



CITY AND BOROUGH OF SITKA

Minutes - Final

Planning Commission

Wednesday, November 7, 2018

7:00 PM

Harrigan Centennial Hall

I. CALL TO ORDER AND ROLL CALL

Present: Chris Spivey (Chair), Darrell Windsor (Vice Chair), Randy Hughey, Taylor Colvin, Aaron Bean (alternate Assembly liaison)
Absent: Kevin Knox (Assembly liaison)
Staff: Maegan Bosak - Community Affairs Director, Lauren Moore - Interim Planning Director
Public: Tony Bird, Lindsay Bird, Don MacKinnon, Roslyn MacKinnon, Charles Bingham, Dorothy Orbison, Dean Orbison

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

II. CONSIDERATION OF THE AGENDA

III. CONSIDERATION OF THE MINUTES

A [PM-54](#) Approve the September 27, 2018 minutes

Attachments: [September 29 2018](#)

The motion to approve the September 27, 2018 minutes passed 4-0.

IV. PERSONS TO BE HEARD

No persons came forward to voice issues distinct from those on the agenda.

V. PLANNING DIRECTOR'S REPORT

B [MISC 18-26](#) Planning Director's report November 7, 2018

Bosak introduced Moore as Interim Planning Director; reminded attendees that there would not be another Planning Commission meeting until December 5; stated that the openings for the Planning Director and Planner I positions closed with the expectation of fulfillment by January 1, 2019; and stated that the Comprehensive Plan had been nominated for an award by the Alaska Planning Association.

Chair Spivey asked about replacing his iPad. Bosak responded that she would check on it and get back to him.

No action was taken.

VI. REPORTS**VII. THE EVENING BUSINESS****C** [VAR 18-12](#)

Public hearing and consideration of a platting variance to subdivide a single lot into two lots at 2174 Halibut Point Road (R-1 MH zone) where the proposal does not meet current development standards including minimum lot size; and increasing the number of lots utilizing the access easement from four to five. The property is also known as Lot 1, Wright Subdivision, Addition Two, USS 2418. The request is filed by Adam and Kris Chinalski. The owners of record are Adam and Kris Chinalski.

Attachments: [VAR 18-12 Chinalski 2174 HPR Staff Report September 20 2018](#)
[VAR 18-12 Chinalski 2174 HPR general application](#)
[VAR 18-12 Chinalski 2174 HPR supplemental](#)
[VAR 18-12 Chinalski 2174 HPR aerial vicinity](#)
[VAR 18-12 Chinalski 2174 HPR plat](#)
[VAR 18-12 Chinalski 2174 HPR existing structures & proposed layout](#)
[VAR 18-12 Chinalski 2174 HPR deed](#)
[VAR 18-12 Chinalski 2174 HPR photos](#)
[VAR 18-12 Chinalski 2174 HPR site plan drawings](#)
[VAR 18-12 Chinalski 2174 HPR buffer mailing](#)

Moore gave an overview of the Planning staff report. Bosak called the attention of the Commission to new information being presented, namely four site drawings of the proposed house to be built. Colvin asked about the status of the development code update, and Bosak stated that it was still in review.

The applicant, Adam Chinalski, was called forward to speak. Chinalski referred to Housing goals and objectives in the Comprehensive Plan, as well as the nearby presence of 1,200 sf lots, to justify the creation of a lot smaller than the required 8,000 sf in the R-1 zone.

Chair Spivey responded with concerns regarding easement access and stated that the Commission would have to consider not just the current owners' capacity to maintain the easement but also that of future owners.

Hughey asked the applicant if it would be cost-prohibitive to move the rock wall on the property to create a lot of ~6,000 sf rather than ~4,000 sf. Chinalski responded that it would be cost-prohibitive. Vice Chair Windsor asked if establishing an accessory dwelling unit (ADU) would be cost-prohibitive, and Chinalski again responded affirmatively. Colvin asked if the new proposed structure would meet requirements for setbacks and parking, and Chinalski responded that it would.

The floor was opened to public comment. Don McKinnon, a neighbor living across the street from the property in question, stated that he was concerned about easement access and available parking, including for service trucks and emergency vehicles. McKinnon stated that he did not give permission for easement access through his property at the bottom of the road. Hughey asked McKinnon to clarify his statement,

then noted that the question would be brought to staff at a later point in the discussion.

