

Haines Borough
Borough Assembly Meeting #88
January 10, 2006
MINUTES

Approved

1. CALL TO ORDER/PLEDGE TO THE FLAG Mayor **SHIELDS** called the meeting to order at 6:30 p.m. in the Assembly Chambers of the Public Safety Building and led the pledge to the flag.
2. ROLL CALL **Present:** Mayor Fred **SHIELDS** and Assembly Members Norm **SMITH**, Jerry **LAPP**, Luck **DUNBAR**, Deborah **VOGT**, Stephanie **SCOTT**, and Scott **ROSSMAN**.

Staff Present: Robert **VENABLES**/Borough Manager and Julie **COZZI**/Borough Clerk.

Visitors Present: Matt **HAWTHORNE**/CVN, Chris **SHARPE**/KHNS, Jim **STUDLEY**, Leonard **DUBBER**, Paul **NELSON**, Patricia **BLANK**, Daniel **WACKERMAN**, Tina **SCHAEFER**, Jan **HILL**, Don **TURNER III**, Greg **STUCKEY**, Faith **TUOHY**, James **TUOHY**, Lucy **HARRELL**, Kathleen **MENKE**, Pete **LAPHAM**, Diana **LAPHAM**, Robin **MARI**, Jeff **SHIELDS**, Lee **HEINMILLER**, Scott **SUNDBERG**, Shawn **MCNAMARA**, Tim **SHIELDS**, Ben **KIRKPATRICK**, and others.

3. APPROVAL OF AGENDA & CONSENT AGENDA

Mayor **SHIELDS** noted the following changes to the agenda: 1) Delete item 11C5 from the agenda and send it to the Government Services Committee; 2) replace item 11C5 with an Executive Session regarding Eco Orca's appeal to the assembly of the manager's decision; and 3) delete item 11C1(1) because the Zack Rezoning appeal has been withdrawn. **SCOTT** requested the addition of item 11C7 to consider adding an additional public comments section to the assembly agenda format.

M/S **LAPP/SMITH** Motion to approve the Agenda/Consent Agenda, as amended. The motion carried unanimously.

4. APPROVAL OF MINUTES December 13, 2005 Regular

M/S **SCOTT/LAPP** Motion to approve the minutes. The motion carried unanimously.

5. PUBLIC COMMENTS - None

6. MAYOR'S COMMENTS/REPORT

Mayor **SHIELDS** expressed concern about the health of the townsite service area fund (Fund 02). He said public works and public safety services are paid for out of that fund, and it is headed for difficulty because of the tax cap.

The mayor also reported on 1)the progress of the union

negotiations, 2)an informal meeting where Tom Hall of Haines Sanitation presented an idea to have a "one-stop" garbage disposal service for the public that would include recycling, and 3)a meeting with Randy Wanamaker who gave an update on the Kensington Mine project.

7. PUBLIC HEARINGS

A. Ordinance 05-11-132 - second hearing

An ordinance of the Haines Borough appropriating \$49,500 from the Alaska Department of Transportation to repair the damaged gangway, approach, and landing float at Letnikof Harbor.

Mayor **SHIELDS** opened and closed the public hearing at 6:37pm; there were no comments.

M/S **LAPP/ROSSMAN** Motion to adopt Ordinance 05-11-132. The motion carried unanimously in a roll call vote.

B. Ordinance 05-12-133 - second hearing

An ordinance of the Haines Borough amending Haines Borough code Title 10 to add Section 10.34.007 permitting conditional ATV use on borough roadways for snow removal purposes.

Mayor **SHIELDS** opened and closed the public hearing at 6:38pm; there were no comments.

M/S **SCOTT/VOGT** Motion to adopt Ordinance 05-12-133.

SCOTT referenced the opinion received from the borough attorney. Four ordinance amendments were recommended, and she agrees with the first three. The clerk incorporated those three amendments into the ordinance for the assembly's consideration at this meeting.

M/S **SCOTT/LAPP** Motion to amend the ordinance by adding to Section 10.34.007(C) - "*A permit issued under this section shall be subject to the conditions set out in HBC 5.04.080,*" and adding (D) "*A permitted operator must comply with AS 28.10.011 vehicle registration requirements and AS 28.22.011 liability insurance requirements.*" The amendment motion carried unanimously.

The main motion carried unanimously in a roll call vote, and the ordinance was adopted as amended.

