No comments have been received by the Planning Department since the permit was granted. At the meeting we'll take any public comment and provide the opportunity for any commissioner questions. The primary objective of the meeting is to determine if sufficient progress has been made toward occupancy requirements.

The Building Official/Fire Marshal Chris Duguay recently inspected the property and is familiar with the applicant's plans. Mr. Duguay submitted a memo dated June 15, 2017 stating that the "childcare/education operations on the second floor are currently allowable as long as the lower level is unoccupied."

Recommendation

Move to approve the 6-month review for the conditional use permit granted to Terry Bartolaba for a specialized instruction school at 213 Harbor Drive with the condition that the first floor is not occupied until approved by the Building Official. The property is also known as Lot 2 Wilmac Resubdivision. The owners of record are Gene and Terry Bartolaba.



Michelle Barker

Conditional Use Permit Request
213 Harbor Drive



City & Borough of Sitka, Alaska

Selected Parcel: 213 HARBOR ID: 10074000

Printed on 3/4/2016 from <http://www.mainstreetmaps.com/ak/sitka/internal.asp>

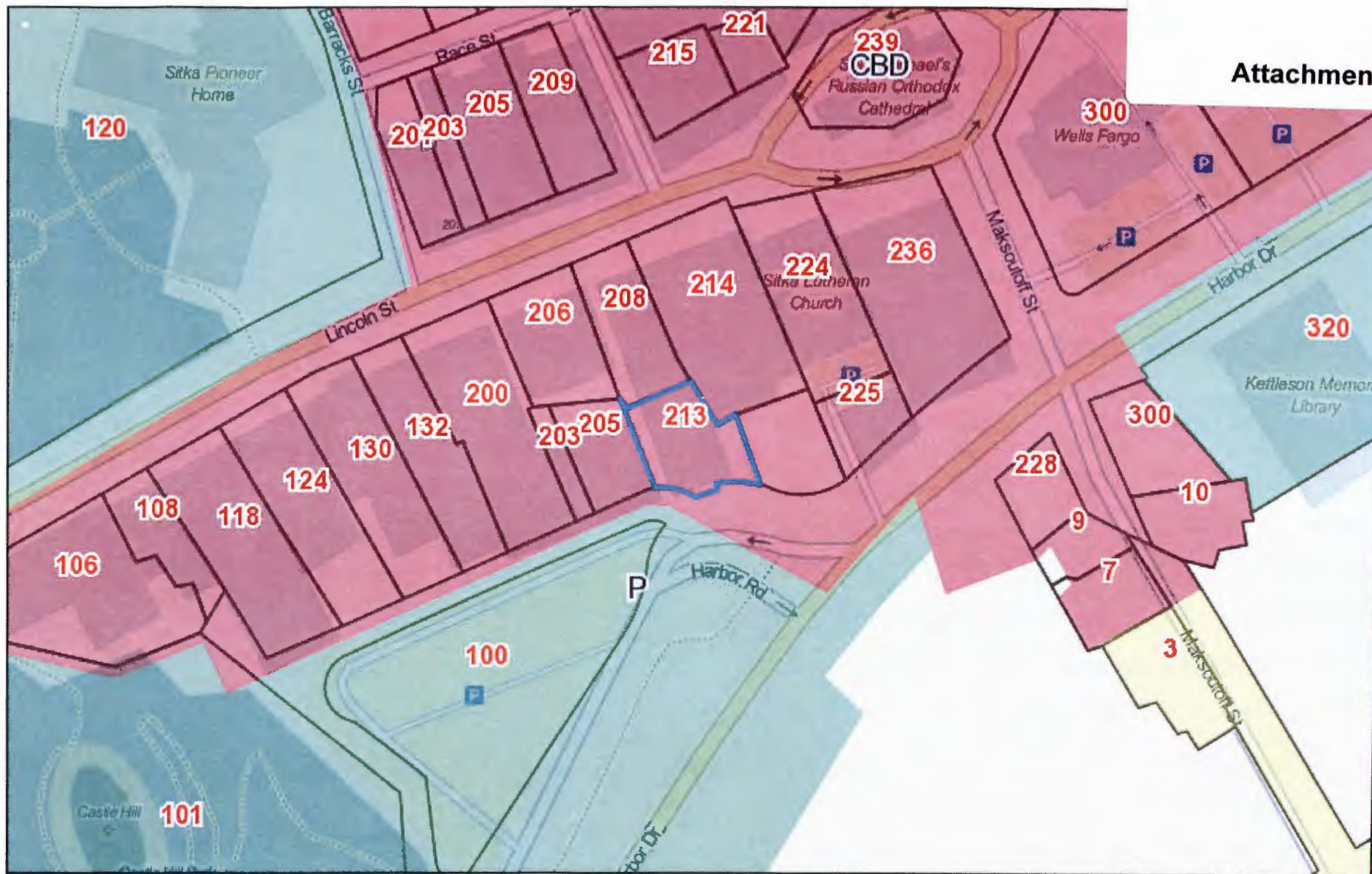
This map is for informational purposes only. It is not for appraisal of, description of, or



responsibility for the information contained herein.

