


Haines Borough
Borough Assembly Meeting #195
February 8, 2011
MINUTES

Approved

1. **CALL TO ORDER/PLEDGE TO THE FLAG:** Mayor **HILL** called the meeting to order at 6:30 p.m. in the Assembly Chambers and led the pledge to the flag.

2. **ROLL CALL**

Present: Mayor Jan **HILL**, and Assembly Members Jerry **LAPP**, Scott **ROSSMAN**, Joanne **WATERMAN**, Greg **GOODMAN**, Steve **VICK**, and Daymond **HOFFMAN**.

Staff Present: Mark **EARNEST**/Borough Manager, Julie **COZZI**/Borough Clerk, Gary **LOWE**/Chief of Police, Jila **STUART**/Chief Fiscal Officer, and Ed **BARRETT**/Harbormaster.

Visitors Present: Krista **KIELSMEIER**/CVN, Bill and Libby **KURZ**, Matthew **BORISH**, Jerry **ERNY**, Rob **GOLDBERG**, Gordon **WHITERMORE**, Paul **NELSON**, Tom **HALL**, Judy **BEAUCHEMIN-HALL**, Brian **CLAY**, Scott **BAXTER**, Sean **GAFFNEY**, Sean **BROWNELL**, Mike **DENKER**, Shawn **MCNAMARA**, Christian **CABANILLA**, Erik **STEVENS**, Don **TURNER III**, Brenda **JONES**, Danny **HUPP**, Cory **LEVENE**, Matt **POLCIN**, Mike **FORTNEY**, Roger **MAYNARD**, Leonard **DUBBER**, Scott **SUNDBERG**, Nick **TRIMBLE**, Tim **THOMAS**, Scott **CAREY**, Ned **ROZBIKI**, and others.

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

Motion: **LAPP** moved to "approve the Agenda/Consent Agenda," and it was amended to move Item 14-Public Comments ahead of the Executive Session. The motion carried unanimously. There was no discussion.

* 4. **APPROVAL OF MINUTES** – Regular: 1/11/11 and 1/25/11

5. **PUBLIC COMMENTS**

ROZBIKI, on behalf of the Chamber of Commerce, thanked the borough manager for his willingness to meet monthly with the Chamber Board of Directors. He will attend the legislative fly-in in Juneau on the 2/22 and would like to collaborate with the borough on issues.

ERNY knows the assembly members take their jobs seriously and would like them to objectively consider the Picture Point issue. The Congress just got rid of earmarks for a reason, and if the borough is going to devote money to something, it should be toward something in dire need of maintenance, such as the Chilkat Center. The borough must stop depending on federal money.

WHITERMORE said he has had his issues with SEABA in the past, but in the past two years, they have been respectful. He doesn't have any problem with them having a permit as long as they can maintain this respect. He won't be a thorn in their side anymore and hopefully they won't have helicopters over his house.

DUBBER commented about the Haines Assisted Living variance agenda item and spoke in support of **DENKER**'s appeal. He is fundamentally opposed to planning and zoning. "The have-nots get mistreated by the haves."

BROWNELL said last week he attended a Klukwan Tribal Council meeting. One of their concerns is the building of a boat ramp at Wells Bridge, and he encouraged the assembly to consider the affects of it on Klukwan.

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

The mayor asked **GOLDBERG** to provide a Heliskiing Work Group status update. He said 2600 skier days is proposed, and he explained how the number was arrived at: 1200 skier days + 700 (140 photo days times 5 which is the average number of crew numbers) + 500 additional days for the two existing operators + 200 skier days for a third operator, Alaska Mountain Guides (AMG) for a grand total of 2600. The allocations would be Alaska Heliskiing 1500, SEABA 900, and AMG 200. There would be a shared use policy for backcountry skiers to request private time. The proposed new definition for *skier day* is "anyone who gets in the helicopter except for the pilot and the guide." **EARNEST** added that there was a no-limit zone and a moderate-impact zone but, since they are predominately on BLM land, they have been effectively removed for the 2011 season since BLM is not issuing permits this year. Through this process, all sides have demonstrated a willingness to work through the issues and try to come up with something that will benefit all interests without creating a huge negative impact on anyone. The meetings have gone well, and although there may not end up being a unanimous decision, they will be moving forward. The Work Group will meet again next week and the hope is that a final draft ordinance will be

ready for consideration at the next assembly meeting.

