



**Haines Borough
Borough Assembly Meeting #36
February 11, 2004
MINUTES**

1. **CALL TO ORDER/PLEDGE TO FLAG**: Mayor Mike **CASE** called the meeting to order at 6:33 p.m. in the Assembly Chambers of the Municipal Building and led the pledge.
2. **ROLL CALL Present**: Mayor Mike **CASE** and Assembly Members Jerry **LAPP**, Stephanie **SCOTT**, Douglas **OLERUD**, Lucy **HARRELL**, and Debra **SCHNABEL**. **Absent**: Assembly Member Norm Smith.

Staff Present: Julie **COZZI**/Borough Clerk, Keith **BETTRIDGE**/Borough Manager, CJ **JONES**/Museum Curator, and Bob **KLING**/Controller.

Visitors Present: Christa **SADLER**/CVN, Todd **SEBENS**/KHNS, Dawne **THOMSEN**, Al **GILLIAM**, Pam **COULTER**, Patricia **BLANK**, Duck and Karen **HESS**, Fred **GRAY**, Ray **STASKA**, Scott **SUNDBERG**, Sean **BROWNELL**, Gershon **COHEN**, Jane **SEBENS**, Gregg **RICHMOND**, Jim **STUDLEY**, Nancy **BERLAND**, George **FIGDOR**, Jon **COULTER**, and Carolyn **WEISHAHN**.

3. **APPROVAL OF AGENDA & CONSENT AGENDA**:

M/S **OLERUD/LAPP** Motion to approve the Consent Agenda, as presented.

M/S **SCHNABEL/SCOTT** Motion to amend by 1)removing the 2/4/04 minutes (they are not yet available), 2)moving up New Business item C-1 (zoning vs. comprehensive plan) so that it is discussed prior to the Ordinance 04-02-042 public hearing, and 3)adding an additional item under New Business: "Collaboration with CIA for a grant application."

The amendment motion carried unanimously.

The main motion, as amended, carried unanimously.

4. **APPROVAL OF MINUTES**: *January 21, Regular Meeting

5. **PUBLIC COMMENTS**:

WEISHAHN asked how the planning commission and the assembly can refer to a comprehensive plan that has not yet been adopted. She believes that all zoning must wait until the comprehensive plan is adopted. **WEISHAHN** read her statement included in the meeting packet saying that the establishment of a heliport zone before adoption of a comprehensive plan is in violation of Borough Charter and State Statute.

6. **MAYOR'S COMMENTS/REPORT**:

- **Alaska Municipal League Award of Excellence** - Mayor Case announced that the Tlingit Park Project is one of two winners of a Community Award of Excellence recently presented by the Alaska Municipal League. Dawne **THOMSEN** accepted the award on behalf of all who participated in the project. When deciding what to

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nominate last fall, **CASE** said that consideration was made to also submitting the equally outstanding library project; however the park was finally chosen as our community's nominee because nearly everyone in town took part in it.

- **Combining School Districts** - Mayor **CASE** said that he had a visit from Larry Sweet, representing Klukwan, who communicated Klukwan's concern about the State looking at the possibility of merging the Haines and Klukwan schools into a single district. **CASE** said he expressed his support to Mr. Sweet for their efforts to oppose the merger of the two school districts. There would be no tax benefit for Haines.
- **Training in Manager Form of Government** - The mayor said that Vince **HANSEN** has agreed to do a workshop for the assembly. A date will be determined soon.
- **Strategic Plan RFP** - Mayor **CASE** said that he has received proposals from Murray Walsh, Michael Conway, and possibly an additional one. He will review them and report back to the assembly.

7. **PUBLIC HEARINGS:**

A. **Ordinance 04-01-039** - (Second Hearing)

An ordinance of the Haines Borough Assembly reappropriating funds for the actual cost of a school facility condition survey not to exceed \$40,000.

Mayor **CASE** opened and closed the first hearing at 6:45 p.m.; there were no public comments.

M/S **OLERUD/LAPP** Motion to adopt Ordinance 04-01-039.

There was no discussion.

The Motion carried unanimously on a roll call vote.

B. **Ordinance 04-01-040** - (Second Hearing)

An ordinance of the Haines Borough reappropriating \$150,435 for purchase of a Case front-end loader for the Haines Borough Public Works Department.

Mayor **CASE** opened and closed the public hearing at 6:47 p.m.; there were no public comments.

M/S **OLERUD/HARRELL** Motion to adopt Ordinance 04-01-040.

There was no discussion.

The motion to carried unanimously on a roll call vote.

