

**City and Borough of Sitka  
PLANNING AND ZONING COMMISSION  
Minutes of Meeting  
March 20, 2007**

**Present:** Pat Hughes, Bob Goss, Don Alexander, Brian McNitt, Planning Director Wells Williams, Planner Sara Russell, and Secretary Maria Finkenbinder

**Members of the Public:** Tom Mattingly, Connor Nelson, Sidney Wilson, Klaudia Lecesse, Kim Elliot, Suzy Sturm, Fred Reeder, Denton Pearson, Bob Carlson, Walt Pasternak, Sue and Mike Litman, Andy Miller (Sentinel). There were other members of the public including Assembly members Cheryl Westover and Jack Ozment who were present but did not come forward to testify.

Chair Hughes called the meeting to order at 7:00 pm.

**Consideration of Minutes from the March 6<sup>th</sup>, 2007 meeting:**

Ms. Russell pointed out that the following changes in the minutes:

- (1) On page 2, add the phrase "and (4) increase the lot coverage to 38%" in the Davenport motion. The motion shall now read as:

*"M/S Alexander/Goss moved to approve a triple variance request filed by Erik Davenport at 301 Nicole Drive to (1) reduce the front setback facing Nicole Drive to 10 feet, (2) reduce the front setback facing Patterson Way to 10 feet, and (3) reduce the rear setback opposite of Nicole Drive to 5 feet, **AND (4) INCREASE THE LOT COVERAGE TO 38%...**"*

- (2) On page 7, under Public Comments, third paragraph (which starts with "Ms. Stedman urged the Board..."), delete the phrase "without any permit or other written authorization." The paragraph shall now read as:

*"Ms. Stedman urged the Board to keep in mind a person's ability to access a waterfront property when discussing access by kayaks, floatplanes, boats, raft, etc. She referred to a provision in the Alaska Administrative Code which lists generally allowed uses on state-owned public domain land ~~without any permit or other written authorization...~~"*

**MOTION:** **M/S McNitt/Alexander** moved to approve the minutes from the March 6<sup>th</sup>, 2007 meeting, as amended.

**ACTION:** Motion **PASSED 4-0** on a voice vote.

**The evening's business:**

**MAJOR SUBDIVISION – CONCEPT PLAT  
TO CREATE 5 COMMERCIAL CONDOMINIUM UNITS  
AND 1 COMMERCIAL CONDOMINIUM UNIT  
W/ A RESIDENTIAL CARE-TAKER APARTMENT  
215 SMITH STREET  
SITKA COMMERCIAL CONDOMINIUMS**

*Public hearing and consideration of a concept plat for a major subdivision to create 5 commercial condominium units and 1 commercial condominium unit with a residential care-taker apartment at 215 Smith Street. This request is filed by Sitka Commercial Condominiums. The property is also known as Lot 1 Smith Street Industrial Subdivision. Owner of record is Tom Mattingly.*

Ms. Russell briefly showed the layout of the two-story structure which is located on Smith Street just past the

Allen Marine retail store. It has 6 units identified as 1A to 1F with Unit 1A closest to Smith Street. Unit 1F has a 2-bedroom care-taker apartment on the second floor which can be accessed through a flight of stairs at the back of the building. Units 1A, 1C and 1E have mezzanines on the second floor. The units range in size from 1189 square feet to 1244 square feet. She noted that the parking diagram shows 25 parking spaces

She pointed out that the project needs to go through the major subdivision process which requires three meetings. No formal action is required this evening.

On the Chair's query regarding parking requirements, Mr. Williams said that the complex has 25 parking spaces which is exactly the number required for building of that size.

*Tom Mattingly's comments*

Mr. Mattingly, owner of record, told the Board that their intent is to sell each individual unit except Unit 1F and the care-taker apartment which will be sold as one unit.