C. Ordinance 05-12-134 - first hearing

An ordinance of the Haines Borough amending Title 18 Section 18.70.060 (pertaining to zoning protests) to match

the Charter amendments ratified by the voters during the October 4, 2005 regular Election.

Mayor **SHIELDS** opened and closed the public hearing at 6:44pm; there were no comments.

M/S **LAPP/SCOTT** Motion to advance Ordinance 05-12-134 to a second public hearing on January 24, 2006. The motion carried unanimously.

D. Application for New Commercial Tour Permit - AMK

Alaska Mountain Kinetics has applied for a 2006 Commercial Tour Permit to operate snowcat-assisted ski trips within the Haines Borough. The activity and the base of operations will occur on the northeast face of Porcupine Peak (accessed from the upper end of the Little Salmon logging road). Title 5 requires a public hearing on all new commercial tour permit applications.

Mayor **SHIELDS** opened the public hearing at 6:46pm.

BAUER said he encourages any winter recreation in the Haines Borough, and he spoke in favor of the borough permitting both operators. He said he is not supportive of any permanent structures being allowed on state forest lands and is concerned about parking lots, geothermal well drilling, and guide liability insurance.

WACKERMAN said his three-phase development plan incorporates a long-term goal to ultimately have an actual ski area. His proposed buildings are considered semi-permanent (put together and taken apart similar to Legos) and located in an area that is not visible from the Haines Highway. There is no plan to drill a well. His guide insurance is with WOGA (Wilderness Outdoor Guides Association). He added that he has dreamed about having a scholastic ski team for the young people in this community.

SHIELDS pointed out that the assembly is tasked only with approving the Commercial Tour Permit.

SUNDBERG asked **WACKERMAN** how he sees the two companies operating together on the same mountain. **WACKERMAN** said there is a limited operating area until access to the backside can be opened up that will give plenty of room for more than one ski operation. He does not see how two operators can have a lucrative business in the limited primary access area. **SUNDBERG** asked if he is planning to actually operate in 2006. **WACKERMAN** said he will not.

Hearing no more comment, Mayor **SHIELDS** closed the public

hearing at 7:02pm.

M/S **SCOTT/ROSSMAN** Motion to approve the Commercial Tour Permit application by Alaska Mountain Kinetics.

SCOTT said the assembly does not negotiate space. One example is Chilkoot Lake where there are multiple operators. She does not believe the assembly has grounds for not granting the two permits before them at this meeting. **ROSSMAN** said DNR has the right to grant the lands. The operators need to "duke it out" on the mountains and in the business arena. **DUNBAR** agreed, saying it is up to the operators to work out the competition issues. He spoke in favor of granting both permits. **VOGT** said the assembly does have the power to limit the number of permits. The clerk was asked to read aloud HBC 5.18.020. **SCOTT** asked why the assembly should issue a permit for someone not intending to operate this year. **COZZI** responded that the Borough is collaborating with DNR. They have indicated they plan to issue permits if the borough issues theirs. They are honoring the borough's permitting process. Also, investors are waiting for permits before they make monies available for purchasing equipment.

The motion carried unanimously in a roll call vote.

E. Application for New Commercial Tour Permit - SEABA

Southeast Alaska Backcountry Outfitters has applied for a 2006 Commercial Tour Permit to operate snowcat-assisted ski and snowshoe trips within the Haines Borough. The activity and the base of operations will occur on the northeast face of Porcupine Peak (accessed from the beginning of the Porcupine logging road). Title 5 requires a public hearing on all new commercial tour permit applications.

Mayor **SHIELDS** opened the public hearing at 7:13pm.

BAUER asked **SUNDBERG** if he has snowcats and plans to operate. **SUNDBERG** said he does and plans to begin operating by January 31 if the permit is issued.

Mayor **SHIELDS** closed the public hearing at 7:16pm.

M/S **ROSSMAN/LAPP** Motion to approve the Commercial Tour Permit Application by Southeast Alaska Backcountry Adventures.

VOGT asked **SUNDBERG** if he believes there is room for two snowcat operators in the desired area. **SUNDBERG** said he believes there is room for only one, but the state currently has no protocol for regulating capacity or

granting exclusivity. **ROSSMAN** asked **SUNDBERG** if he is aware that part of his tour occurs on University land. **SUNDBERG** is aware of it.

The motion carried unanimously in a roll call vote.

