

IN THE MATTER OF

APPEAL FROM THE DECISION OF THE HAINES BOROUGH PLANNING  
COMMISSION DENIAL OF A TEMPORARY CONDITIONAL USE PERMIT  
APPLICATION FOR DEVELOPMENT OF A HELIPORT ON LOT 10 SUNDBERG  
SUBDIVISION

Appellant: Big Salmon Ventures LLC  
Appellant's Representative: Scott Sundberg

Appellee: Haines Borough Planning Commission  
Appellee's Representative: Julie Cozzi, Interim City Manager

Having sat to hear an appeal pursuant to Section 18.30.060 of the Haines Borough Code and held a properly noticed public hearing on the above-referenced appeal on March 11, 2014, considered all of the evidence in the record as identified in this decision and all of the additional information provided at the appeal hearing and having voted to reverse the decision of the Planning Commission, and order the Commission to issue a Conditional Use Permit with conditions the Borough Assembly of the Haines Borough adopts the following:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

**FINDINGS OF FACT**

1. The property involved in this appeal is Lot 10 Sundberg Subdivision located at Mile 26 Chilkat Lake Road within the boundaries of the Haines Borough ("the Property").
2. The owner of the Property is Big Salmon Ventures, LLC.
3. The Property is located in a land use district designated on the Haines Borough Zoning Map as Amended as a General Use district.
4. The Property is about 20.79 acres.
5. There is no evidence in the record that the Property is adjacent to a state-identified anadromous stream.
6. On or about January 27, 2014, Big Salmon Ventures LLC submitted an application for a conditional use permit to allow development of a commercial heliport on the Property ("the Application").
7. On January 29, 2014 the Application was accepted as complete.

~~108~~. Material in the record indicates that it is possible in some conditions for the decibel level associated with use of the portion of the Property proposed for use as a helipad to be measured at 62-69 decibels at one or more points on the Property while a helicopter was either in flight or on the ground refueling while the engine was operating.

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9. Decibel readings were also taken at points on adjoining property used as a year round residence with similar results.

~~10~~. On February 13, 2014 the Planning Commission held a public hearing on the Application. The Commission vote on a motion to approve a temporary one year permit with conditions that are stated in the permit application was 3 yes and 4 no so the CUP application with the proposed one year permit period was denied.

~~1211~~. The Commission then passed by a vote of 6-1 a recommendation that the Assembly authorize the Borough Manager to issue a temporary conditional use permit that allowed for a limited pre-approved Borough monitored number of landings all of which were to be at least 1,100 feet from the centerline of Chilkat Lake Road between the hours of 8:30 and 4:30 to gage impacts with continued noise measurement and monitoring.    

~~1312~~. The Planning Commission did not prepare any written findings of fact. The Assembly has reviewed the recording of the Commission deliberations at the meeting and has determined that the main factor leading to denial of the application was noise associated with the proposed use as referenced in objections to the proposed use received from members of the public.

~~1413~~. A timely appeal from the decision of the Planning Commission was filed by Big Salmon Ventures on February 18, 2014.

## CONCLUSIONS OF LAW

1. The following items, in addition to those presented by Appellant and Appellee at the appeal hearing are considered part of the record of this proceeding:

Minutes and recording of 02/13 Planning Commission Meeting  
Pages 42-137 of the Assembly Packet for the March 11, 2014  
Assembly meeting  
3/8/2014 Basford e-mail  
3/8/2014 Jans e-mail

2. As the party challenging the decision of the Commission, Big Salmon Ventures had the burden of proof in establishing the permit was wrongfully denied. HBC 18.30.060(B).

3. The General Use District is intended to allow as broad a range of land uses as possible. Any use is allowed but a conditional use permit is required for high impact uses. HBC 18.70.030(D).

4. Any property within the General Use District proposed for use as a commercial heliport in support of commercial ski tours requires a conditional use permit. HBC 18.70.030(D)(5), HBC 5.20.080(F)(14)(d).

45. The conditional use permit process is intended to evaluate proposed uses and issues of community-wide importance and subject those proposed uses to a broader public process and higher standards than approvals by the manager. The conditional use process is intended to afford the commission and the community the flexibility necessary to make development approvals that are appropriate to specific sites, uses, -or designs provided certain conditions are met. HBC ~~18.50.010~~ 18.50.010.

56. Before a conditional use may be allowed the Planning Commission must find that all of the following criteria are met:

A. The use is located on the site so as to avoid undue noise and other nuisances and dangers.

B. The development of the use is such that the value of the adjoining property will not be significantly impaired.

C. The size and scale of the use is such that existing public services and facilities are adequate to serve the proposed use.

D. The specific development scheme of the use is consistent and in harmony with the comprehensive plan and surrounding land uses.

E. The granting of the conditional use will not be harmful to the public safety, health or welfare .

F. The use will not significantly cause erosion, ground or surface water contamination or significant adverse alteration of fish habitat on any parcel adjacent to state-identified anadromous streams .

G. The use will comply with all required conditions and specifications if located where proposed and developed, and operated according to the plan as submitted and approved.

H. Comments received from property owners impacted by the proposed development have been considered and given their due weight.

HBC 18.50.040(A). Finding that even one of the general standards is not met requires the conditional use to be denied without consideration as to whether any of the other general standards are met.

67. The conditions to be included in the permit must be taken into consideration when determining whether the criteria for issuance of a conditional use permit have been met.

78. The denial of the CUP application with a one year time limitation but the adoption of a recommendation for issuance of a temporary conditional use permit implies that a time limitation of less than one year or the imposition of additional conditions may have been approved by the Commission. It also implies that the Planning Commission assumed the interim borough manager had the legal authority to issue conditional use permits.

89. The planning commission erred by giving undue consideration to the statements related to undue noise as opposed to the decibel information and by failing to consider fully the difference in noise impact between a one year permit and a permanent conditional use permit which contained the other conditions referenced in the Planning Commission recommendation. In particular, the Commission's apparent belief that the Borough Manager has authority to issue conditional use permits on a temporary basis is incorrect as a matter of law.

910. If the Planning Commission had incorporated its recommendations into a conditional use permit that permit would have met all eight of the standards of section 18.50.040(A). Therefore such a permit should have been granted by the Commission provided it was subject to additional conditions as set forth in these findings of fact and conclusions of law .

1011. In particular, the Assembly finds that restricting the conditional use of the property as a heliport for a period expiring in one year and that is further subject to the conditions set forth in this decision results in location of a use on the property which does not generate "undue noise" as that phrase is used in HBC 18.50.040(A) and also provides "due weight" to the comments received from property owners impacted by the proposed use.

1112. The Planning Commission is hereby directed to issue a Conditional Use Permit to Big Salmon Ventures, LLC for use of Lot 10, Sundberg Subdivision as a heliport with the following conditions:

- a. Duration of Period of Use. This is a temporary conditional use permit which shall commence April 1, 2014 and shall expire May 3, 2015.
- b. Operating Hours. 8:00 A.M. to 6:00 p.m..
- c. Only one company is allowed to use the heliport.
- d. No use of Bell 212 helicopters.
- e. The following conditions proposed by the applicant are also included in the permit:
  1. Fuel storage to be done in accordance with ADEC standards with a fuel spill containment program in place before operations begin.

2. Specific identified GPS flight paths after take off and landing that will create the least amount of noise and impact to nearby residences and take place over state lands to be submitted to the Borough, tracked using GPS tracking and reported in the manner required by SEABA's commercial ski tour permit.

3. 2015 Dates of operation: February 1<sup>st</sup> through May 3, 2015;

2014 Dates of operation: No operations after May 3, 2014.

4. Allowance of emergency use for state and federal response, medical, firefighting.

5. Up to 1 voluntary shut down of operations per month for special nearby events that would be considered a nuisance or would disturb the quality of the planned event.

~~12~~13. The conditional use with the above conditions meets the standard of section 18.50.040(A)(2) because there is no evidence in the record that use of the property for a heliport for a year -subject to these conditions will significantly impair the value of the adjoining property.

~~13~~14. The conditional use with the above conditions meets the standards of section 18.50.040(A)(3) because the size and scale of the proposed heliport is adequately served by existing borough services.

~~14~~15. The conditional use requested meets the standards of section 18.50.040(A)(5) because granting the conditional use with the conditions specified above results in a seasonal use during a fairly short window for one year which is not harmful to the public safety, health or welfare.

~~15~~16. The conditional use with the above conditions meets the standards of section 18.50.040(A)(4) because; 1) a specific development scheme which is consistent and in harmony with the comprehensive plan accompanied the application and; 2) the limited temporary use allowed provides an opportunity to more objectively assess longer term impacts and noise associated with use of the Property as a heliport which is consistent with the comprehensive plan suggestion that the Borough develop a management plan and criteria for siting of heliports and ; 3) because a variety of uses with noise impacts are already permitted in the general use district.

~~16~~17. The conditional use with the above conditions meets the standards of section 18.50.040(A)(6) because a heliport on the Property will not cause erosion, ground or surface water contamination.

~~17~~18. The conditional use with the above conditions meets the standards of section 18.50.040(A)(7) because the Assembly presumes the applicant will comply with all permit conditions. If this assumption proves incorrect the permit may be revoked as allowed by Borough code.

Wherefore, having set forth findings of fact and conclusions of law, the Borough Assembly of the Haines Borough sitting as an appeal body under HBC 18.30.060 hereby **REVERSES** the decision of the Haines Borough Planning Commission denying the application for a conditional use to allow use of Lot 10, Sundberg Subdivision as a heliport and **ORDERS** the Planning Commission to issue a conditional use permit to Big Salmon Ventures LLC with the conditions contained above.

Duly adopted this \_\_\_<sup>th</sup> day of March, 2014.

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Hon. Stephanie Scott  
Mayor, Haines Borough