Michelle Barker

Conditional Use Permit Request
213 Harbor Drive



City & Borough of Sitka, Alaska

Selected Parcel: 213 HARBOR ID: 10074000

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Michelle Barker
Conditional Use Permit Request
213 Harbor Drive

Lot 2 Wilmac Resubdivision
4,011 Sq ft

Lot, all structures
+ parking

Site
Plan
213 Harbor Drive



Michelle Barker
Conditional Use Permit Request
213 Harbor Drive



Michelle Barker
Conditional Use Permit Request
213 Harbor Drive

MEMO

To: Michael Scarcelli
Maegan Bosak
From: Chris Duguay, Building Official
Date: 6/15/17
Subject: Bartolaba Conditional Use Permit

Page 1 of 1

The Planning Commission has before it a conditional use permit request for a specialized instruction school at 213 Harbor Drive, filed by Michelle Barker. The applicants have been informed that building code requirements for a structure with a childcare/education facility and also a retail store must have a two-hour fire-rated separation between them as well as a fire-protected egress exit. The retail store is not currently in place and construction of the fire separation is not yet complete. The building department is currently allowing the childcare/education facility to continue operations (on the upper level) prior to completed construction of the fire separations, with the condition that the rest of the building is unoccupied. No occupancy is approved for the lower level until the fire separations are complete and a full plan review of any new occupancy has been completed. To date, I have received no indication that occupancy is pending for the lower level.

This information should have no bearing on the pros or cons of granting a conditional use permit, but should serve to reiterate to the applicants that childcare/education operations on the second floor are currently allowable as long as the lower level is unoccupied.

INSPECTION REPORT
CITY AND BOROUGH OF SITKA BUILDING DEPARTMENT
100 LINCOLN STREET
SITKA, ALASKA 99835
PHONE: 747-1804 FAX: 747-3158
www.cityofsitka.com

DATE 4/27/17
TIME 4:30 PM

TYPE OF INSPECTION

- | | | |
|-------------------------------------|---|---|
| <input type="checkbox"/> EXCAVATION | <input type="checkbox"/> STEM WALLS | <input type="checkbox"/> VAPOR RETARDER |
| <input type="checkbox"/> FOOTING | <input checked="" type="checkbox"/> FRAME | <input type="checkbox"/> FIRE & LIFE SAFETY |
| <input type="checkbox"/> UNDERSLAB | <input type="checkbox"/> ELECTRICAL | <input type="checkbox"/> FINAL |
| (PLUMBING/ELECTRICAL) | <input type="checkbox"/> PLUMBING | <input type="checkbox"/> _____ |

OWNER Gene Bartoloba

ADDRESS 213 Harbor Drive

Framing inspection of 1st floor ceiling in preparation for
installation of fire-rated assembly. Ceiling framework has
been cleaned out and electrical wiring is being adjusted for
future sheetrock installation.

Fire-rated assembly is not yet installed, but upon completion
of electrical work, rock wool will fill all joist bays, then
sheetrock, then hat channel, then another layer of sheetrock
and intumescent paint (as per plan) is to be installed

☒ COPY PROVIDED TO Gene

INSPECTOR 

☐ CALL FOR REINSPECTION
BEFORE CONCEALMENT

☐ CORRECTIONS OR ITEMS NOTED ABOVE WILL BE
REINSPECTED AT TIME OF NEXT CONSECUTIVE INSPECTION

City and Borough of Sitka

100 Lincoln Street

Sitka, Alaska, 99835

April 19, 2017

Dear Samantha Pierson,

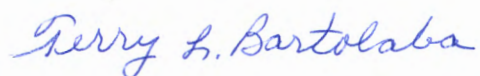
Terry' Learning Center (TLC) in operation in the upper level at 213 Harbor Drive, is having a successful year. We currently hve 29 students between the ages of 5 and 15, and 3 Tutors. Our operating hours are from 8 am to 4 pm Monday - Friday.

Construction and required projects for the upper level have all been completed. The lower level of the business is still unoccupied as we are waiting for the completion of the required 2 hour fire barrier between floors. The target date for that to be completed is in September.

We have had several inquiries from those who might be interested in renting the lower level, but as yet we have not decided the best fit for the location and parking.

I want to thank you again for the support of your staff in supporting our buiness efforts at this location. Please contact me if you need further information for this report.

Sincerely,



Terry L. Bartolaba

907 738 5516

Terry's Learning Center, TLC
213 Harbor Drive, Sitka, Alaska 99835
(907) 738-5516

Samantha Pierson
Planner I
City and Borough of Sitka
100 Lincoln St.
Sitka, AK 99835

August 29, 2016

RE: Review of conditional use permit for a specialized instruction school at 213 Harbor Drive.

Dear Samantha Pierson,

Although all of the recommendations have not yet been completed, they are all being addressed. Here is a brief description of what has been or is being done at present.

First List Of Requirements:

1. The emergency egress illumination is being installed this week.
2. Signs have been posted for the maximum 49 person occupancy requirement.
3. 5 smoke detectors are being installed upstairs. This will be completed on Tuesday.
4. The stair enclosure has been modified to provide a 2-hour fire separation between the stair enclosure and the upper and lower level. The fire-rated doors for both the upstairs and downstairs are scheduled to be installed in 2 weeks (apparently back ordered).
5. We are deciding on a plan to provide for the horizontal 2 hour barrier.
6. A water dispenser has been purchased.
7. Greg Johnstone, from Alaska DEC, declared TLC exempt from food service requirements other than refrigerator temperature being below 41 degrees, and having a water source other than the bathroom for drinking water and washing hands for food preparation.

Second List Of Requirements;

1. Electrical circuits have been checked out and are in good working condition.
2. Handrails in staircase are being installed this week (being replaced after the fire walls were put up.)
3. The back emergency exit has been replaced with a door with a proper panic bar.
4. Damaged ceiling tiles are being replaced
5. Circuit breakers are labeled
6. GFCI outlet in the bathroom has been installed
7. There are 4 fire extinguishers on the premises.

The General Contractor is still on site and is nearing completion of the finish work. I hope that this report is satisfactory. Please call me if more information is necessary.

Sincerely,



Terry L. Bartolaba



CITY AND BOROUGH OF SITKA

Minutes - Final

Planning Commission

Chris Spivey, Chair
Darrell Windsor, Vice Chair
Debra Pohlman
Randy Hughey

Tuesday, September 20, 2016

7:00 PM

Harrigan Centennial Hall

I. CALL TO ORDER AND ROLL CALL

Chair Spivey called the meeting to order at 7:00 PM.

