

3/25/98

In other business, the Assembly — appointed chemistry professor Joe Marcello, an incumbent, and Southeast Alaska Regional Health Corporation Facility Manager Christina Kowalczewski to two at-large positions on the Environmental Compliance and Citizen's Right-to-Know Committee. Incumbent chairwoman Nancy Hope was not re-appointed. Tom Briggs also applied. The Assembly also appointed SEARHC Safety Manager Robert Berger to the health position on the committee. His was

the only seat open. There are still three positions open on the committee — to represent fish and game, Forest Service and fish processor interests.

— refused a request from Ivory Jack's Trading Company of Seattle to waive the 5 percent levy on commercial sales in the Centennial Building recently enacted as part of a restructuring of building fees. The company is a wholesaler of scrimshaw, Eskimo and Northwest Indian Art that sells to several Sitka retailers. Assembly members said if they granted the request, they would undermine the new policy.

— set two work sessions — one for 7 p.m. Monday, March 30, to discuss taking over responsibility of ANB Harbor from the state for a one-time grant of about \$350,000; discuss the auditor's report, study the waste system and policy for dumping at the incinerator and to review the city's standing in a class action suit filed by a Sitka resident against APC. The other work session is to meet and discuss general topics with Lt. Gov. Jack Coghill. That work session is set for 3 p.m. April 1, in the Shee Atika Hotel.

— heard from city bond counsel Sterling Gallagher that the refinancing of about \$52 million in Green Lake revenue bonds could go through any day and could save the city up to \$2.5 million over 27 years.

— approved renegotiation of the Nugget Restaurant's lease. Restaurant owners said they needed a commitment from the city to justify spending money to renovate the airport cafe.

— voted 4-3 to turn down a request from Aurora Borealis Temp. Rentals for an appeal of a \$15.10 penalty late sales taxes because the company's owner was in the hospital. Hallgren, Hackett and Richards voted to approve the request.

— asked for more information on a request from Roger Sudnikovich to be able to purchase about 90,000 square feet of property in the 4600 block of Halibut Point Road, adjoining the Sudnikovich rock quarry. Adjacent property owners are also to be advised of the request.

# Assembly Accepts Denslow Resignation

By WILL SWAGEL

Sentinel Staff Writer

Pressured by a pending resolution calling for his removal, City Administrator Stuart Denslow Tuesday night tendered his resignation, effective Aug. 1.

Denslow has held the job since 1988. He is presently paid \$73,840.

After City and Borough Assembly members returned from an executive session they had called to continue discussing Denslow's future, City Attorney Theron Cole read out a motion setting the terms of the administrator's resignation: that Denslow receive a favorable recommendation from the mayor; that he remain on the municipal payroll; and that he receive between now and August any raises that would have been due him.

Denslow was assured of continued employment by the city through the end of July, unless he accepts a job offer elsewhere. Mayor Dan Keck, one of the Assembly minority favoring retention of Denslow, said he hoped he would help with the transition to a new city administrator. Another, Jud Fager, said he hoped Denslow would apply for the position when it is advertised.

In a statement he distributed to the press, Denslow said "my family has selected Sitka as our retirement home and we plan to continue to reside here. He said he would announce his personal plans later this summer. Denslow conferred with his attorney, James McGowan, in the hallway prior to the Assembly's vote.

Assembly members Frank Richards, De Ingwersen, Dan Hackett and Peter Hallgren, who had sponsored the removal resolution, voted to accept the resignation.

Keck, and Assembly members Fager and Mike Reif voted against accepting it.

With a motion to accept Denslow's resignation on the table, Reif asked for a motion to delay the effective date of Denslow's resignation, but Cole ruled the motion would be out of order.

Cole said Reif could ask for reconsideration, but Reif declined after being told by other Assembly members that the question of whether Denslow could return would be more properly addressed during the hiring process for his successor.

Reif said he had asked in executive session to give Denslow time to correct perceived shortcomings and then be re-evaluated later this year, but could not get a majority of members to agree.

Reif's statement indicated that the Assembly violated the Alaska Open Meetings Act in deliberations over Denslow, by discussing topics which would not have harmed Denslow's or others' reputations, the reason Assembly members stated for going behind closed doors.

Several members of the public spoke in Denslow's favor and several against him, but none of the Assembly members changed from the positions they had held since the dismissal resolution was made public last month.

In other business, the Assembly approved, in principle, an agreement with the state under which the state will pay the city \$350,000 and then relinquish responsibility for maintenance of ANB Harbor.

The Assembly gave final approval to an ordinance authorizing purchase of portable restrooms for the Crescent Harbor dock area, and another ordinance that simplifies readjustment of property lines between neighbors.

The Assembly reappointed Mike Schmidt and Tom Smotherman to new terms on the Port and Harbors Commission. Fishermen Anton Bowers and Ken Mears also applied.

The Assembly postponed public hearings on several ordinances that had been scheduled for public hearing.

All seven Assembly members were present. Denslow

Denslow's prepared statement read:

"After exhaustive consideration of how to achieve a more positive, unified municipal government, I have regretfully concluded that a workable compromise with members of the Sitka Assembly to permit me to function effectively as administrator is not possible. Therefore, I am tendering my resignation effective Aug. 1, 1992, in order to provide for a smooth transition to a new administrator."

"I wish to thank the hundreds of supporters who have come forward to support me during this challenge. My family has selected Sitka as our retirement home and we plan to continue to reside here. I shall announce my

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future intentions later this summer."

Denslow's wife, Orriene. First Denslow, is assistant superintendent of schools for instruction.

Of the half dozen people who spoke Tuesday night in Denslow's favor, Sitka retailer John MacDonald was the most strident, calling the majority of Assembly members "the Gang of Four" and accusing them of plotting to oust Denslow in order to restore what MacDonald characterized as "the Good Old Boy" city government that preceded him.

"The real question is who are the gang of three or four responding to," MacDonald said. "Is there a clique of good old boys that are calling the shots here? I think we are seeing a power play here that had nothing to do with serving the public. It has to do with serving some special interest unknown to the public. Or perhaps personal vendettas."

He said the Assembly has failed to give Denslow specific reasons for wanting him removed.

Tim Twaddle, a foreman at the Alaska Pulp Corp. mill, agreed.

Kent Hanson, a retired school teacher and former school board member, also objected to the ouster move, and said he did not want to go back to that "good old boy" system.

Dick Griffin, special assistant to the chancellor of the University of Alaska Southeast, and another Denslow supporter, said there were problems with earlier administrators that he said were worse than those during Denslow's tenure. He said there were questions about religious bias in hiring and promotions by Denslow's predecessor.

He said Sitka may find it has trouble recruiting top-notch administrators because of its treatment of Denslow.

John Dapcevich, who was mayor on the Assembly that hired Denslow, said that if he was still on the Assembly he would not accept Denslow's resignation. He said Denslow "had tried hard" to please the Assembly and the community.

Dapcevich said Sitka should not expect to find another administrator up to the level of former administrator Rocky Gutierrez, because Gutierrez was "one of a kind."

Teacher Harvey Brandt said Denslow had not done anything illegal and should be retained. He said the community "had just about recovered" from the divisive debate on whether to build new schools in the mid-1980's and thought Denslow's resignation could lead to new and similar problems.

Former Assembly member and retailer Dick Sunde said he was neutral on Denslow's performance, but he said the Assembly had not given the administrator enough clear direction because of a lack of unity on the board itself.

"If you continue on that course, you will never have an administrator who will live up to your standards because you'll have seven different standards," he said.

But Planning Commission member Connor Nelson said he applauded the action of the Assembly majority and said he was "glad we have people looking out for the problems of the city." He said Denslow's support came from "special interests."

Retailer John Harris said he worried about financial oversight in Denslow's last few months.

Bea Harris asked "If he's that good, why do we have four votes against three to dismiss him?"

The city administrator serves "at the pleasure of the Assembly," though the city charter says a resolution of removal must state the reasons he is being removed.

The majority in favor of dismissing him cited their desire to "pursue a change in legislative philosophy and administrative philosophy" that they believed "can best be achieved with a new administrator."

Perhaps the best summary of Denslow's opponents' views Tuesday night was given by Reif, who favored the administrator. He said that while Denslow was excellent in some areas of government, he was deficient in others. Namely, he said, Denslow's budget management and supervisory skills were lacking.

But Reif also lay some of the blame on the Assembly's lack of unity.

He said he was surprised new Assembly members Dan Hackett and De Ingwersen came to such a "quick" evaluation of Denslow. He said older members Peter Hallgren and Frank Richards should have worked harder to tell Denslow where he needed to improve.

Reif took it upon himself to apologize for the Assembly for not treating Denslow with dignity.

But Hackett, who along with Reif was elected to the Assembly last October, countered that while he had not been on the Assembly as long as some others, he had spent many hours mulling over the situation and speaking with many people.

It was Hackett who first indicated how seriously displeased some of the Assembly members were with Denslow when he called for an executive session last December to discuss why so many top city employees were resigning.

Introduction of a dismissal resolution was discussed just before Christmas, but it was decided that any action be postponed until after Denslow's annual evaluation by the Assembly. The evaluation was conducted last month.

In other business, the Assembly:

— agreed with Denslow's decision to move city controller Glenda Boddy to utility office manager, a new position. City officials said there would be no increase in the number of city employees. Assembly members said they wanted a person knowledgeable in accounting to be controller. This was recommended by the auditors of the city books recently.

— referred to the Planning Commission a request from Roger Sudnikovich to purchase land adjoining the Sudnikovich rock quarry in the 4600 block of Halibut Point Road.

— approved a policy statement for the Isabel Miller Museum gift shop, allowing the sale of historical items and items relating to the natural history of this area. The policy was worked out by representatives of Sitka merchants and the museum after some merchants complained the museum competed with them.

— authorized \$254,000 to pay costs relating to the re-roofing of the Wastewater Treatment Plant.

— approved an 89 cents per gallon contract price for Sitka Fuels to sup-

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# Assembly Grants UA Zoning Request

By WILL SWAGEL  
Sentinel Staff Writer

The City and Borough Assembly Tuesday night approved a zoning request for the University of Alaska on a portion of Sawmill Creek Road waterfront land that the Parks and Recreation Committee would like the city to acquire for a park.

The Assembly granted final approval to change the zoning of the tract from P-Public to R-1 LD Residential-Low Density.

The land is on the far side of the Eddy Property toward the end of Sawmill Creek Road. The University has created four lots on approximately 1.6 acres of the five-acre tract.

UA Lands Manager Martin Epstein said the university plans to offer the four parcels to the public by sealed competitive bid soon, but would wait up to two years to give the city a chance to get money for the 3.4 acre piece.

Under ownership of the State Division of Lands the property had been reserved for a park, but the University Lands Division acquired it in a land trade settling a dispute involving lands elsewhere in the state, and announced its intention to eventually sell all of it to the highest bidders.

Parks and Recreation Committee member Bart Meyer said his committee would like to have the city acquire one or more of the residential parcels to add to the 3.4-acre piece that was the minimum that should be acquired by the city. The committee in an April 2 memo, urged the Assembly not to rezone any of the land, if possible.

Meyer said the area would be perfect as a whale-watching area and also noted there were no parks presently in the southeast end of town.

In other business, the Assembly gave final approval to ordinances allowing mooring stalls to be transferred among immediate family members and ordinances setting rules for sales to tourists in the Crescent Harbor area.

The Assembly rejected a request to waive Centennial Building fees for a Multiple Sclerosis fund raiser.

And Assembly members briefly discussed the new portable restrooms being installed at Lake and Lincoln Streets.

Assembly members also received their first draft of the fiscal 1993 budget, which showed a 3.8 percent increase in general fund spending over the present year's (see related story).

Six Assembly members were present Tuesday night. Dan Hackett was excused.

## Park Lands

The University land on Sawmill Creek Highway is a rugged tract of undeveloped bayfront that local residents point out is an ideal vantage point for watching whales as they return each year to feed near the entrance to Silver Bay. Proponents of preserving the tract for a park say it is an excellent spot for viewing scenery and wildlife.

The approximately five-acre tract was originally held by the State of

Alaska and, like the Benchlands and the downtown Armory property on Observatory Street, was given to the university as part of a settlement of a lawsuit in which the University claimed compensation for some of its lands near Anchorage which the state had wrongfully appropriated.

Epstein said the four lots would sell for \$65,000 to \$75,000 apiece. He said the 3.4 remaining acres would probably sell for about the cost of two of the lots. While Meyer said the city should see in a short time if it can get title to all of the land for a large park, Epstein noted that more than 300 people have expressed interest in the parcels and that the university was anxious to sell them.

