

Haines Borough
Borough Assembly Special Meeting
June 13, 2011
MINUTES

Approved

THIS SPECIAL MEETING WAS HELD SOLELY FOR CONSIDERING THE ITEMS LISTED ON THE PUBLISHED AGENDA. NO ADDITIONAL ISSUES WERE CONSIDERED AT THIS MEETING.

1. CALL TO ORDER/PLEDGE TO THE FLAG

Mayor **HILL** called the meeting to order at 6:00pm in the Assembly Chambers and led the pledge to the flag.

2. ROLL CALL

Present: Mayor Jan **HILL** and Assembly Members, Scott **ROSSMAN**, Steve **VICK** (via telephone), Jerry **LAPP**, Joanne **WATERMAN**, and Daymond **HOFFMAN**.

Staff Present: Mark **EARNEST**/Borough Manager, Julie **COZZI**/Borough Clerk, Gary **LOWE**/Chief of Police, Tanya **CARLSON**/Tourism Director, Patty **BROWN**/Library Director, Jerrie **CLARKE**/Museum Director, and Brad **MAYNARD**/Director of Public Facilities.

Visitors Present: Keith **KAISER**, Gina **ERNY**, Kelly **LOWE**, Nick **TRIMBLE**, Scott **SUNDBERG**, Deborah **VOGT**, Don "Duck" and Karen **HESS**, Misty **ANDERSON**, Jerry and Gina **ERNY**, Wayne **HIRSCH**, Roger and Barbara **MAYNARD**, Bill and Cheryl **MCRBERTS**, Gary E. **HESS**, Carol **TUYNMAN**, Anne Marie **PALMIERI**, Jon **HIRSH**, and John **FLORESKE Jr.**

3. APPROVAL OF SPECIAL MEETING AGENDA

Motion: **WATERMAN** moved to "approve the special meeting agenda," and the motion carried unanimously.

4. PUBLIC COMMENTS

The mayor announced that the time limit for this evening would be 2 minutes for each speaker.

D.HESS asked the assembly to appoint Karen Hess to Seat E.

ERNY said no one else was a candidate, and it seems unethical for a person to try to get on the borough assembly by an easy appointment rather than running in an election.

ANDERSON representing Community Waste Solutions, read a written statement expressing that business's support for Karen Hess being appointed.

TRIMBLE supports Karen Hess being appointed. He agreed with **ERNY** that no one else ran for that seat and Hess got more than 40% of the vote as a write in. He believes it is the fair and ethical thing to do.

TUYNMAN said each assembly member is elected to make decisions for the good of the borough as a whole. She believes the borough made an honest mistake in this matter.

G.HESS spoke on behalf of appointing Karen Hess.

R.MAYNARD spoke in favor of a Karen Hess appointment, as well. He explained that the judge said the court didn't have the right to give the office to the next highest vote getter. The right thing to do is for the assembly to appoint Karen Hess. This decision will reflect on the assembly who made a mistake last fall.

PALMIERI mentioned that this is a 3-month term position. It would be of greatest interest to the borough to seat someone who is up-to-date on the issues and urged the appointment of Norm Smith to the seat.

VOGT said it was outrageous that Goodman was personally sued.

K.HESS rebutted that she did not sue Greg Goodman and added that she has opted not to seek any damages.

SUNDBERG spoke in support of Karen Hess. It's the right thing for the assembly to do, and it will be a lot of positive goodwill for the assembly.

Barbara **MAYNARD** said the right thing to do is to seat Karen Hess.

KAISER spoke on behalf of Karen Hess, also. The assembly has made some mistakes in the past and he would like to see them right this matter, because she is well qualified.

5. BUSINESS

A. ASSEMBLY SEAT E – INTERIM APPOINTMENT

On 5/24/11, the assembly decided to fill the vacant assembly seat E by appointment and to provide the general public an opportunity to submit letters of interest. The deadline was 6/8, and several letters were received.

The mayor offered applicants an opportunity to speak for two minutes, if desired.

HIRSCH said he supports Karen Hess' appointment but, if that does not happen, he would like to be appointed.