8. STAFF REPORTS

A. Manager - VENABLES summarized his written report covering the following topics:

- Harbor funds
- Cannery Cove mini-grant
- November storm disaster update
- School Construction Project
- Kensington Mine

Additionally, **VENABLES** said the school architects are scheduled to present the 65% design documents on January 25th and 26th. He invited the assembly members to attend.

- B. Borough Clerk**
- C. Chief Fiscal Officer**
- D. Chief of Police**
- E. Museum**
- F. Library**
- G. Chilkat Center**

9. COMMITTEE/COMMISSION/BOARD REPORTS

- A. Commerce Committee**
- B. Finance & Budget**
- C. Government Services/Affairs**
- D. Personnel**
- E. Planning Commission**
- F. School Board**
- G. Chilkat Center Advisory Board**
- H. Parks & Recreation Advisory Board**
- I. Tourism Advisory Board**
- J. Boat Harbor Advisory Committee**
- K. Public Safety Commission**

10. OLD BUSINESS - None

11. NEW BUSINESS

A. Resolutions

1. Resolution 06-01-079

A resolution of the Haines Borough Assembly adopting an alternative allocation method for the fiscal year 2006 Shared Fisheries Business Tax Program and certifying that this allocation method fairly represents the distribution of significant effects of fisheries business activity in the Northern Southeast Fisheries Management Area.

M/S **LAPP/DUNLAP** Motion to adopt Resolution 06-01-079.

The motion carried unanimously in a roll call vote.

2. Resolution 06-01-080

A resolution of the Haines Borough Assembly regarding the Alaska Department of Environmental Conservation's proposed regulations relating to Water Quality Standards - Mixing Zones.

M/S **SCOTT/VOGT** Motion to adopt Resolution 06-01-080.

SMITH briefly summarized the resolution and read aloud the following portion of the resolution: *"Now, therefore, be it resolved that the assembly hereby expresses its opposition to the ADEC's proposed 2005 water quality - mixing zone regulations because implementation of the regulations would allow for increased pollution in salmon spawning areas."*

VOGT distributed copies of a bill just introduced in the state legislature that, if passed, would prohibit the use of mixing zones.

The motion carried unanimously in a roll call vote, and the resolution was adopted as written.

3. Resolution 06-01-081

A resolution of the Haines Borough Assembly urging the State of Alaska to prioritize investment in our existing transportation system.

M/S **LAPP/SCOTT** Motion to adopt Resolution 06-01-081.

LAPP said the resolution was given to him by Juneau Assembly Member Bob Doll. It calls for the state not to waste money on frivolous projects and to invest in upgrading the Alaska Marine Highway System. **SMITH** said he does not like the word "tailor" used in Section 1 of the resolution and asked if another word could be used. **SCOTT** suggested "design." **HEINMILLER** was asked to explain the Planning Commission's Action Request regarding the recent STIP funding decisions. He said the Commission recommends that the Haines Highway project remain at the top of the list and supports the Auke Bay ferry terminal option in Juneau. The commissioners based their recommendation on the value of Haines road projects to the economic, safety, and commercial interests of the community.

M/S **VOGT/DUNBAR** Motion to replace the word "tailor" with

"design" in Section 1 and to amend Section 2 to read *"address the outstanding needs of our existing road and ferry system including reinstating the Haines Highway upgrade project to a place of priority on the list and investing in marine transportation from Auke Bay, to ensure safe, reliable, and efficient movement of goods and services now and into the future before expending money on costly and controversial mega-projects."* The amendment motion carried unanimously.

The main motion carried unanimously in a roll call vote, and the resolution was adopted as amended.

LAPP requested distribution of the resolution to the governor and all members of the state legislature. The Clerk will send them via email.

B. Ordinances for Introduction - None

C. Other New Business

1. Appeal of Planning Commission Decision - Porcupine Plat

STUDLEY said the surveyor and the applicant have met the requirements of the final plat, but the planning commission disagrees and has asked for more information on the meander line. The draft minutes of the 12/8/05 meeting reflect that the commission wanted more accurate information regarding the river channel. He believes the river channel is not part of the final plat requirements. The meander line was identified on the plat and is appropriate. There is a difference in opinion between him and the planning commission.

VOGT said it appears that the commission did not outright deny the plat request; they just asked for more information. She believes they have the authority to do that.