Assembly member Peter Hallgren said he was worried that the university's need to get the greatest return from its lands did not result in too much loss to Sitka's interests. Assembly member Jud Fager was more blunt, stating the university has not been responsible toward Sitka in its land plans.

As he has said before, Epstein said he is legally charged to manage the university's land for the good of the institution — and that means getting the highest price possible on its parcels.

While Tuesday's action only dealt with the rezoning, Assembly members also discussed with Epstein future subdivision plans for the Sawmill Creek Road parcels.

The low-density zone change meant the parcels themselves were not to be further subdivided, but Assembly members warned Epstein that the land earmarked for a park would need separate road access, should it be developed as homesites instead. Tying in access to the other four parcels would require the university to bring the access road up to city codes, because with more than four parcels being served the area would qualify as a major subdivision.

## Harbor Moorage

Four ordinances relating to the harbors were given final approval Tuesday night and one was introduced. All passed without objection, except for one concerning sales on public property in the harbors.

An ordinance requiring persons giving out advertising handbills and leaflets in the Crescent Harbor area to get a permit and clean up after themselves was given final approval.

The administrator or his designees were given the authority to issue the permits, which are free. The permits could be revoked if the clean-up is inadequate.

An ordinance allowing sales by permit on public property in Crescent Harbor was given final approval. The ordinance allows juveniles to sell home-made or collected items; allows Natives to sell traditional items and senior citizens to sell "personally made" arts and crafts items for charitable purposes. The ordinance also allows fishermen to sell their catch from their boat stalls to consumers.

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All but the fishermen will be required to get an annual permit, at the cost of \$10 for juveniles and \$25 for adults. Hallgren argued against charging juveniles for permits when commercial enterprises giving out sight brochures were given free permits. The guidelines were suggested by the Sitka Convention and Visitor's Bureau and the Harbor Department.

Visitor's Bureau Director Ann Chadwick said the purpose of the permit and fee was to teach children about business, but Hallgren said all it would teach them was that some get things free and others have to pay. The Assembly agreed to a compromise — children who attend a seminar on how to deal with tourists will get half of their fee waived. Hallgren, however, still voted against the ordinance.

An ordinance allowing transfer of moorage spaces within an immediate family was approved. Harbormaster Brian Bergman said the situation arose when a longtime fisherman wanted to give his boat and stall to his son. Such transfers were only done previously when a boat was inherited after the death of its owner, Bergman said. He said he had the discretion to allow transfers without a formal ordinance, but he wanted to be backed by city codes.

Also given final approval was an ordinance allowing fish-buying scows more than 185 feet in length to be moored in the harbor. Sitka Sound Seafood made the request, noting that the scows would be towed to their remote buying spots during the summer and their moorage could be used for other vessels during the busy season. The scows will now be put on the reserved moorage list. Bergman said Sitka Sound would prefer to have the scows moored at ANB Harbor, which might be possible if a new harbor is built and vessels presently at that harbor are moved.

An ordinance introduced Tuesday would cancel the moorage agreement with the holder of any harbor stall who does not use it for at least three months of each year. It made allowance for exceptions in the case of absences for extended trips or repairs, in which absences of up to one year would be allowed.

## Other Ordinances

The Assembly gave final approval to an ordinance returning \$402,480 of earnings from the Sitka Permanent Fund back into the fund for inflation-proofing.

Finance Director John McCracken said the fund earned about \$1.2 million last year and that the \$900,000 remaining would be put into the general fund, offsetting the equivalent of two mills of property tax.

The Assembly gave final approval to an ordinance authorizing \$282,000 in expenditures to pay for items not covered in the original budget.

An expenditure of \$140,000 from the sewer fund was approved, to pay for repairs to the wastewater treatment plant roof; \$12,000 from the Electric and Water Fund was approved to cover the cost of shifting controller Genda Boddy to a new position as utility manager; \$100,000 was from the Harbor Fund to pay for decking over the Thomsen Harbor breakwater and a port study, from money originally appropriated in fiscal 1991; and \$30,000 was taken from the data processing fund to pay for new accounting software.

The Assembly also gave final approval to an ordinance changing the zoning of upper Lance Drive from R-2 MHP Residential-Mobile Home District to a straight R-2 district, to prohibit the introduction of mobile homes, as requested by property owners there.

The Assembly introduced an ordinance changing the zoning of the block of Halibut Point Road from commercial to industrial. An over-sight in 1986 left the property designated commercial, even though there was a gravel operation operating there for some time. Resource extraction is prohibited from a commercial zone.

The ordinance is meant to correct the error. A related measure was deferred back to the Planning Commission for further review before being considered by the Assembly May 7.

Judy and Roger Sudnikovich are asking to buy city property upland of their quarry to expand their operation, which would require the city to change the zoning from R-1 to industrial. Assembly members asked for the planning commission to hold a public hearing on the matter. The restrictive R-1 zone in place on the entire strip of bench property on outer HPR is being used as a "holding zone," until the city decides what to do with the area. Assembly members said they wanted to be sure changing the zone did not conflict with future plans. As to the value of the city's property, assessor Rick Anderson asked that the value be determined by an outside assessor, but the Assembly asked City Administrator Stuart Denslow to find out the cost of an outside consultant before they gave their approval.

4/29/92



Tuesday 5-5-92

# Planning Panel Delays Vote on SMC Zoning

By SHANNON HAUGLAND  
Sentinel Staff Writer

The Sitka Planning Commission Monday left several residents in the Shotgun Alley area frustrated as it postponed a decision to rezone the area from Rands Drive through Harris Island.

The area is now zoned Single Family and Duplex Low Density Mobile Home, and residents with the petition for the change requested the "mobile home" part be dropped, turning the area into Single Family and Duplex Low Density.

Planning Director Wells Williams said he had heard from all but three residents of the area and no one had objected to the proposed change.

The Planning Commission wanted to include more of the neighborhood, at least through the lots on Remington Way, the street above Rands, and this would have required prior notification to more residents and another meeting.

The petitioners said they wanted to get this zoning change approved, at least, and consider an expansion or additional rezoning requests at another time.

Commission member Bert Stedman told the residents, "We have to look at the entire neighborhood."

Other commission members present, Chairman Larry Nelson, Dede Preuss and Connor Nelson agreed, and the commission will take up the rezoning request, including Remington Way, at the next Planning Commission meeting.

On the city's request to correct the official zoning map on two of Roger Sudnikovich's lots, the commission voted 3-0 to change the zoning from General Commercial and Mobile Home (C2) to Industrial (I). Connor Nelson owns property nearby, so he abstained from voting.

Former Planning Director Mike Schmidt said that when the city changed the zoning plan in 1986 Sudnikovich was taken out of I and put into C2. It was not the intention of the city to change Sudnikovich's zoning, said Schmidt.

The city also requested, under a different item, to change an R-1 Single Family and Duplex zone in a lot owned by the city immediately in back of Sudnikovich's lots to Industrial. Sudnikovich wants to buy the land from the city to extend his quarry into the lot behind. The whole bench-

land is now owned by the city and zoned R1.

Speaking on the first request as an area resident, not a commission member, Connor Nelson said that Sudnikovich's property hasn't been affected adversely by the zoning change from I to C2.

"I would be against the rezoning because there's no need for it," said Nelson. If the Assembly decides not to grant the zone change in the lot in back of Sudnikovich's, there would be no point in changing the zoning on Sudnikovich's current lots.

Emphasizing that he was not speaking for or against the request, Public Works Director Dick Smith said that the planning commission should address the issue in a "timely manner" after it has seen more topographical maps of the area and other information.

He said both the city and Sudnikovich want the matter settled quickly, but that should not influence

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## SMC Rezoning...

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how the planning commission considers the issue. The Assembly had approved the request on its first reading without any testimony at its last meeting.

Preuss suggested the commission wait until the Assembly has considered the zoning change on the lots Sudnikovich already owns. She said the planning commission should also examine the comprehensive plan for the whole benchland area in back of Sudnikovich's lot.

The other commission members agreed to delay consideration until more information is obtained.

In other business, the board:

—delayed consideration on a request to create a four lot subdivision out of Les Kinnear's lot near the intersection of Rands Drive and Shotgun Alley.

—approved a request from Sheldon Jackson College to create a residential lot on college property on the northwest corner of Lincoln and Kelly streets. SJC Vice President of Administrative Services John Smith said a college employee wants to buy the land and house on it from the college. Area residents said they were con-

cerned that the property would be re-subdivided once it was owned by a private citizen. John Smith said the college would have an agreement with the owner that any significant changes to the property would have to be agreed to by the college and owner.

—approved Harriet McClain's request for a one guest room bed and breakfast conditional use permit for 1111 Halibut Point Road, lot 2.

—agreed to write a letter of support for Sheldon Jackson College's effort to develop 156 one-acre plots for residential use on the north side of Sawmill Creek Road next to the trooper academy. John Smith said the college is working to get approval from the Army Corps of Engineers for the development, which would result in a loss of wetlands. He said the college also is looking at developing a 14- to 16-acre parcel for 45 low-income families in an area separate from the one-acre plots.

—heard a presentation from Sue Kanen about a fire in a mental health home in Fairbanks that killed two people. She said the state is starting to look at how homes, such as the one in Fairbanks and on Sitka's A Street, are overseen.

7a 5/05/92

# Assembly Looks at Land, Development

By WILL SWAGEL

Sentinel Staff Writer

Land use and the city's future development policy were the topics of the evening at Tuesday's meeting of the City and Borough Assembly, which otherwise had a light agenda.

The Assembly gave final approval to an ordinance changing the zoning of the Sudnikovich quarry in the 4600 block of Halibut Point Road, to correct an oversight when the area was rezoned in 1986.

Although the quarry was in operation then, its location was zoned commercial even though "resource extraction" is prohibited in commercial zones.

Former City Planner Mike Schmidt said he had erred in leaving the quarry in a different zone from the waterfront side of HPR, all of which is zoned industrial.

Judy and Roger Sudnikovich have asked the city to sell them undeveloped city land upland of their quarry to expand it. But Planning Commission member Connor Nelson, who owns adjacent property, said he thinks the area is prime for marine-related commercial uses and did not think an expanded quarry would be compatible.

The Assembly has yet to decide whether to sell the land and will be asking the city assessor to determine its worth as industrial property.

On a different matter, Assembly members said they wanted to see projected costs before deciding whether the city should become involved in putting in roads and utilities in a partnership with the owners of property near Verstovia Elementary School.

Contractor Tim Scott, one of the property owners, said half of the roads

would front on city-owned property and contended the city should build them.

He also said a local improvement district is needed to make the lots affordable.

Under an LID, the city makes the road and utility improvements and the property owners are assessed shares of the cost, which is paid back over a period of time with interest. The city has

about \$650,000 in the revolving LID fund, officials said.

In other business, the Assembly gave a one-year approval for a high school called Sitka Ambassadors to raise funds for school activities by selling articles to tourists at the Centennial Building and Crescent Harbor and providing visitor services there.

The Assembly approved drawings of the tank farm to be built at Sitka

Fuels on Katlian Street.

An addendum to the Coastal Zone Management Plan which identifies areas of high public use, such as popular clamming beaches and anchorages, also was approved.

All seven members of the Assembly were present Tuesday night.

## Land Use

Considering the Sudnikovich rezoning request, the Assembly ended up having a longer conversation with Nelson than with Roger Sudnikovich.

Nelson is a member of the Planning Commission, but did not take part as a member during the commission's deliberation on the rezoning request because of his ownership of the nearby property. He did, however, express his views as a property owner.

Assembly members Mike Reif and Dan Hackett said they understood that local and state conflict-of-interest rules would make even that participation improper.

Assembly member De Ingwersen said she understood the rules to prohibit a member of that person's company or family from testifying as well.

City Attorney Theron Cole said he would research the matter.

But speaking on the rezoning request, Nelson said he felt strongly that the commercial zone should be retained to provide the city with badly-needed commercial space, especially for marine-related uses.

He said he did not see how the 1986 rezoning could have been an oversight, because property owners were made aware the area was being considered and information was easily obtainable from the city.

Assembly member Jud Fager said if the Sudnikoviches had not been personally notified his property was being considered for a change, his rights would have been violated.

But Schmidt said the Sudnikoviches had not been personally notified because the Planning Commission was concentrating on the waterfront side of HPR for a possible W-water-

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front zone. He said, however, that the property owners asked that the area remain industrial, and that was approved.

"Roger, being on the uphill side of the road, just got left out of the picture," he said.

Except for that waterfront area, everything north of Granite Creek is zoned commercial, he said.

Planning Director Wells Williams said the zoning code allows for expanding existing zones and Reif commented that the new zoning would simply add the Sudnikovich property to the industrial zone across HPR.