On Mr. McNitt's question whether the condominium agreement allows an owner to sublease the mezzanine and the lower space separately, Mr. Mattingly replied in the affirmative and added that the condominium association will have a set of officers or a board who will decide on the policies. He also said that they picked a legal team who has a long experience in putting together condominium agreements.

He invited the Board to check out the building. The place is open during the day.

*Additional Staff Comments*

Mr. Williams said that the property is zoned industrial and what the applicant is doing is an industrial condominium. This particular kind of condominium arrangement is the first to come in to the Sitka market. A buyer of one unit basically gets two things: (1) the interior space of the unit and (2) a share into the common areas which is an undivided interest in the spacing and sheet rock that divides two units, the exterior of the building, and the roof. That share makes the owner a permanent member of the condominium association. He pointed to the lengthy agreement included in the packet which describes property ownership, owner responsibilities, how the association works, etc. He urged the members to go through the document particularly Article 7 which describes how things are laid out.

Mr. Williams also said that this kind of project is common in Seattle. Juneau has similar projects but they do not regulate it and do not send them through the major subdivision process because CBJ views all condominium units as one individual corporate owner. On the other hand, the Sitka General Code requires projects like these to go through a major subdivision process so the City can crosscheck that all property rights are protected.

This agenda item will be back before the Board on April 3<sup>rd</sup> with a preliminary plat.

**SUBDIVISION REPLAT  
CREATING TWO NEW LOTS  
105 AND 107 LITTLEBYRD WAY  
CONNOR NELSON**

*Public hearing and consideration of a subdivision replat for 105 and 107 Littlebyrd Way to subdivide Lots 3 and 4 of the Littlefield II Subdivision, creating two new lots. The request is filed by Connor Nelson.*

Ms. Russell told the Board that the applicant purchased two vacant commercially zoned lots in April of 2006. Mr. Nelson would like to build two residential structures on the lots and for better utilization, he is requesting to relocate the property line. Essentially, the request involves rotating the property line by 90 degrees (instead of running parallel to HPR, it becomes perpendicular to HPR) so that the upper half of Lot 3 and Lot 4 becomes Lot 2 and the lower half of lot 3 and lot 4 becomes Lot 1. As a result, the top portions of the two

new lots will have a good building pad.

Mr. Goss thought it is a good idea as it will give the houses to be built on the two lots a better view.

Mr. Connor explained that the lower lot is substandard. He told the Board that two of their children want to build houses on those lots. On the issue of access, he explained that they've laid out access to the two lots which he said is a little bit challenging but they were able to work it out. The main road goes up at about 20% and it comes to a part which is pretty flat and it goes up 15% to the top lot. He said the parking is little bit crowded at the top but they are working on it.

On the Chair's question if the applicant needs a grading variance, Mr. Williams said that he does not. If it is a City street, he would need a variance to go over 12%. But since it is a private roadway, the Code provides that he can't go above 20%.

**MOTION:**        **M/S Goss/Alexander** moved to approve a subdivision replat for 105 and 107 Littlebyrd Way to subdivide Lots 3 and 4 of the Littlefield II Subdivision, creating two new lots. The request is filed by Connor Nelson.

**ACTION:**        Motion **PASSED 4-0** on a voice vote.

**ZONING ORDINANCE TEXT AMENDMENT  
REVISING THE DEFINITION OF "LODGE"  
AS IT APPEARS IN SITKA GENERAL CODE TITLE 22**

*Public hearing and consideration of a zoning ordinance text amendment revising the definition of the term "lodge" as it appears in Sitka General Code Title 22. The proposed definition reads, "Lodge means a premises that provides accommodations and a variety of other related services, with or without an exchange of money, on a regular on-going basis, during any season, for guests engaging in recreational activities such as sight-seeing, fishing, etc. Lodges employ at least one person to provide guest services such as food preparation, housekeeping, sport fishing, sight-seeing, etc."*

Mr. Williams said that the language as presented is based on the Board's directive from the last meeting. He maintained that the proposed lodge definition is not legally-defensible.