HEINMILLER said the planning commission did not deny the request. They did not have much problem with the request but wanted the additional information. Some of the commissioners have actually visited the site since their meeting. **STUDLEY** said it appears to him that the plat is being singled out, because it has not been required of any other plat. The surveyor was told what the commission asked for and responded that he will not do it. Flood plain elevation is established by the federal government, and they are responsible to have that information. This is a burden that should not be put on the property owner. **VOGT** said what the planning commission is looking for is the actual location of the

river and the elevation. The commission may have incorrectly used the term "floodplain" but they have the right to ask for location and elevation information. **ROSSMAN** said both the borough and DNR have satellite imagery that shows the location and the elevations. He believes this issue is getting too complicated. **HEINMILLER** said he is the one that brought up the issue of floodplain data. The commission wants to know where the river edges are in relationship to the 3.5 acre lots. A 100-year flood occurs 1% of the time every year. **ROSSMAN** asked if he and **STUDLEY** could sit together to come to an agreement. **HEINMILLER** said he believes they can. The commission is going to come up with the information from sources including the site visits and the GIS system. **STUDLEY** said the meander line means the river moves. Alluvial soil comes and goes. He doesn't believe it is necessary. **MENKE** said the commission is working really hard to come up with processes that are consistent and facilitating. The commission is not proposing limitations. They are just asking for more information. **SCOTT** said **STUDLEY** brought his appeal to the assembly in good faith. Because it is clear to her that the planning commission has not yet delivered a decision on the plat per se, she recommends not rehearing the issue.

M/S **SCOTT/SMITH** Motion not to rehear the Planning Commission's decision on the Porcupine plat.

SMITH said he believes the borough has a planning commission that is working, and he gives them a lot of credit for an often thankless job. He supports their decision on this issue. **LAPP** asked **HEINMILLER** if the commission will decide the plat request at their upcoming 1/12/06 meeting. **HEINMILLER** said it is not on the agenda but will probably be added at the beginning of the meeting. He believes it can be worked out to the satisfaction of all parties. **STUDLEY** said the GIS system will be wonderful when it is working. He said that, right now, the satellite images and fly-over photos are less than accurate; they may be off as much as 120 feet. The GIS system is a reference tool and should not be relied on as fact. **ROSSMAN** agreed with the inaccuracy of the plat lines and contour lines, and said it is important that they be used only as guidelines. **HEINMILLER** disagreed with the statements of inaccuracy and said he has never found anything more than 10 feet off. However, if nothing else, the GIS

system is correct for elevation. It shouldn't be off by more than a few feet.

The motion carried 4-2 in a roll call vote with **LAPP** and **ROSSMAN** opposed, so the assembly will not rehear the Planning Commission's decision concerning the Porcupine plat request.

2. Request for Non-Objection - Liquor License Renewal

M/S **LAPP/DUNBAR** Motion to write a letter of non-objection for the liquor license renewal.

SCOTT said she is opposed because of the large number of liquor licenses within the Haines Borough. Most of the existing licenses were grandfathered in, and the number will never decrease if the assembly keeps approving renewals.

The motion carried 5-1 in a roll call vote with **SCOTT** opposed.

3. Municipal Land Selections

M/S **SCOTT/VOGT** Motion to approve the municipal land selections as prioritized by the Planning Commission (Parcels 1, 3, 2, then 4).

HEINMILLER said the planning commission did not look at land values but did look at adjacent properties, road locations, and utilities. **TURNER** said Parcel 1 is the first choice because it is right on the road. **HEINMILLER** added that the borough already owns substantial land next to Parcel 4. **VENABLES** said there is no access to Parcel 4 but since the state wants to get rid of the land anyway, the borough will be asking for all four parcels. **VOGT** said the assembly should defer to the planning commission and approve their recommendation.

The motion carried unanimously in a roll call vote.

4. Cooperative Agreements with Alaska Fish & Game

Mayor **SHIELDS** said the manager and he met with Tim Shields and Ben Kirkpatrick and the proposals were explained. Both projects appear to be something good for the borough to support.

M/S **ROSSMAN/VOGT** Motion to approve the request to enter into cooperative agreements with Alaska Fish & Game to enable the Takshunak Watershed Council to perform design work on fish habitat enhancements in two locations: the Sawmill Creek

drainage in the Haines townsite and Big Boulder Creek near 34-mile on the Haines Highway.