7. PUBLIC HEARINGS

A. Commercial Tour Permit – New Activity – Chilkat Guides

Note: Chilkat Guides applied for renewal of their commercial tour permit for 2011 and requested to add a Marine Sightseeing Tour to their currently permitted tours. The proposed tour is onboard a 26 passenger, 40-foot long Almar Raiv boat. Tours would depart from the Port Chilkoot Dock, the Small Boat Harbor or the Letnikof Cove dock. Routes, depending on sea conditions and time of year are generally defined as the waters and beaches of the Lynn Canal, Chilkat inlet, Chilkoot Inlet, Taiya Inlet and Taiyasanka Harbor.

The mayor opened the public hearing at 6:49pm.

SUNDBERG spoke in support of Chilkat Guides' high quality operation, and said they are perfectly capable of operating this tour.

HEDDEN explained the proposed tours. It's not a new tour for Haines, and was originally operated in a similar manner by Glen and Alison Jacobsen and Chilkat Cruises and Tours. He projects, at most, one or two trips on Wednesdays when there is a cruise ship in town. It's a trial year and, if it takes off, he will return to the assembly to request more capacity.

Hearing no further comments, the mayor closed the public hearing at 6:53pm.

Motion: **LAPP** moved to "authorize the addition of the new Marine Sightseeing Tour to the list of permitted Chilkat Guides tour activities effective with the 2011 permit."

Motion: **WATERMAN** moved to "postpone this agenda item to the 2/22/11 assembly meeting," and it was amended to require a Boat Harbor Advisory Commission review of the Letnikof Cove portion of the proposed tour prior to the assembly's consideration. The motion carried unanimously.

During discussion, assembly members expressed concerns with the Letnikof Cove portion of the proposed activity. They would like more information and a review by the Boat Harbor Advisory Committee. They would like to hear what they have to say, and they might suggest some facility upgrades to alleviate some of the concerns, such as overcrowding and limited parking and restrooms.

B. Ordinance 10-10-243 – third hearing

An ordinance of the Haines Borough amending Haines Borough Code Title 5 to repeal permit requirements for heli-ski operations and commercial helicopter tours and add permit requirements for commercial skiing tours.

The mayor opened the public hearing at 7:00pm.

ELY does not believe the non-motorized users have been represented on the Heliskiing Work Group. There are philosophical differences that are becoming more pronounced as the population grows. In the Haines Borough there are not a lot of options for non-motorized recreation. It's important to build protections into the ordinance and set aside areas for the future.

BORISH said the heliskiing guides are concerned about safety. It is premature to consider allowing a third operator. The industry has lost a lot of the terrain this season because of BLM not issuing permits. He explained that there is not unlimited space, because the conditions have to be right. It is a concern that guides will be pushed into places that are not safe.

SUNDBERG said SEABA's helicopter will arrive on Friday or Saturday, and skiing will begin on Sunday. The company intends to follow the ideas put forth in the Work Group including flight paths. They will mitigate, as much as possible and don't want to create situations, or make involuntary mistakes. He asked for guidance during this important test year. Once SEABA starts operating, he would like the assembly to investigate the complaints and related areas and determine for themselves the impact---verify what they've been hearing. He encouraged people that if they see a red helicopter operating out at the airport with SEABA on it to stop by to see what is planned for the day.

CAREY expressed alarm about the proposed 2600 skier days saying it's too many. The assembly should not allow another operator at this time. He also wants the ordinance to be amended so that the manager does not have the ability to change the map.