For the record, Moore read a letter submitted by Kathryn Rumery in opposition to the variance request, which had been delivered after the packet was created. Rumery's letter stated her concerns regarding the impacts of the proposed variance, especially those related to drainage down the easement, access for emergency vehicles, parking, and traffic.

Chair Spivey asked Planning staff if the proposal would trigger a subdivision change. Bosak responded that no subdivision would be created since the request is for a platting variance. As such, the easement would not become City-maintained right-of-way. Hughey asked Planning staff if access easements are subtracted from the size of the lot. Bosak responded that they are not, but that they are only subtracted from buildable lot area. Vice Chair Windsor asked Planning staff if the users of an access easement can set terms for who is allowed to use it, and Bosak replied that such an agreement would have to be signed by the owners of each property using the easement.

Chair Spivey stated that he was concerned about the narrowness and steepness of the easement restricting access, particularly for emergency vehicles. Vice Chair Windsor echoed Spivey's statement and added that he supported Chinalski's objective but felt that it was not the right place to accomplish it. Likewise, Colvin expressed his regret for topographical conditions beyond Chinalski's control.

Chair Spivey and Colvin discussed the conflicting directives in the code, which mandates dimensional standards for large lots in the R-1 zone; and the Comprehensive Plan, which supports smaller lots and higher density. Hughey stated that if the applicant were to propose an ADU, the same impacts would be present but the Planning Commission would have no basis for denial. Chair Spivey responded that the ADU would be a conditional use, so in fact the same concerns would likely arise in that case, giving reason to deny. Bosak agreed with Spivey, stating that the ADU would not be on a municipally maintained road, so similar findings would be required.

Colvin moved to deny the platting variance to split a single lot into two lots at 2174 Halibut Point Road in the R-1 MH single-family, duplex and manufactured home district. The motion passed 4-0.

Colvin moved to adopt the findings as found in the staff report. The motion passed 4-0.

**D CUP-R
Greenleaf**

Public hearing to review the conditional use permits, specifically conditions regarding odor control and parking (CUP 16-14, 16-31, and 17-12) for a marijuana cultivation facility and marijuana retail facility at 4612 and 4614 Halibut Point Road in the C-2 general commercial and mobile home zoning district. The property is known as Lot 3 Carlson Resubdivisions. This review is filed by the Planning Director. The conditional use permit holders are Connor Nelson and Aaron Bean for Greenleaf, Inc. The owners of record are Connor K. Nelson and Valorie L. Nelson.

Attachments:

CUP 16-12 16-31 17-12 Greenleaf Bean Aug 2 2018 staff memo
CUP 16-14 16-31 17-12 Grean Leaf review May 17 2016 minutes attachment #1
CUP 16-14 16-31 17-12 Grean Leaf review Nov 16 2016 minutes attachment #2
CUP 16-14 16-31 17-12 Grean Leaf review Apr 18 2017 minutes attachment #3
CUP 16-14 16-31 17-12 Grean Leaf review May 15 2018 letter attachment #4
CUP 16-14 16-31 17-12 Grean Leaf review May 17 2018 memo attachment #5
CUP 16-14 16-31 17-12 Grean Leaf review Mary 22 2018 letter attachment #6
CUP 16-14 16-31 17-12 Grean Leaf review Notice from PD attachment #7
CUP 16-14 16-31 17-12 Grean Leaf review Jun 22 2018 PD response attachment #8
Nelson site visit memo 10-29-18
Nelson memo attachments A-F
Green Leaf 2016 cultivation CUP application narrative
Green Leaf 2016 cultivation CUP parking plan
Green Leaf 2016 retail application November 16 2018 minutes
Green Leaf 2016 retail application site plan with parking notation
Green Leaf interior remodel property owner comment memo Nov 2 2018
Green Leaf interior remodel property owner comment attachments Nov 2 2018
Green Leaf HVAC and filter property owner memo November 2 2018
Green Leaf HVAC and filter property owner memo attachments November 2 2018

Moore gave an overview of the most recent Planning staff report, dating to August 2, 2018. The Planning Commission deliberated about how to address public comment that had been received shortly before the meeting began. The comment in question was the Memorandum Decision and Order for the case of Nelson, Conner (sic) v. Green Leaf, Inc., filed on October 19, 2018. Bosak stated that comments received prior to the meeting but after the dissemination of the packet are typically accepted, as long as they are open to the public. Chair Spivey moved to recess for 10 minutes to review the new information. Hughey seconded the motion. The motion passed 4-0.