Tim **SHIELDS** summarized the mission of the Takshunak Watershed Council and the two projects, including the benefits. He said these projects be handled similar to the Muskrat Creek project. The borough's involvement is minimal; it would receive the money from Alaska Fish & Game, disperse it to the Watershed Council, and retain a percentage of the funds for administrative costs. **DUNBAR** said he personally worked on the Muskrat Creek project and can attest to the projects being worthwhile. He spoke in favor of the cooperative agreements.

The motion carried unanimously in a roll call vote

5. Executive Session regarding Eco Orca's appeal to the assembly of the manager's decision

M/S **VOGT/LAPP** Motion to go into Executive Session as allowed by state statute for adjudicatory deliberations. The motion carried unanimously.

The executive session convened at 8:39pm and ended at 9:02pm.

M/S **VOGT/ROSSMAN** Motion that the borough manager's decision in the appeal to the manager of the clerk's denial of Eco Orca's 2005 tour permit be remanded to the manager for further findings of fact and conclusions of law, in accordance with this motion. The decision, as written, does not provide a sufficient basis for the borough assembly to consider the matter on appeal. The manager's decision should set out or attach the following:

1. Specifically, the grounds cited by the clerk for denying the permit,
2. The pertinent code provisions that are alleged to have been violated,
3. Any conditions that were attached to the permit,
4. The Haines Tour Operator's Code of Conduct,
5. The Port Chilkoot Dock Operating Plan,
6. The burden of proof,
7. Findings of Fact (The decision must set out what facts the hearing officer has determined to be true. The decision draws conclusions without giving the assembly the factual basis for those conclusions. Specific findings must be made in support of each conclusion that the hearing officer draws.), and
8. The application of the law to the facts. (For each item, the decision needs to apply to the law.)

The manager shall 30 days to rewrite the decision. After the rewritten decision (the decision on remand) is issued, the applicant may appeal that decision within 15 days.

The motion carried unanimously in a roll call vote.

6. Committee/Board Appointments

Mayor Shields said he is in the process of considering appointments to various board openings.

7. Additional public comments section in the assembly agenda format.

There was no objection to adding, on a trial basis, a second opportunity for public comment during the assembly meetings. The new section will be added to the agenda between "Set Committee Meeting Dates" and "Announcements/Assembly Comments."

12. SET COMMITTEE MEETING DATES

The Government Affairs & Services Committee will meet on 1/17/06 at 1:30pm to discuss the USA Patriot Act and the request for a grand jury investigation.

The Commerce Committee originally scheduled for the 17th at 5pm has been postponed.

13. ANNOUNCEMENTS/ASSEMBLY COMMENTS

SCOTT said she is alarmed by the mayor's comment about the condition of Fund 02. Mayor **SHIELDS** said the Fund is constantly working at a deficit. Philosophically, the bigger pool (Fund 01) could fund the smaller pool (Fund 02), but perhaps shouldn't because Fund 01 is area wide while Fund 02 is townsite service area-only. Fund 02 is limited in its revenue-generated capacity because of the tax cap; it's not paying for itself. **VOGT** said everyone in the borough benefits from the public works and public safety services that take place within the townsite. **SCOTT** said, per the charter, the assembly does not have borough-wide powers to change the taxation.

VOGT expressed her appreciation for the Chief Fiscal Officer's financial comparison report format. She also asked the manager to make available a copy of the ice house operating plan. She has become concerned that the post-construction operation costs will be considerable. **SCOTT** agreed that it would be important to see the plan.

SHIELDS informed the borough manager that he should not construe the remand of the Eco Orca decision as a rebuke. It

is merely a request for additional information.

SMITH said the Chilkat Center report is good, but he is really concerned about the cost of operating it. He said he would like to see income matched with outgo; a complete budget report. **SCOTT** added that, unfortunately, the borough has always subsidized the Center. She believes it would be good for the assembly to keep an eye on the big financial picture, because it will help to hold the facility accountable.

ROSSMAN said the facilities maintenance worker is a borough-wide employee, and there are many buildings that need maintenance. He would like to see it become a full-time position eventually. **SMITH** agreed and said \$12/hour is not enough pay for the skills the job requires.

SMITH said he will be gone for the next three meetings and will be back on March 2. Mayor **SHIELDS** said he will be gone the first two weeks of February, so it is possible that there will only be one meeting that month.

14. ADJOURNMENT - 9:24 pm

M/S **LAPP/SMITH** Motion to adjourn. The motion carried unanimously.

ATTEST:

Fred Shields, Mayor

Julie Cozzi, Borough Clerk