Present: Spivey, Windsor, Pohlman, Hughey

Absent: Parker Song - excused

II. CONSIDERATION OF THE AGENDA

Chair Spivey reported that items F and L had been pulled from the agenda.

III. CONSIDERATION OF THE MINUTES

A Approval of the minutes from the September 6, 2016 meeting.

Hughey/Pohlman moved to APPROVE the September 6, 2016 meeting minutes.
Motion PASSED 4-0.

IV. REPORTS

B Planning Regulations and Procedures.

V. THE EVENING BUSINESS

C Six-month review of a conditional use permit request granted for a specialized instruction school at 213 Harbor Drive. The property is also known as Lot 2 of Wilmac Resubdivision. The request is filed by Terry Bartolaba. The owners of record are Gene and Terry Bartolaba.

Pierson explained the history of the request. The permit was approved in April 2016 with a condition of approval that the Commission would conduct a 6 month review to assess progress toward occupancy requirements. The speed of work has been satisfactory, and the only remaining task is to install panic doors. The Building Official has allowed the school to move into the facility. Staff recommend approval with the condition of another 6 month review.

Windsor/Pohlman moved to APPROVE the 6-month review of the conditional use permit granted to Terry Bartolaba for a specialized instruction school at 213 Harbor Drive, with the condition that a review will occur in 6 months to

assess progress toward occupancy. The property is also known as Lot 2 Wilmac Resubdivision. The owners of record are Gene and Terry Bartolaba.

Motion PASSED 4-0.

D

Public hearing and consideration of the final plat of a minor subdivision at 211 Shotgun Alley, zoned SFLD Single Family Low Density Residential. The subdivision would result in four lots. The property is also known as Lot 2 of Johnstone Subdivision Replat. The request is filed by Barth Hamberg. The owner of record is Barth Hamberg.

Scarcelli explained the request. Scarcelli stated that he visited the downhill property after a rain event, and the drainage system was not overflowing, although some runoff did occur. The application complies with existing subdivision codes and the Comprehensive Plan. The increase to runoff is reasonable. Staff recommend approval.

Barth Hamberg stated that his application has been covered thoroughly.

No public comment.

Scarcelli stated that Hamberg is following the code. Pohlman stated that she has problems with the findings of fact, and the covenants were to protect the downhill property. Pohlman stated concern with the findings of fact statement that the harm experienced by the downhill property is caused by the downhill owners' action.

Hughey/Windsor moved to AMEND item E in the recommended staff findings to state that the proposal "Is a reasonable use of the property and existing natural drainage system."

Motion PASSED 4-0.

Hughey/Windsor moved to APPROVE the findings of fact for the final plat for the Cedars Subdivision, subject to the attached condition of approval, for a 4 lot minor subdivision at 211 Shotgun Alley, zoned Single Family Low Density Residential. The property is currently legally described as Lot 2 of Johnstone Subdivision Replat. The request is filed by Barth Hamberg. The owner of record is Barth Hamberg. It is found that the project:

- a. Complies with all applicable zoning regulations, specifically because minimum lot size and dimensions have been met by providing lots that range from 15,029 square feet to 80,796 and on average exceed the width of 80 feet, which further the intent of the zone for less density;
- b. Complies with subdivision regulations, specifically because those criteria addressed in Section 21.40 have been surpassed, and the drainage assessment has been approved by the Municipal Engineer as complaint with the 2013 Stormwater Management Plan;
- c. Does not pose a negative impact to the public's health, safety, or welfare because the proposal as set forth in the application, final plat, recorded covenants, and drainage assessment complies with the subdivision code and it is a reasonable development of a minor subdivision;
- d. Has not caused any apparent unreasonable or substantial direct harm, and further that any potential for harm has been adequately and reasonably addressed in the drainage report, the condition of approval, existing

IV. THE EVENING BUSINESS

F Public hearing and consideration of a conditional use permit request filed by Michelle Barker for a specialized instruction school at 213 Harbor Drive. The property is also known as Lot 2 of Wilmac Resubdivision. The request is filed by Michelle Barker. The owner of record is Island Fever Diving & Adventures, LLC.

Scarcelli described the request. Scarcelli stated that staff observed a pick-up time this morning, and operations appeared to go smoothly. This property offers 6 private parking spaces, which are not required in CBD. The rear of the building has a stairway that descends into the alley. Scarcelli shared information from AMCO, which did not provide a clear answer on if a tutoring center is a sensitive use in regard to marijuana. Scarcelli stated that marijuana is still speculative, as the Assembly hasn't granted final approval. Scarcelli stated that a tutoring center is not a sensitive use in regard to alcohol businesses. Scarcelli summarized a memo from the Building Official which stated that the change of occupancy would require building review. Staff recommend approval of the request. Scarcelli read a letter from Robert Purvis in support of the conditional use permit request. Windsor clarified that the conditional use permit runs with the land. Hughey asked if churches are sensitive uses in regard to marijuana. Scarcelli stated that it is, but the AMCO board makes the final decision.

Michelle Barker stated that all educational uses are conditional uses except in the Public zone. Barker stated that the intent was not to stop educational facilities. Barker stated the responsibility of the board to enforce the comprehensive plan. Barker stated that her business Sitka Bike & Hike promotes the artist community through its programs. Artist promotion is named in the comprehensive plan. Education is also addressed in the comprehensive plan. Barker stated that her business and Terry's business contribute to other local businesses. Barker stated that her business has sustained \$10,000 in loss during this conditional use process. Barker stated that the city will gain \$82,000 this year through the building sale and normal operations of her business. Barker stated that she employs 25-40 people per season. Scarcelli asked to clarify the work hours. Terry Bartolaba stated her hours as Monday through Friday, 7:30-3:30. Spivey stated that the applicant would have to come back to the commission if they choose to expand downstairs, and Bartolaba stated that she understood. Spivey stated that building may require expensive updates, and Barker stated that she was aware.

