


Haines Borough
Borough Assembly Meeting #218
February 28/29, 2012
MINUTES

Approved

1. CALL TO ORDER/PLEDGE TO THE FLAG: Mayor **SCOTT** 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 Stephanie **SCOTT** and Assembly Members Jerry **LAPP**, Joanne **WATERMAN**, Norman **SMITH**, Steve **VICK**, Debra **SCHNABEL**, and Assembly Member Daymond **HOFFMAN** (via teleconference).

Staff Present: Mark **EARNEST**/Borough Manager, Julie **COZZI**/Borough Clerk, Ed **BARRETT**/Harbormaster, and Tanya **CARLSON**/Tourism Director.

Visitors Present: Margaret **FRIEDENAU**/CVN, Bill **KURZ**, Burl **SHELDON**, Jack **WENNER**, Tom **HALL**, Paul **NELSON**, Pam **RANGLES**, Don **TURNER III**, Deborah **VOGT**, Eric **KOCHER**, George **FIGDOR**, Nick **TRIMBLE**, Scott **SUNDBERG**, Ben **CLARK**, Floy **MCDOWELL**, Rob **GOLDBERG**, Melissa **ARONSON**, Chris **DALTON**, George **CAMPBELL**, Erika **MERKLIN**, Nicholas **SZATKOWSKI**, Jessica **PLACHTA**, Christopher **BROOKS**, Tom **WEYES**, Becky **HUNT**, Mario **BENASSI**, Michael **BYER**, Annemarie **PALMIERI**, Nelle **JURGELEIT-GREENE**, Sean **BROWNELL**, Orion **KOLEIS**, Matt **BORISH**, Daniel **GONCE**, Vanessa **SALMON**, Sean **MCNAMARA**, Dean **LARI**, Glenn **ZOLLER**, Daniel **BRUCE**/SEABA Attorney, and others.

3. APPROVAL OF AGENDA & CONSENT AGENDA (Items with the *asterisk are on the consent agenda)

Motion: **LAPP** moved to "approve the Agenda/Consent Agenda," and it was amended to add Consideration of the Planning Commission's Recommendations for Beach Road/Front Street as item 11C1 and shift the other New Business items down. All motions were seconded. The motion as amended carried unanimously.

*** 4. APPROVAL OF MINUTES** – None

5. PUBLIC COMMENTS

RANGLES spoke for the Takshanuk Watershed Council, and said they have had several discussions about the GPS data. They may be able to offer some assistance, because they have the software, expertise, and maps, and could be a disinterested third party to receive and process the data on a contractual basis.

SHELDON spoke concerning the Community Waste Solutions (CWS) contract and negotiated land sale issues. He asked for the committee of the whole to take place as promised pending legal advice. He briefly explained CWS's planned approach to the leachate problem and said the buffer property is very important. Today, they entered into a contract agreement with a firm that will prepare a cost analysis.

NELSON requested that **SCHNABEL** be recused from voting on any issue regarding CWS because of her brother's connection with the company. Acme Transfer has the RCA permit and the ability to provide the community garbage disposal services. He read a 3/10/11 email from Brandon Miller of the RCA. CWS may want the assembly to believe they are the only choice, but the assembly has the power to investigate. Acme Transfer has an ongoing relationship with the Haines Friends of Recycling, and they will continue to work together.

CAMPBELL expressed support for Ordinance 12-01-279 and he likes the way it was amended at the previous meeting.

FIGDOR said he has concerns about Ordinance 12-01-279. The trust issue is a two-way street. The assembly has done enough to invite the trust of the industry by extending skier days, but the trust the other way is still missing. There is still no track record, nothing to show monitoring works, etc. The GPS system needs to work well for ALL stake holders. It may be appropriate in a couple years to revisit it for scaling back after there is a track record.

MCDOWELL said the GPS requirement was added to appease both sides. It was never to be open for just anyone to get the data. The way the ordinance is currently worded is good. It's important to continue monitoring the industry for a few more years to see if there are areas that need to be tweaked.

SUNDBERG, of SEABA, said Ordinance 12-01-279 reads very similar to the way other federal and state agencies regulate and monitor. If SEABA fails to provide the data upon borough request, they are in violation if they don't provide it. Therefore, they will continue to collect the data. They are also

interested in being able to have the data for verification in the event of an alleged violation. He likes how the current ordinance reads. As for the Takshanuk Watershed Council offer to work with the GPS data on a contractual basis, he thinks it's a great idea. However, he would request an RFP be put out.