C. **Ordinance 04-01-042** - (Introduction & First Hearing)

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An ordinance of the Haines Borough to adopt the Haines Borough Code Section 18.70.030, subsection (N) and Section 18.20.020 (Definitions); providing a "Commercial Recreational Zone."

M/S **HARRELL/LAPP** Motion to introduce Ordinance 04-01-042.

Regarding a possible problem with zoning prior to comprehensive plan: Mayor **CASE** summarized the borough attorney's opinion received in response to **WEISHAHN**'s written statement. In Attorney, Steve Sorenson's opinion, "the Haines Borough has no comprehensive plan at this time" and the Borough apparently has only two current options regarding the heliport zoning matter: 1) regulate the heliskiing activity under the General Use Zoning District standards, or 2) forestall the enacting of a specific zoning district for heliskiing until the comprehensive plan is completed. Mayor **CASE** said that the Charter does address *preservation of prior laws* so, in spite of the attorney's opinion, he recommends the assembly proceed with the public hearing and set this ordinance for its second hearing. If preservation of prior laws does not end up applying in this case, then it will just die.

Mayor **CASE** opened the public hearing at 7:49 p.m.

Karen **HESS** commended the planning commission for the difficult process they have gone through in coming up with two heliport recommendations. She expressed support for the planning and zoning process but pointed out that the two recommended areas are not feasible and accessible. She requested that the assembly look at *grandfathering in* the 33-mile site and/or looking at additional sites.

Ray **STASKA** agreed with **HESS** and thanked **THOMSEN** for the hundreds of hours she and the commission have put into the process. He expressed support for Al **GILLIAM**'s request for a helicopter use-by-right. "Gilliam has been steadily building his business for the last twenty years. His permit is the unique exception that should be considered." **STASKA** went on to say that he does "not support all of the demands being put on the assembly by the fledgling heli-skiing industry" and said that "the wishes of the property-owners and families in the upper valley should take precedence."

Al **GILLIAM** attempted to clarify some areas of concern saying, "This is not a special use discussion tonight because of the passage of the SUD. My company has historically and legally operated helicopter take-off and landing facilities."

Patricia **BLANK** said that her concern is the additional impact on wildlife, especially the goat population in the

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Takhin/Tsirku area. She recommended that the maximum heliport elevations be set at 1000 ft instead of 1200.

Jon **COULTER** said that he has personally been a part of **GILLIAM's** ongoing struggle to build a business and said he supports the establishment of a heliskiing zone in the upper Takhin/Tsirku valley.

WEISHAHN displayed a map and said that she questions whether or not the planning commission, when drafting the ordinance, used proper procedure. She believes heliports in the General Use zone should remain *conditional use* until the comprehensive plan is adopted. Regarding the Porcupine zone, she said, "It is an unnecessary zone, and it will potentially harm salmon. A heliport zone in the Porcupine area would have serious impacts both economic and social."

Pam **COULTER** said that stringent regulations were applied through the SUD process, and wildlife impacts are not an issue.

Scott **SUNDBERG** thanked **THOMSEN** and the assembly for taking up the issue of zoning for heliports. He said, "The Takhin site works if you have an elite-type lodge that can be flown into. Unfortunately, most of this area's clients are not in that class and need to be able to go into an area with easier access." He also voiced support for Gilliam's area.

Hearing no more public comments, Mayor **CASE** closed the public hearing at 7:04 pm.

Mayor **CASE** said that he recommends introducing the ordinance and proceeding. He read the text from Charter Section 19.04 - Prior Law Preserved. **HARRELL** said that she wants to proceed; the borough has been operating under the old comprehensive plan and the new comprehensive plan is nearing completion. **THOMSEN** suggested postponing the second hearing until an interim "new" comprehensive plan is in place.

SCHNABEL asked why some of the public testimony presented tonight implies the ordinance threatens a curtailing of existing permits. Mayor **CASE** said he believes it poses no such threat. **SCHNABEL** expressed concern about no longer having conditional use permits after the heliports are established. "A company may need to use a helicopter on an incidental basis. Because of our geography, the potential for mineral development, etc., the rest of the borough needs to have some way of getting a permit." **HARRELL** responded that "there will be a use-by-right for helicopters. There is nothing to preclude permits for incidental use. She said the general use zone will gradually be phased out and only 4 zones will remain in the borough: *industrial, residential,*

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recreational, and *commercial*. The state is going to require it within a few years". **SCHNABEL** said she is concerned about *prohibited use* and wants to see *conditional use* retained.

THOMSEN said, "Anyone can make an application for a conditional use even if the code says a use is prohibited. There is nothing to bar the planning commission from granting one if they choose. **OLERUD** said to **SCHNABEL** that "conditional use within the general use zone is going to be in a separate ordinance. As of the 29th of February, there will be no conditional use, so a different ordinance will have to be considered."