Mary Magnuson stated that Barker's business narrative is irrelevant to the discussion. Magnuson stated that she did her due diligence when she bought her location and opened her business. Magnuson stated that she has submitted a conditional use permit application for a marijuana retail facility, and the business plan is in motion. Pohlman stated that she does not understand Magnuson's concern for the Commission's process. Magnuson stated that approval would immediately make her business plan not possible. Bosak asked for clarification that Magnuson just wanted approval to be postponed until after the marijuana permit is considered. Magnuson stated that she wanted approval of the specialized instruction school to be postponed until a marijuana retail conditional use permit can be considered for her own building, and that potential building concerns of 213 Harbor Drive be

addressed.

Robert Purvis stated that he would prefer to see children at the location than a marijuana shop.

Caleb Harris identified himself as Barker's son, stated that he does books for his mother, and stated that the \$82,000 is not in arrears. Harris stated that Magnuson is speaking of speculative income from a speculative permit. Harris stated that daycares in town are full.

Linda Barker Olson stated that cannabis business is not currently legal in Sitka. Olson stated that the same business owners who wrote letters in support of Barker's permit would be asked to give comment on a marijuana permit. Olson stated that Bartolaba has a business, just as Magnuson does.

Bartolaba asked about Magnuson's marijuana timeline. Bartolaba stated that she is ready to buy the building and Barker is ready to sell.

Spivey stated that the commission cannot speculate, and should focus on what the code says. Spivey stated that concerns were raised at the last meeting about alcohol and marijuana uses, and staff have done their jobs in researching the answers. Pohlman stated that she believes that the commission has received good answers to their questions from the previous meeting. Hughey stated that it is not certain that a tutoring center would prevent marijuana retail. Hughey stated that he does not see the big deal with required buffers. Parker Song asked at what point we will know how buffers will be addressed. Scarcelli stated that the state will address buffers on a case by case basis. Hughey asked Bartolaba about the timeline for the purchase. Gene Bartolaba stated that he would like to hear the building official's requirements before finalizing the purchase. Bosak stated that the conditional use permit is not officially activated until the conditions of approval are met.

Hughey/Pohlman moved to APPROVE the required findings for conditional use permits.

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 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.

Motion PASSED 5-0.

Hughey/Pohlman moved to APPROVE the conditional use permit request filed by Michelle Barker for a specialized instruction school at 213 Harbor Drive, subject to eight conditions of approval. The property is also known as Lot 2 of Wilmac Resubdivision. The request is filed by Michelle Barker. The owner of record is Island Fever Diving & Adventures, LLC. Motion PASSED 5-0.

Conditions of Approval:

1. Contingent upon an approval by the Building Official and Fire Marshall for the proposed occupancy of all levels of the structure at 213 Harbor Drive (upstairs and downstairs). A review will occur after 6 months to assess progress toward occupancy requirements.
2. The facility shall be operated consistent with the application and plans that were submitted with the request.
3. The facility shall be operated in accordance with the narrative that was submitted with the application.

5. The Planning Commission, at its discretion, may schedule a public hearing at any time following the first nine months of operations for the purpose of resolving meritorious issues and too mitigate any identified adverse impacts on public's health, safety, and welfare.
6. Failure to comply with all applicable tax laws, including but not limited to remittance of all sales tax, shall be grounds for revocation of the conditional use permit.
7. Failure to comply with any of the above conditions may result in revocation of the conditional use permit.
8. The property owner shall register for a sales account prior to the Conditional Use Permit becoming valid.

G

Public hearing and consideration of a variance request filed by Richard Parmelee for 405 Hemlock Street. The variance is for the reduction in the side setback from 8 feet to 2 feet for the construction of a carport. The property is also known as Lot 11 of Tower Heights Subdivision. The request is filed by Richard Parmelee. The owners of record are Richard J. Parmelee and Marjorie A. Parmelee.

Scarcelli described the request. Scarcelli stated that the item was previously postponed to allow for neighbor discussion. Scarcelli stated that only a portion of the proposal would be within 2 feet of the property line. Scarcelli read a letter from Michael Sullivan, the renter and prospective owner of 407 Hemlock, who stated support for the carport. Staff recommend approval of a variance to 3 feet.

Richard Parmelee stated that he requests a variance to 2 feet to allow for a tail on the carport. Parmelee stated that the post will be 3 feet from the property line. Spivey stated that he had spoken to the neighbor, Mike Sullivan, and he was supportive of the carport.

Parker Song/Hughey moved to APPROVE the required findings for major structures or expansions as discussed in the staff report.

Required Findings for Variances.

1. Required Findings for Variances Involving Major Structures or Expansions.
Before any variance is granted, it shall be shown:

- a) That there are special circumstances to the intended use that do not apply generally to the other properties, specifically, the narrowing of the lot near the rear;
- b) 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 ability to adequately protect a vehicle from rain;
- c) That the granting of such a variance will not be materially detrimental to the public welfare or injurious to the property, nearby parcels, or public infrastructure; and
- d) That the granting of such a variance will not adversely affect the Comprehensive Plan: specifically, the variance is in line with Comprehensive Plan 2.4.1, which states, "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."

Motion PASSED 5-0.