Ms. Russell read for the record the correspondence received by the Planning Office from Barbara Teepe and Jim Steffen. Ms. Teepe pointed out in her letter that as the number of lodge-type facilities continues to grow in the Sitka vicinity, there is a need to clarify the definition of such facilities in order to make sure everyone knows what type of operations fall under the conditional use permitting process. She believed that a lodge with guests, whether paying or non-paying, needs to fall under the same definition simply because the operation and its impacts are the same.

Mr. Steffen's email indicated that as a property owner on Galankin Island, he is in favor of the lodge definition as presented tonight. He believed that the intent of the present language regarding "at least one employee" is to move those with higher impact lodging intentions toward the public conditional use process so that neighbors on subdivided or adjoining islands have the opportunity to evaluate the potential impacts of those intentions. Mr. Steffen's letter also pointed out that the Planning Director favors a looser definition as far as employees are concerned but since the public testimony does not seem to support this approach, he urged the Board to proceed with the current definition.

In response to Mr. Steffen's comments, Mr. Williams clarified that the Planning Office is not advocating a looser definition. He said that he is just stating that the current definition is not legally-defensible. He cannot find any Code or haven't found any precedence or a specific definition that's cleared of legal challenges. Neither had he found any evidence that a definition as proposed has survived a legal challenge. He pointed out that he has an obligation to inform the Board about it. He expressed apprehension that the definition might end up as a fairly expensive proposition. He added that most Codes contemplate monetary

transaction.

Mr. Goss remarked that everyone needs to understand that for a conditional use permit to be granted, an applicant must specifically their intent and it is up to the Assembly whether to grant the permit or not.

#### *Public Comments*

Ms. Elliot testified that the current wording is worth taking the chance to get beaten in court.

Ms. Litman urged the Board to pass it on to the Assembly, noting its overwhelming public support. She said that they should have asked the City Attorney to review the language. She stressed that there is a problem with non-paying guests on the islands and it needs to be addressed.

Ms. Wilson asked the Board to leave the language as proposed and have it debated at the Assembly level. She pointed out the need to control growth of lodges and to strengthen regulations.

Mr. Pearson reiterated his previous comment that by setting the threshold of one employee in the definition of a lodge, the Board is courting the law of unintended consequences. He noted that provision he earlier proposed, "*TO INDIVIDUALS OTHER THAN THE OWNERS OF THE PROPERTY AND FAMILY MEMBERS*" is gone. He encouraged the Board to put it back in the definition. He explained that as worded, the proposed definition is creating a situation in which people are forced to get a lodge conditional use permit when they invite family members to visit. He added that the change in the definition would make it impermissible to have a hired housekeeper in an R1 zone.

Ms. Sturm expressed appreciation to the Board for the work they've done and urged them to push it on to the Assembly. She said the Assembly has the right to send it back to the Board if it doesn't work.

Mr. Pasternak stated that he is comfortable with the definition and told the Board to be done with it. He noted that the lodge and charter businesses have grown exponentially in recent years.

Mr. Reeder cited certain provisions in the US Constitution which he believed are being violated by the proposed definition. He averred that the if the Board requires a conditional use permit for people to have guests stay at their homes in their islands, they can do the same thing to him in an R1 zone. He told the Board that they can't control someone's guests; they can't control who can visit someone's home. He expressed disbelief that the Commission would even want to change the definition.

Mr. Litman countered Mr. Reeder's remark by saying that the phrase "regular on-going basis" covers Mr. Reeder's concerns.

Mr. Carlson thanked Ms. Litman for bringing the issue forward and the Board for addressing the issue. He said the definition is excellent although he recognized that it might need modification in the future. He clarified that the intent is not to prohibit lodges but only to make it conditional use.