SCOTT read a statement from the president of a Juneau flight-seeing company. "Before any site is built, appropriate planning is required. It is inappropriate to have residential areas bordering heliport zones." **SCOTT** said she disagrees with heliports being a use-by-right; they should be conditional use because of safety issues. She believes that **GILLIAM** will not be affected if this ordinance is not adopted. **GILLIAM** disagreed. He said that the upper Takhin/Tsirku needs to have a decision right away. BLM has stopped his helicopter operations until it is satisfied that this issue has been resolved on the local level. "It is a delaying tactic and a deliberate attempt to stall it. The State has signed off on all of his permits, but at the same time it would be nice to know that the Borough Assembly supports it for BLM's satisfaction."

SCOTT asked how much area is in question in that area. **GILLIAM** said that the State decided to move the boundary line further down the Takhin Valley so as not to limit it to one property owner. **SCOTT** said that she believes **GILLIAM**'s operation is independent of this ordinance because the SUD process and passage occurred prior to the assembly's consideration of heliport zones. **HARRELL** said, "Our laws must accommodate state and federal law. By zoning these sites, new sites would be prevented." She said that she is against conditional use. **OLERUD** said that "whether or not the assembly adopts the ordinance, **GILLIAM**'s operation is not in danger." He said he is not in favor of the ordinance as written and does not believe the planning commission did its job to come up with areas that would provide an incentive for helicopter businesses to locate there and get them away from populated areas. **GILLIAM** took exception to **OLERUD**'s comment and said that the area is definitely good for business. **SCHNABEL** said that she believes the borough government has just been "reacting to suppositions and presentations. The borough, in the Porcupine recreational zone, should consider putting up \$200K to build a chalet, a generator, a heli-pad, a commercial kitchen, plow the road, and lease it out. We

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can be in the heli-ski industry in the way we want to be in it. It is a possible way of resolving this issue--to be a partner and designer of what the industry is." **OLERUD** asked when an attorney response was requested. **CASE** said that it was submitted following receipt of **WEISHAHN's** letter. **OLERUD** said, "Response time seems inappropriate and prevented discussion prior to the meeting." **SCOTT** asked the mayor and manager to speak to the attorney about the third class borough's comprehensive plan that only dealt with lands outside the former City boundaries. **LAPP** said that he would like to see the ordinance defined more. **SCOTT** said, "We are moving up on the "sunset deadline" but I am not too concerned because the industry has said that they are not planning to use the remote sites at this point."

The motion to introduce Ordinance 04-02-042 failed 4 to 1 with **HARRELL** voting in favor.

8. STAFF REPORTS:

A. Manager

- Administrative Offices Remodel - **BETTRIDGE** said that the substantial completion inspection was completed today by the architect, Ke Mell.
- Harbormaster - The manager said the candidate offered the position decided to accept a different one in Saudi Arabia. He hopes to have a decision regarding a different candidate by the end of the week.

SCOTT asked if exit interviews ever occurred with the department heads that had resigned. Mayor **CASE** said that he spoke with Vince **HANSEN** about it, and he confirmed that it is the manager's responsibility and not for the assembly. **BETTRIDGE** said that informal ones were conducted with Michelle **GLASS** and Jim **MOCK**. Elli **BRAATEN** is still working with the Borough. **SCOTT** also asked about the review of lateral staffing possibilities. **BETTRIDGE** said that some lateral staffing is already occurring and more discussions and evaluations will take place.

9. COMMITTEE/COMMISSION REPORTS:

- Solar Aquatic System Water Treatment Committee - **SCHNABEL** said that the committee had a wonderful meeting, and their recommendation is that the borough proceed with a feasibility review. There are some concerns and questions including whether or not the federal government could be involved in funding a patented system. "It may be that bids would have to be solicited under a term like *bio-remedial* since *Solar Aquatic* is a patented term." **SCHNABEL** suggested that the feasibility study might possibly include sending certain

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borough employees to review other facilities. She also said if the assembly decides to proceed, they will need to decide who should help to move it forward--whether a borough employee or a hired consultant. Discussions with the USDA will be needed. Mayor **CASE** suggested the manager take a look at this and report back on his recommendations for moving it forward.

10. OLD BUSINESS: None

11. NEW BUSINESS:

A. Ordinances for Introduction

1. Ordinance 04-02-041

An ordinance of the Haines Borough adopting Haines Borough Code Title 1 and Title 2 and setting an effective date pursuant to Haines Borough Charter requirements.