Assembly members said they would consider in the future whether to sell the Sudnikoviches the upland property, but first wanted the Planning Commission to consider whether that should be zoned industrial and how much the property would be worth zoned that way.

Assembly members decided against hiring an appraiser and opted to have City Assessor Rick Anderson appraise the land for various zoning uses.

A long band of benchland on outer Halibut Point Road owned by the city is presently zoned residential R-1, which is intended to restrict development until the city decides what to do with the land.

Cole noted that title to the area is clouded by the Mental Health Trust lands dispute, and that prospective buyers should be told of that.

# Planning Panel OKs Single-Family Zoning

By WILL SWAGEL  
Sentinel Staff Writer

The Planning Commission Monday night approved the creation of a new zone category that will be the most restrictive residential zone yet.

The new zone, SF Single Family, will allow only single detached houses, but not the duplexes, apartments or bed-and-breakfast establishments that are allowable in R-1, formerly the

most restrictive residential zone in Sitka.

Establishing the new category has been discussed for years by various public officials — notably Planning Commission member Doris Bailey, who was absent from Monday's meeting.

The introduction of the SF concept came in conjunction with a request from property owners living along

Shotgun Alley. The property owner discussed the matter with commission members May 4.

Acting as a representative of area property holders, Shotgun Alley resident Bart Hamberg asked for a low density SF designation and also asked for the area to be expanded slightly to include properties closer to Sawmill Creek Road.

Planning Director Wells Williams said getting comments from the property owners has helped him in drafting a proposed amendment to the zoning code.

The SF zone allows only single family homes and will not allow other types of structures as conditional uses. R-1 zones allow B&B establishments of up to three guestrooms, churches and quasi-institutional homes.

Garages associated with the houses and other accessory buildings are allowed in the SF zone. Home occupations are allowed as long as there is no outward sign of them from the street, and such use takes up no more than 20 percent of the floor space.

As in R-1 zones, the minimum lot size is 8,000-square-feet and the minimum lot width 80 feet. Front setbacks are set at 20 feet, side setbacks at eight feet and rear setbacks at 10 feet, except for docks. Maximum height is 35 feet, as in R-1 zones.

A low-density variety of the SF zone was also approved by the commission Monday. The SF-LD zone would require a minimum lot size of 15,000 square feet, with 20-foot front and rear setbacks for structures, and 15-foot side setbacks.

The matter will now go to the Assembly for consideration as an ordi-

nance amending the zoning code.

In another zoning matter, the commission approved a zoning change for a piece of city-owned property behind the Sudnikovich quarry in the 4600 block of Halibut Point Road. Roger and Judy Sudnikovich want to purchase a three-acre parcel to expand operations.

Commission member Connor Nelson, owner of adjacent property, stepped down from the panel to speak from the audience opposing the plan. He said he thought maritime-related commercial development, which he said would be the highest and best use of the property, would be hampered by having a quarry nearby.

Nelson said the noise from the quarrying would dissuade anyone from having an office in the area. Nelson said the city was also violating proper procedures by not submitting a formal plat of the property they intended to rezone.

He said there was no conditional use permit for the Sudnikoviches' quarry on file. Nelson owns one of the two other quarries in the Sitka area. His operation is at the end of Price Street. The city owns a quarry at Granite Creek.

Nelson later admitted that there are no conditional use permits for any of the quarries, but that that use is grandfathered in.

But he said the Sudnikovich operations shouldn't be allowed to expand because the city comprehensive plan said the area should be developed as residential or commercial property.

The city has an infinite supply of gravel at Granite Creek, he said, but

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only limited areas available for commercial development.

Noting that, commission members added to the motion approving the zone that the Sudnikoviches submit a development plan to the city which includes the amount of rock they intend to take out of the property. When that rock is gone, the city will review the situation, ruled the commission by a 3-0 vote.

Public Works Director Dick Smith said there is potential for development in the area about 1,000 feet behind the Sudnikovich quarry, but that the area closer to the gravel pit is extremely rugged.

He said the Sudnikovich operation had the potential to leave a visible scar on the landscape comparable to clearcut area of mountainside above Jamestown Bay, and said that that fact should be considered in the proposed sale, along with money questions.

In other business, the commission granted a variance reducing the minimum lot width from 80 feet to 52.5 feet for Margaret Anderson, at 1937 Dodge Circle.

It also approved a two-lot subdivision for Anderson, who wants to build a small home on a 8,787-square-foot-section of a 33,000-square-foot lot so

she can live close to her son. Anderson's contractor, Tim Scott, said he circulated a letter outlining plans among adjacent property owners and none objected.

Scott said the land layout made sense, especially to keep a stand of trees between Anderson's home and her son's and between the new house and the nearest neighbor.

The commission is to add a plat note that the property cannot be further subdivided and that all setbacks be observed.

— postponed action on a major subdivision requested by John Miller, who wants to develop 19 lots atop Anna Drive. Williams said Miller had not turned in documents early enough to be distributed to commission members prior to the meeting. Smith said preliminary sketches showed a steep access road containing a hairpin turn, which he did not think could be plowed in winter. Major subdivisions require utilities to be installed up to city specifications and the city takes over maintenance. Smith also said there could be water pressure problems because of the height of the lots and parking problems because of the steep terrain. Miller did not attend the meeting.

72 5/19/92

By WILL SWAGEL  
Sentinel Staff Writer

The City and Borough Assembly Thursday night raised the local contribution to schools by \$270,000, to \$3,489,524, after nearly two hours of discussion and impassioned lobbying by those advocating an increase.

The raise will be added to \$210,000 in increased retirement benefits for teachers that was to be billed to the district, but instead is to be paid for by the state.

The district may also receive an additional \$147,000 if an increase in the foundation funding formula passed by the Legislature makes it by Gov. Walter Hickel, who had threatened a veto. Sitka School Board President Mike Litman said it was unlikely the schools would see a foundation increase.

Nonetheless, the \$480,000 increase guaranteed the district is good news in heading off the more painful cuts the school board authorized to create a "bare bones" budget, when funding was more in doubt. The district had asked for about a \$348,000 increase, which has been exceeded.

But school funding advocates did not appear pleased with the Assembly's increases, stating that there were many needs that were not being addressed, even with more funds.

In other business at Thursday's special meeting, the Assembly awarded a \$1.42 million contract to Dawson Construction Co. of Bellingham, Wash. to replace the roof at Verstovia Elementary School.

Dawson is being sued by the city, along with the designer, manufacturer and subcontractor, for the alleged failure of the roof.

City attorney Theron Cole said there were no apparent advantages of waiting to replace the roof until the lawsuit was decided. Assembly member Mike Reif, who on Tuesday urged a fix be sought that did not involve total replacement, said he had consulted an expert on roofs who concurred with the decision to replace it.

The Assembly also withdrew an ordinance rezoning a piece of municipal property in the 4600 block of Halibut Point Road to industrial. It has been earmarked for sale to Judy and Roger Sudnikovich, to allow them to expand their adjacent rock quarry.

Cole said problems with the passage of the measure through the Planning Commission and the Assembly had brought up some procedural questions. The matter was also being appealed by Valorie Nelson, whose husband, Connor, stepped down from the Planning Commission to oppose the rezoning.

The Nelsons own adjacent property and Connor Nelson said the area was developing as a marine-related commercial zone, which could be hurt by gravel extraction nearby.

The Assembly met for more than five hours Thursday, going into executive session at the end to discuss a legal matter with Cole.



# Assembly Gives OK To Change in Zoning

By HEATHER MacLEAN  
Sentinel Staff Writer

The Sitka City and Borough Assembly Tuesday night voted 6-1 to permit as conditional uses veterinary practices, animal shelters and similar businesses on commercially zoned property.

In a related issue, the board voted to rezone the Price Street and Harvest way area near the U.S. post office off Sawmill Creek Road from Industrial to Commercial-2.

The moves comprised a "carefully crafted compromise" between the Sitka Planning Commission and owners in the Price Street/Harvest Way area, who wanted their land designat-

ed C-2 because it is more saleable than Industrial property, said Planning Director Wells Williams.

In other business, City Attorney Theron Cole told the Assembly the Alaska Department of Education is giving the city a second chance to appeal the state's decision not to pay 80 percent of the \$1.6 million bill to reroof the Verstovia Elementary School.

The city authorized the work on the three-year-old building earlier this year while under the impression that it would have to pay only about \$320,000 of the bill. The state was supposed to pick up the rest of the tab.

However, the state rejected the

city's claim for the 80 percent reimbursement on July 14 and on Aug. 6 rejected an appeal submitted by former City Administrator Stuart Denslow.

At the city's request, the Department of Education said a second appeal will be accepted, and Cole said he should have it drafted by this Friday.

In other business, the Assembly passed on first reading a proposed ordinance that for the first time would allow liquor sales during voting hours on city election days.

Another proposed ordinance introduced on first reading would provide funding for maintenance of the airport terminal building.

The Assembly rejected a rezoning request for the Darrin Subdivision.

In executive session, the panel agreed to cancel its sale of a tract of land to Valorie Nelson, who has claimed that she should not be required to go through with the \$100,000 purchase. The Assembly agreed to offer the tract to the next highest bidder, Roger Sudnikovich, for \$95,000.

Also Tuesday, the Assembly passed on final reading an ordinance to place a charter amendment on this fall's ballot that would require a vote from the people to ratify expenditures from the principle of the city's permanent fund.

The Assembly also granted a one-room bed and breakfast conditional use permit to Alvin Helm, and made appointments to the Police and Fire Commission and the Sitka Convention and Visitors Bureau Board.

All seven Assembly members were present at the meeting.

## Animal Shelter

Land owners in the Price Street/Harvest Way area, including Harold Stocker, have testified recently before the Planning Commission that they support a zone change from Industrial to C-2.

However, two owners expressed

Continued on Page 12

## Land Purchase

During a 10-minute closed session, Assembly members approved the sale of a city-owned piece of property behind the S&S gravel pit above Hatibut Point Road to Roger Sudnikovich for \$95,000.

Valorie Nelson originally bid \$100,000 for the parcel in a public auction, but recently withdrew the bid. Sudnikovich offered \$5,000 less than did Nelson at auction.

Nelson told Assembly members she objects to the way the sale was handled and said she believes the city's original intention was to sell the land to Sudnikovich. She said she objects to the area being zoned Industrial and noted she is appealing the decision in Superior Court. She also said that since she is appealing, the land cannot be sold.

However, Cole said the zoning question does not interfere with the city's right to sell the land.

The Assembly voted unanimously to sell the land to Sudnikovich for his original \$95,000 offer.

The Assembly also directed Cole to recover the \$5,000 difference in the two bids from Nelson.

22 8/26/93



# City to Start Over in Sale of Disputed Lot

By HEATHER MacLEAN  
Sentinel Staff Writer

City Attorney Theron Cole said today the city would not go through with the sale of a disputed piece of city property to contractor Roger Sudnikovich, but would start an entirely new procedure to sell the land.

At its Tuesday meeting the Assembly authorized the sale of the 3-acre parcel to Sudnikovich for \$95,000.

In a public auction held in June, a

nearby property owner, Valerie Nelson, outbid Sudnikovich, who had asked that the property be put up for auction. Nelson's final bid was \$100,000.

Since that time, however, she has argued that the auction had been illegally conducted, and has refused to pay the \$100,000. After hearing her latest protest at Tuesday's Assembly meeting, the Assembly voted to accept Sudnikovich's last bid in the auction, \$95,000, and to attempt to collect from Nelson the \$5,000 difference between that amount and her bid.

But after a meeting with Administrator Gary Paxton on Wednesday, Cole said that the city will cancel the preceding transactions and start the sale procedure from scratch. The Assembly members were individually notified of the decision Wednesday and today.

A minimum price of about \$72,000 had been set for the land prior to the June auction, and Cole said that that would probably be the lowest bid that would be accepted when the land is put up for sale again.

The Assembly held a brief executive session at its Tuesday night meeting before emerging to vote unanimously to sell the 3-acre lot behind the S&S gravel pit above Halibut Point Road to Sudnikovich.

He owns S&S General Contractors and Equipment and plans to use the new tract to expand his existing quarry.

Prior to the vote Nelson told the Assembly she believes the city did not follow its own rules in rezoning and subdividing the property, and there-

fore any sale of the land was illegal.

The area is actually zoned R-1, but would have been rezoned to Industrial automatically if the sale had gone through, said Planning Director Wells Williams.

Nelson contended that the city had a legal obligation to provide a plat for

the lot before it was rezoned, but failed to do so in this case.