Chair Spivey noted that the applicant and property owners would be called forward separately. Hughey stated that he wanted to make sure not to separate Connor and Valorie Nelson. Chair Spivey confirmed that the Nelsons would be called forward together.

The applicant, Aaron Bean, was called forward. Chair Spivey asked Bean if he would comply with the terms of the conditional use permit, particularly regarding odor control and parking. Bean responded that he would. Vice Chair Windsor asked Bean what had changed in the parking plan since the last review of the conditional use permit. Bean

responded that nothing had changed. To follow up, Chair Spivey asked why proper parking was then not established. Bean stated that that was a question for Nelson. Chair Spivey asked why Bean, the business owner, would not take it upon himself. Bean responded that he was doing the best he could.

Discussion turned to the parking plan documentation referenced in the staff report. Bean stated that there had been a modification to the parking layout from the original plan for the cultivation facility. Bean stated that Nelson's vehicles and materials were blocking available parking spaces.

Hughey stated that at the time of his September site visit, he was told by Nelson that a lease for parking was to be arranged separate from that for the building; he asked Bean for comment. Bean had no comment and said he had not seen such a lease.

Hughey asked about the relevance of the new evidence as it related to odor and parking concerns. Chair Spivey stated that he thought the document may be irrelevant. In response, Bean stated that he was complying with state and local regulations, including the conditions of his permit, in contradiction of the allegations against him.

Chair Spivey stated that he had detected a small amount of odor on his site visit to Green Leaf, finding the complaints meritorious. He noted that the odor was comparable to that of other marijuana cultivation facilities, but that he had also visited cultivation facilities with no detectable odor at all. Spivey asked Bean what more he could do, as business owner, to mitigate odor.

Bean responded that there was probably more he could do to reduce odor, but it would not be reasonable to issue a request of that nature. Bean stated that he had taken corrective action following the prior notice of violation.

Chair Spivey asked Planning staff about AMCO's comments regarding the odor complaint and upgrading the filters. Bosak responded that AMCO's information about the odor violation was in the memo included in the packet.

Bosak asked Bean if there was a schedule for upgrades and maintenance of the filtration system. Bean acknowledged that the system should be upgraded more often and stated that he would change the filters as needed.

Bean returned to his seat, and Connor and Valorie Nelson were called forward. Chair Spivey asked Connor Nelson if he would comply with the terms of the conditional use permit, particularly regarding odor control and parking. Connor Nelson responded that he would not. Valorie Nelson stated that the Planning Commission had, in the packet, Connor Nelson's response to the letter sent by former Planning Director Michael Scarcelli. Valorie Nelson also stated that Bean did not respond to the letter.

Vice Chair Windsor asked Connor Nelson to clarify the nature of the parking complaint. Nelson responded that he had put documentation in the packet of Bean's plan to purchase parking spaces, and that he had originally drafted a parking plan with Bean, but Bean reneged on his agreement.

Chair Spivey stopped the discussion to redirect the hearing away from the civil dispute and back to the issues at hand for the Planning Commission. Connor Nelson asked if the Commission had any questions about odor. Chair Spivey responded that he was unsure whether Nelson, as the landowner and not the building owner, had purview over the odor issue.

The floor was opened to public comment. Valorie Nelson stated her opposition to the conditional use permit, as the property owner not party to the litigation. Nelson stated that the complaints about odor and parking were not coming from her and her husband, but from Paul and Lamoyne Smith. Nelson stated that Scarcelli had determined the odor to be insignificant, contradicting Nelson's experience.

For the record, Moore read a November 5, 2018 email from Paul and Lamoyne Smith expressing their opposition to the conditional use permit, with odor being a major concern. The Smiths also expressed concern that the Nelsons' property rights were being infringed upon.

Vice Chair Windsor asked if Planning staff had clarified, with AMCO, the role of the Assembly versus the Planning Commission in hearing odor complaints. Bosak responded that the Assembly, having absorbed the former Marijuana Advisory Board, hears odor complaints. Vice Chair Windsor noted that parking is a valid issue for the Planning Commission to address, but that odor should go before the Assembly.

Noting the conflicting testimony from Bean and the Nelsons as to the existence of a lease for legal parking, Hughey stated that he wants the City attorney to determine if such a lease exists in compliance with the CUP. Chair Spivey stated that the business owner and property owner were co-applicants who shared responsibility to meet the terms of the CUP, and echoed the problem of their conflicting testimony. Given that, Hughey stated his preference to clarify the legal status of the parking lease before making a decision regarding the review of the CUP, and asked Bosak if that question could be asked of the City attorney.

Bosak stated that the Planning Department could ask the attorney to review the parking lease and answer the question of whether legal parking exists on the property. Bosak stated that it would be pertinent to review conditions #8 and #9 of the permit, which pertain to parking and odor control.

Colvin stated that he had observed adequate parking capacity and minimal odor during the site visit, and noted that it was different from the plans documented in the packet. The Planning Commission moved to ask the City attorney, as soon as possible, to determine whether legal parking exists as approved in the CUP and to postpone the matter until the question was answered.

Hughey moved to ask City Attorney Brian Hanson to determine whether a legal parking lease exists. Vice Chair Windsor seconded the motion. The motion passed 4-0.

Hughey moved to postpone the review of the conditional use permits until receiving counsel from City Attorney Brian Hanson regarding the existence of a legal parking lease. Colvin seconded the motion. The motion passed 4-0.

E [CUP 18-29](#)

Public hearing and consideration of a conditional use permit for a short-term rental at 1616 Sawmill Creek Road in the R-1 district. The property is also known as Lot 3 Olsen Subdivision USS 2184. The request is filed by Anthony and Lindsay Bird. The owners of record are Roger and Shirley Curry.

Attachments: [CUP 18-29 Bird STR 1616 Sawmill Creek Road staff report Nov 7 2018](#)
 [CUP 18-29 Bird 1616 SMC general applicaton](#)
 [CUP 18-29 Bird 1616 SMC str supplemental](#)
 [CUP 18-30 Bird 1616 SMC aerial vicinity](#)
 [CUP 18-29 Bird 1616 SMC plat](#)
 [CUP 18-29 Bird 1616 SMC floor plan](#)
 [CUP 18-29 Bird 1616 SMC parking plan](#)
 [CUP 18-29 Bird 1616 SMC renter information](#)
 [CUP 18-29 Bird 1616 SMC warranty deed](#)
 [CUP 18-29 Bird 1616 SMC photos](#)
 [1616 SMC buffer notice Nov 7 2018](#)
 [CUP 18-30 Bird 1616 SMC mailing labels](#)

Moore gave an overview of the Planning staff report. The applicants, Anthony and Lindsay Bird, were called forward and asked to clarify what they intend to do with both of their properties, #1616 and #1616 1/2. The Birds responded that they are currently living in the smaller house, #1616 1/2. They plan to move into the lower floor of the larger house, #1616, and conduct short-term rentals in the upper floor of #1616 and the entirety of #1616 1/2.

Hughey asked Planning staff to continue to ensure that all rentals in Sitka, both short-term and long-term, are monitored. Bosak responded that the Planning Department annually reports on short-term and long-term rentals, and the next report will be delivered to the Planning Commission in January 2019. The Planning Commission agreed that their concerns regarding this permit were appropriately mitigated by the conditions of approval. There was no public comment.

Colvin moved to approve the conditional use permit for a short-term rental at 1616 Sawmill Creek Road in an R-1 zoning district subject to the attached conditions of approval. The request is filed by Anthony and Lindsay Bird. The owner is Abalonie Point Vistas, LLC. The property is described as Lot 2, Olsen Subdivision, US Survey 2184. The motion passed 4-0.

Colvin moved to adopt and approve the findings within the staff report. The motion passed 4-0.

