

MEMO

To: Petersburg Borough Assembly, sitting as the Board of Adjustment under PMC Chapter 18.36

From: Liz Cabrera, Community and Economic Development Director

Re: Appeal of Central Council of the Tlingit & Haida Indian Tribes of Alaska (CCTHITA or “the appellant”) from the Platting Board's Non-Action on the Application for Minor Subdivision, 1200 Haugen Drive (PID 01-012-010)

Meeting Date: August 17, 2026

Purpose

This memo describes the role of the Borough Assembly, sitting as the Board of Adjustment on CCTHITA's appeal. It does not recommend how the Board should vote; that is a decision for the Board to make on the record before it.

Role of the Board of Adjustment

- The Board of Adjustment considers appeals from the Planning Commission, sitting as the Platting Board, when it is alleged there was an error made by the Platting Board concerning a subdivision matter.
- The Board of Adjustment may reverse or affirm, wholly or in part, or may modify the order, requirement, decision, or determination appealed, and may make such order, requirements, decision, or determination as ought to be made based on pertinent law.
- The Board of Adjustment may exercise its independent judgment on legal issues raised by the appellant. Legal issues are those matters that relate to the interpretation or construction of ordinances or other provisions of pertinent law.
- The burden of proof that a decision was made in error, or the decision should be modified or will have an adverse effect, is on the appellant.

CCTHITA's Appeal

CCTHITA's Notice of Appeal and accompanying letter are in the packet and set out its arguments for why the Platting Board's non-action on its application was in error, should be modified, and will have an adverse effect under PMC 18.36.030(D). Any written comments or objections the Borough receives to the appeal will also be provided to the Board.

Proposed Findings of Fact and Conclusions of Law

The decision of the Board of Adjustment shall be based upon findings and conclusions adopted by the Board. Attached are two different proposed decisions for the Board of Adjustment to utilize, should it choose to do so. These are not being provided to recommend a particular decision, but to assist the Board in saving time in drafting a clear decision after voting. The Board can adopt, change or reject any part of a proposed Decision to fit its final vote.

Draft A: Partial Grant of the Appeal; Remand the Matter to the Platting Board

Rather than deciding the merits of CCTHITA's application for a minor subdivision, the Board of Adjustment would direct the Planning Commission sitting as the Platting Board to vote on the application on the existing record, at its next regular meeting, and to adopt findings supporting whatever decision it reaches. A written decision by the Platting Board would allow a further substantive appeal to be made on the written findings of the Platting Board.

Draft B: Deny the Appeal; Affirm the Decision of the Platting Board

This would deny the appeal. The denial should rest on findings and conclusions the Board of Adjustment adopts itself, since the Platting Board adopted none.

Attachments

- Draft Decision A – Grant Appeal in part, and Direct Platting Board Vote and Adopt Findings
- Draft Decision B – Affirm Denial of the Appeal
- PMC Chapter 18.36 (Appeals)

**Petersburg Borough Assembly, sitting as the
Board of Adjustment**

**Decision on July 23, 2026 Appeal filed by the Central Council of the Tlingit &
Haida Indian Tribes of Alaska**

On August 17, 2026, by a vote of - , the Assembly of the Petersburg Borough, sitting as the Board of Adjustment, having considered the appeal filed by the Central Council of the Tlingit & Haida Indian Tribes of Alaska (“CCTHITA”) from the failure of the Petersburg Borough Planning Commission, sitting as the Platting Board (“the Platting Board”), to consider CCTHITA's Application for Minor Subdivision, hereby GRANTS the appeal in part, and REMANDS the matter back to the Platting Board, with direction to take formal action on the Application at its next regularly scheduled meeting, and by no later than September 25, 2026.

Based upon the evidentiary record on appeal, and the written arguments of those opposing or supporting the appeal, the Board of Adjustment hereby adopts the following Findings of Fact and Conclusions of Law.