BROWNELL, owner of Alaska Heliskiing, said he doesn't have a problem with collecting the GPS data. His concern is making the data available to anyone who wants to see it. Having the borough manage it with spot checks is okay. Having a competitor get access would harm his business. This would be like a long line captain who has worked for many years. To let other fishermen know how he runs his boat and catches his fish would be unfair. He has spent over a decade in Haines learning the area and close to \$5m in skiing time, and sharing that with competitors would harm his company.

VOGT has a considerable career with tax matters. She disputed the notion that the borough has to disclose the data just because they collect it. The borough should collect the data and keep it confidential.

MERKLIN believes the GPS data should be collected on a daily basis and not just be spot checked. Fishermen are monitored and get ticketed for being out of bounds. There needs to be more heliskiing regulations. They need to self-regulate, but the data should be made available to anyone who wants it. The data should be used to make sure the industry is complying, not just when a complaint is received.

6. MAYOR'S COMMENTS/REPORT

Mayor **SCOTT** said over a million dollars of mayoral support letter requests recently came from community organizations applying for legislative grants. She was very uncomfortable doing those letters without assembly involvement, so this is the last time she will do it. She will do her best to alert the community that support requests will come to the assembly in the future.

She cancelled the borough's annual trip to Washington DC on the recommendation of the lobbyist.

The borough has signaled its interest in the sustainability of the wild fish stocks, and she received a response from the AK-F&G Commissioner. She has asked Debra Schnabel as chair of the Commerce Committee to monitor this situation and keep it active.

Governor Parnell called her last week. He wants some economic indicators to show how Haines has fared this winter. He asked Emergency Preparedness to attend the upcoming gardening conference in March. He agreed to come to Haines for the Fair and the anniversary of the Bald Eagle Preserve.

7. PUBLIC HEARINGS

A. Rehearing on Appeal of a Planning Commission Decision SEABA Inc. – Heliport Conditional Use

Note: SEABA, Inc. wished to operate a heliport on their property at .6 mile Chilkat Lake Road on Lot 6 Sundberg Subdivision, so they applied for a conditional use permit as required by HBC 5.18.080(F)(13). On 1/19/12, the planning commission considered that request and subsequently denied it by a tie-vote of 3-3. HBC 18.30.060 allows for an appeal to the assembly of a planning commission decision, and SEABA properly submitted an appeal to the borough clerk on 2/3/2012. On 2/14, the assembly voted to rehear the matter and scheduled the hearing for this meeting as required by 18.30.060(A). This public hearing was conducted according to HBC 18.30.060.

The mayor disclosed her field trip to the proposed heliport property on February 26 and that she wrote about it on her blog. It turns out she was gathering evidence per the attorney. During this proceeding, the assembly must make its decision by a supermajority vote which is 5 out of the 6 members. Therefore, there is no opportunity for her to vote, and it is not a veto-able matter. She asked if the appellant, borough manager, or assembly members had any issue. **WATERMAN** said she falls under the same category, because she went to 26-mile herself. **SCHNABEL** asked who ruled that this is not allowed. **FALCONER** explained that under code, this is an appeal that is based on the factual record. No new evidence is taken at this type of hearing. It is worth disclosure and asking if there are problems with it. Does he think that this particular field trip will make the "judge" unqualified to deliberate? No. However, he wants to make sure there is no issue. **SCOTT** asked the appellant if there was an objection, and SEABA's attorney, Daniel **BRUCE**, said he had none. **EARNEST** also said he had no objection. Additionally, there was no assembly objection expressed.

Mayor **SCOTT** put aside her timers and asked the appellant to come forward because they bear the burden of proof. This will be followed by the borough manager and then the public testimony.

7:11pm – SEABA attorney Daniel **BRUCE** said he is representing the company in this appeal. It was a non-decision of the planning commission because it was a 3-3 vote. The manager's

recommendation is unsound in that it is not fact-based. He failed to advise the planning commission that SEABA has a right to develop a heliport on their property provided it is not used for commercial skiing. It is only the interface between Title 5 and Title 18 that requires the conditional use permit. There are no facts in the manager's recommendation. The only facts presented to the planning commission were provided by SEABA, including noise level information. SEABA, in their best year of operation, flew 54 days in the season--- 104 hours of operation---14% of the time. He challenged that, given the levels of noise and the amount of time in operation, there is not a significant impact on adjoining property owners. It is a mixed-use area, and there are other commercial activities in that area. SEABA had a reasonable expectation at the time they purchased the property that they would be able to use the property for their business. The conditions proposed by SEABA and the manager were very reasonable to establish a balance between property owners and uses. But for Title 5, SEABA would not need to come before the assembly for a conditional use permit. **SMITH** asked him if he had driven up to the property. **BRUCE** said he is not a judge or fact-finder in this appeal---he is an advocate. He said Commissioner Roger Maynard summed it up best, and he encouraged the assembly to go to that portion of the audio recording of the planning commission meeting.

7:18pm - Borough Manager Mark **EARNEST** said he considered this very deliberately in order to balance the interests of the property owner/developer and the residents in that area. The borough does not have scientific data including decibel levels. He also considered the fact that the area adjacent to the property is also developed for residential neighborhoods. In going through the eight criteria that the applicant must meet, he concluded the application fell short on three of them. The other five were either met or he had no opinion. He believes criterions 1, 4, and 5 were not met. He carefully considered the application and evaluated it on what he determined to be in the best interest of the borough, recognizing that the matter would go before the planning commission and most likely to the borough assembly. **SCHNABEL** asked what a good measure is for "area away from residences?" **EARNEST** admitted it is subjective. Considering the correspondence received over the past two years and visiting the site, there is some mitigating topography. However, his opinion is that once the helicopter is in the area, it is federal airspace and can go any direction. He decided a different location further away from residents would be preferred.

7:23pm - Public Testimony:

HUNT read a written comment entered into the record. She supports the heliski industry but does not believe heliports belong in residential areas. She has been a property owner at 26-mile since 1997. The area has grown up and become a neighborhood.

WEYES is a guide for SEABA. The helicopters have proven over the years that they can land in close proximity, such as 18-mile and 33-mile.

BROOKS said he believes SEABA has shown through fact that this will work a lot better than 18-mile and the airport, and he is supportive. This is an industry that comes here for a few months and then goes away. It has a lot less impact than a year-round industry. He was at 33-mile eating lunch one day and a helicopter landed and took off. It wasn't that bad and did not upset his lunch.

MCDOWELL said she was informed that if this heliport is approved, there are plans to put in two additional heliports. No one wants to pay to land or take-off, so the trend is to purchase land to put in a privately-owned helipad. She supports Heliskiing and agrees the industry needs a place to land but it should be on borough land that meets their needs but not in a residential area. It should not be on private property because there will always be a battle. The University of Alaska sold these lots for residential purposes. The community as a whole could come up with a good location for a heliport. She asked the assembly to respect the planning commission's decision.

SZATKOWSKI is a 26-mile resident. He spoke at length in opposition to the heliport. Whether a person is for or against Heliskiing, the issue is that the eight criteria for a conditional use permit have not been met. He noted what he called a slight procedural misunderstanding---it's not an issue of land restrictions but a Title 5 permit issue. The burden of proof is on the applicant to prove the eight criteria are met. The rights of business should not override permit requirements. He is definitely opposed to this permit.

PLACHTA reiterated her husband **SZATKOWSKI**'s comments. She asked the assembly to be mindful of the 100-150 people who will be seriously affected by the decision. SEABA cannot meet the conditions necessary to qualify for a heliport conditional use permit. **SCHNABEL** asked her to point out on the map where their home is since they claim it shook when SEABA landed their helicopter there.

CAMPBELL said it's unfortunate that during the planning commission meeting there were a lot of subjective statements made. One portion of the land out there was sold by the University as residential, but the SEABA property is mixed-use. Just because people are in that one residential area doesn't mean it has to be that way for other areas. He works in the aviation industry. The heliport at the airport is NOT the safest place. The Juneau heliports have had many meetings trying to keep the fixed wing and helicopters in separate traffic paths. The risk of a mid-air collision is high. The shorter the flights, the less time they are in the air, the safer they will be. "Not being neighborly" should not be a reason to vote against this. The planning commission should vote on the issues of code and the eight criteria. Helipads are not necessarily a devaluation of property. When the FAA talks about noise impacts, it includes fixed wings. They have actually found that helipads increase property values. It's the fixed wings that drive the values down. Unfortunately, it seems there are more emotions in this issue than true facts. He asked the assembly to approve it.

GOLDBERG, planning commission chair, said he presided at the hearing before the commission. He disagreed with **BRUCE**'s statement that the only evidence presented at that hearing was from SEABA with their decibel information. Doesn't the testimony of the residents constitute evidence? He did consider the eight criteria and found he agreed with the manager's recommendation that three of them were not met. And, after public testimony, he agreed that the property values would likely go down. He disagreed that helicopters are not very loud. The decibel scale works much like the Richter scale. He believes a heliport will have a major impact on the residents' quality of life.

MERKLIN said she is directly across the street, less than 1,000 feet away, from the proposed site. A clear-cut exists between the two properties, so there is no sound barrier. There is a lot of hostility in the neighborhood. One business will benefit from this while many people will be negatively impacted. A lot of the heliport supporters don't even live in the area. She doesn't believe everyone is familiar with the fact that it is a neighborhood. The average decibel level in a residential area is 55. Noise is subjective. Some things bother some people more than others. Studies show that helicopter noise is more irritating than other sounds. She asked the assembly to plan for a heliport. Their homes are not built to prevent shaking from helicopters. She shouldn't have to put up with noise that interrupts her conversation. This hearing is not to discuss the safety of this business but rather to consider whether a heliport should be put in a residential neighborhood.

TURNER III, planning commissioner, explained that in borough code, a person has two years to develop their General Use Zone property under code that existed at the time they acquired it. In his opinion, the manager's decision to bring this to the planning commission was in error. The Title 5 code was inserted a year ago. That language was not in Title 5 when SEABA purchased their property. If you buy a piece of property for an intended use, you have the right to do what you were going to do in spite of code changes. The neighbors got the code changed.

BENASSI spoke on behalf of wildlife. Any eagles attempting to nest in that area would be put off. This is a critical time of year when birds are setting up to nest. Also, the proposed heliport property is in close proximity to the Eagle Preserve.

KURZ appreciates freedom. When taking away another guy's freedom, a person is taking away their own. Helicopters are common out in that area. This heliport would be reasonably close to the Klehini Valley Fire Department. The rules that were in place when the property was purchased should apply.

Hearing no further comments, the mayor closed the public testimony portion of the hearing.

BRUCE was afforded an opportunity for rebuttal. He said one commenter asked the assembly to use their imagination, but they're supposed to listen to the facts, weigh them, and make a decision based on the eight criteria. Flight time will be reduced by 65%. There are a handful of properties without 1,000 feet of this property. Helicopters would be in the area at the most two hours a day, maybe 54 days a year. There would be minimal impact. Concerning wildlife issues, the logic escapes him - how reducing flight time by 65% increases wildlife impacts. The helicopters will fly away from houses. Helicopters flying out of 33-mile and 18-mile go over houses. It is a General Use Zone. Every person buying property had the understanding they could develop their property.

EARNEST clarified that he did not bring this matter to the planning commission as stated by **TURNER III**. It was SEABA's application that went to the planning commission.

Hearing no further testimony, the mayor turned to the assembly for deliberation at 8:24pm. She explained the assembly will deliberate in private.

Motion: SMITH moved to "deliberate in private," and it was seconded. The motion carried unanimously.

Motion: SMITH moved for a brief recess at 8:25pm. There was no objection to a 5-minute break.

Present during the private deliberation: Mayor Scott; Assembly Members Lapp, Waterman, Vick, Hoffman, Schnabel, and Smith; Borough Clerk Julie Cozzi; and Borough attorney Bruce Falconer. The deliberation convened at 8:34pm and ended at 10:23pm.

Following the private deliberation, and the following motions were made in open session:

Motion: WATERMAN moved to "adopt the decision to deny the conditional use permit [SEABA 26-mile heliport] and direct counsel to prepare findings for the assembly to review." The motion carried 5-1 in a roll call vote.

Motion: VICK moved to "adjourn this meeting to February 29th, 6:30pm in the assembly chambers," and it was seconded. The motion carried unanimously.

The meeting adjourned at 10:24pm to pick up at this point on February 29, 2012 at 6:30pm.

FEBRUARY 29, 2012 – CONTINUED MEETING

The mayor convened the continued meeting at 6:30pm and led the pledge to the flag. The clerk called the roll and all were present.

Mayor **SCOTT** referred to her announcement the previous evening that she had cancelled the Washington DC trip for 2012. It was brought to her attention that the assembly should confirm this decision.

Motion: WATERMAN moved to "confirm the cancellation of the 2012 trip to Washington DC," and it was seconded. The motion carried unanimously.

During a brief discussion, **VICK** said this is a very important trip. He's okay with canceling it this year on the advice of the lobbyists but wants the trip to take place in future years.

7. PUBLIC HEARINGS ---continued---

B. Ordinance 12-01-280 - Third Hearing An Ordinance of the Haines Borough Assembly providing for the addition or amendment of specific line items to the FY12 budget.

Mayor **SCOTT** opened and closed the public hearing at 6:35 pm; there were no public comments.

Motion: WATERMAN moved to "adopt Ordinance 12-01-280," and it was amended as recommended by the manager and chief fiscal officer in a memo dated 2/29/12 to change the source of funding for the expenditures for the Chilkat Center roof engineering and borough facility master plan, and it was further amended to delete the FY12 Economic Development Fund appropriation of \$8,500 for the Washington DC trip." All motions were seconded. The main motion as amended carried unanimously in a roll call vote.

During a brief discussion, **EARNEST** explained the reason for eliminating the expenditures for the Lutak fence and the Lutak resurfacing design. The Lutak Dock enterprise fund is doing quite well, and there is a grant that was awarded for these particular projects.

C. Ordinance 12-01-281 – Second Hearing An Ordinance of the Haines Borough Assembly amending Haines Borough Code Title 16 to clarify governance of the Haines Borough Port and Harbor Facilities.

Mayor **SCOTT** opened and closed the public hearing at 6:42 pm; there were no public comments.

Motion: WATERMAN moved to "adopt Ordinance 12-01-281," and it was amended to adopt the substitute ordinance prepared on 2-21-12 by the harbormaster, and further amended to strike from 16.04.010 "*Enterprise Funds*" describes the funding mechanics proscribed by state law that limits revenue over expenses to reinvestment in the enterprise as in Boat Harbor Fund, Lutak Fund and Port Chilkoot Fund, and;" and completely strike Section 16.16.070, and further amended to strike from 16.20.040 "[d]uring the winter months, it is the responsibility of slip licensees to remove snow from adjacent fingers if they are occupying their assigned slips", and further amended to change 16.16.020 to read, as follows:

'No property rights are created by this section or this title. The slip licensee shall have only a license to use the space reserved to him or her as provided in this title. There shall be no loaning or sublease of slips except by the Harbormaster. Slips are assigned to vessel owners, rather than vessels; a person buying a

vessel previously moored in the harbor shall have no rights to the previous owner's vessel slip except as established by the harbor slip waiting list. Exceptions justified in the public interest, such as in transfer to a surviving spouse in the case of death of the slip holder, shall be detailed in the license agreement. The Harbormaster has the authority to utilize the holder's reserved space for other vessels during the absences of the holder's vessel and to move moored vessels to other locations in the event of fire or other emergency requiring such action.'

All motions were seconded. The main motion, as amended, carried unanimously.

SCHNABEL explained the Lutak Dock and Portage Cove Dock Enterprise Funds are already described in Title 3, Sections 3.31 and 3.33. Reference to them in Title 16 is redundant. **LAPP**, in response to a citizen comment, proposed an amendment to remove the requirement that licensees are responsible to remove snow from adjacent fingers. He also suggested adding in code that it is the responsibility of harbor staff to do that, but **EARNEST** explained it is not necessary because it would be an assumed responsibility of staff if it is not the boat owner's responsibility. **SMITH** said it's always been the responsibility of the harbor crew to clear the fingers. **BARRETT** said half the people are worried that snow blowers will blow snow into the boats and the other half are worried about snow being left on the fingers. He has no preference either way. **SCHNABEL** noted that the wording in 16.16.020 needs to change to eliminate the assembly's involvement in routine matters that can be handled through the licensing process. This was discussed at great length by the Boat Harbor Advisory Committee, and the omission of this edit was likely an oversight in the rewrite. She also requested that Chapter 16.33 be reserved for future "Port" code. **EARNEST** suggested perhaps 16.50, and **SCHNABEL** said she does not care what the number is but just wants to make sure it is acknowledged that at some point "Ports" needs to be addressed in Title 16. **WATERMAN** thanked the Boat Harbor Advisory Committee for the work they did on this amendment. Following adoption of this ordinance, that group will be known as the *Port and Harbor Advisory Committee*.

8. STAFF/FACILITY REPORTS

A. **Borough Manager - 2/28 Report**

EARNEST addressed the question of mineral rights with the Picture Point tidelands. The borough owns the surface, and the state owns the subsurface. He added that the Army Corps of Engineers would have to approve any mining claim.

B. **Museum - January 2012 Staff Report**

9. COMMITTEE/COMMISSION/BOARD REPORTS AND MINUTES

A. **Assembly Committees**

1. **Committee of the Whole**
2. **Commerce Committee - 2/22 meeting report**

SCHNABEL said the committee met to continue their discussions on garbage disposal, a public heliport, and options for partnering with AP&T for alternative energy sources.

3. **Finance & Budget**
4. **Personnel & Labor Relations - 2/27 meeting report**

WATERMAN said the committee met to work with the manager on the job description for the Executive Assistant to the Manager, and another meeting will be scheduled to continue that work.