City and Borough of Sitka

100 Lincoln Street • Sitka, Alaska 99835

Coast Guard City, USA

Planning and Community Development Department

Date: August 29, 2016

To: Planning Commission

From: PCDD Staff

Re: CU 16-06 Six-Month Review of a Specialized Instruction School at 213 Harbor Drive

GENERAL INFORMATION

Applicant: Terry Bartolaba

Property Owner: Gene and Terry Bartolaba

Property Address: 213 Harbor Drive

Legal Description: Lot 2 Wilmac Resubdivision

Parcel ID Number: 1-0074-000

Size of Existing Lot: 4011 square feet

Zoning: CBD

Existing Land Use: Educational Facility

Utilities: Full municipal utilities

Access: Harbor Drive

Surrounding Land Use: Commercial, Public

MEETING FLOW

- Report from Staff
- Applicant comes forward
- Applicant identifies him/herself – provides comments
- Commissioners ask applicant questions
- Staff asks applicant any questions
- Floor opened up for Public Comment
- Applicant has opportunity to clarify or provide additional information
- Comment period closed - brought back to the board
- Findings
- Motion of Recommendation

ATTACHMENTS

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Attachment B: Aerial Vicinity Map

Attachment C: Zoning Map

Attachment D: Parcel Pictures

Attachment E: Subdivision Plat

Attachment F: Approval

Attachment G: Mailing List

Permit Operations Update

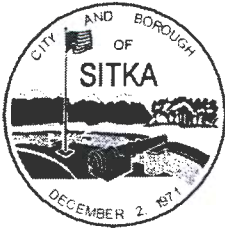
Terry Bartolaba was issued a conditional use permit for a specialized instruction school at 213 Harbor Drive on April 19, 2016. A condition of approval was that the Planning Commission would hold a 6-month review to assess progress made toward occupancy requirements.

No comments have been received by the Planning Department since the permit was granted. At the meeting we'll take any public comment and provide the opportunity for any commissioner questions. The primary objective of the meeting is to determine if sufficient progress has been made toward occupancy requirements.

Bartolaba provided staff with a list of renovations that have been completed, and stated that the General Contractor is almost finished with the finish work. Staff believe that the permit holder has made sufficient progress toward meeting occupancy requirements, but renovations are still underway. Staff recommend that the Planning Commission approve this 6-month review with the condition that another 6-month review will occur.

Recommendation

Move to approve the 6-month review of the conditional use permit granted to Terry Bartolaba for a specialized instruction school at 213 Harbor Drive, with the condition that a review will occur in 6 months to assess progress toward occupancy. The property is also known as Lot 2 Wilmac Resubdivision. The owners of record are Gene and Terry Bartolaba.



City and Borough of Sitka

100 Lincoln Street • Sitka, Alaska 99835

Coast Guard City, USA

Planning and Community Development Department

Date: April 13, 2016

To: Planning Commission

From: Michael Scarcelli, Senior Planner

Re: CU 16-06 Specialized Instruction School (Tutoring Center) - 213 Harbor Drive

GENERAL INFORMATION

Applicant: Michelle Barker

Property Owner: Island Fever Diving & Adventures, LLC

Property Address: 213 Harbor Drive

Legal Description: Lot 2 Wilmac Resubdivision

Parcel ID Number: 10074000

Size of Existing Lot: 4011 square feet

Zoning: Central Business District (CBD)

Existing Land Use: Commercial Retail

Utilities: Full city services

Access: Harbor Drive

Surrounding Land Use: Commercial retail, Bar with restaurant, Daycare, & Residential

MEETING FLOW

- Report from Staff
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Attachment G: Access and Utility Maintenance Agreement

Attachment H: Driveway Agreement

Attachment I: Zoning Map

Providing for today...preparing for tomorrow

Attachment J: Flood Zone Map
Attachment K: Mailing List
Attachment L: Proof of Payment
Attachment M: Warranty Deed
Attachment N: Comments

BACKGROUND/PROJECT DESCRIPTION

The request is for a conditional use permit for Terry's Learning Center (TLC). TLC is a tutoring center geared towards students enrolled in Sitka School District's Home School Program. This business has provided this service to the community for over 15 years. The owner and operator Terry Bartolaba has 45 years of experience and a degree in education. Her focus is on a well-rounded education from numbers to respect.

Table 22.16.015-3, General Services, requires a conditional use permit for all educational services, including, but not limited to specialized instruction school in the Central Business District. The proposed tutoring and home-school support program would fall under this existing regulation. All educational services fall under a conditional use unless they are in the Public Lands zone.

ANALYSIS

1. CRITERIA TO BE USED IN DETERMINING THE IMPACT OF CONDITIONAL USES.¹

a. Amount of vehicular traffic to be generated and impacts of the traffic on nearby land uses:

The school will have three drop-off and pick-up times at 8am, 1130-noon, and 3pm. Services are provided to about thirty students. Operations are only Monday through Thursday, and the TLC will not operate Friday through Sunday. Most of the traffic will occur in a short window of time, but it will be staggered throughout the day. The general area has retail operations that generate more trips per day than the expected trips per day by the proposed use. At the most the school would have 30 trips in three potential segments of time; whereas surrounding land uses could have anywhere from approximately 11 trips per hour up to 160 trips per hour (High Turnover Restaurant).² Therefore, the school's traffic impact would not be any more significant than surrounding land uses. In addition, the 6 on-site parking spots would help mitigate impact. There are concerns about the orientation of the lot and the curved intersection. Children's safety is always a paramount concern.

b. Amount of noise to be generated and its impacts on surrounding land use: No data quantifying any noise concerns. In addition, there will be no outdoor activity.

c. Odors to be generated by the use and their impacts: None of concern.

d. Hours of operation: 8 am to 3 pm with a morning and afternoon session, Monday through Thursdays. No services Friday through Sunday. Year Round.

e. Location along a major or collector street: Driveway Harbor Drive, near O'Connell Bridge.