Findings of Fact:

1. The legal description of the parcel that is the subject of this appeal is a portion of U.S.S. 1168, Petersburg Townsite, Parcel ID 01-012-010, to be subdivided as shown on the proposed plat as “Parcel A” (“the site”). The site contains approximately 10,036 square feet (0.23 acres) of vacant, unsubdivided land owned by the Petersburg Borough, currently zoned Public Use (P-1).
2. By Resolution 2026-16, adopted June 15, 2026, the Borough Assembly approved the sale of the site to CCTHITA, for \$45,000.00, pursuant to a Contract of Sale dated June 23, 2026. The Contract of Sale is contingent upon, among other things, CCTHITA's timely subdivision of the site in accordance with PMC Chapter 18.20.
3. An application for a minor subdivision at 1200 Haugen Drive (“the application”) was submitted on behalf of CCTHITA by Richard J. Peterson, President, in furtherance of Assembly Resolution 2026-16.
4. Borough staff reviewed the application and proposed plat and recommended approval of the minor subdivision subject to conditions. The Public Works, Power & Light, Police, and Fire/EMS Departments each reviewed the application and reported no comments or objections.
5. On June 22, 2026, a notice of the public hearing to be held on the application was mailed to all owners of property within six hundred feet of the exterior boundary of the property that is the subject of the application.
6. On June 23, 2026, a notice of public hearing was posted at the subject property, 1200 Haugen Drive.

7. On July 7, 2026, notice of the public hearing was posted at the Municipal Building and provided to the local radio station for broadcast.
8. On July 8, 2026, a notice of the public hearing was posted to the borough's web site and posted on the notice board at the U.S. Post Office building.
9. On July 9, 2026, a notice of the public hearing was published in the local newspaper of general circulation.
10. On July 14, 2026, the public hearing on the application was held by the Platting Board, all seven members being in attendance, and the Board received written and oral testimony from the public regarding the application.
11. Following the public hearing, a motion was made by Commissioner Floyd to approve the application for minor subdivision. No motion to second was made by any commissioner, and Commissioner Floyd's motion died for lack of second.
12. Since no motion to approve or deny was voted on, no decision was recorded in the minutes, and no findings of fact were adopted or signed by the chairman.
13. On July 23, 2026, pursuant to PMC Chapter 18.36, CCTHITA, as the applicant, filed a Notice of Appeal from the Platting Board's failure to consider the application.¹
14. The hearing on the appeal was scheduled to be heard by the Petersburg Borough Assembly, sitting as the Board of Adjustment, at a meeting on August 17, 2026, at 5:30 PM.
15. On August 6, 2026, notice of the appeal and of the Board of Adjustment appeal hearing were mailed to the persons entitled to notice of the proceedings before the Platting Board.
16. General public notice of the Board of Adjustment meeting was posted at least five calendar days prior to the date of the meeting.
17. The Board of Adjustment met on August 17, 2026, and at the hearing considered the appeal on the evidentiary record before it, including review of the materials submitted and presented to the Platting Board, a transcript of the relevant portions of the Platting Board meeting, the appeal filed by CCTHITA, and written arguments from the public in support of or in opposition to the appeal.

Conclusions of Law:

¹ CCTHITA timely filed their appeal on July 23, 2026, however the Borough provided the applicant with the incorrect appeal form. The correct appeal form was then provided, and CCTHITA was instructed to resubmit their appeal by August 5, 2026.