She added that she considered the deal a "hurry-up" move to enable the city to sell the land to Sudnikovich.

Cole said he conferred with Paxton and Public Works Director Dick

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Smith on Wednesday and decided that some of Nelson's claims might be valid. After notifying Sudnikovich, the sale was called off, he said today.

"It is one of those things that it doesn't hurt to listen to people," he said.

Cole said he is fairly certain the rezoning and land sale were conducted properly, but noted, "It is best to make sure everything is crossed and dotted. ... There was also a possibility that we were wrong."

He added that the sale cancellation would protect Sudnikovich as well as the city.

"He's spending some money, and she raised some questions," he explained.

Cole said the city has secured a plat and will go through the Planning Commission to have the area's zone changed from R-1 to Industrial. Once the change is made, he said, the parcel will again be offered for sale.

The question should come before the zoning board, of which Nelson's husband Connor is a member, at its September 21 meeting, Cole said.

"Basically what we're going to do is slow down the process," he said.

Mayor Dan Keck said today he supported Cole's decision, adding that if any technical details were overlooked in the zone change and land sale they could quickly be cleared up.

"We don't want any problem with

anyone over some little thing," Keck said. "I think it was the right decision."

Nelson said she is contesting the zoning change, and plans to try to seek some restitution from the city for her costs in contesting the original sale procedure.

"I'm going to go through with the appeal now because I have costs incurred," she noted.

Cole said the appeal will likely be moot once the rezoning goes through.

Assembly member Pete Hallgren said, "My only feeling is that the whole thing has been handled in an extremely inefficient manner. I think the city has goofed up tremendously."

Nelson lives near the disputed tract, and the family business she and her husband run also operates a quarry, though not in that neighborhood.

She said she will be interested in bidding on the land if it comes up for sale in a manner she considers legal, but only to keep it from being developed as a quarry.

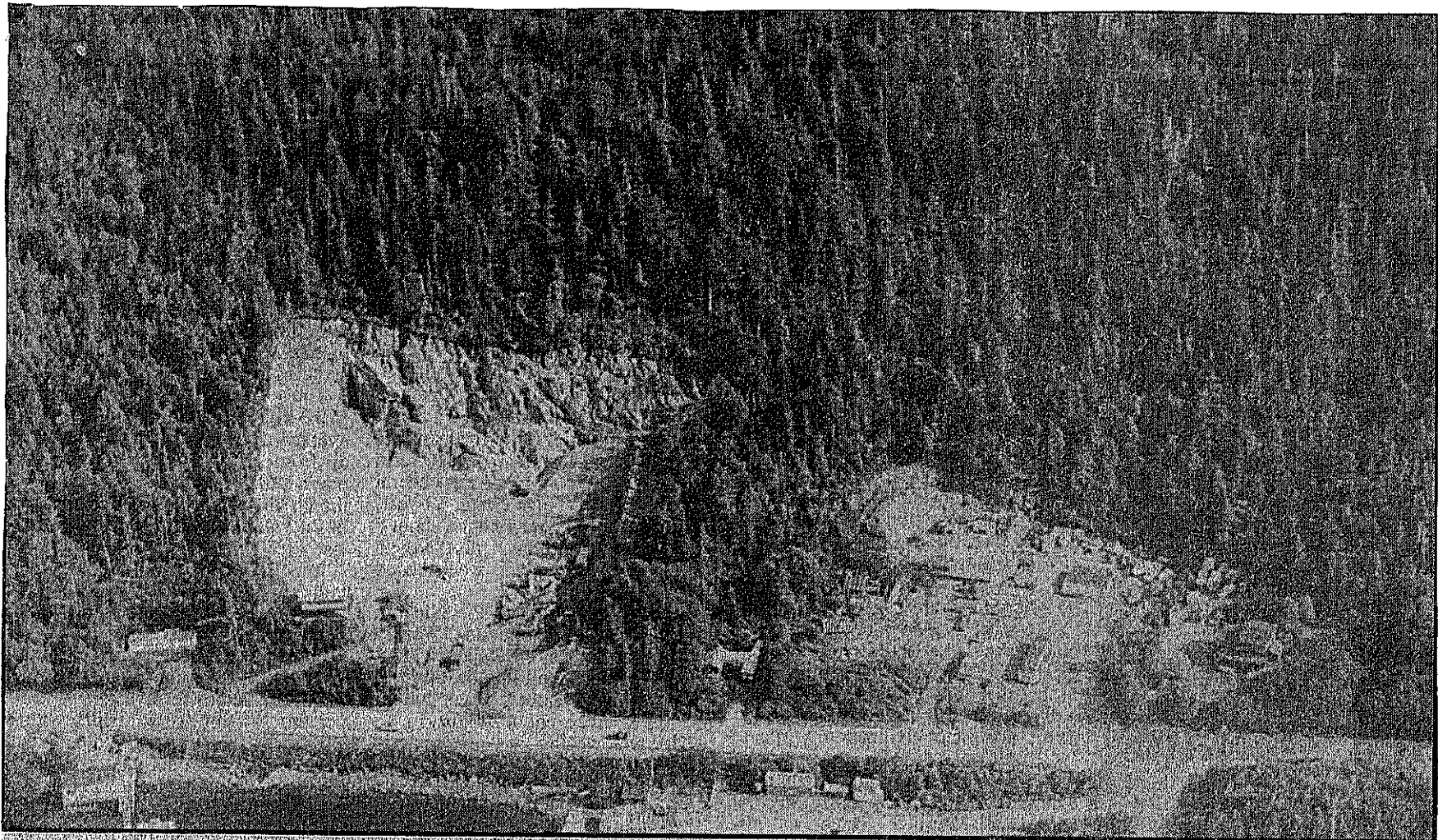
"I'll buy that property to keep it from becoming a pit," she said. "My interest in buying that property is to protect my property."

She added that her quarry business is in Granite Creek and she has no desire to open a quarry near her own home.

Sudnikovich was not available for comment today.

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At left, S&S Construction gravel pit off Halibut Point Road. (Photo provided to the Sentinel by Roger Sudnikovich)

## Planning Panel Paves Way for Land Bid

By HEATHER MacLEAN  
Sentinel Staff Writer

The Sitka Planning Commission Monday night took action to set the stage for another auction of a 3.04-acre parcel of city-owned land located upland from the S&S gravel pit off Halibut Point Road.

The commission members voted to rezone the city land from Residential-1 to Industrial, and the S&S subdivision, where the gravel pit is located, from Commercial-2 to Industrial. The commission also unanimously approved the subdivision of the property creating the separate 3.04-acre tract to be auctioned.

In June and July the commission laid the groundwork for a previous auction of the property. When the auction was held, nearby property owner Valorie Nelson submitted the winning bid of \$100,000. The sale had been held at the request of Roger Sudnikovich, who wished to obtain the property in order to expand his adjoining gravel pit.

But after Nelson topped Sudnikovich's last bid of \$95,000, she refused to complete the transaction, claiming the rezoning and subdivision process had been faulty.

After she filed an administrative appeal of the sale, City Attorney Theron Cole advised the City and Borough Assembly last month to cancel the land transaction and start the sale procedure from scratch.

Planning Director Wells Williams told the commission members Monday that the city probably was being "over-cautious," but that taking time to do the process again is easier than getting into a court battle with Nelson over whether or not proper procedures were followed.

In other business Monday, the commission members rejected a text amendment change to the zoning ordinance that would restrict the establishment of bed and breakfasts in R-1 areas, and reviewed several requests for conditional use permits for bed and breakfasts.

The members also voted to revise the definition of family and quasi-institutional homes in city code to bring the code into compliance with the Federal Fair Housing Amendment Act.

Doris Bailey, Connor Nelson, Dede Preuss, Bert Stedman and Commission Chairman Larry Nelson were present at the three-hour meeting.

### Land Sale

The commission members voted 4-0 to create the 3.04-acre lot upland from the S&S gravel pit to be sold in public auction. Connor Nelson, who is married to Valorie Nelson, did not take part in discussions to avoid an appearance of conflict of interest.

Williams said the land is 300 feet by about 441 feet, and most of it is on a steep grade.

Stedman said he was interested in

dealing with the matter quickly because the commission members accepted testimony in June and July and no one, except Valorie Nelson, was contesting the move.

The commission members also voted 4-0 to rezone two lots in the S&S subdivision from C-2 to Industrial. Williams explained that the area was zoned I-2 Industrial and Mobile Home Park in the 1960s, but in 1986 when the city rewrote the zoning code, a mistake was made and the zoning was changed to C-2. The zone change Williams noted, was not initiated or approved by the planning commission.

Sudnikovich said he had no idea until recently that the area had been rezoned six years ago.

Valorie Nelson told the commission she thought rezoning the area would constitute spot zoning because no areas around it are Industrial.

However, Williams said this morning that the land across the highway the site of Halibut Point Marine, is zoned Industrial. Changing the zoning of the gravel pit just continues the Industrial zone up the hill, he said.

"It clearly was not a spot zoning," he said.

Nelson added that there is no real hurry to rezone the area because Sudnikovich already is working on the city land.

Smith said this morning, however, that the city is allowing Sudnikovich to access his own gravel pit through the city land, but he is not quarrying on city property.

Sudnikovich has said he does plan to quarry rock on the site, but only if he first purchases the land.

The commission also voted 4-0 to rezone the 3.04-acre city parcel from R-1 Single Family and Duplex to Industrial. The parcel will be returned to R-1 if it is not sold.

Stedman pointed out that R-1 is one of the most restrictive zones and Industrial the least, but the change was necessary in order to sell the land. The terrain is too steep for a residential area.

He noted that most city land not in use is zoned R-1 and called it a "holding zone." The practice enables the city to maintain control over the zoning when a purpose for the land is eventually determined and it is sold, he said.

In a related move, the commission agreed to waive the requirement that the city provide a topographical map for the 3.04-acre lot as allowed in zoning code.

Williams explained that topographical maps are required in areas that might eventually be zoned Residential because it is important for the planning commission to determine if the grade of land is suitable for building. Since there's no question the area is too steep to be made residential, he said, the topographical map is not needed and would be a waste of city funds.

However, Valorie Nelson said she would be interested to see the topography of the land because it would "provide valuable information." "I think the public has a right to know."

She added that she thought the board should proceed with caution when dealing with the land because of the administrative appeal she has filed.

Williams pointed out that the city was moving cautiously by going through the subdivision and rezoning process for the second time.

### Text Change

The commission unanimously rejected a text amendment that would restrict the establishment of bed and breakfasts in R-1 zones.

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# Assembly OKs Shift In Electrical Rates

By WILL SWAGEL  
For the Sentinel

The City and Borough Assembly Tuesday night gave unanimous final approval to an ordinance setting one minimum rate for all electric utility customers — \$20.25.

The new rates lowered the minimum fees that were enacted by the Assembly earlier this year, and which took effect on July 1.

However, for residential users, the monthly minimum charge still will be 63 percent higher than it was under the rate schedule in effect up to July 1.

The ordinance lowered the minimum charge about \$7 for residential users and \$47 for commercial and government users from the schedule that went into effect July 1.

It also will allow rebates for some of those who have paid minimum fees at the rates in effect since July 1.

All residential and harbor customers will be charged 13.5 cents per kilowatt hour for the first 150 kilowatt hours of electrical usage per month, or the equivalent amount, even if their usage is less than that.

Until July 1, the monthly minimum charge was for 100 kilowatt hours at 12 cents.

The Assembly split 4-3 on a proposal by Assembly member Jud Fager to lower the harbor minimum to 100 kilowatt hours or \$13.50 per month. Mayor Dan Keck and Assembly member Stan Filler voted with Fager.

But other Assembly members, including Peter Hallgren, who like Fager and Keck is a candidate for reelection, said they preferred that further changes be done on a planned basis and after a study of usage patterns and predictions.

Assembly member Mike Reif and Hallgren said decisions that were made before the announcement of the mill closure were based on data that may no longer be accurate.

In the reasons for proposing the standard minimums the city cites encouraging conservation as a goal. But power conservation may no longer be in the city's interest, several Assembly members claimed, because of the surplus of generating capacity and lower revenue that are expected with the closure of the Alaska Pulp Corp. mill.

In other business, the Assembly deferred actions on two controversial items, the subdivision appeal for the Sudnikovich quarry and the zoning appeal of Bob and Mary Lou Collier, who wishes to continue to stable horses on a mid-town residential lot.

City Attorney Theron Cole, who sat in as acting administrator Tuesday night in the absence of Gary Paxton, who is on vacation, recommended that the Assembly defer action on the

Sudnikovich request, and the Assembly agreed.