#### *Additional Commission Comments*

Mr. McNitt said that they are close to reaching a definition which may not be perfect but close to it. He acknowledged that the Assembly may further tweak the definition. In response to Mr. Pearson's comment about the deletion of his proposal about exception of family members, he pointed out that Mr. Williams recommended its deletion.

Mr. Alexander remarked that a lodge is a lodge and they couldn't get any closer to a definition that what they are proposing.

**MOTION:** **M/S Goss/McNitt** moved to recommend to the Assembly a zoning ordinance text amendment revising the definition of the term "lodge" as it appears in Sitka General Code

Title 22. The proposed definition reads, "Lodge means a premises that provides accommodations and a variety of other related services, with or without an exchange of money, on a regular on-going basis, during any season, for guests engaging in recreational activities such as sight-seeing, fishing, etc. Lodges employ at least one person to provide guest services such as food preparation, housekeeping, sport fishing, sight-seeing, etc."

**ACTION:** Motion **PASSED 4-0** on a voice vote.

Mr. Williams said that the Board's recommendation goes to the Assembly on April 10<sup>th</sup> in the form of an ordinance.

**ZONING ORDINANCE TEXT AMENDMENT  
REVISING SITKA GENERAL CODE TITLE 22 TABLE 22.16.015.1  
TO MAKE LODGES, HOTELS, MOTELS  
CONDITIONAL USES ON UNSUBDIVIDED ISLANDS  
IN THE GENERAL ISLAND DISTRICTS**

*Public hearing and consideration of a zoning ordinance text amendment revising Sitka General Code Title 22 Table 22.16.015.1 Residential Land Uses to make lodges, hotels, motels, short-term rentals, and bed and breakfasts conditional uses on unsubdivided islands in the General Island (GI) district. The uses are currently permitted uses on unsubdivided islands in the General Island (GI) district.*

Mr. Williams explained that what the proposal essentially does is change the residential land use table in the Code and tightens up the general islands zoning district.

Mr. McNitt said that the intent is to treat both subdivided and unsubdivided islands exactly the same as they've heard that the impacts are the same.

Mr. Goss pointed out some unsubdivided islands are in close proximity to subdivided islands.

*Public Comments*

On Ms. Speck's query on how footnote 10 correlate to the new table, Mr. Williams said that footnote 10 becomes moot and needs to be dropped.

When the Chair sought additional public comments, some members of the public raised their hands to show support for the zoning text amendment.

**MOTION:** **M/S Goss/Alexander** moved to recommend to the Assembly a zoning ordinance text amendment revising Sitka General Code Title 22 Table 22.16.015.1 Residential Land Uses to make lodges, hotels, motels, short-term rentals, and bed and breakfasts conditional uses on unsubdivided islands in the General Island (GI) district, with the deletion of footnote 10.

**ACTION:** Motion **PASSED 4-0** on a voice vote.

Mr. Williams said that the Board's recommendation goes to the Assembly on April 10<sup>th</sup> in the form of an ordinance.

**ZONING ORDINANCE TEXT AMENDMENTS  
USE TABLE 22.16.015-2 CULTURAL/RECREATIONAL USES  
TO REGULATE THE TYPES OF DOCKS THAT ARE  
PERMITTED, CONDITIONAL AND PROHIBITED USES IN  
ISLAND ZONING DISTRICTS**

*Public hearing and consideration of a zoning ordinance text amendments to Use Table 22.16.015-2*

*Cultural/Recreational Uses that regulate the types of docks that are permitted, conditional and prohibited uses in island zoning districts.*

Mr. Williams explained that under the existing Code, commercial docks are not regulated in the island zoning districts. What the proposal does is to require conditional use permits for commercial docks in islands, increase the number of slips for community personal use docks, and allows float planes and charter boats to come and go on intermittent basis if they are solely used by the owners of the property for non-commercial purposes. It also allows island residents to do personal seafood processing on a dock but not for commercial purposes. All non-private use of waterborne aircraft would require a conditional use approval.