K.HESS said it's been a long process. She has served on the borough assembly in the past and cares about this community and wants it to thrive. She would like to be a part of this group to take the borough to the next level.

HIRSH appreciated the opportunity to sign up for appointment. He is concerned about the future of Haines and wants to participate in it. He is concerned for youth, a healthy economy, and happiness with borough decisions. He added that he has nothing against Karen Hess.

G.HESS said the duty of every public office is to the people they serve, and sometimes people lose sight of that. He signed up for the job in the event that Karen Hess is not appointed. He is concerned about what is good for Haines and its people. If he is appointed, he would run for office in October.

Motion: **LAPP** moved to "appoint Karen Hess to Borough Assembly Seat E," and the motion failed 2-3 with **WATERMAN**, **HOFFMAN**, and **VICK** opposed.

During discussion, **ROSSMAN** said it's important that Karen Hess ran in the election and believes there's precedent for appointing an election candidate to a vacant position. **LAPP** noted there are many good people on the list, but none of the others put their name out there for the last election like Hess did. It's only 3-4 months before the next regular election, and he believes appointing Hess is the fair thing to do. **HOFFMAN** believes Karen Hess wants to serve the best interests of the community. The contradiction he has is that there are people who are saying that she got 40% of the vote and they would feel disenfranchised. If she is seated, the 60% who voted for someone else might feel disenfranchised, as well. This puts the assembly in a strange position. He cannot vote to appoint her, because there would be more voters disenfranchised. **WATERMAN** agreed. She has put more thought into this meeting than any other so far. She realizes mistakes were made and there are lessons learned. No matter what happens, someone will be disappointed. She said she is leaning toward a Norm Smith appointment. **ROSSMAN** said the assembly has the power to appoint someone this evening. The percentage doesn't matter. The person took the initiative to run for office in October, and nobody else on the list did that. **LAPP** doesn't believe the assembly would be disenfranchising anyone. The voters who voted for someone who was not a resident should feel disenfranchised. **VICK** said Karen Hess should not feel like it's her right to be appointed---there is no entitlement.

Motion: **WATERMAN** moved to "appoint Norm Smith to Borough Assembly Seat E," and the motion failed 3-2 with **LAPP** and **ROSSMAN** opposed.

During discussion, **WATERMAN** said she stands by the voters and believes that appointing Norm Smith at this point takes everything back to square one. It doesn't wipe the slate clean, but it's as close to the beginning, as possible. **ROSSMAN** said he's prepared to sit until midnight, if necessary, and **LAPP** agreed. **WATERMAN** responded that she refuses to be blackmailed. **VICK** said in the end, if this vote does not pass, it would help if there is a compromise candidate everyone can agree on.

Motion: **VICK** moved to "Appoint Joanne Ross Cunningham to Borough Assembly Seat E," and the motion failed 2-3 with **WATERMAN**, **LAPP**, and **ROSSMAN** opposed. There was no discussion on this motion.

Motion: **HOFFMAN** moved to "appoint Jon Hirsh to Borough Assembly Seat E," and the motion failed 3-2 with **LAPP** and **ROSSMAN** opposed.

During discussion, **VICK** said Hirsh has been a member of the community and has a family. He believes he would be a good compromise candidate. **ROSSMAN** cannot understand why it's alright to nominate someone who didn't have any voter approval at all, but it's wrong to appoint someone who went through the election and got more than 40% of the vote. **VICK** disagreed with that point. **WATERMAN** doesn't believe it's right or wrong; the assembly's at a point where anyone could put their name in.

HOFFMAN said it's becoming very clear how this is going to go, and wondered if there is a compromise

person. **LAPP** sees it as a matter of ethics. A wrong was done according to the court, and in his heart and mind, the right thing to do is appoint Karen Hess. He cannot support any of the other individuals. **WATERMAN** said if she had felt she knowingly and willfully did the wrong thing, she might understand the argument, but she did not. Seating Norm Smith restarts everything. She believes that is best for the voters, so they can have their say in October. **VICK** said the court made a ruling but did not dictate who to appoint. It is important to make the right decision for the community. **WATERMAN** said one of the rules the judge referenced was the American Rule that says the next highest vote getter is not automatically entitled to be given the vacated office. The matter should be given back to the voters. **LAPP** would have been more inclined to support someone else if they had shown up at the meeting or had a support group in attendance. **HOFFMAN** said he has heard the same number of comments against appointing Karen Hess, right or wrong and wondered what the next move is. The assembly appears to be deadlocked. **ROSSMAN** said he is not supportive of putting nominees on a list, ranking them, and adding up the points. **HOFFMAN** asked if staff has any recommendations. **EARNEST** offered that the assembly may want to consider going outside of the list. There is nothing that would preclude that if, in fact, there is not going to be a resolution. **WATERMAN** said if ground rules are established, voting might be acceptable. Could the assembly get it down to a shortlist of 3 people? **ROSSMAN** did not like the idea.

WATERMAN moved again to appoint Norm Smith, but there was no second to the motion.

G.HESS was allowed to speak and asked what is so terrible about appointing Karen Hess and letting the voters decide in October. The assembly seems prejudiced. **HOFFMAN** said what is right in the different minds is okay. Everyone is standing for what they believe in. He has nothing against any of the people including Karen Hess. It's difficult to sit there and be called spineless and prejudiced. Some type of compromise is needed.

Chief **LOWE** wondered if it would be possible to allow the mayor to vote. [No]

VICK suggested that if the assembly is truly in a deadlock, two names could be put in a hat. **WATERMAN** wondered how to get to the two names. **VICK** said Karen Hess and Norm Smith have been proposed the most. **ROSSMAN** said he would feel like that would be the worst thing an elected official could do. **VICK** countered that there have been many instances where close votes have been decided by a coin toss. **WATERMAN** added she believes that's how the Alcohol Beverage Control Board decides who gets the liquor license if two people are up for it. Leave it to fate, do a drawing.

Motion: **VICK** moved to "appoint John Brower to Borough Assembly Seat E," and the motion failed 3-2 with **LAPP** and **ROSSMAN** opposed. There was no discussion.

Motion: **VICK** moved to "appoint Norm Hughes to Borough Assembly Seat E," and the motion failed 2-3 with **LAPP**, **WATERMAN**, and **ROSSMAN** opposed. There was no discussion.

HOFFMAN said he would have preferred a special election to fill this seat. He doesn't believe there has been any clear direction given to the assembly. He has no problem with **LAPP's** and **ROSSMAN's** position, but the assembly doesn't know how to do this in a deadlock. **VICK** reminded that the assembly members are the ones elected to serve. They need to keep hacking at it and make a decision tonight. Take the responsibility and figure out a way to come to an agreement. **WATERMAN** asked **ROSSMAN** and **LAPP** if they are still standing firm for Karen Hess. **ROSSMAN** and **LAPP** both said they feel strongly about appointing her. **WATERMAN** said she would go to the judge's conclusion to hold a special election, and asked if that would fly with the court. **ROSSMAN** agreed with that thought. **WATERMAN** wondered what happens if the assembly breaks the borough code and doesn't appoint someone to the seat.

Motion: **WATERMAN** moved to "proceed to a special election to fill Assembly Seat E with the election to take place during the general election," and the motion failed **3-2** in a roll call vote with **LAPP** and **VICK** opposed

EARNEST said he called the attorney who has no issue with filling the seat by election, although there would be a risk of having it taken to court. If that's the wish of the assembly, it would be a possibility. **LAPP** asked if the judge's order trumps borough code. **EARNEST** said that question was evaluated when the ruling came out. The judge talked about an election and also talked about borough code. There was a conflict between the timeframes for appointment (30 days) and a special election (45 days).

VICK cannot support knowingly violating borough code by not appointing someone to the vacancy tonight. **WATERMAN** said what she heard from the attorney is that if the assembly follows the judge's decision, she's not clear they will actually be breaking borough code if they follow the judge's directive. **EARNEST** believes yes, but what would the ramifications be?

D.HESS was allowed to speak. He asked if it would be appropriate for the 3 members who are against Karen Hess' appointment to explain why. **VICK** believes the request is inappropriate. **HOFFMAN** said

he doesn't believe credentials are the point right now. The point he was trying to make is that there was a flawed election but voters had 2 or 3 months to decide who to vote for. He sided with the voters on his previous decision and is now. The majority of the votes did not go to Karen. He freely admits he is not a constitutional scholar. He has to stand by what he believes is right. He respects the other position but doesn't agree with it. **WATERMAN** said this decision is best left to the voters. She still believes Norm Smith should be appointed to the seat, but short of that, the voters should decide. She will be wrong no matter what decision she makes tonight. She believes Karen Hess is totally qualified to serve in that seat, but it is not her decision. **ROSSMAN** disagreed and said it actually is the assembly's decision tonight. **VICK** again suggested putting names in a hat.

Motion: **ROSSMAN** moved to "appoint Karen Hess to Borough Assembly Seat E," and the motion failed 2-3 with **WATERMAN**, **HOFFMAN**, and **VICK** opposed.

During discussion, **HOFFMAN** said his vote will still be the same, because he doesn't believe he is wrong. 60% of the voters were not wrong.

K.HESS was allowed to address the assembly. She said she is a bit confused about the three who are against appointing her to the seat. They say they don't want to go against the voters, but she got 43% of the vote. There were a lot of people out there who believed Goodman would not have been allowed to be seated since borough code did not allow him to be kept off the ballot. She is baffled that they would appoint someone who didn't run and get even one vote. **WATERMAN** said if there had been an avenue in borough code to say Goodman was not qualified to run, another person would have stepped up. There are a lot of unknowns. She still contends Norm Smith was in the seat when the election happened so put him back in the seat and let the election happen again. The letters of support for Karen Hess have emphasized the amount of votes received. There's also the amount of votes she didn't receive, and that's where her quandary is. **HOFFMAN** agreed with **WATERMAN**. He's okay with breaking the borough code and having an election to let the voters decide. He would prefer to see it go that way. **ROSSMAN** asked if there is any way that **LAPP** or **VICK** would agree to an election. **LAPP** said yes. **VICK** said no.

Motion: **WATERMAN** moved to "have a special election to fill the vacant Assembly Seat E with the election to take place during the general election," and it was amended to add that due to the sitting assembly being unable to appoint someone, they will call for a special election. The motion carried **4-1** in a roll call vote with **VICK** opposed

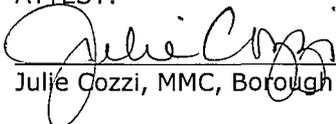
During discussion, **LAPP** said he would go along with this because Charter says "shall attempt" to appoint. The assembly is getting nowhere, and this is the next best option. **VICK** said he will not vote for this, because he believes making an appointment is the assembly's obligation at this time. Code doesn't allow for an election, at this point. **ROSSMAN** said with what the judge's orders were, he's going into the gray area if this is what he said to do. He can sort of justify to himself that the assembly is doing what they are supposed to do. Everything they do as an assembly is always an interpretation of what is written in code and charter every time. **VICK** agreed with that. In the end, the vote will be taken. He's comfortable with the decision that they are about to make. **LAPP** said he believes it is unfortunate they couldn't reach a consensus, but he just can't go against what he believes is right.

Mayor **HILL** turned the gavel over to **LAPP**. She said it was a difficult meeting to sit through because she could do nothing. Generally the opportunity to break a tie is very difficult and most of the time undesirable. She was elected to make decisions. This would have been an easy decision for her to make this evening if she had been able to break a tie, although she's not sure how she would have voted on the election motion. She has no problem with having the citizens vote, but the assembly was elected to make the kind of decisions like the one before them this evening. Part of being a good leader is the willingness to compromise. She respects everyone's positions and understands the strong opinions. She wished there was a way she could have helped fill the empty seat. It bothers her. The failure to make an appointment this evening will not sit well with the community.

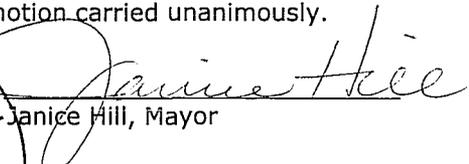
6. ADJOURNMENT - 8:14 pm

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

ATTEST:


Julie Cozzi, MMC, Borough Clerk




Janice Hill, Mayor