Cole made his recommendation after Valerie Nelson, who is suing the city over the subdivision and sale of the land to Sudnikovich, protested that the city had not followed its own ordinances regarding issuance of notice of the matter, which was an appeal from the Planning Commission denial of the subdivision request.

Cole said that she was correct, and that Assembly action on the appeal should be held over until corrected notices are sent to the interested parties.

Nelson had the original subdivision ruled invalid in an appeal to the Superior Court. She has a separate lawsuit pending that deals with other aspects of the land transaction.

Nelson also charged that Cole and several other Assembly members had held an illegal meeting with Sudnikovich in a downtown restaurant last Saturday.

Cole and Filler said it was coincidence that they were in the restaurant at the same time, when their paths crossed, but they did not discuss the land issue. Cole said he did touch briefly on the issue with the Sudnikovichs but did not discuss it with the Assembly members.

The Assembly deferred the entire matter of the Collier horses to the next meeting, because Planning Director Wells Williams, who is on vacation, was absent.

Neighbors of the Collier horse lot on Hollywood Way have complained about the noise, odor and sanitation problems associated with the horses. The city has ordered Collier to relocate them, as this use of the property is not allowed in a residential zone.

The Planning Commission has denied Collier's appeal and he appealed again to the Assembly.

Fager suggested that city land be found which could be rented to those who want to keep horses. He suggested \$1 or \$10 per year as the rent, on condition that the users would build and maintain the facilities and the associated trails. Keck said he thought that was a good idea.

The Assembly made appointments to four committees. Jay Myer was appointed to the Police and Fire Commission. Al W. McDermott and Bill Novcaski also applied. Fred Reeder and Chris Fondell were appointed to Sitka Convention and Visitors Bureau. Frank Richards also applied. Nancy Eliason was appointed to the Sitka Community Hospital Board. Mike Snowden and James Burris also applied.

All seven Assembly members were present for the meeting.

## Electrical Rates

Assembly members agreed that

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electrical rates should be studied to see if the mill closure changes any assumptions.

Finance Director Jay Sweeney said the city could generate such a report in-house within 60 days, but Hallgren questioned whether city staff would have the expertise to gauge use changes.

Keck and Hallgren both commented that the rates are highest for residential users, since homeowners pay 9.5 cents per kilowatt hour over 2,000 kwh, while commercial and industrial users pay 8.5 cents.

On the question of lowering harbor minimums, Connor Nelson and Jay Myer both joined Fager in saying that a significant number of boat owners would buddy-up or shut off their power if the rates were not reduced. Brendan Hughes said he applauded the concept of a study, but agreed with those who said it should have been done before the last increase.

The new minimums were made retroactive to July 1 and those who are due rebates will have their accounts credited with the amount they are owed under the adjusted rates, the city said.

## Sudnikovich Appeal

The Sudnikovichs and the city are appealing a Sept. 7 decision of the Planning Commission denying a minor subdivision application for the parcel in the 4000 block of Halibut Point Road.

The city maintains that its sale of the parcel to the Sudnikovichs is valid, though a court declared the subdivision invalid because of a flawed process.

When the Planning Commission considered the recent request, Commission member Jim Williams voted against the subdivision. Bert Stedman was absent and Connor Nelson abstained, so the request failed to get the required three votes necessary for passage.

Both the city and the Sudnikovichs appealed the matter to the Assembly, which can overturn Planning Commission decisions.

Before hearing Valerie Nelson's objections to the noticing requirements and deciding to postpone action on the matter, the Assembly heard from Sudnikovich attorney Ed Stahla and Connor Nelson. Valerie Nelson's husband, The Nelsons own property adjacent to the Sudnikovich tract, and their company also operates a commercial quarry. The Sudnikovichs are quarrying their recently acquired tract of city land under the exemption for this usage allowed for "site preparation," which the city claims has traditionally been allowed in zones where quarries are not allowed uses.

Stahla said that much of what is now considered industrial use was included in commercial zones at the time Sudnikovich quarry was established.

Nelson said he understood that Sudnikovich's use of his original lot was grandfathered in, but he objected when Sudnikovich expanded the quarry by purchasing nearby city lands.

Connor Nelson contrasted Sudnikovich's operation with that of himself and other rock pit operators who pay royalties on the material they remove and are required to abide by state regulations.

He repeated his complaint that noise and dust from Sudnikovich operation make it difficult for him to consider developing his adjacent property. He also said it is bringing down the value of nearby city property.

He said the area meanwhile is developing as a commercial area.

Connor Nelson also said the land the city has sold to the Sudnikovichs for \$96,000 contains up to \$1 million worth of rock at the going rate in Sitka.

Is this not the Sudnikovich "Grandfather Permit" Doctrine tried again?

wrong doctrine  
appeal non tant

10/2/89



# Two Make Assembly Debut

By WILL SWAGEL  
Sentinel Staff Writer

Stan Filler and Anne Morrison took their seats on the City and Borough Assembly Tuesday night after the results of the Oct. 6 election were certified.

The out-going Assembly members, Dan Hackett and Frank Richards, participated in the first portion of the meeting before stepping aside for their replacements midway through the session.

In other business, the Assembly gave final approval to a "drug-free workplace" ordinance, required by the federal government as a condition for receiving federal grants and other funds.

The policy allows supervisors to order employees to be screened for drug or alcohol use if they are suspected of coming to work under the influence of intoxicants.

The Assembly denied a series of appeals by Valorie Nelson protesting the planned sale of a tract of city-owned property in the 4600 block of Halibut Point Road for use as a gravel pit.

Among the ordinances given final approval was one creating a Historic Preservation Commission, which if approved by the state will qualify Sitka for shared historic preservation grants and technical help.

The Assembly appointed Beth Reynolds, the only applicant, to one of the two openings on the Sitka Advisory Committee on Aging.

All of the Assembly members, new and old, were present Tuesday night except for Jud Rager who was excused.

City Administrator Gary Paxton was out of town and City Attorney Theron Cole acted as administrator in his place.

## Election Results

In the final vote count, Filler received 1,321 votes and Morrison 1,089. Kathy Staroska finished third with 946 and incumbent Frank Richards got 686. Dan Hackett, the other Assembly member whose term expired, chose not to run.

In short speeches under "Persons to be Heard," Richards and Hackett both said they felt the city was in better shape than when they took over three years and one year ago, respectively.

Richards also promised to be back to speak from the audience about matters of importance to him.

The final tally in the school board race showed Carolyn Evans received 1,404 votes to Karen Christner's 718.

The ballot question to protect the principal of the city permanent fund was approved in an official count of 1,851 in favor to 269 against.

Cole administered the oath of office to Filler and Morrison.

The new Assembly members were greeted with applause as they took their seats. Assembly member Mike Reif also thanked Richards and Hackett for their service.

## Drug Free Workplace

Besides banning alcoholic beverages and illegal drugs from the workplace and authorizing drug tests for those suspected of being intoxicated, the new policy also offers confidential therapy for substance abuse by those who voluntarily come forward.

The details of the required program have not yet been worked out, said Cole.

The ordinance states that those seeking voluntary help shall not have their jobs jeopardized as a result of their seeking treatment.

It also states that employees taking prescription drugs which could impair their work performance must inform their supervisors.

City Building Official Harry Chartier said more specific rules may have to be worked out for on-call people, for instance, or top city officials who are nearly always on call.

A similar ordinance covering Sitka Community Hospital employees was also approved.

The policy and ordinance were required by the federal Drug Free Workplace Act of 1988.

## Nelson Appeal

The Assembly denied appeals on the four separate grounds cited by Valorie Nelson for invalidating the city's plans to sell a three-acre piece of city-owned property in the 4600 block of Halibut Point Road, across from The Cove dock.

The Assembly listened to testimony from Nelson and several supporters, but had little discussion before voting against each appeal.

Assembly members said they intended for the sale to go through, but for the competitive bid process to keep the sale fair. In order to address previous concerns expressed by Nelson, the city invalidated a previous sale of the property in which Nelson was the successful bidder at \$100,000.

The land is behind the quarry operated by Roger Sudnikovich, who

asked that it be put up for sale by the city so he could expand his gravel pit.

Valorie Nelson and her husband Connor Nelson have spoken repeatedly against the sale, alleging that the city was giving special favors to Sudnikovich.

The Nelsons own property adjacent to Sudnikovich's operation and also own a competing gravel pit located elsewhere.

Connor Nelson said that the presence of the gravel pit is keeping the area from being developed as a marine-related commercial area.

Cole said Valorie Nelson, solely as a member of the public, lacked the legal standing to appeal actions of the Planning Commission. Nelson has legally presented herself as an "aggrieved party," but did not show why, Cole said.

Questioned later by a member of the audience, Cole stated it could be argued that Nelson had standing as an adjacent property owner and business competitor.

Susan Sturm, Valorie Nelson's mother, said the proposed lot for sale is in the midst of a large tract of city-owned land that should be disposed of in an orderly manner and not piecemeal. The presence of a rock quarry in the center of the tract severely limits the attractiveness and usefulness of other parcels, she said.

Two of Valorie Nelson's appeals were based on the city's waiver of the planning code's requirement that topographical maps or subdivision plats

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be produced prior to a sale. Although Assembly members denied Nelson's appeal, they asked city staff to supply them with the documents for the Oct. 27 meeting.

In connection with the planned sale, the Assembly introduced three ordinances, all without a dissenting vote.

The ordinances rezone Sudnikovich's present and proposed future gravel sites from commercial and residential to industrial and authorize the sale of the tract by competitive bid.

Public hearings on the ordinances are to be held Oct. 27.

"Special  
favor"

10/14/88

# City May Look at Land Deal Again

By WILL SWAGEL  
Sentinel Staff Writer

The city will probably go back to Planning Commission next month to resolve a technical problem that has re-emerged in the city's sale of a tract of land to Roger and Judy Sudnikovich, City Attorney Theron Cole said at Monday night's meeting of the City and Borough Assembly.

Cole said information just brought to light indicates some steps in the sale process need to be redone. The three-acre tract is located behind the Sudnikovich rock quarry in the 4700 block of Halibut Point Road. Roger Sudnikovich said he wanted the hillside parcel to expand the quarry.

Valorie Nelson, who opposed the sale at the time it was made, said she has found city records indicating city officials were incorrect when they said the quarry site was already zoned Industrial, a designation which allows rock quarries as conditional uses.

Last year, former Planning Director Mike Schmidt testified that although the zoning map showed the Sudnikovich quarry was in a Commercial zone, in which quarries are not a permitted use, the map was in error. Schmidt said the area had actually been zoned Industrial, but a wrong entry had been made in a 1986 citywide update of zoning records.

Acting on that assertion, the Assembly voted to correct that perceived error, designating the quarry area as Industrial in order to accommodate Sudnikovich's planned use.

In an April 20 letter to city officials and the Assembly Nelson wrote: "While researching an upcoming planning and zoning agenda item, I

discovered some information that is contrary to what I had been told by (the) administration. I am enclosing copies of the planning & zoning meeting minutes of 8/14/78 and 12/06/82 which show that lots 61 & 62 were in fact C-2, and known to be C-2 by Mr. Sudnikovich prior to the rezoning of 1986. I have researched the subsequent P&Z meeting minutes up to and including the ones of the comprehensive zoning change and found no evidence that these lots were ever changed to industrial. The administration last year sponsored ordinances 92-1063 and 92-1099, supposedly to correct an error alleged to be by Roger Sudnikovich.

"As the administration sponsored an ordinance to correct an error that was never made, I am respectfully requesting that you correct this obvious error and rezone the property to its original C-2 zoning."

Rock quarries are not allowed in Commercial zones, but are allowed in Industrial zones as conditional uses. Without the old quarry being zoned Industrial, quarrying would not be allowed in the new parcel.

Nelson is appealing the rezoning and other factors of the sale in legal actions filed last summer and fall in Superior Court. She maintains that Sudnikovich's quarrying rights should have ended when he used up his present site and should not be allowed to expand. She said quarrying in the area devalues nearby property that she owns.

At the Assembly meeting Monday night, Assembly member Mike Reif said the city "seems to have made an

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error," and Assembly member Peter Hallgren said the city owed Nelson "some sort of apology."

"We need to acknowledge the fact that Valorie has done her homework," said City Attorney Theron Cole.

Cole said once the appeal was filed, Sudnikovich was prohibited from expanding his rock quarry, but is being allowed to do some site preparation on his new parcel.

In a related matter, attorneys for the Mental Health Trust wrote the city last month stating that if a solution to the trust question is not negotiated by the state, the trust could seek to recover, not only the land sold to Sudnikovich, but the value of rock and timber that might have been removed from the parcel.