¹ § 22.24.010.E

² Based on Traffic Engineer studies of general land use and traffic correlations.

f. Potential for users or clients to access the site through residential areas or substandard street creating a cut through traffic scenario: There is some cut-through foot traffic from Lincoln to Harbor Drive. However, this fact is not created by the proposed business; therefore, it should not be considered unless it raises a safety concern directly related to the property or proposed use.

g. Effects on vehicular and pedestrian safety: Similar to any other use.

h. Ability of the police, fire, and EMS personnel to respond to emergency calls on the site: Same ability as other use.

i. Logic of the internal traffic layout: Unlike many other uses in the immediate vicinity, this site provides 6 on-site parking spaces.

j. Effects of signage on nearby uses: No proposed signage. If so, must comply with signage code.

k. Presence of existing or proposed buffers on the site or immediately adjacent the site: The site has some distance between the building and the street provided by the parking area.

l. Relationship of the proposed conditional use is in a specific location to the goals, policies, and objectives of the comprehensive plan: The Comprehensive Plan sections support: 2.1.12 providing access to high-quality education; 2.2.2 providing needs services (only similar niche business in Sitka); 2.9 meeting city's educational goals; 2.4.21 providing conditional uses that do not impact residential areas.

m. Other criteria that surface through public comments or planning commission review:

1. There is much public support from various businesses for this proposed use. Included are all written letters of support.
2. Some adjacent business are concerned that the existing operation, which technically is currently in violation of code, and the potential conditional approval of TLC would negatively impacts their ability to expand their legally operating business and long-term business plan. Some of the discussed uses are permitted, while others are conditional.
3. The state has responded to questions regarding buffers and sensitive uses as those pertain to alcohol and marijuana: The questions (in black) and answers (in red & underlined)) are below as received:

"Marijuana 500 Foot Buffers"

1) Would a **tutoring center** be considered a **sensitive use** that would **trigger a 500 foot buffer** (regulations identify school, recreation, and youth center)? It is possible that a tutoring center would fall under "recreation or youth center" based on the definition given on 3 AAC 306.990 (35) which states "recreation or youth center" means a building, structure, athletic playing field, or playground

(A) run or created by a local government or the state to provide athletic, recreational, or leisure activities for persons under 21 years of age; or

(B) operated by a public or private organization licensed to provide shelter, training, or guidance for persons under 21 years of age.

2) When the regulations state that the 500 foot buffer is to be **measured by the shortest pedestrian route** does that mean

- a. As **the bird flies or through legal crosswalks and legal paths** (e.g. not jaywalking or through trespass over or between properties).
The shortest pedestrian route whichever that route may be.
- b. What if an applicant made a **maze of fences or walkways** (similar to a movie or amusement park or airport security line that goes back and forth) would the path include that legal path which would extend the distance traveled and enable a marijuana business to locate within 500 linear feet of a church or school. This would be up to the board
- c. What constitutes the **outer boundary** (property line or exterior building)? For the purpose of 3 AAC 306.010 (a) where outer boundaries refers to proximity to school ground, and recreation or youth center, it means property line.

Alcohol Buffer

- 3) When measuring the 200 foot buffer for a potential alcohol establishment, does a “**tutoring center**” or other educational use that does not require a state license as a “school” trigger the 200 foot buffer under state regulations? No. It only applies to a Beverage Dispensary or Package Store licenses, and only for school grounds (pre-K – 12) or church building in which religious services are regularly conducted.
- 4) In the alternative, **does the municipality have any say** about this for or against (i.e. does the municipality have any discretion to object or override this buffer requirement for tutoring center)? A local government can make its ordinances more restrictive, but cannot override the State’s regulations.

Alcohol Licenses

In regard to expanding existing licenses and use of Mean Queen, a second, “duplicate” license would be required. Please see:

- “Sec. 04.11.090. Beverage dispensary license.** (a) A beverage dispensary license authorizes the holder to sell or serve on the licensed premises alcoholic beverages for consumption on the licensed premises only.
- (b) The biennial beverage dispensary license fee is \$2,500.
- (c) [Repealed, § 69 ch 101 SLA 1995.]
- (d) The area designated as the licensed premises under a beverage dispensary license issued to a hotel, motel, resort, or similar business that caters to the traveling public as a substantial part of its business may include the dining room, banquet room, guests’ rooms, and other public areas approved by the board.
- (e) A holder of a beverage dispensary license may not maintain upon the licensed premises more than one room in which there is regularly maintained a fixed counter or service bar at which alcoholic beverages are sold or served to members of the public for consumption unless the licensee is issued by the board, after investigation, a duplicate of the original license for each of the rooms. The holder of the beverage dispensary license shall pay to the board with each application for a duplicate license an amount equal to the fee payable for

the original beverage dispensary license under (b) of this section. If the licensed premises are located within a municipality, a duplicate beverage dispensary license may not be issued unless approved by the council or assembly, as appropriate.”

For a package store, a transfer ownership of an existing Sitka based package store to this location would be required. The number of package stores available in Sitka has reached the statutory limit, no new package store liquor licenses can be issued. For this to come to fruition, an existing package license would have to be purchased and ownership and location transferred.

A Careful Balancing of Interests

Local business has raised reasonable concerns about the financial impact upon their business and a permitted use. This raised for discussion whether a conditional use (tutoring center) should take precedence over a permitted use (restaurant and bar). In this case, the permitted use of a bar and restaurant or package store (to-go sales of alcohol) would not be limited by existence of the proposed conditional use tutoring center according to state responses to this inquiry because the state does not consider a tutoring center a sensitive use in regards to alcohol regulations.