On Mr. McNitt's query regarding the difference between community personal use docks and personal use docks, Mr. Williams explained that the new definitions carried over the restrictions on the personal use dock to the community personal use dock. These restrictions include covered or uncovered lease slips, seafood processing, sale of seafood, float houses, liveaboards or float planes unless for non-commercial purposes.

Mr. McNitt suggested adding the word "commercial" before the phrase "seafood processing" in the definition of a community personal use dock for clarity.

**MOTION:** **M/S McNitt/Alexander** moved to recommend to the Assembly a zoning ordinance text changes revising Sitka General Code Use Table 22.16.015-2 Cultural/Recreational Uses that regulate the types of docks that are permitted, conditional and prohibited uses in island zoning districts. In addition, it has been moved and seconded to insert the word "commercial" before the phrase "seafood processing" in the definition of a community personal use dock.

**DISCUSSION:** Ms. Wilson spoke about State permitting requirements to which Mr. Williams responded that the State recognizes local zoning authority. He said that the State Department of Natural Resources (DNR) looks at local zoning regulations before issuing permits.

Ms. Wilson also expressed concern about float planes and requested the Board to address the float plane regulation in the future.

Ms. Elliot shared the same concern about float planes and suggested that float planes be required to get a conditional use permit or go through a process wherein neighbors will be notified.

Mr. Pasternak expressed fear that those who haven't applied for permits will be grandfathered in. He warned the Board to watch out for people asking for grandfather rights. He also said that there is not enough enforcement on island districts.

Mr. Williams responded that the City Planning Office is not an enforcement agency for the Corps of Engineers and DNR. The Planning Office do assist these agencies if requested. He stressed that the current proposal is intended to provide a regulatory framework for commercial docks on islands.

Ms. Stedman testified that the Corps looks at docks, both commercial and non-commercial. There is a process. It is regulated and provides an opportunity for public review and public input on what's supposed to happen and what might happen.

Mr. McNitt remarked that Sitka is a unique place. It is changing rapidly over the last ten years and regulations will continue to change along the way.

**ACTION:** Motion **PASSED 4-0** on a voice vote.

Mr. Williams said that the Board's recommendation goes to the Assembly on April 10<sup>th</sup> in the form of an

ordinance.

## **PLANNING DIRECTOR'S REPORT**

Mr. Williams informed the Board about the City Administrator's email recommending that boards and commissions hold a visioning session to be moderated by a facilitator, similar to the Assembly's visioning session. He suggested that they schedule it in May at the earliest.

The members unanimously agreed that it is worth a try. Mr. McNitt suggested that they hold a joint visioning session with the Long Range Planning Commission.

On the Chair's question if get the public involved in the visioning session, Mr. Williams said it is the Board's call. He encouraged the Board to think incrementally or the process may end up burdensome.

Mr. Alexander informed the members that he will be gone from April 4-22. Mr. Williams said that he will be gone during the last two week of June while Ms. Russell will be on vacation leave two weeks in April.

### *Public Comments*

Ms. Lecesse expressed support to the visioning session, saying that she would love to see a vision for Sitka that includes clear parameters on the way Sitka should look. She felt that the visioning session is one opportunity to include public input.

Ms. Elliot pointed out that the public can submit their input through emails to the Board.

Ms. Wilson agreed that the Board should get together with LRPC and create a bigger picture and long term vision for Sitka. She felt that there should be more planning and oversight, and more organized regulations.

## **PUBLIC BUSINESS FROM THE FLOOR**

Mr. Carlson stressed the need for enforcement, saying that the Board are creating sets of rules but people violate them without consequence. He pointed out that based on the police blotter published on the local paper, the Police enforces various regulations such as noise, animal control, etc. He thought the zoning regulations should similarly be enforced.

## **ADJOURNMENT**

The meeting adjourned at 8:25 pm.

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**Chair, Pat Hughes**

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**Secretary, Maria Finkenbinder**