Trust land manager Dave Thomas asked that the city have surveys made of the rock and timber resources on the property, so the value can be assessed for compensating the Mental Health Trust, if it develops that the land was wrongfully transferred.

He said both the city and the Sudnikoviches are potentially liable.

The plaintiffs are not necessarily out to shut everybody down, but if the settlement agreement goes away, (the city and the Sudnikoviches) are going to be on the hook for a whole lot of money," Thomas said.

The city disagrees that it or the Sudnikoviches are exposed to a big liability.

In a March 19 memo from Cole to

Public Works Director Dick Smith, Cole said the likely settlement should there ever be one, would be for the city to refund what it received for the land, plus interest.

"(But) in an abundance of caution," Cole wrote, "it might be advisable for either Roger or us to have a beginning cross-section available." He referred to a chart that would indicate the volume of material on the property prior to the start of any removal.

"They were just reminding us that if some other resolution doesn't happen, they're out there," Cole told the Sentinel last week.

"The biggest thing we need to do is keep track of things."

Cole said he was confident that should the situation be reviewed, it would be confirmed that the city rightly assessed the value of the rock and timber on the property when it decided to sell the property for \$96,000.

Smith said the city "ran the numbers" and determined that the alternative of leasing the land and taking a royalty on the rock removed would be less financially desirable for the city than selling the tract outright.

"We did a fairly extensive evaluation of both ways of going and by and large it seems that we could demonstrate that the price we received was reasonable and that the very most (the trust) should receive is what we received plus interest," said Cole.

map error  
Mike Schmidt.

- site preparation -

Mental Health Trust  
wrongfully transferred

- error not made -

refusal of purchase price

② \* rightly assessed property  
at 96K (Mental Health Trust)

Put off royalty and  
Lease



# Planning Panel Says No to Rock Proposal

By HEATHER MACLEAN  
Sentinel Staff Writer

The Sitka Planning Commission Monday night narrowly decided against supporting a resolution and ordinance designed to allow the removal of natural resources, including rock and gravel, from lots being developed in all zoning districts.

Both the ordinance and resolution were proposed by city staff and will be reviewed tonight at a meeting of the Sitka City and Borough Assembly. The planning panel had no authority in either matter, and merely served in an advisory capacity.

In a meeting that lasted nearly five hours, the commission members discussed 16 agenda items, including a request by Valerie Nelson to rezone property adjacent to hers, which is owned by Roger Sudnikovich on Halibut Point Road.

Sudnikovich is operating a rock quarry on the property, and Nelson has been working for the past year and a half to prove that he is doing so illegally because the property's zoning does not allow for that usage.

In other business, the commission members voted to support an ordinance to be reviewed tonight by the Assembly that will remove the appeal process on decisions made by the planning panel on zoning questions. They also approved preliminary plats for two phases of the Knutson Subdivision, which will create more than 40

lots in the Jamestown Bay area.

The panel also granted variances to the Cascade Creek Convenience Store for construction of a hotel with a zero seaward setback at 2035 HPR, and to Mark Gorman to allow for a 25-foot public access easement reduction on his Middle Island property.

Howie Martindale, who is applying for four variances to build decks around his home, was asked to rework his plan to allow for off-street parking, and Steve Cox was given the go-ahead to develop an idea for a subdivision on his six-acre Long Island parcel.

In addition, the panel denied a request by John McCrehin to place a mobile home on his Halibut Point Road lot that contains the Bunkhouse boarding rooms.

Members present were Connor Nelson, Jim Williams, Doris Bailey and Chairman Larry Nelson. Bert Stedman was absent and excused.

Connor Nelson was asked by the chairman to remove himself from discussion of four agenda items that involved, directly and indirectly, a lawsuit and two appeals Nelson and his wife Valerie Nelson have brought against the city involving the zoning and subdivision of property owned by Roger Sudnikovich.

## Resource Removal

Connor Nelson, who runs a gravel pit and owns Keystone Associates

Continued on Page 8

## Continued from Page 1

construction company, was asked by the chairman to step down from discussions on a resolution and text change to the zoning code targeting the removal of natural resources, including rock and gravel, from sites being developed.

That left just three members to discuss the items, and all would have had to be in favor for them to pass. However, Jim Williams, a recently appointed member, voted against both proposals, which were initiated by city staff.

Under the current zoning code, rock excavation is permitted with a conditional use permit in areas zoned Industrial. However, Planning Director Wells Williams said, the city historically has allowed excavation of rock and other resources in non-industrialized areas. The text change, he explained, was designed to bring the code in line with the city's current practices.

The text change would allow excavation, rock crushing and other methods of removing natural resources in all city zones — including Residential-1.

"Due to our terrain, it simply does not make sense to require that all rock excavation require industrial zoning and a conditional use permit," Williams stated.

The text change provides that natural resource extraction will be permitted in "all zoning districts as part of site development for a use or building consistent with permitted or approved uses in that district." In addition, it states that owners or developers must obtain an excavation/fill permit from the building official before beginning the work.

If passed, the ordinance would be retroactive in application.

Williams said that developers and land owners have been allowed to remove gravel from building sites all over town because terrain is often steep and unbuildable without excavation.

"The examples are countless through the community," he said, pointing to the Knutson Subdivision presently under way. He noted that the area, located in Jamestown Bay, contains steep tracts and the developer plans to level several areas and use the rock as fill where needed.

John Miller, the contractor, said creating several lots in the subdivision, which is in a residential zone, would be impossible if he could not level certain areas.

"I feel that all along we have been allowed to do this. Right or wrong, that is the only way to develop land here is to use the natural resources on sight," Miller said.

Larry McCrehin, of McCrehin General Contracting, agreed.

"It is just the way we do things here," he said.

But Valerie Nelson said she was afraid that if the change were approved, developers would start rock crushing operations all over town and disturb once peaceful neighborhoods. "I don't believe that is right," she said.

Despite the testimony given by the developers and construction business owners, Nelson said she does not believe the city has allowed natural resource extraction in non-industrial areas in the past.

Commission member Jim Williams said he was worried that the noise associated with rock removal and crushing would disturb home owners in residential areas, and said he could not support the text change. He voted against it in a 2-1 tally, while Bailey and Larry Nelson voted in favor. The ordinance will be reviewed by the Assembly tonight.

The panel also decided by a 2-1 vote not to support a companion resolution that would acknowledge the "long-standing practice" of allowing builders and developers to remove natural resources from land being developed. The wording of the resolution was similar to the text change as were the arguments made by the panel and audience for and against it.

Jim Williams was the only dissenter.

The effect of the city administration's proposal to change the zoning code and adopt the resolution would be to give Roger Sudnikovich authority, retroactively, to quarry rock from his Halibut Point Road lot without regard to its zoning classification.

## S&S Subdivision

The panel decided not to take action on a request by Valerie Nelson to rezone a portion of land along Halibut Point Road occupied by the Sudnikovich quarry.

Nelson contends that Sudnikovich should not be allowed to operate the quarry because it is not zoned industrial and never has been. The planning panel rezoned the land last fall after former city planning director Mike Schmidt said he made a mistake when the zoning code was rewritten and the maps were revised in 1986. He said in an affidavit that the property was zoned Industrial and the city made a mistake since then by labeling it Commercial. He recommended that the city rezone the land to Industrial to correct the mistake.

Since then Nelson has produced Planning Commission minutes from the time that Schmidt was director, which contradicted Schmidt's assertion.

She said the property was never zoned Industrial and played a tape of an Aug. 28, 1978 Assembly meeting in which a vote was taken to zone the property C-2.

Nelson said she believes Schmidt's testimony was false and that the property has always been zoned Commercial or Residential.

"It was never Industrial," she said.

Commission member Bailey said that since Nelson is appealing decisions about the zoning made by the Assembly and planning panel, the members should not discuss it.

"We don't know what the court is going to decide," she said. "You have to let the court take its course and go from there."

The members agreed to defer discussion on the rezoning.

## Appeals Process

The commission members voted 3-0 to approve a text change to the zoning code that will remove an appeals process for rezoning decisions made by the planning panel.

The current process, City Attorney Theron Cole said, is redundant. He explained that a zoning decision made by the planning panel can be questioned in an administrative appeal to the Assembly when it sits as the Board of Adjustment. A decision by that body can then be appealed to the Alaska Superior Court. A second and unrelated process allows the Assembly's decision to be appealed through the Superior Court, leaving two appeals for virtually the same decision, he said.

Cole said the administrative appeal is unnecessary, since the Assembly's decision can be appealed.

"There are protections for the public under this process and having an additional appeal process is redundant," Williams stated.

Decisions on rezonings by the panel are now considered administrative decisions, but they would become part of the legislative process if the text change were approved, Cole noted.

The ordinance states, in part, "The report of the Planning Commission is part of the legislative process and not subject to appeal."

Cole said after the meeting that the ordinance was developed because Valerie Nelson is appealing decisions by the planning panel and Assembly on the rezoning of Sudnikovich's gravel pit. Connor Nelson abstained from the discussion and vote.

New  
and

Rock  
Excavation

Text  
Change

In all  
districts

Took  
Assembly  
admin appeal

12  
6/8/93



# Assembly Votes for Hospital Resolution

By SHANNON HAUGLAND  
Sentinel Staff Writer

The City and Borough Assembly passed a resolution at its Tuesday meeting to ask the U.S. Justice Department to review the mediation agreement between Sitka Community Hospital and SEARHC-Mt. Edgecumbe Hospital.

The request itself will be drafted by a SEARHC attorney and approved by City Attorney Theron Cole, and will ask the Justice Department whether the mediation agreement is in conflict with antitrust statutes.

Although the proposed mediation settlement was endorsed by the Sitka Community Hospital Board, SEARHC board members said they were concerned that implementing portions of it would violate antitrust statutes. The specifics of the mediation draft have not been made public, but it appeared that SEARHC's objection relates to the section of federal law that prohibits ostensibly competing businesses from colluding to divide markets or fix prices.

Assembly members said they hoped this will be the first step toward a resolution of the dispute.

Also at the meeting, the Assembly heard protests about electrical installation and zoning requirements, and about harboring livestock in densely populated areas; increased the fine for unauthorized parking in handicapped parking spaces; made appointments to the hospital, aging and harbor panels; passed an ordinance restricting appeals from planning commission decisions, and heard a budget presentation from Finance Director Jay Sweeney.

Assembly members present were Jud Fager, Anne Morrison, De Ingwersen, Stan Filler and Mike Reif. Dan Keck and Peter Hallgren were absent and excused.

## Code Amendment

On a 5-0 vote, the Assembly passed an ordinance intended to "clarify"

what the city attorney said has always been the city's position, that reports by the Planning Commission are not subject to appeal.

An unusual clause in the effective date of the ordinance makes it retroactive.

Cole said the ordinance was drafted, retroactive clause and all, in response to the Superior Court lawsuit of Valerie Nelson against the city, in connection with a zoning dispute.

Cole said the ordinance defines the position of the city that appeals be restricted to decisions made by the Assembly, not the Planning Commission.

Ingwersen said she was concerned that the ordinance would be "meddling" in the Nelson lawsuit and proposed an amendment to remove the "retroactive" statement from the ordinance.

Cole said that could be used by Nelson as evidence that the Assembly has operated by a different policy in the past, and the motion failed 4-1.

W 6/23/93

# Judge Overturns City on Subdivision

By SHANNON HAUGLAND  
Sentinel Staff Writer

A Superior Court judge has reversed the City and Borough Assembly's decision to subdivide a parcel of public land to permit the sale of a three-acre section to Roger Sudnikovich for expansion of his rock quarry.

Judge Larry Zervos ruled July 6 on two appeals filed over the past year by nearby property owner Valorie Nelson, by finding the first one moot and ruling in Nelson's favor on her objection to the Assembly's subdivision procedure, because it failed "to make all the plans, data and other material available for public inspection at least five days before the public hearing," in violation of the city's own ordinance.

The first appeal, filed July 2, 1992, alleged the Assembly violated city ordinances and state statutes in denying Nelson her appeal of the Sitka Plan-

ning Commission's decision to approve the rezoning of the three-acre parcel. The judge ruled that the city had corrected many of the procedural errors that Nelson had complained of after that appeal was filed, and that he would take up Nelson's complaint about the subdivision procedure used by the city in his decision on her second appeal.

That appeal, filed on Nov. 10, 1992, claimed the Assembly had erred in denying her appeals of a commission's decision to approve the subdivision, rezone the quarry lots and rezone the subdivision.

She took her appeals of the zoning and subdivision matters directly to the Superior Court, citing the section of the Sitka General Code that gives that as the procedure for planning and zoning appeals.