TUYNMAN asked that the Heliskiing Work Group be allowed to continue its work before adopting a new ordinance, and she suggested the assembly request a memorandum of agreement from the Group that would state the terms and conditions they have agreed upon to-date. She would also like

to see a sunset provision in the ordinance that would require the regulations to be revisited in six to eight months.

Hearing no further public comments, the mayor closed the public hearing at 7:12pm.

Motion: **VICK** moved to "advance Ordinance 10-10-243 to a fourth public hearing on 2/22/11," and the ordinance was amended to "substitute draft ordinance #3" prepared by the borough attorney. The motion carried unanimously.

During discussion, **VICK** said he likes the idea of the new *skier day* definition. Regarding the proposed increase in number of days, he acknowledged the industry needs an opportunity to grow but, perhaps, the increase to 2600 should happen incrementally. He hopes the Work Group will function for another year; if they stop now, some issues may never be addressed. **GOODMAN** doesn't believe police officers should initiate fines for heliskiing infractions as currently stated in HBC 5.04.160. **EARNEST** responded that the Work Group plans to change that. **GOLDBERG** added that the Work Group doesn't want to see the fines and offenses spelled out, to allow for leeway. **WATERMAN** said the idea of the 2600 skier days was partially to do away with the current photography days. It quantifies something that is already going on. The photo days were being used but not written down solidly, and this is an attempt to give it a number. Her hope is that everyone can work together to define what areas get used and for what so everyone has an opportunity to get what they need for recreation. She would hope that lines wouldn't have to be drawn. **HOFFMAN** said the proposed 2600 skier days is really not a huge jump but a closer representation of actual numbers. It also includes a little bump so we're not dealing with an issue of going over the days. If they're not exceeding their days, there is no infraction. He would go along with this, because it simplifies things. He would also like to see an overall goal for this industry similar to planning other things in the borough. The comprehensive plan update is coming up, and now is the time for everyone to get involved so it is accurate. **EARNEST** noted that one of the changes in the work draft is that the ability for the companies to come back during the season to request more days would go away. **LAPP** said he would like to see the ordinance in its final form. He believes the 2600 is likely the limit of what can be used in this valley. **VICK** said some people are concerned that there is no ceiling; there isn't a lot of faith that 2600 would be the final limit. **ROSSMAN** reminded that **SUNDBERG** had asked for some guidance and wondered what will be done. **EARNEST** responded SEABA will meet with the manager. **EARNEST** said he will get together with **GOLDBERG** to hammer out the changes that came out of today's Work Group meeting, and get them to the attorney so a new draft can be out hopefully well in advance of the next public hearing.

8. STAFF REPORTS

A. Borough Manager

The manager summarized his written report that included the following items:

- Garbage Contract
- Borough Property Assessment Update
- Haines/Skagway Borough Joint Work Session
- Excursion Inlet Survey Update
- Nukdik Point Property
- Pleasant Camp Fire Protection - MOA
- Lutak Dock Tariff - Cargo
- FY 2012 Legislative Priorities - CAPSIS

ROSSMAN asked about fire services for the U.S. Border Station. **EARNEST** explained that providing that service is one of the reasons for the federal PILT monies.

* B. Borough Clerk

C. Chief Fiscal Officer

STUART summarized the FY11 2nd Quarter Financial Report provided in the meeting packet. FUND 01 revenues are down primarily due to raw fish tax being down. Property Tax revenues are up 13%. Revenues in the Townsite Service Area are more or less flat.

* D. Chief of Police

* E. Museum

* F. Library

* G. Chilkat Center

9. COMMITTEE/COMMISSION/BOARD REPORTS

- A. Commerce Committee
- B. Finance & Budget
- C. Personnel & Labor Relations
- D. Government Affairs & Services

VICK reported that the Committee met to discuss the borough's garbage collection services and they recommend putting it out to bid. It is necessary to continue the conversation about sludge, so they plan to meet again. One idea is that sludge should be considered a useful commodity such as a possible heat source for the sewage treatment plant.