5. **Government Affairs & Services**

- * B. **Planning Commission**
- * C. **School Board**
- * D. **Advisory Boards - Chilkat Center Advisory Board - 1/16/12 approved meeting minutes**
- * E. **Service Area Boards**
- F. **Ad Hoc Boards & Committees**

10. UNFINISHED BUSINESS

A. **Ordinance 12-01-279**

An Ordinance of the Haines Borough Assembly amending Haines Borough Code Section 5.18.080(f)(4) to provide that global positioning data submitted by ski tour operators is confidential.

Motion: **LAPP** moved to "adopt Ordinance 12-01-279," and it was amended to change the ordinance title by striking 'to provide that' and replacing with 'establishing' and striking 'submitted by ski tour operators is

confidential' and replacing with *'monitoring'*; and to change the ordinance itself by striking *'grounds for requesting'* and replacing with *'borough requests for'* in the last sentence. All motions were seconded. The main motion, as amended, carried unanimously.

During discussion, **VICK** said he interpreted wording to say only the borough would be permitted to request the data from the companies and he attempted to have the following sentence added to the ordinance: *'Requests from outside agencies is not prohibited within this ordinance'*. **SMITH** suggested listing the agencies that could request the data from the borough. **WATERMAN** explained this leaves the ownership of the GPS data in the permittee's hands. The borough doesn't own the information. For example, if AK-F&G wants to ask Alaska Heliskiing for the data, they have the right to do that. **EARNEST** agreed saying an ordinance is not necessary to allow a private business to give data to a requesting agency. **SCHNABEL** said the public has asked the borough to find a way to know for sure the companies are in compliance. **VICK** clarified his intention is not for agencies to request the data from the borough. He just wants to make sure the ordinance does not prevent the agencies from asking the heliskiing operators for the data. **SMITH** believes this ordinance was gutted and should be voted down so the assembly can start over. **SCHNABEL** said borough code should just deal with the borough's responsibility to enforce its regulations rather than trying to tell the public and industry how to relate to each other.

SMITH moved unsuccessfully to include the following text in the ordinance: *the Haines Borough Manager will publish a monthly report, no later than ten (10) days after the end of each reporting month to the community, that will include the names of the ski tour operators who are a)delinquent in submission; and/or 2)are in violation of boundaries and flight paths; or 3)stipulates that all permit holders are operating in compliance for the period.* **SMITH** also moved unsuccessfully to direct the manager to publish a monthly report stipulating that all permit holders are operating in compliance for the period. **WATERMAN** and **VICK** don't believe the reporting policy and details should be in code. **HOFFMAN** sought clarification of the process for agencies and community members to request GPS data. **WATERMAN** said there is no process through the borough. They would go directly to the operators to request that information.

11. NEW BUSINESS

A. Resolutions

1. Resolution 12-02-335

A Resolution of the Haines Borough Assembly setting the date of the 2012 Board of Equalization for April 30.

Motion: **VICK** moved to "adopt Resolution 12-02-335," and it was seconded. The motion carried unanimously in a roll call vote.

During a brief discussion, **SCHNABEL** expressed concern that property taxpayers have adequate time to appeal.

2. Resolution 12-02-336

A Resolution of the Haines Borough Assembly supporting forward funding and yearly increases for education.

JURGELEIT-GREENE thanked the assembly for bringing the resolution back for consideration. The Haines Borough School District is in great need of forward funding. It will allow them to plan and keep in line with cost of living increases.

ARONSON strongly encouraged adoption, because investing in children is where the future is.

RANGLES spoke in support of the resolution saying forward funding will be so much better for the curriculum and the children.

BYER thanked the assembly for considering this resolution. Now is the time to be planning for next year and looking at needed improvements rather than waiting to see what kind of funding they will get before making decisions.

SHELDON agreed that forward funding is very important to provide consistent, proactive funding for schools.

Motion: **WATERMAN** moved to "adopt Resolution 12-02-336," and it was seconded. The motion carried unanimously in a roll call vote. There was no discussion.

- B. Ordinances for Introduction - None**
- C. Other New Business**

1. PC Recommendations for AK-DOT Beach Road/Front Street Project

(this item was added during approval of the agenda)

Motion: **SCHNABEL** moved to "transfer the planning commission recommendations to borough letterhead and send to AK-DOT," and it was amended to add a seventh item to ask AK-DOT to consider burying the power lines along the entire Beach Road/Front Street project. All motions were seconded. The motion, as amended, carried unanimously.