The speculative, but highly probable use of conditional marijuana use could be impacted by the approval of a conditional tutoring center. This raises several questions: 1) Should speculative future uses be considered against existing code uses; 2) If so, should one conditional use take primary focus over another? If so, which one. Furthermore, the state may consider a tutoring center a sensitive use in regards to required buffers for licensed marijuana business as the state regulations are broader than the similar alcohol regulations. Again, should such a consideration of a future speculative code change impacts existing conditional use proposals? In staff's professional planning opinion, the answer is speculation of future land use changes should not be considered, at least in terms of analysis of land use compatibility.

Comprehensive Plan

In terms of Comprehensive Plan arguments, there is support in the Comprehensive Plan to promote business and economic development in general of which any business would include, including restaurants, bars, or future marijuana business. There is also support to encourage educational opportunities and businesses such as a private tutoring center; However, in this case, does the proposal create harmony of use for a tutoring center to go in next to an existing bar and restaurant in the Central Business District. On this point, there is Comprehensive Plan support that uses should be compatible with surrounding uses, and there is an argument education does not mix well with alcohol. There has been past precedent in this Community and by this Commission that a very similar use was compatible when even closer to a restaurant and bar. Careful consideration should be given to harmony of use.

Safety

Staff suggests that the applicant consult with the Building Department regarding any applicable state or local regulations that may pertain to building code, life and safety, and/or proposed occupancy. To that point, the Building Official has provided a memorandum to our Department, which states in part:

“A change to an educational (E) occupancy, and possibly an institutional (I) occupancy, will require a thorough review of the International Building Code to identify requirements for a change of occupancy to a more restrictive use. The applicant should be informed that if the conditional use permit is approved by the Planning Commission, there will be a permit required by the Building Department in order to change the occupancy of this building. Whether it is possible to meet the provisions of a different occupancy is undetermined as I have not been contacted by the applicant with a detailed proposal or plan.

This information should have no bearing on the pros or cons of granting a conditional use permit request, but should serve to inform the applicant that further work is required to address potential issues of changing occupancy to a more restrictive “E”, educational occupancy, or possibly an “I”, institutional occupancy.”

FINDINGS

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:³

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.

³ § 22.30.160.C – Required Findings for Conditional Use Permits

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.

RECOMMENDATION

It is recommended that the Planning Commission adopt the Senior Planner's analysis and required findings as found in the staff report and carefully consider the balance of competing business interests as discussed in the staff report.

Recommended Points for Consideration and Deliberation

1. Should a conditional use of a tutoring center take precedence over a permitted restaurant and bar use? (Does it truly effect this business? State answer seems to say no – in other words this is a non-issue, though it was a reasonable concern).
2. Is a proposed conditional tutoring center an appropriate use in this specific case next to an existing restaurant and bar? In other words, is the proposed use in harmony with existing surrounding land uses? Regardless of whether one use prohibits the other, should the tutoring center be located next to a bar and restaurant?
3. Should a proposed conditional use of a tutoring center take precedence over a speculative future conditional marijuana use?

Recommended Motions: (two motions - read and voted upon separately)

- 1) I move to adopt and approve the required findings for conditional use permits as discussed in the staff report.
- 2) I move to approve the conditional use permit request filed by Michelle Barker for a specialized instruction school at 213 Harbor Drive subject to the eight (8) attached conditions of approval. The property is also known as Lot 2 of Wilmac Resubdivision. The request is filed by Michelle Barker. The owner of record is Island Fever Diving & Adventures, LLC.

Conditions of Approval:

1. Contingent upon an approval by the Building Official and Fire Marshall for the proposed occupancy of all levels of the structure at 213 Harbor Drive (upstairs and downstairs).
2. The facility shall be operated consistent with the application and plans that were submitted with the request.
3. The facility shall be operated in accordance with the narrative that was submitted with the application.
5. The Planning Commission, at its discretion, may schedule a public hearing at any time following the first nine months of operations for the purpose of resolving meritorious issues and too mitigate any identified adverse impacts on public's health, safety, and welfare.
6. Failure to comply with all applicable tax laws, including but not limited to remittance of all sales tax, shall be grounds for revocation of the conditional use permit.
7. Failure to comply with any of the above conditions may result in revocation of the conditional use permit.
8. The property owner shall register for a sales account prior to the Conditional Use Permit becoming valid.

Parcel ID: 10001000
STATE OF ALASKA
PIONEER HOME
ALASKA, STATE OF
P.O. BOX 110690
JUNEAU AK 99811

Parcel ID: 10005000
ORTHODOX CHURCH IN AMERICA
RUSSIAN GREEK MISSION
ORTHODOX CHURCH IN AMERICA
P.O. BOX 697
SITKA AK 99835-0697