However, Zervos said that her complaints about the Assembly's rezoning procedure, since they involved

legislative decisions by the Assembly, were not subject to his ruling under the city code's appeals process. He noted that they could be challenged in a separate lawsuit, and that Nelson has filed such a suit.

In his 30-page memorandum of decision, the judge found two basic points in Nelson's favor: that she did have "standing" to file a suit, and that she was correct in her assertion that the city violated the requirement that supporting data and information be provided to the public at least five days prior to a hearing.

"Because the city failed to make the subdivision plans, data and supporting material available for public inspection in a timely manner... the Assembly's decision to subdivide the three-acre parcel was in error and is reversed," he said.

In March 1992 Sudnikovich asked the city to sell him three acres of land out of the 871-acre city-owned parcel

in back of Sudnikovich's quarry on Halibut Point Road, and to change the zoning of the area from Residential-Single Family Low Density, to Industrial, states the court record.

Nelson had objected to the request, stating that as an adjacent land owner, she did not want to see the rock quarry expanded in the mainly commercial and residential area.

City ordinance requires the subdivider — in this case, the city — to have all plans, data and other supporting materials available for public inspection in time for the public to inspect them adequately and prepare an appropriate response, states the ruling.

"Since notice is given to the public over the subdivision five days before a public hearing, (the Sitka General Code) requires the subdivider to make the plans, data and supporting material (available) at least five days before a public hearing," Zervos wrote.

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Nelson said today that she is satisfied with the court ruling.

"I feel it's a victory; I won," she said. "I was right. And now they're turning around and writing more retroactive ordinances... to bomb the lawsuit, and it's just not going to work."

In her separate lawsuit filed in connection with the lands transaction, she contends that the city sold the land to Sudnikovich at less than its fair market value, and has violated its own ordinances by allowing him to proceed with his quarry operation on the land without a conditional use permit and without authority to expand a non-conforming use.

A January 1994 trial date has been set in the case.

"I think the city should get the

(land) back and the money back for material he's taken out," Nelson said today. "And they should hold onto (the land) until they know what's going on with the mental health lands litigation." When the city does develop the land, she said, it should do some long-range planning on the entire 871-acre parcel.

Nelson has filed a motion to recover her expenses from the appeals giving the cost as \$24,000, which includes costs of filing, making copies, her own time, preparation of the record, and \$5,000 for legal advice.

The land transaction has proved to be the most complex that the city has ever attempted. The first time the land was put up for auction, Nelson outbid Sudnikovich and then appealed to the Assembly to invalidate it because of the alleged irregularities in procedure.

The city complied, repeated the rezoning and subdivision procedures, and immediately put the land up for sale again, with Sudnikovich the only bidder, matching the high bid from the previous sale, \$100,000.

After Nelson filed her appeals and her lawsuit, City Attorney Theron Cole drafted a number of ordinances intended to support the city's position in defending against Nelson's appeals and lawsuit, and at least one has been adopted.

Slated for consideration at Tuesday's Assembly meeting are two proposed ordinances on introduction, one reauthorizing the sale of a portion of the city's lot upland of the S&S rock quarry, and another ordinance ratifying the sale of the portion to Roger and Judith Sudnikovich.

Another of the proposed ordinances dealing with the case, which would be retroactive if passed, is under consideration by the Planning Commission. It would permit, under certain conditions, the extraction of resources from land in any zone classification without the need for a conditional use permit.

City Attorney Theron Cole filed a motion on July 7 to stay the effect of Zervos' ruling on the subdivision issue until Sept. 2, and to extend the time for the city to appeal until Aug. 2.

Cole explained that he had long-standing plans to be out of town on vacation from July 7 until Aug. 1.

NOTICE

Reg. (i) Supporting data and information he provided to the public @ least 5 days before the hearing (ii)

Ordinance Rush



## An Editorial

# It's Wise to Wait

Disregarding the popular wisdom, Valorie Nelson has taken on city hall, and has won a round.

But the reaction of city officials to her upstart challenge proves that whoever it was who coined the phrase about fighting city hall had a good idea of what you can expect.

It is not merely Nelson's challenge to the subdivision, rezoning and sale of a plot of city land to a private developer, but the city's response that is turning the matter into an epic confrontation.

Acting as her own attorney, Nelson won an important point in her appeal of the city's procedure in the subdivision of the parcel. The court declared the subdivision invalid, which naturally invalidates the sale of the non-existent subdivided lot.

The city staff's response so far has been to write ordinances, to be introduced at Tuesday night's City and Borough Assembly meeting, reconfirming the terms of the original sale.

Since the Planning Commission is to take up the question of subdivision of the tract at its next meeting, and presumably has the authority at that time to recommend that the plan be modified or even rejected, it appears premature, to say the least, for the city administration to jump in with these sale ordinances in advance of that action.

It would be premature, in our opinion, for the Assembly to introduce such ordinances at any time prior to its own final decision on the subdivision. To do otherwise is to indicate the city intent is only to rubber stamp its previous decision, regardless of what may emerge from either the Planning Commission's deliberations or from the Assembly's own findings, once proper procedure is followed.

Nelson is charging, in a civil suit that is yet to be adjudicated, that the city has repeatedly violated its own charter and ordinances in this whole complex matter of rezoning, subdivision and sale of public land. Without taking a position on that, we nonetheless must observe that these draft ordinances, being offered for introduction at this time, might support the suspicion, even by a disinterested observer, that something is seriously amiss.

For many years it has been city policy to allow rock removal from public lands on a royalty basis, rather than by outright sale of the property. It has been city policy for many years to require, whenever possible, complete subdivision plans for large parcels rather than to allow piecemeal minor subdivisions with no overall plan. (We are disturbed that the city itself should violate this basic element of planning in such an offhand manner.)

In the light of the court's ruling, there is now opportunity for the city to take another look at these issues. It is instructive that every time the city has been forced by Nelson's appeals to redo some part of its slapdash procedures to date, there has been some modification, and most people would say improvement, to the outcome.

Ordinary caution, not to say respect for public process, indicates to us that the city should take a thoughtful look at the points Nelson has raised, on the chance that previous decisions by the city were not necessarily the right ones.

For a start, we suggest that introduction of the land sale ordinances be put on hold until the Planning Commission has had a chance to review the situation, and to avoid the appearance of prejudice that would be created by Assembly action on these ordinances at this time.

EDIC  
Confrontation

7/26/93

We are disturbed  
that the city itself  
should violate the  
basic element of planning  
in such an offhand manner.



# Assembly Puts Off Accepting P.O. Bid

By SHANNON HAUGLAND  
Sentinel Staff Writer

The City and Borough Assembly voted Tuesday night to delay the award on the old post office renovation project for up to 60 days.

Members said they wanted to look at options for cost savings in order to complete the project within the \$2.5 million budgeted by the city.

If the lowest bid were to be accepted, the project would run \$147,000 over budget.

"If we accept this bid, we're not only over-budget, but we're underfunded, too," said member Pete Hallgren, citing city estimates that the sales tax revenues are expected to decline in light of the mill closure.

Mayor Dan Keck and members Jud Fager and Stan Filler said they supported the project but said they would be willing to wait and look at possible savings options.

Also at the meeting, Assembly members agreed to review the electrical rate structure at a future meeting, rejected a zoning request by Valorie Nelson, approved a ballot question regarding a road to Rodman Bay, received a petition supporting the city's action against the U.S. Forest Service, and voted to opt out of the lawsuit against Alaska Pulp Corp. filed by Larry Edwards.

Other items discussed included creating a position of lieutenant in the Sitka police department, rezoning several parcels of land on Halibut Point Road, amending the electrical

customer service policy and considering a conditional use permit for downtown apartments on Etolin Street.

Present were Keck, Fager, Hallgren, Filler, Anne Morrison and Mike Reif. De Ingwersen was absent and excused.

## City Hall Project

Hallgren said he still thinks the post office renovation is a "good project," but members had hoped last April that they could encourage public trust with the project.

He said he would prefer that about \$500,000 be cut out of the design, but would settle for outbacks in the amount of \$100,000 to \$200,000. He proposed that the city reject the bids until a design is completed that would bring the project within the amount originally budgeted. The architect's estimate on the project before bids were called was over the \$2.5 million budgeted for the project. All three of the contractors' bids received were under the architect's estimate, however.

Keck proposed that bid award be postponed for up to 60 days for Assembly members to consider areas where there could be some savings, and allow the city to look for other funding sources for the project.

Morrison said she would be disappointed if the city cut out so many items on the renovation that major renovations would be needed in the future.

From the audience, Sandie Gregg

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spoke in favor of the project, which she said would provide more than 30 full-time workers during the winter months after the mill closes. Downtown businesses, she said, will be looking at "major layoffs" of store employees.

The vote was 6-0 to delay the award for up to 60 days. Public Works Director Dick Smith said today that the question of whether new bids will have to be called depends on what, if any, modifications are made to the specifications of the project.

## Nelson Request

The Assembly turned down a request by Valorie Nelson to initiate an action to rezone the S&S rock quarry property from Industrial to Commercial.

Nelson, who has a lawsuit pending against the city regarding previous action taken by the Assembly on the property, said the Assembly agreed to rezone the lot from Commercial to Industrial based on false information.

She said the former planning director Mike Schmidt signed an affidavit that said the property had been zoned Industrial but was changed inadvertently in the major overhaul of the city plan. She said city records show that this is not true, that the property had always been Residential or Commercial, never Industrial.

The Assembly last year approved the zoning change to Industrial.

She requested that the city "correct the oversight" by returning the property to Commercial.

Cole said, "This property is zoned Industrial, as far as I can tell. ... Mrs. Nelson disagrees with the way that was accomplished." He said the Assembly did not need to take any action

regarding the issue because only the property owner, planning commission and Assembly can initiate a zoning change.

Hallgren commented that the property has been a quarry for a "good number of years."

"This Assembly has decided it should continue to be a quarry," he said. "I don't really feel like trying to turn back the clock."

*affidavit*

8/25/93

# Backhoe Destroyed in Drop Off Mountainside

By STEVE WILL  
Sentinel Staff Writer

A 27-ton track-mounted backhoe valued at \$110,000 was destroyed early Wednesday when an earthslide swept it off a 120-foot high ledge in a Halibut Point Road rock quarry.

No one was on the machine and there were no injuries.

Roger Sudnikovich, one of the owners of the quarry, said a huge mass of overburden swept down the mountainside shortly after sunrise. It poured onto the ledge, enveloped the backhoe and carried it 75 feet across the width of the bench, where the entire mass plunged 120 feet to the floor of the quarry.

The machine, a 225 Caterpillar with a one-and-a-half-yard bucket, was a total loss.

Sudnikovich stood in the pouring rain Wednesday afternoon with a weary look on his face. The backhoe's treads faced the elements, its arm twisted out sideways from beneath. The wreckage looked like the shattered carcass of a once-proud monster half-buried in slimy brown muck.

"It makes me sick," Sudnikovich said. "We take good care of our equipment."

The machine had been working the pit the previous afternoon, when a hydraulic hose broke. It was shut down and left there awaiting repairs.

"Probably sittin' in a spot that we shouldn't have left it sittin' in, waiting for parts," Sudnikovich said.

The parts came in on the noon plane.

Sudnikovich valued the machine at \$110,000. It was not insured.

It has been a rough week.

Sudnikovich said there hadn't been a slide at the pit before this week. But one had struck just two days earlier.

"Basically, it was in the same spot, a little different situation," he said.

On Monday there was an operator in the backhoe when the slide hit.

"He jumped out when he seen the slide coming."

That was a bigger machine, a 235 Cat, and "it slid down a slide slope," traveling somewhere between 30 and 50 feet, Sudnikovich said.

The 235 will go to Juneau for repairs. He said he didn't know what the repairs will cost.

Surveying the scene Wednesday, Sudnikovich looked up at ledge lining the cliff face at the back of the quarry, up where the backhoe had broken its hose just 24 hours before. Rain washed a sheet of dingy brown water over the cliff face. A rain of rubble burst over the lip and pattered down on the remains of the 225.

"What are you gonna do?" Sudnikovich asked nobody in particular.

"It's over and nobody got hurt, that's the main thing. We try to be as safe as we can."



The remains of a backhoe lie crumpled at the bottom of a rock quarry on Halibut Point Road Wednesday. (Sentinel photo by James Poulson)

- Earth Slide  
- Slide  
- Jump out.

Safe

11/12/93



# City, Nelson Reach Agreement On Suit

By SHANNON HAUGLAND  
Sentinel Staff Writer

The City and Borough of Sitka, Roger Sudnikovich and Valorie and Connor Nelson, have reached an agreement to settle the Nelsons' lawsuit challenging the validity of the rezoning, subdivision and sale of a tract of city land that was sold to Sudnikovich.