During discussion, **LAPP** asked the reason for the commission's recommendation that all issues involving property owned by Port Chilkoot Company be resolved prior to construction. **SCHNABEL** explained Mr. Heinmiller, President of Port Chilkoot Company, informed the planning commission there are some encroachment issues on the project plans and the state has not yet discussed the project with him.

2. Juneau Access Road Letter from Upper Lynn Canal Mayors

Motion: **WATERMAN** moved to "approve Mayor Scott to sign the joint Upper Lynn Canal mayoral letter to be sent to AK-DOT regarding the Supplemental Environmental Impact Statement," and it was seconded. The motion carried unanimously.

3. Policy Statement for Managing Heliskiing Compliance Reports

Motion: **WATERMAN** moved that "the borough's website be used to communicate heliskiing information to the public including GPS data the borough has requested and received to show the borough knows how to read that data; past and present complaints, how they were addressed, and the conclusions; and a form and procedure the public can use to submit complaints," and it was amended to direct that the first report will be available on the website by March 16, 2012. All motions were seconded. The main motion, as amended, carried unanimously.

During discussion, **WATERMAN** explained the reasons for her motion. She thinks this helps keep the policy in perpetuation. It will be easy to update and easy to access. It will help to fortify trust that the borough is actively enforcing the regulations. There has been a certain amount of frustration in the past in knowing the staff has done due diligence in these situations and it has not been recognized. The outlying feeling is that it is not being policed or monitored. This would show that it is. **SMITH** suggested the borough take a leadership role. Alaska Mountain Guides (AMG) could be used as an example and asked to submit data to Takshanuk Watershed Council for interpreting. They said they don't care if their data is disclosed. The borough needs to show what it can do. **VICK** likes the idea of establishing transparency of the process, but he would like to add an actual monitoring piece. He moved to amend it to direct the manager to collect GPS data and compile a monthly report outlining any compliance issues on whether the data was submitted timely and included all the necessary data for tracking, but his motion failed in a tie vote with the mayor breaking the tie in the negative.

SCHNABEL said the information needs to flow to the public so the borough can show it's doing something. She believes it's as easy as just putting something up on the web and fine-tuning it from there. The manager should start requesting the GPS immediately. **WATERMAN** said one of the previous amendments to the ordinance stated that the borough would go to the operator's office, but it was decided that would be too time-consuming for staff. Instead, her idea is for the manager to request limited amounts of data be submitted to the borough as a spot check, and the request can be go to all of the companies or just one. That data will still become the borough's possession to a certain extent. She said that data should be catalogued by day and by helicopter if they are running more than one. If there are two helicopters, then there should be two files. **HOFFMAN** clarified the assembly is not dictating how the manager is to do this, so he could go to a third party who would give their report to the manager---the manager could do it himself or outsource it.

SCHNABEL said she trusts the staff can make this happen. It's not a static thing---it's always developing. She suggested staff be given an opportunity to develop a report that can be tweaked. Assembly should not attempt to legislate the form of the report, but give staff an opportunity to draft something the assembly can evaluate later. She moved to amend the motion to set a deadline of March 9 for the initial report. **SMITH** wants to see results, because the borough owes that to the public, but he wants to know if an assembly motion to make a policy can be enforced. Mayor **SCOTT** said that every time the assembly makes a motion to direct the manager to do something it is making a policy statement. **COZZI** explained the operators have only been operating for 10 days. **VICK** wanted to give staff an extra week and moved successfully to amend the deadline for the initial report to March 16.

4. Draft Comments on SEIRP (Southeast Alaska Integrated Resource Plan)

Note: The mayor requested this agenda item as an opportunity to bring this draft Plan and comment period to the assembly's attention.

There was no objection to the mayor drafting comments for the assembly's approval at the 3/13 meeting.

5. CWS Proposal to Purchase Borough Property – Further Consideration Determination

Note: Community Waste Solutions (CWS) has been ordered by the AK-DEC to fix a problem with leachate at their landfill on FAA Road. In order to accomplish this, they are proposing to purchase, through a negotiated land sale, 19.54 acres of Borough land adjacent to the landfill. The proposal has been reviewed by the planning commission who has made a recommendation. The next step was for the assembly to consider that recommendation and determine whether the proposal should be further considered and, if so, whether by direct negotiation with the original proposer or by competition after an invitation for further proposals.

Mayor **SCOTT** announced she made an investigation along with the clerk into an alleged conflict of interest for **SCHNABEL** in this matter and concluded there is none.