Parcel ID: 10017000
STATE OF ALASKA
CASTLE HILL
STATE OF ALASKA
6860 GLACIER HWY
JUNEAU AK 99801

Parcel ID: 10037000
SITKA JET CENTER, INC.
SITKA HOTEL
SITKA JET CENTER, INC.
1924 JACKSBORO HWY
RIVER OAKS TX 76114

Parcel ID: 10040000
LINCOLN PLACE, LLC
LINCOLN PLACE, LLC
1925 DODGE CIR.
SITKA AK 99835

Parcel ID: 10045000
STANLEY FILLER
ERNIE'S BAR
FILLER, STANLEY, J.
P.O. BOX 777
SITKA AK 99835-0777

Parcel ID: 10055000
DOUGLAS/OLGA BORLAND
BORLAND, DOUGLAS & OLGA
P.O. BOX 1268
SITKA AK 99835-1268

Parcel ID: 10060000
CITY & BOROUGH OF SITKA
CASTLE HILL PARKING LOT
~~C/B OF SITKA~~
100 LINCOLN ST
SITKA AK 99835

Parcel ID: 10062000
TROY/VICTORIA DENKINGER
DENKINGER, TROY/VICTORIA
2221 HALIBUT POINT RD
SITKA AK 99835

Parcel ID: 10068000
ETHEL/NORMAN/C. STATON
STATON, ETHEL/NORMAN
JR., BARGER, C.
P.O. BOX 829
SITKA AK 99835-0829

Parcel ID: 10068001
FRANK/MARY MAGNUSON
MAGNUSON, FRANK & MARY
209 MILLS ST, APT A
SITKA AK 99835

Parcel ID: 10073000
WILMAC CORPORATION
WILMAC CORPORATION
208 LINCOLN ST
SITKA AK 99835

Parcel ID: 10074000
TERRY/GENE BARTOLABA
BARTOLABA, TERRY & GENE
443 VERSTOVIA AVE
SITKA AK 99835

Parcel ID: 10095000
STEVEN/LINDA ANDERSEN
ANDERSEN, STEVEN/LINDA
216 LINCOLN ST
SITKA AK 99835

Parcel ID: 10097000
C/B OF SITKA
BETWEEN VAN WINK & CELLAR
~~C/B OF SITKA~~
100 LINCOLN ST
SITKA AK 99835

Parcel ID: 10100000
LUTHERAN CHURCH
LUTHERAN CHURCH
LUTHERAN CHURCH
P.O. BOX 598
SITKA AK 99835-0598

Parcel ID: 10105000
VENNEBERG BUILDING, LLC
VENNEBERG BUILDING, LLC
225 HARBOR DRIVE
SITKA AK 99835

Parcel ID: 10110000
FRANKLIN BUILDING CORPORATION
FRANKLIN BUILDING CORP.
FRANKLIN BUILDING CORPORATION
236 LINCOLN ST, APT 9
SITKA AK 99835

Parcel ID: 10115000
ETHEL/NORMAN, JR STATON
STATON, ETHEL/NORMAN
JR./BARGER, C
P.O. BOX 829
SITKA AK 99835-0829

Parcel ID: 10220000
JAMES/AMABEL POULSON
POULSON, JAMES, T./AMABEL, F.
112 BARRACKS ST
SITKA AK 99835

Parcel ID: 10230000
KIM/CHRISTOPHER ELLIOT/BREWTON
ELLIOT, KIM & BREWTON, CHRIS
7 MAKSOUTOFF ST
SITKA AK 99835

Parcel ID: 10240000
JOHN LONGENBAUGH
% BETSY LONGENBAUGH
LONGENBAUGH, JOHN, T. T.
319 B STREET
DOUGLAS AK 99824

Parcel ID: 10242000
MARK BUCK
BUCK, MARK, C.
16487 DEERWOOD RD
GARDEN CITY MN 56034

Parcel ID: 10245000
BARRY/CINDY BRANTMAN/EDWARDS
BRANTMAN, BARRY/EDWARDS, CINDY
108 MAKSOUTOFF ST
SITKA AK 99835

Parcel ID: 10250000
SITKA'S WOMEN'S CLUB
SITKA'S WOMEN'S CLUB
300 HARBOR DR.
SITKA AK 99835

Parcel ID: 10254000
CITY & BOROUGH OF SITKA
SITKA PUBLIC LIBRARY
~~C/B OF SITKA~~
100 LINCOLN ST
SITKA AK 99835

Parcel ID: 10260000
WELLS FARGO BANK
% THOMSON PROP TAX SERV
WELLS FARGO
P.O. BOX 2609
CARLSBAD CA 92018-2609

Parcel ID: 10400000
OLD HARBOR BOOKS, INC.
OLD HARBOR BOOKS, INC.
201 LINCOLN ST.
SITKA AK 99835

Parcel ID: 10418000
RENTAL TOO, LLC
RENTAL TOO, LLC
P.O. BOX 616
SITKA AK 99835-0616

Parcel ID: 10427000
AMERICAN LEGION, SITKA POST #13
THE AMERICAN LEGION
205 LINCOLN ST
SITKA AK 99835

Parcel ID: 10428000
GALEN WEST TRUST
WEST TRUST, GALEN, D.
P.O. BOX 1792
SITKA AK 99835-1792

Parcel ID: 10475000
LINDA TRIERSCHIELD LIVING TRUST
TRIERSCHIELD, LINDA
~~P.O. BOX 1463~~
~~SITKA AK 99835-1463~~

Parcel ID: 10495000
SITKA BAZAAR BUILDING, LLC
SITKA BAZAAR BUILDING, LLC
P. O. BOX 458
SITKA AK 99835-0458

Parcel ID: 10465000
NEWSPAPER PROPERTIES, LLC
NEWSPAPER PROPERTIES, LLC
1 MAKSOUTOFF ST
SITKA AK 99835

Parcel ID: 10480000
TRIERSCHIELD RENTALS, LLC
TRIERSCHIELD RENTALS, LLC
P.O. BOX 458
SITKA AK 99835-0458

Parcel ID: 10500000
DIOCESE OF SITKA & ALASKA
DIOCESE OF SITKA & AK, ORTHODOX
CHURCH
P.O. BOX 210569
ANCHORAGE AK 99521

Parcel ID: 10470000
LINDA TRIERSCHIELD LIVING TRUST
TRIERSCHIELD LIVING TRUST, LINDA,
D.
P.O. BOX 1463
SITKA AK 99835-1463

Parcel ID: 10490000
KARL/ROBIN STEDMAN
STEDMAN INSURANCE AGENCY
STEDMAN, KARL, E./ROBIN
P.O. BOX 6172
SITKA AK 99835-6172

Parcel ID: 10521000
KCCR PROPERTIES, LLC
KCCR PROPERTIES, LLC
P.O. BOX 614
SITKA AK 99835-0614

P&Z Mailing
June 9, 2017