M/S **OLERUD/LAPP** Motion to set Ordinance 04-01-042 for its first public hearing on February 18, 2004.

The motion carried unanimously.

2. Ordinance 04-02-043

An ordinance of the Haines Borough adopting Haines Borough Code Title 3 and setting an effective date pursuant to Haines Borough Charter requirements.

M/S **OLERUD/HARRELL** Motion to set Ordinance 04-01-043 for its first public hearing on February 18, 2004.

The motion carried unanimously.

B. Resolutions

1. Resolution 04-02-035

A Resolution adopting an alternative allocation method for the FY04 shared fisheries business tax program and certifying that this allocation method fairly represents the distribution of significant effects of fisheries business activity.

M/S **OLERUD/LAPP** Motion to adopt Resolution 04-02-035.

The motion carried unanimously on a roll call vote.

C. Other New Business

1. Solid Waste Management Plan - SCHNABEL said that the existing plan needs to be updated since Haines Sanitation has substantially changed its operation and Haines Friends of Recycling has made a significant impact. She strongly

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recommended the assembly support Chilkoot Indian Association's application for a grant to update the solid waste management plan. The grant funds would support the establishment of a committee. No action was taken.

M/S **OLERUD/LAPP** Motion to go into executive session to discuss the Local 71 Union and the manager's evaluation.

The motion carried unanimously.

The Executive Session lasted 1 hour 35 minutes [in at 8:49 p.m. and out at 10:24 p.m.]

M/S **LAPP/HARRELL** Motion to reconvene the regular meeting.

The motion carried unanimously.

12. SET COMMITTEE MEETING DATES:

Finance Committee meetings will occur every Tuesday at 4:00pm until further notice. The next one is February 17.

There will be a Committee of the Whole meeting on Monday, February 16 at 6:30pm to continue title review.

13. ANNOUNCEMENTS/ASSEMBLY COMMENTS:

SCHNABEL said she recently attended the Alaska 20/20 conference in Anchorage. 120 people from around the state participated.

SCOTT said that she would be careful, in the future, to make sure any action items assigned to the manager and staff are clearly defined. Additionally, she said she would like to introduce an amended ordinance that just makes heliports a conditional use. Mayor **CASE** said, "We gave the planning commission a moving target, they thought they hit it, and we moved it again." **LAPP** said he does not understand why the people that really pushed for the ordinance seem to all of a sudden be against it. **HARRELL** expressed concern that the planning commission might resign over this. The mayor agreed and said it would be appropriate if the assembly wanted to offer a motion to reconsider.

M/S **SCHNABEL/LAPP** Motion to reconsider the vote that resulted in a failure to introduce Ordinance 04-02-042.

Motion to reconsider failed with **OLERUD** and **SCOTT** opposed.

OLERUD said he does not believe the planning commission did what the assembly specifically asked them to do.

SCOTT said that at the planning commission meetings she went to, "the public in the room was overwhelmingly against the two recommended heliport areas. The planning commission did not

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publicly notice the ordinance at their meeting." **OLERUD** said, "The current staff assigned to the planning commission are probably not adequate to properly support them procedurally. **HARRELL** pointed out that the planning commission held hearing after hearing. She also reminded the assembly that only THEY can do an ordinance. "All the commission did was submit text to the administration draft into an ordinance."

SCHNABEL said she is concerned about the communication that was made directly or indirectly by the assembly's vote on the ordinance introduction tonight. "The information brought forward by **WEISHAHN** injected a whole new level of concern about procedure. It's not clear how to move forward. My vote this evening had less to do with **WEISHAHN**'s position then it did my state of confusion. The consequences of NOT introducing the ordinance were not made clear. If it means total resignation from the commission members, I don't like that." **CASE** said it would not be inappropriate for someone to make a motion to thank the planning commission for their efforts. No motion was made. **SCHNABEL** said she would like the mayor to have a conversation with **THOMSEN** and advance the idea of a meeting with the planning commission. "The fallout should not be total despair and resignation."

SCOTT said she believes the planning commission is "suffering from a terrible lack of procedures. I know that the procedures for the land use service areas are very carefully laid out for how they should run their meetings. Where are the planning commission procedures? If they have to be codified, then let's do it." **SCHNABEL** requested that, in the future, ordinances should be presented to the assembly for introduction by the planning commission or other sponsor.

14. ADJOURNMENT :

M/S **OLERUD/LAPP** Motion to adjourn.

Motion carried unanimously.

The meeting was adjourned at 10:46 p.m.

Mike Case, Borough Mayor

ATTEST:

Julie Cozzi, Borough Clerk

S E A L: