

Haines Borough
Borough Assembly Special Meeting
May 20, 2008
MINUTES

Approved

THIS WAS A SPECIAL MEETING HELD TO CONSIDER CONTRACTING WITH AN INTERIM BOROUGH MANAGER.

1. CALL TO ORDER/PLEDGE TO THE FLAG Mayor **SHIELDS** called the meeting to order at 5:15 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**, Pete **LAPHAM**, Doug **OLERUD**, Steve **VICK**, and Deborah **VOGT**.

Staff Present: Jila **STUART**/Chief Fiscal Officer and Acting Manager and Suzanne **NEWTON**/Administrative Assistant (meeting recorder in the clerk's absence).

Visitors Present: Jessica **EDWARDS**/CVN, Stephanie **SCOTT**, Ed **FABECK**, Tim **JUNE**, Kelly **HOSTETLER**, Bill **STACY**, Danny **GONCE**, Scott **ROSSMAN**, Nick **TRIMBLE**, Matthew **BORISH**, Mary **STICKLER**, Aldeana **STOUT**, Scott **SUNDBERG**, Don **TURNER III**, Dave **STICKER**, and others.

3. APPROVAL OF AGENDA

SHIELDS said he wanted to add Item 3A - Manager Update. He has had several discussions with Venables and has something to report. **OLERUD** questioned the correctness of adding an item to this special meeting agenda. **SHIELDS** said he ran it by the attorney who believed there was no problem with adding it because the whole thing relates.

Motion by **VOGT**: Approve the Agenda. It was seconded by **SMITH**.

OLERUD said in the future when doing something like this that involved discussions with the attorney; he would like to have something in writing before proceeding. **SHIELDS** agreed to that saying it was a good idea. He added that this particular item came up very quickly.

The motion carried unanimously.

3A. MANAGER UPDATE

SHIELDS said Venables has offered to tender his resignation provided he still receives three months severance pay. The mayor believes this would be good for all concerned. He asked for a motion of unanimous consent to convert the termination

to a resignation with three months severance pay. **VOGT** said that if anyone feels uncomfortable with this since the posted special meeting agenda said that nothing but the interim manager would be discussed, then it could be postponed to the next regular meeting. **SHIELDS** apologized for bringing this topic tonight but said it had just come up today. **OLERUD** said he would rather wait for the next meeting on the 27th. **LAPP** agreed with **OLERUD**. He believes this goes against the Open Meetings Act. He'd rather see this issue posted on an agenda so that the public knows about it. **SHIELDS** said it would be better to have a unanimous consensus regarding the resignation so it should probably be added to the 5/27 meeting. **SMITH** asked if the resignation is in writing. **SHIELDS** said a resignation letter is being drafted by the attorney. If this were approved this evening, he had planned to meet the next day with Venables. **VICK** asked if the written resignation would be in the 5/27 packet. **SHIELDS** said it undoubtedly would. **LAPHAM** thought it sounded good to wait for that meeting.

4. INTERIM MANAGER CONTRACT

SHIELDS said he received a phone call from Bob Ward, retired Skagway manager, who said he would be available to serve as an interim borough manager for \$9,000 and the airline travel from Seattle.

Motion by **VICK**: Contract for 30 days with Bob Ward to serve as Interim Borough Manager for \$9,000/month and the cost of airline travel from Seattle. It was seconded by **VOGT**.

OLERUD expressed concern that the salary amount represents a huge increase from the current manager salary, and he wants to know where the extra money is coming from. Also, he believes it is inappropriate to be contracting with an interim manager when the assembly is still debating whether or not the previous manager resigned or was terminated. Additionally, there's an unresolved question regarding the legality of terminating the manager at the last meeting when it was not posted on the agenda. He wants a written opinion from the attorney regarding the legality of it. That question needs to be answered before moving forward to hire another manager. **SHIELDS** said that \$9,000 for a contractor is actually less than the previous manager's pay with employee burden added. **VICK** said with all of the projects and issues happening in the borough at this time, it is imperative to get someone on board as soon as possible. Bob Ward's application shows a wealth of experience. **LAPHAM** said he has a problem with this, too. He has been contacted by a lot of

people questioning whether it was handled properly at the last meeting to terminate the manager's contract. He was quick to note that has no problem with Bob Ward.

Motion to Amend by **LAPP**: The contract with Bob Ward shall be contingent upon determination by the borough attorney that there was no violation of the Open Meetings Act when terminating Venables.

SHIELDS offered to get the borough attorney on the phone. He called a brief recess.

NOTE: The following recorded conversation took place outside of the meeting during the recess: A citizen asked why Venables was fired. **SHIELDS** said he operated under a contract that allowed termination with or without cause or notice. "If a manager loses the confidence of his board, and the board votes to replace that manager, it's totally normal. In fact, that's how an at-will employee works, and that's what happened here. The details are not public information." The citizen said, "Even though he works for us and you work for us, we're not allowed to know?" At that point, the mayor reconvened the session and phoned the borough attorney.

SHIELDS informed the attorney that some assembly members are uncomfortable with the action taken at the previous meeting to terminate the manager. **OLERUD** said the action was of great significance to the borough but was not duly noted on the public agenda. He understands the contract allows with or without notice, but the public should know what's going to happen at a meeting, especially if it's something important. **BLASCO** said he didn't understand the issue. **LAPP** expressed concern that an issue of this importance and magnitude should not have been acted on without public notice, and he believes it is possibly a violation of the Open Meeting Act (OMA). **BLASCO** said he does not believe it impacts the OMA. There is no statute that he is aware of that would require the assembly to provide notice of an intent to terminate a contract. **OLERUD** said "the OMA pertains to everything but contracts then?" **BLASCO** said his understanding is that the assembly may add things to an agenda without it impacting the OMA. He added that there was no stipulation in Venables' contract to provide public notice before termination. **LAPP** read AS 44.62.312(4): "*the people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know.*" **OLERUD** agreed and asked "doesn't that pertain to this?" **SHIELDS** said there are many motions and actions that the assembly takes that aren't posted on the agenda. **BLASCO** said the assembly can take

action without notice being provided ahead of time. **OLERUD** said there are certainly amendments to motions and ordinances that are made without being specifically on an agenda, but then there are other times when the assembly has not been allowed to take action when things of a substantive nature require full public notice or hearing. A significant or dramatic change requires notice. It's important to make sure the people know what's happening. **BLASCO** responded that this is not a situation that required a public hearing or public notice. There is nothing in the OMA that would require that Venables' termination be noticed. **LAPP** said if it's an issue that is controversial, complex, or important to the community, then the community has the right to know about it ahead of time. **BLASCO** reiterated that Venables' contract did not require that the public be notified before termination. He sees no legal problem, and if there is a philosophical problem, it's for the assembly to address. **SMITH** asked if the resignation can be legally accepted this evening so the assembly may proceed with an interim manager contract. **BLASCO** said he sees no legal problem with accepting that resignation during this meeting. In fact, he believes it would be beneficial. **VICK** asked **BLASCO** if the assembly legally terminated Venables. **BLASCO** believes it was legal. **LAPHAM** asked if the resignation needs to be in writing. **BLASCO** said Venables authorized the mayor to make this public representation to the assembly. He doesn't know of any legal reason why the assembly couldn't accept that verbal resignation this evening. **LAPP** asked for a written letter from the attorney stating that the assembly did not violate the OMA. **BLASCO** said the assembly would have to pose a specific question and task him with it. **VOGT** said even if there was an OMA violation, it would not affect whether or not the termination occurred. That's a question that goes down a different course. **BLASCO** agreed with **VOGT**'s statement and said hypothetically if someone filed a lawsuit regarding an OMA violation, it would have to be proven and the action would only be voidable, not voided. Hearing no further questions, the mayor released **BLASCO**.

LAPP withdrew his amendment motion.

The main motion carried unanimously in a roll call vote.

Motion by **SMITH**: Accept the former manager's resignation with three months severance pay pending receipt of the resignation in writing.

LAPP said he is very disappointed with how this whole thing went down. He still believes it should have been on the

agenda. **OLERUD** agreed with **LAPP** and said he does not believe is shows the transparency in government that the community has been promised. He added that the employees are the most important asset the borough has because they do the work and stated his belief that the assembly owes them respect whether a contract calls for it or not.

5. ADJOURNMENT - 6:18pm

Motion by **OLERUD**: Adjourn the meeting. It was seconded by **LAPP**. The motion carried unanimously.

ATTEST:

Fred Shields, Mayor

Julie Cozzi, Borough Clerk