- *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
- *L. Service Area Boards
- *M. Ad-Hoc Boards & Committees

10. **OLD BUSINESS** - None

11. **NEW BUSINESS**

A. Resolutions

1. **Resolution 11-02-258**

A Resolution of the Haines Borough Assembly authorizing the Borough Manager to contract with Jensen Yorba Lott, Inc. for \$13,085 to provide assistance with preliminary engineering and developing conceptual designs for the School and Pool Locker Rooms.

Motion: **WATERMAN** moved to "adopt Resolution 11-02-258," and the motion carried unanimously in a roll call vote.

During discussion, **EARNEST** explained the reason engineering is needed for this project. The Department Education (DEED) requires it for funding, so it will make it possible for it to be on the list for grant consideration. **VICK** said the needed project is bigger than a remodel of locker rooms. The whole piping system involving two floors needs to be gutted and replaced. **EARNEST** reiterated that this project is specific to the problems, and the engineering is a necessary step.

2. **Resolution 11-02-259**

A Resolution of the Haines Borough Assembly authorizing the Borough Manager to negotiate a contract with Bigfoot Auto Service to purchase a lawn tractor for an amount not to exceed \$17,985.

Motion: **GOODMAN** moved to "adopt Resolution 11-02-259," and the motion carried unanimously in a roll call vote.

During discussion, the manager clarified that the lawn tractor was funded in the FY08 CIP. He explained that the borough is going back and identifying those funded CIPs that are backlogged and still needed. Conversely, any items no longer necessary or appropriate will be brought back to the assembly for reappropriation to other projects.

3. **Resolution 11-02-260**

A Resolution of the Haines Borough Assembly authorizing the Borough Manager to contract with Sheinberg Associates for \$44,464 to provide assistance with the Haines Borough Comprehensive Plan Update – Phase I.

Motion: **WATERMAN** moved to "adopt Resolution 11-02-260," and the motion carried unanimously in a roll call vote. The assembly did not discuss this item.

B. Ordinances for Introduction

1. **Ordinance 11-02-252**

An Ordinance of the Haines Borough Assembly approving the Lutak Land lease agreement between the Haines Borough and Delta Western, Inc.

Motion: **ROSSMAN** moved to "introduce Ordinance 11-02-252 and set a first public hearing for 2/22/11,"

and the motion carried unanimously.

During discussion, **EARNEST** said the new lease is fair to both parties. There were many deficiencies in the previous document, and this one safeguards the interests of the borough. He informed the assembly that Delta Western has requested a freeze on the fuel tariff increases for ten years. He cannot support that but had agreed to pass the request on to the assembly. He said he might support a shorter term up to five years provided the 3% annual increase was still adhered to. He asked the assembly to read through the lease document in preparation for the first public hearing and let him know if there are questions in the mean time.

2. Ordinance 11-02-253

An Ordinance of the Haines Borough Assembly amending Haines Borough Code 7.08.090 to expand the boundaries of the Letnikof Estates Road Maintenance Service Area to include Tract A, Port. USS 1242.

Motion: **ROSSMAN** moved to "introduce Ordinance 11-02-253 and set a first public hearing for 2/22/11," and the motion carried unanimously.

During discussion, the assembly asked for a map to be provided at the next meeting and for all such items in the future.

3. Ordinance 11-02-254

An Ordinance of the Haines Borough Assembly amending Haines Borough Code Section 3.70.050 to clarify mobile home registration requirements.

Motion: **LAPP** moved to "introduce Ordinance 11-02-254 and set a first public hearing for 2/22/11," and the motion carried unanimously.

During discussion, **GOODMAN** noted that charging a person with a misdemeanor requires the borough to pay for their legal counsel. The manager will look into an amendment for the next meeting to change it to a violation.

4. Ordinance 11-02-255

An Ordinance of the Haines Borough Assembly amending the port of Haines Terminal Tariff No. 3 to increase demurrage, dockage and wharfage rates.

Motion: **GOODMAN** moved to "introduce Ordinance 11-02-255 and set a first public hearing for 2/22/11," and the motion carried unanimously.