Motion: WATERMAN moved to "consider the planning commission's recommendation to sell 5 acres to Community Waste Solutions," and it was amended to include both options: the full 19.54 acres and the planning commission's idea of 5 acres to give the borough manager and CWS more leeway for negotiation. The amended motion carried 4-2 with **SMITH** and **HOFFMAN** opposed.

During discussion, **SCHNABEL** said her preference is to try to agree on a price for selling the full 19.54 acres then go with a fallback of the planning commission's recommendation to sell only 5 acres. **WATERMAN** sees merit in what the commission has suggested but also believes it is important to give the manager as much leeway, as possible. **LAPP** wanted to hear from CWS the reasons they need 19.54 acres. **SHELDON** speaking for CWS said the company owned the 19.54 acres until 2006 when it was quit-claim deeded back to the borough. Because of the financial condition of the company and reduction of garbage volume, they were unable to pay off the remaining balance on the property, and they defaulted on the debt. 5 acres is the absolute minimum required to deal with the leachate issue. **SMITH** asked if the financial situation is any better now than it was in 2006. **LAPP** said he would feel better about selling the whole 19.54 acres. **VICK** said there are questions of financial viability and compliance. **SCHNABEL** said it is oftentimes the terms that make something financially viable, and ultimately the negotiated terms will be brought to the assembly for approval. **EARNEST** said if he will be negotiating on 5 acres, he might as well negotiate on the whole thing. **SMITH** is not convinced things have changed so dramatically that CWS can continue to make payments on land they defaulted on in 2006. He believes the assembly needs to support the planning commission's recommendation. He doesn't see a need to sell the larger amount if CWS can solve their problem with 5 acres, **SCHNABEL** said if an affordable price cannot be found for the full 19.54 acres, then it would default down to the 5 acres anyway. The planning commission believes the other acreage will be saleable for residential lots, and she doesn't share that opinion. Mayor **SCOTT** agreed that there can be problems with properties adjoining contaminated property, and the borough could be liable.

6. Items for Future Assembly Meetings

SMITH said he would like to have an agenda for assembly member **LAPP** while he's attending Southeast Conference in Juneau. **SCOTT** responded that he is attending at her request. He will participate in the energy workshops and meet with representatives from Alaska Energy Authority. He will be deeply involved with the Integrated Resource Plan discussions. She said she will have **LAPP** give a report at the 3/27 assembly meeting.

7. Consider New Waste Management Contract –Executive Session

Note: A contract with Community Waste Solutions (CWS), guaranteeing rates for garbage collection and disposal, expired in April 2011. CWS requested the assembly consider entering into a new Waste Management contract. The assembly discussed the matter in executive session on 2/14 and tasked the manager with getting some legal answers from the borough attorney. This agenda item provided an opportunity for follow-up and occurred in executive session as allowed by AS 44.62.310(c)(1) and Haines Borough Charter Section 18.03.

Motion: WATERMAN moved to "go into executive session to review the confidential report from the borough attorney as allowed by AS 44.62.310(c)(1) and Haines Borough Charter Section 18.03, and invite the manager and clerk to attend," and it was seconded. The motion carried unanimously.

Present: Mayor Scott; Assembly Members Lapp, Waterman, Vick, Hoffman, Schnabel, and Smith; Borough Manager Mark Earnest, and Borough Clerk Julie Cozzi. The executive session convened at 9:57pm and ended at 10:43pm.

Following the executive session, a Committee of the Whole meeting was scheduled for 3/6/12 at 5:00pm for the purpose of discussing the items noted in the following 2/14/12 motion:

"Schedule a Committee of the Whole to discuss possible conditions of a short-term contract with Community Waste Solutions to provide security to meet regulatory compliance at Community Waste Solution's landfill pending feedback from the lawyer." that said it would happen."

12. CORRESPONDENCE/REQUESTS

A. Response re. Sockeye Salmon Stocks – Alaska Fish & Game

13. SET MEETING DATES –

A. Next Commerce Committee Meeting – Wednesday, 3/7, 6:00pm.

B. Personnel Committee Meeting will be scheduled for 3/6, 3:00pm, Exec Asst to the Mgr Job Desc.

14. PUBLIC COMMENTS

NELSON asked the assembly to be careful about entering into a sole-source contract and said there is nothing to lose by issuing an RFP.

HALL thanked the assembly for all of their time.

15. ANNOUNCEMENTS/ASSEMBLY COMMENTS

WATERMAN announced she will not be available to attend the second assembly meeting in March.

16. ADJOURNMENT – 10:50 p.m.

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

ATTEST


Julie Cozzi, MMC, Borough Clerk


Stephanie Scott, Mayor