- 1) The site is located within the Petersburg Borough, and the Borough has jurisdiction over platting and subdivision matters within Service Area No. 1.
- 2) The Borough Planning Commission serves as the Platting Board for the Borough. PMC 18.12.010.
- 3) Pursuant to Resolution 2026-16, CCTHITA, through its President, submitted an application for a minor subdivision plat, proper in form, for a portion of a Borough-owned parcel located in Service Area No. 1.
- 4) Notice of the Platting Board meeting on the application was provided to the public and to surrounding property owners, posted, and published.
- 5) A public hearing was held before the Platting Board on the application for a minor subdivision plat, as required by PMC 18.12.060.
- 6) The July 23, 2026 CCTHITA appeal from the Platting Board's failure to act on the application and that is the subject of this Decision was timely filed under PMC 18.36.030(B).²
- 7) Notice of the appeal and of the appeal hearing before the Board of Adjustment was provided to the public and to those entitled to notice of the Platting Board proceedings in compliance with PMC 18.36.040(A) and (B).
- 8) Per PMC 18.12.050, *Action on Application*, the Platting Board is required to take formal action on an application for a minor subdivision plat "by voting on a motion to approve or deny an application." The Board's decision approving or denying the application is to be recorded in the minutes prepared by the secretary to the Board. Further, the Board action is to include findings of fact supporting the decision, based on the facts presented and the Board's debate. A decision is adopted when signed by the chairman.
- 9) PMC 18.12.050 imposes a mandatory duty on the Platting Board to take formal action by vote, with recorded findings on applications properly before it.
- 10) The Board failed to vote on, record, or adopt findings on the CCTHITA application, and this failure constitutes a failure to act contrary to PMC 18.12.050.
- 11) This failure to act is appealable under PMC 18.36.030.
- 12) As no decision on the merits of the application was ever rendered by the Platting Board, there is no fact-based decision for the Board of Adjustment to affirm, reverse, or modify. Remand is the appropriate remedy to ensure the application receives the formal action required by PMC 18.12.050.

Accordingly, the appeal is GRANTED in part, and the matter is hereby REMANDED to the Planning Commission, sitting as the Platting Board, with direction to take formal action on the application for Minor Subdivision, as required under PMC 18.12.050, at its next

² See footnote 1.

regularly scheduled meeting, and by no later than September 25, 2026. The Board shall issue a written decision approving or denying the application together with findings of fact supporting that decision. The Platting Board's decision on remand, as directed hereunder, is subject to appeal under PMC 18.36.030.

Robert Lynn, Borough Mayor

Dated: _____

Certificate of Service: This Decision was sent on August _____, 2026, by U.S. Mail to the following: See attached mailing list

Rebecca Regula, Borough Clerk

Notice: This is notification of a Final Decision of the Board of Adjustment. Pursuant to PMC Chapter 18.36.060, this Decision may be appealed by an aggrieved person to the Superior Court, State of Alaska, First Judicial District, within thirty (30) days of the date of mailing, in accordance with the applicable rules of court.

**Petersburg Borough Assembly, sitting as the
Board of Adjustment**

**Decision on July 23, 2026 Appeal filed by the Central Council of the Tlingit &
Haida Indian Tribes of Alaska**

On August 17, 2026, by a vote of - , the Assembly of the Petersburg Borough, sitting as the Board of Adjustment, having considered the appeal filed by the Central Council of the Tlingit & Haida Indian Tribes of Alaska ("CCTHITA"), hereby DENIES the appeal.

Based upon the evidentiary record on appeal, and the written arguments of those opposing or supporting the appeal, the Board of Adjustment hereby adopts the following Findings of Fact and Conclusions of Law.

Findings of Fact:

1. The legal description of the parcel that is the subject of this appeal is a portion of U.S.S. 1168, Petersburg Townsite, Parcel ID 01-012-010, to be subdivided as shown on the proposed plat as "Parcel A" ("the site"). The site contains approximately 10,036 square feet (0.23 acres) of vacant, unsubdivided land owned by the Petersburg Borough, currently zoned Public Use (P-1).
2. By Resolution 2026-16, adopted June 15, 2026, the Borough Assembly approved the sale of the site to CCTHITA, for \$45,000.00, pursuant to a Contract of Sale dated June 23, 2026. The Contract of Sale is contingent upon, among other things, CCTHITA's timely subdivision of the site in accordance with PMC Chapter 18.20.
3. An application for a minor subdivision at 1200 Haugen Drive ("the application") was submitted on behalf of CCTHITA by Richard J. Peterson, President, in furtherance of Assembly Resolution 2026-16.
4. Borough staff reviewed the application and proposed plat and recommended approval of the minor subdivision subject to conditions. The Public Works, Power & Light, Police, and Fire/EMS Departments each reviewed the application and reported no comments or objections.
5. On June 22, 2026, a notice of the public hearing to be held on the application was mailed to all owners of property within six hundred feet of the exterior boundary of the property that is the subject of the application.
6. On June 23, 2026, a notice of public hearing was posted at the subject property, 1200 Haugen Drive.