During discussion, **ROSSMAN** expressed concern that the borough remain competitive. **EARNEST** agreed that it's important to find a balance between paying for the facility and encouraging market flow. He could recommend the draft rate but certainly no higher. It's not necessary to match the Mat-Su Borough. They are competing with Anchorage and have volume issues. **EARNEST** said he would like this to be discussed by the Commerce Committee prior to the next assembly meeting.

C. Other New Business

1. Appeal of Planning Commission Decision

Note: on 12/09/10, the planning commission considered a Haines Assisted Living (HAL) variance request and granted it. The commission reconsidered its action on 1/20/11 with the same result. An appeal of that decision was properly submitted to the borough clerk by the aggrieved adjoining property owners, Mike Denker and Lisa Blank.

DENKER presented his request to the assembly to rehear the planning commission's decision. His main contention is that HAL created conditions requiring a variance when they violated the previous variance conditions. Code says that the conditions requiring a variance cannot be caused by the person seeking the variation. The standard we all work under in the code is set, and the planning commission did express a need to change the code in the future. HAL was not required to adhere to the provisions in code. They got the appropriate approval to build 2 feet into the 15-foot building separation, however, they did not get permission prior to going 6 additional feet into it. In his appeal letter, he spelled out the borough code-prescribed process. Any after-the-fact variance flip-flops that process by the construction taking place first. The public is not offered an opportunity to weigh in, and he believes that is a due process violation. That's why the application is the first step in the process. He added that due process rights are spelled out in both the Alaska and U.S. Constitutions. He thanked the assembly for hearing his appeal for a rehearing.

Motion: **GOODMAN** moved that “believing the planning commission may have erred in its decision concerning the HAL variance permit, the assembly will rehear the entire decision on February 22, 2011,” and the motion carried unanimously.

During discussion, **ROSSMAN** said he had understood this to be an issue where the separation was measured to a wall as opposed to the eave. **DENKER** responded that the borough code stipulates from protrusion to protrusion (eave to eave). The actual wall was built farther into the separation than the original variance approved. **GOLDBERG** clarified that separation and setback are two different things. HAL exists within a commercial zone and can be on the zero lot line according to the setback chart in code. Elsewhere in code, a 15-foot separation is required between buildings. **DENKER** agreed that there are two different standards. The most restrictive standard applies when there are conflicts, and he wants to know what the standard is in this borough.

2. Proposal to Purchase Borough Property – New Hope Fellowship

Note: The church, New Hope Fellowship, submitted a proposal on 7/25/10 to purchase a portion of the Borough’s recently acquired Emerson Field. The planning commission reviewed the proposal and recommended the borough not sell it. On 1/11/11, the assembly, by motion, asked the planning commission to reconsider the proposal and meet with the Mosquito Lake residents. At its 1/20/11 meeting, the planning commission took no action on this matter. In the interest of providing the church with an answer, the borough manager requested the assembly make the decision at this meeting.

Motion: **LAPP** moved to “authorize the Borough Manager to negotiate with New Hope Fellowship to purchase a portion of the parcel generally known as Emerson Field,” and the motion carried 4-2 with **WATERMAN** and **GOODMAN** opposed.

During discussion, the **GOLDBERG** explained the planning commission’s recommendation not to sell the property. The assembly talked about pros and cons and concerns about the proposal amount not being a fair market price. It was mentioned that most of the residents in that area would like the borough to sell the land to the church. **EARNEST** said the borough would have the ability to put conditions on that sale. The process for negotiating a land sale is prescribed in code and is very lengthy involving back and forth conversations between the assembly and the planning commission and requiring a non-code ordinance. He clarified that all costs for the survey, appraisal, escrow, etc will be paid by the party wishing to purchase the property.

**3. Reconsideration of Ordinance 10-12-251 – to correct the effective date
An ordinance of the Haines Borough amending Haines Borough Code sections 3.70.030 and 3.70.040 to include a process for handling late-filed applications for senior & disabled veterans property tax exemptions.**

Motion: **WATERMAN** moved to “reconsider the 1/25/11 motion to adopt Ordinance 10-12-251,” and the motion carried unanimously.