Superior Court Judge Larry Zervos signed the settlement papers today. The parties reached an agreement after lengthy discussions Thursday and Friday.

The settlement outlines conditions for operation of the Sudnikovich quarry on the subdivided lot directly behind the current quarry, and the pending case, appeals and conditional use processes for the quarry.

City Attorney Theron Cole and Valorie Nelson said today they would not make any public statement without each party's approval, in accordance with the settlement agreement.

At an Assembly meeting last month, the Assembly gave Cole authority to settle the case. Members discussed the subject in executive session and would not state in public specific guidelines for the settlement.

The court document states that the settlement covers, but is not limited to, cases involving ownership and use of the Sudnikovich lots; pending appeals from the Planning Commission or Platting Board to the Assembly, and any appeal from the Assembly or the Assembly sitting as a Board of Adjustment to the Superior Court; and the existing conditional use process for the lot in back of the quarry.

The original complaint filed by the

Nelsons had asked for court and attorney fees. The only monetary agreement in the document is that the city and S&S will pay \$9,000 to the Nelsons for noise remediation.

Most of the conditions set out in the settlement document pertain to the effect the quarry has on the Nelsons' enjoyment of their adjoining property.

The agreement sets the hours of operation of the S&S quarry from March through October, 7 a.m. to 5:30 p.m. Monday through Thursday, November through February, the operations will be 7:30 a.m. to 4:30 p.m. Monday through Friday. The hours may be modified with barge activities or if S&S gets the Thomsen Harbor or a similar contract.

The agreement states that there should be mutual respect for S&S business needs as well as for the Nelsons' quality of life.

For example, it states, "S&S will talk with truck drivers hauling to and from their rock quarry in a way that will eliminate unnecessary use of compression brakes on their trucks so that noise will be reduced." S&S and Nelson agree that this problem will receive special attention.

With regard to dust, S&S has installed a fog nozzle on the rock crusher to keep down the level of dust.

Both parties agreed that the rock crusher shall be moved away from the highway and the Nelsons' property by Oct. 1 to reduce noise. If S&S gets the Thomsen Harbor contract, which requires shot rock, the crusher may be kept in its present location.

All drilling equipment shall have properly installed and maintained

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mufflers, and S&S will give six hours' oral or written notice to the Nelsons of any blasting of rock.

S&S will construct, at its own expense, a ramp for trucks to provide more direct access from the quarry to the Alaska Marine Lines barge loading area across the street.

The agreement states that after all rock, an estimated 500,000 cubic yards, has been extracted, quarry ac-

tivities on the lot will cease.

S&S will be required to give the Nelsons, upon request, copies of reports from agencies that regulate the quarry operations, so they may monitor S&S compliance with these standards.

S&S must apply for a conditional use permit for the rock crusher in addition to the application now pending as to the use of the lot for extraction of rocks.

Nelsons shall not oppose or appeal the issuance of the Conditional Use Permits consistent with this agreement, the court document states.

Either party may enforce this agreement, and may file a petition for enforcement in Superior Court. The petitioner must allege a "serious violation" of the agreement, and show a "preponderance of evidence" that a serious violation has occurred.

The petitioner must give the other party written notice detailing the alleged violation, and allow the party 15 days to correct, or arrange to correct, the violation.

Signing the agreement were Valorie Nelson, Connor Nelson for Keystone Associates Inc., the Nelsons' attorney Stephen Sorensen, Roger Sudnikovich, Theron Cole and Sudnikovich attorney Edward Stahl.

The Nelsons filed a complaint for declaratory and injunctive relief in November 1992, asking that the sale of the property in back of the Sudnikovich quarry on Halibut Point Road be ruled invalid; that S&S not be allowed to operate a quarry without a conditional use permit; and that attorney and court costs be awarded.

The Nelsons argued that the city had not followed proper platting and public hearing procedures when it subdivided the land, and that Sudnikovich began drilling and blasting on the land without a conditional use permit, which is required in the land-zoned Industrial.

The Nelsons said in their complaint that the city sold the property at a price far below its fair market value. They said the rock that could be quarried on the property has the potential value of \$514,615. The Nelsons own a competing business, Keystone Associates Inc., and said sale would allow Sudnikovich to under-bid Keystone, which uses the city quarry, on any project that requires quarried rock.

A trial on the lawsuit was set for next month.

The Nelsons also filed an appeal in October 1993, saying the Assembly violated state and federal constitutions, and its own general code, in the manner it subdivided the land.

At Assembly and Planning Commission meetings, since the original suit was filed, Valorie Nelson has protested the rezoning of the property to Industrial, originally zoned Commercial-2, and has testified against the conditional use permit to allow the quarry.

Assembly members have said they support the proposed use of the subdivided land as a quarry.

The Assembly, convening as the Board of Adjustment, is slated Tuesday to consider Sudnikovich's appeal of a Sitka Planning Commission decision to deny a conditional use permit to operate the quarry. Following that agenda item will be consideration of a conditional use permit for the quarry.

either can enforce  
serious violation

H.O.O.  
mutual respect  
noise abatement  
fog nozzle

Settlement  
Conditions

Notice

quarry activities  
will cease



# Rock Crusher Issue Running into Appeals

By SEAN COCKERHAM  
Sentinel Staff Writer

The Sitka Planning Commission Monday once again hashed over the apparently interminable complexities of the debate surrounding S&S General Contractors' rock crusher.

The current round saw Roger Sudnikovich, owner of S&S, again appealing the directive of the city planning director requiring the crusher to be moved from its present location in the S&S Subdivision.

Following a lengthy discussion of

the legal aspects of the situation with Municipal Attorney Theron Cole, the commission members voted to stay the enforcement action and essentially leave the crusher alone pending a decision by the Superior Court.

Implicit is that the crusher be allowed to operate during the stay, said Planning Director Wells Williams.

The original conditional use permit called for the crusher to be moved by last August. When it was not, the planning director issued an enforcement action.

Sudnikovich appealed, and in November the Assembly, following the commission's recommendation, issued an amended permit that allowed the crusher to remain until November 1996 or four months after

completion of the Thorsen Harbor expansion project, on which the crusher is employed.

Valorie Nelson, who had complained about noise from the crusher, then appealed the amended permit to the court system. That appeal is to be heard by the Superior Court.

Cole said Nelson's appeal stayed the amended permit and recommended that the planning director reinstate the enforcement action requiring the crusher to be moved. Sudnikovich appealed and the matter was again before the visibly reluctant commission.

Commission members voted unanimously that the planning director's enforcement action was correct, but that the "indivisibility" of the actions meant that the stay on the amended conditional use permit translated into a stay on the enforcement

action as well.

Also at the two-hour meeting, commission members

— approved a variance request by Bill and Karen Adickis to reduce a side setback to 7 feet at 1401 Edgcombe Drive.

— unanimously recommended to the Assembly approval of a minor subdivision filed by the city to create two parcels from municipal tidelands on Siginaka Way for sale to Theresa Weiser, including the strip of land historically used for parking for the Wild Strawberry Inn.

— unanimously approved a tidelands lease request by the Seafood Producers Cooperative for the expansion of their cold storage facility.

Martin Construction is completing the house at the corner of Mills Street and Edgcombe Drive for Bill and Karen Adickis.

During the plan review process, the Building Department did not notice the lack of the required exit for the third floor.

Martin Construction then built a stairway to serve as a fire exit to comply with the code.

But the addition of the stairway requires a variance, since the side setback is now six feet instead of the required seven feet.

Commission member Mike Reif said, "I agree (the variance) is the best and most cost-effective way to deal with the problem."

But Reif chastised contractor Marty Martin for building the stairway before obtaining a variance.

"If you were aware of the need for a variance you should have come before us first. It shows you don't care what we say," said Reif.

Martin said he had little choice. "If I've offended the board I'm sorry. That was not my intention but I couldn't wait any longer because my bank loan had to close," he said.

The members voted unanimously to allow the variance.

Commissioners present at the regular meeting were Doris Bailey, Stuart Denslow, Reif, Tim Scott and Eve Rauscher.

46/17/16

# S&S Crusher Again Issue For Assembly

By SHANNON HAUGLAND  
Sentinel Staff Writer

The long-running issue of Roger Sudnikovich's conditional use permit for a rock crusher will be back before the City and Borough Assembly March 25.

Superior Court Judge Larry Zervos ruled Dec. 6 that the city failed to follow its own ordinances by amending a conditional use permit for Roger Sudnikovich's rock crusher after an original permit expired.

Zervos was ruling on a complaint filed by Valorie Nelson, the owner of property adjacent to the quarry where Sudnikovich operates the crusher.

In a 15-page decision issued on Dec. 6, Zervos concluded that the conditional use permit issued by the city on Jan. 10, 1995, expired on the ending date set out in the permit, Aug. 30, 1995. He also ruled that the city planning director exceeded his authority in allowing operation of the crusher at the site after that date.

Zervos wrote at the conclusion of his decision: "If the crusher has not already been moved, it must be moved immediately. Ms. Nelson is the prevailing party and she may file an affidavit concerning her costs."

The crusher is no longer operating, but the Sitka Planning Commission at its Feb. 3 meeting recommended on a 4-0 vote that the Assembly approve a conditional use permit for Sudnikovich to operate his crusher on an adjacent lot, with related heavy equipment staying on the lot where the crusher is currently located.

"I think the judge's decision was fair," said Nelson, who filed for the Superior Court ruling after city officials ruled against her in administrative appeals. "It means the city has these ordinances and they have to follow them."

City Attorney Theron Cole said the Assembly at a regular meeting had intended to issue a new conditional use permit to Sudnikovich after the first permit expired. However, the motion wasn't stated clearly.

"It was an oversight at the meeting," Cole said.

Although the Assembly at a later

Continued on Page 10

## S&S . . .

Continued from Page 1

meeting issued "findings of fact" to clearly state its previous intent to issue a new permit. Zervos decided that even if it was a new permit, the city hadn't followed the applicable ordinances, the city attorney said.

The controversy dates back to 1992, when Nelson appealed the city's decision to sell Sudnikovich a tract of city-owned property for expansion of his quarry. Nelson had also objected to rezoning of the property, at Sudnikovich's request, from residential to industrial.

The case was resolved with an agreement that Sudnikovich would get a permit for his rock crusher through Aug. 30, 1995, when he would be required to move it away.

When the crusher continued in operation after that date, Nelson asked the city to enforce terms of the permit, and that the crusher be moved within 15 days.

Sudnikovich asked for an extension, which prompted Planning Director Wells Williams on Sept. 25, 1995, to give Sudnikovich 30 days from that date to move the machine. Nelson objected at the time that Williams didn't have the authority to grant an extension.

Sudnikovich was not happy with Williams' ruling either, and appealed to the planning commission for an amendment to his conditional use permit that would allow continued operation of the crusher until May 31, 1996. The commission upheld the planning director's ruling, but recommended that the city issue a new conditional use permit allowing Sudnikovich to operate the crusher at the same site until Nov. 1, 1996.

The Assembly then approved that recommendation, issuing a new permit for operation of the crusher until four months after the completion of the Thomsen Harbor breakwater or Nov. 1, 1996, whichever date occurred first.

The issue of whether the city is-

sued a new permit or amended the old permit is the subject of great confusion," Zervos wrote. "Throughout the process S&S, the planning commission and the city discussed the work on the conditional use permit as an amendment."

At the same time, the city attorney was warning the planning commission and the city that S&S's request should be treated as a request for a new permit, since an argument could be made that the old permit expired.

Nelson argued that even if the city had issued a new permit, it didn't follow its own ordinances in granting a permit.

Zervos decided: "Ultimately it is not necessary for the court to resolve this factual issue."

He said that if the Assembly's intent was to amend the conditional use permit, the amendment is invalid because the conditional use permit had already expired. If the intent was to issue a new permit, the permit is invalid because the Assembly didn't follow its own procedures on the issuance of permits when it failed to give notice as required by law, Zervos said.

The Superior Court ruling did not end the dispute.

Nelson said today that if the Assembly issues a new conditional use permit March 25 and Sudnikovich fails to follow city ordinances, which also require him to obtain appropriate state and federal permits, she will again file an appeal.

"I just want them to follow the law," she said. "I don't want them to keep going with this good-old-boy syndrome. . . I just feel we've been flim-flammed all along."

The city will have to pay Nelson's \$139 in court costs.

"I don't get paid for my time, but I feel pretty good about prevailing in the appeal, with as little experience with the law that I have," said Nelson, who is an accounting technician with the U.S. Forest Service.

- Decision  
- 1995 exp.  
- P.O. exceeded  
Activity

2/24/97