7. On July 7, 2026, notice of the public hearing was posted at the Municipal Building and provided to the local radio station for broadcast.
8. On July 8, 2026, a notice of the public hearing was posted to the borough's web site and posted on the notice board at the U.S. Post Office building.
9. On July 9, 2026, a notice of the public hearing was published in the local newspaper of general circulation.
10. On July 14, 2026, the public hearing on the application was held by the Platting Board, all seven members being in attendance, and the Board received written and oral testimony from the public regarding the application.
11. Following the public hearing, a motion was made by Commissioner Floyd to approve the application for minor subdivision. No motion to second was made by any commissioner, and Commissioner Floyd's motion died for lack of second.
12. On July 23, 2026, pursuant to PMC Chapter 18.36, CCTHITA, as the applicant, filed a Notice of Appeal from the Platting Board's failure to consider the application.
13. The hearing on the appeal was scheduled to be heard by the Petersburg Borough Assembly, sitting as the Board of Adjustment, at a meeting on August 17, 2026, at 5:30 PM.
14. On August 6, 2026, notice of the appeal and of the Board of Adjustment appeal hearing were mailed to the persons entitled to notice of the proceedings before the Platting Board.
15. General public notice of the Board of Adjustment meeting was posted at least five calendar days prior to the date of the meeting.
16. The Board of Adjustment met on August 17, 2026, and at the hearing considered the appeal on the evidentiary record before it, including review of the materials submitted and presented to the Platting Board, a transcript of the relevant portions of the Platting Board meeting, the appeal filed by CCTHITA, and written arguments from the public in support of or in opposition to the appeal.

Conclusions of Law:

- 1) The site is located within the Petersburg Borough, and the Borough has jurisdiction over platting and subdivision matters within Service Area No. 1.

- 2) The Borough Planning Commission serves as the Platting Board for the Borough. PMC 18.12.010.
- 3) Pursuant to Resolution 2026-16, CCTHITA, through its President, submitted an application for a minor subdivision plat, proper in form, for a portion of a Borough-owned parcel located in Service Area No. 1.
- 4) Notice of the Platting Board meeting on the application was provided to the public and to surrounding property owners, posted, and published.
- 5) A public hearing was held before the Platting Board on the application for a minor subdivision plat, as required by PMC 18.12.060.
- 6) The July 23, 2026 CCTHITA appeal from the Platting Board's failure to act on the application and that is the subject of this Decision was timely filed under PMC 18.36.030(B).
- 7) Notice of the appeal and of the appeal hearing before the Board of Adjustment was provided to the public and to those entitled to notice of the Platting Board proceedings in compliance with PMC 18.36.040(A) and (B).
- 8) Per PMC 18.12.050, Action on Application, the Platting Board is required to take formal action on an application for a minor subdivision plat "by voting on a motion to approve or deny an application." The Board's decision approving or denying the application is to be recorded in the minutes prepared by the secretary to the Board. Further, the Board action is to include findings of fact supporting the decision, based on the facts presented and the Board's debate. A decision is adopted when signed by the chairman.
- 9) The actions of the Platting Board are upheld for the following reasons:

Accordingly, the Platting Board's actions in regard to CCTHITA's application for a minor subdivision plat are upheld and this appeal is denied.

Robert Lynn, Borough Mayor

Dated: _____

Certificate of Service: This Decision was sent on August _____, 2026, by U.S. Mail to the following: See attached mailing list

Rebecca Regula, Borough Clerk

Notice: This is notification of a Final Decision of the Board of Adjustment. Pursuant to PMC Chapter 18.36.060, this Decision may be appealed by an aggrieved person to the Superior Court, State of Alaska, First Judicial District, within thirty (30) days of the date of mailing, in accordance with the applicable rules of court.