F [CUP 18-30](#)

Public hearing and consideration of a conditional use permit for a short-term rental at 1616 ½ Sawmill Creek Road in the R-1 district. The property is also known as Lot 2 Olsen Subdivision USS 2184. The request is filed by Anthony and Lindsay Bird. The owners of record are Roger and Shirley Curry.

Attachments: [CUP 18-30 Bird STR 1616.5 Sawmill Creek Road staff report Nov 7 2018](#)
[CUP 18-30 Bird 1616.5 SMC general application](#)
[CUP 18-30 Bird 1616.5 SMC str supplemental](#)
[CUP 18-30 Bird 1616.5 SMC vicinity map 2](#)
[CUP 18-30 Bird 1616.5 SMC plat](#)
[CUP 18-30 Bird 1616.5 SMC floor plan](#)
[CUP 18-30 Bird 1616.5 SMC parking plan](#)
[CUP 18-30 Bird 1616.5 SMC renter information](#)
[CUP 18-30 Bird 1616.5 SMC warranty deed](#)
[CUP 18-30 Bird 1616.5 SMC site photos](#)
[1616.5 SMC buffer notice Nov 7 2018](#)
[CUP 18-30 1616.5 SMC mailing labels](#)

Moore gave an overview of the Planning staff report. The applicants, Anthony and Lindsay Bird, were called forward. The Planning Commission had no further questions for them.

Bosak stated that garage space may be used to meet parking requirements, as decided by the Planning Commission in 2014. There was no public comment.

Colvin moved to approve approve the conditional use permit for a short-term rental at 1616.5 Sawmill Creek Road in an R-1 zoning district subject to the attached conditions of approval. The request is filed by Anthony and Lindsay Bird. The owner is Abalonie Point Vistas, LLC. The property is described as Lot 2, Olsen Subdivision, US Survey 2184. The motion passed 4-0.

Colvin moved to adopt and approve the findings within the staff report. The motion passed 4-0.

G [VAR 18-14](#)

Public hearing and consideration of a variance at 613 Lake Street in the R-1 district for a reduction in the setback from 8 feet to 0 feet for placement of a greenhouse. The property is also known as Lot 2 Block 7 Sitka Broadcasters Subdivision. The request is filed by Dean and Dorothy Orbison. The owners of record are Dean and Dorothy Orbison.

Attachments: [VAR 18-14 Orbison 613 Lake Street Staff Report Nov 7 2018](#)
[VAR 18-14 Orbison 613 Lake St general application](#)
[VAR 18-14 Orbison 613 Lake St supplemental](#)
[VAR 18-14 Orbison 613 Lake St vicinity map 1](#)
[VAR 18-14 Orbison 613 Lake St plat](#)
[VAR 18-14 Orbison 613 Lake St site plan](#)
[VAR 18-14 Orbison 613 Lake St green house](#)
[VAR 18-14 Orbison 613 Lake St neighbor support letter](#)
[VAR 18-14 Orbison 613 Lake St deed](#)
[VR 18-14 Orbison 613 Lake Street from Lake Street](#)
[VR 18-14 Orbison 613 Lake Street greenhouse site](#)
[VR 18-14 Orbison 613 Lake Street property line](#)
[613 Lake St buffer notice Nov 7 2018](#)
[VAR 18-14 Orbison 613 Lake St mailing labels](#)

Moore gave an overview of the Planning staff report. Chair Spivey asked Planning staff if the greenhouse would be mobile. Bosak replied that it would be on a permanent foundation, and above 30 inches.

The applicants, Dorothy and Dean Orbison, were called forward. The Commission asked no questions of them. No public comment was received.

Hughey moved to approve the variance request for 613 Lake Street in the R-1 district. The request is for the reduction of the side setback from 8 feet to 0 feet for the placement of a permanent greenhouse. Colvin seconded the motion. The motion passed 4-0.

Hughey moved to adopt and approve the required findings for minor expansions, small structures, and signs. Colvin seconded the motion. The motion passed 4-0.

VIII. ADJOURNMENT

Chair Spivey moved to adjourn at 8:52 PM. The motion passed 4-0.

ATTEST: _____
Lauren Moore, Interim Planning Director