The effect of the passage of this motion put the motion to “Adopt Ordinance 10-12-251” on the floor and opened it for discussion.

Motion: **WATERMAN** moved to “amend Ordinance 10-12-251 to change the Section 3 effective date to read: *this Ordinance is effective upon adoption,*” and the amendment motion carried unanimously.

The main motion to adopt Ordinance 10-12-251 carried unanimously in a roll call vote.

**4. Nukdik Point Presentation and Discussion of Potential Uses
SCHNABEL gave a PowerPoint presentation on the history and potential benefits of purchasing the Nukdik Point property. **EARNEST** explained some federal funding opportunities including a non-earmark, competitive grant program. He would like to pursue it.**

[See Item 14 on the following page.]

14. PUBLIC COMMENTS moved to this point during Approval of the Agenda.

GOLDBERG said government is not a business. Its purpose is to provide services, not make money. He believes this Nukdik Point idea will fit right in with the local services, and he is comfortable with his federal dollars going toward it.

ERNY said this gateway to Haines sounds really nice but the rest of the town looks “despicable.” The existing infrastructure needs to be upgraded rather than purchase Nukdik Point.

JUDSON asked the assembly to adopt a resolution at this meeting to build a community center but was informed by the mayor that resolutions must be on a published agenda before consideration. He also made suggestions for improved ferry service and improved mail delivery during bad weather conditions.

5. Executive Session - Manager's Evaluation & Chilkoot Lumber Co. Lawsuit

The mayor and manager requested the assembly to, by motion, move into executive session in order to discuss the following items. These qualified for executive session because discussion in the open would clearly have had an adverse effect on the finances of the Haines Borough and/or tend to prejudice the reputations of those involved.

- 1) **Chilkoot Lumber Company lawsuit** – to discuss and provide direction to the borough attorney regarding this specific legal matter affecting the borough's finances
- 2) **Borough Manager's performance Evaluation** – to discuss with the manager the results of the assembly's evaluation of his performance.

Motion: LAPP moved to "postpone the manager evaluation portion of the Executive Session to the 9/22/11 assembly meeting," and the motion carried unanimously.

Motion: LAPP moved to "go into executive session to discuss the Chilkoot Lumber Company lawsuit and provide direction to the borough attorney. Discussion in open session would clearly have an adverse effect on the finances of the Haines Borough, therefore this matter qualifies for executive session, as allowed by AS 44.62.310(C)(1) and Haines Borough Charter Section 18.03(B)." The motion carried 5-1 with **ROSSMAN** opposed.

The borough manager, borough clerk, and chief fiscal officer were requested to attend.

Present: Mayor Hill; Assembly Members Lapp, Waterman, Vick, Rossman, Goodman, and Hoffman; Borough Attorney Brooks Chandler (via telephone); Borough Manager Earnest; Borough Clerk Cozzi; and Chief Fiscal Officer Jila Stuart. The executive session convened at 10:18pm and ended at 10:55pm.

There was no statement or action made following the executive session.

12. CORRESPONDENCE - None

13. SET MEETING DATES

The following meetings were scheduled:

- Government Affairs & Services Committee, Tuesday, 2/15, 5:30pm
Topic: Borough Solid Waste disposal, including sludge
- Commerce Committee, Tuesday, 2/22, 5:30pm
Topic: Proposed Port Tariff Ordinance 11-02-255
- Finance Committee, Tuesday, 3/8, 5:30pm
Topic: Proposed FY11 Budget Amendment

14. PUBLIC COMMENTS – moved before Item 11C3 during approval of the agenda.

15. ANNOUNCEMENTS/ASSEMBLY COMMENTS - None

16. ADJOURNMENT – 11:08 p.m.

Motion: LAPP moved to "adjourn the meeting," and the motion carried unanimously.

Janice Hill, Mayor

ATTEST:

Julie Cozzi, Borough Clerk