Chapter 18.36 APPEALS*

Sections:

18.36.010 Reconsideration.

- A. The platting board may reconsider its decision upon petition of any aggrieved person filed within ten consecutive calendar days after the decision.
- B. The board may reconsider its decision only if it finds any of the following:
 - 1. There was a clerical error in the decision;
 - 2. The decision resulted from fraud or mistake;
 - 3. There is newly discovered evidence or a change in circumstances;
 - 4. The board previously rejected the application by a tie vote; or
 - 5. There was a procedural error by the board.
- C. The platting board shall review the petition at the next regular or special meeting, and decide whether to reconsider the matter. The decision shall be based on the petition and any oral argument of the petitioner which the platting board may decide to hear. Additional evidence shall be taken as required by the circumstances resulting from the request for reconsideration. If the petition is granted, the platting board then shall decide the matter or set the matter on its agenda for rehearing. The decision of the platting board on reconsideration shall be final. The platting board's final decision made during reconsideration may be appealed to the city council.

(Ord. 907 § 3 (part), 2007)

18.36.020 Persons who may appeal.

A decision of the platting board granting or denying approval of any final action authorized under this title may be appealed to the city council by:

- A. The applicant; or
- B. Any person adversely affected by the decision; or
- C. Any governmental agency that has previously submitted comments on the issue.

(Ord. 907 § 3 (part), 2007)

18.36.030 Commencement of appeal.

- A. A decision of the platting board is final unless an appeal of the decision is commenced within ten consecutive calendar days after the platting board's final action.
- B. All appeals must be filed with the city clerk within ten consecutive calendar days of the date the final decision is made. Appeals must be submitted on a notice of appeal obtained from the city clerk's office. The appellant must specify concisely the reason for the appeal and the relief sought.

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- C. No person shall be entitled to an appellate review who fails to file a proper notice of appeal with the city clerk within ten consecutive calendar days of the date the final decision is made.
 - D. The burden of proof that a decision was made in error, or the decision should be modified, or the decision will have an adverse affect, is on the appellant.

(Ord. 907 § 3 (part), 2007)

18.36.040 Appeal hearing procedure.

- A. The city clerk shall mail notice of the appeal to each person who would have been entitled to notice of the original proceeding. The notice shall include the appellant's notice of appeal, describe the decision appealed, state the date of the appeal hearing and state that written argument supporting or opposing the appeal may be submitted by persons who are not able to be present at the hearing.
- B. Before taking action on the appeal, but within thirty consecutive calendar days of the filing of the appeal, the city council shall hold a hearing on the appeal. At least ten consecutive calendar days before the hearing notice of the time and place of the hearing shall be mailed to all parties in interest and to each person who would have been entitled to notice of the original proceeding. General public notice of the hearing shall be given at least five consecutive calendar days prior to the hearing by posting in three public places.
- C. At the discretion of the council, a full rehearing may be ordered with all parties presenting whatever evidence is relevant with opportunity to make argument, or the council may elect to make its decision only on the evidentiary record, considering only the arguments of those opposing or supporting the appeal.
- D. The council may exercise its independent judgment on legal issues raised by the appellant. Legal issues are those matters that relate to the interpretation or construction of ordinances or other provisions of pertinent law.
- E. Every decision of the council shall be based upon findings and conclusions adopted by the council. Such findings should be sufficiently specific as to provide the applicant, community and where appropriate, reviewing authorities, a clear and precise understanding of the reasons for the decision.
- F. Within ten consecutive calendar days after the hearing, the city council shall render a decision on the appeal.
- G. In exercising the above-mentioned powers, the city council may reverse or affirm, wholly or partly, or may modify the order, requirements, decision or determination appealed and may make such order, requirement, decision or determination as ought to be made based on pertinent law.
- H. All meetings shall be open to the public and minutes of proceedings showing decisions, the reasons for decisions and the vote of each member upon each question shall be kept.

(Ord. 907 § 3 (part), 2007)

18.36.050 Stay pending appeal.

Upon commencement of an appeal, the decision appealed is stayed until the decision on appeal becomes final.

(Ord. 907 § 3 (part), 2007)

18.36.060 Appeals from decisions of the city council.

Judicial review by the superior court of a final decision of the city council may be had by filing a notice of appeal in accordance with the applicable rules of court.