
Haines Borough
Borough Assembly Meeting #251
August 13/14, 2013
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 Debra **SCHNABEL**, Jerry **LAPP**, Norman **SMITH**, Dave **BERRY**, Joanne **WATERMAN**, and Steve **VICK**.
Staff Present: Mark **EARNEST**/Borough Manager, Julie **COZZI**/Borough Clerk, Jila **STUART**/Chief Fiscal Officer, Carlos **JIMENEZ**/Director of Public Facilities, Tanya **CARLSON**/Tourism Director, Simon **FORD**/Interim Police Chief, and Michelle **WEBB**/Deputy Clerk.
Visitors Present: Tom **MORPHET**/CVN, Margaret **FRIEDENAUER**/KHNS, George **FIGDOR**, John **HUNT**, Scott **SUNDBERG**, Neil **EINSBRUCH**, Fred **EINSBRUCH**, Dave **KAMMERER**, Dean **LARI**, Rob **GOLDBERG**, Rob **MILLER**, Dave **BUTTON**, Pam **COULTER**, Peter and Sherrie **GOLL**, Eric **HOLLE**, Harriett **BROUILLETTE**, Bill **KURZ**, Glenda **GILBERT**, Leonard **DUBBER**, and others.

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

The following Items were on the published consent agenda:

- 4 – Approve Assembly Meeting Minutes
- 8B – Borough Clerk Report
- 8C – Museum Staff Report
- 9A – Museum Board Minutes
- 11A1 – Adoption of Resolution 13-08-477
- 11A2 – Adoption of Resolution 13-08-478
- 11A3 – Adoption of Resolution 13-08-479
- 11A4 – Adoption of Resolution 13-08-480
- 11A5 – Adoption of Resolution 13-08-481
- 11A6 – Adoption of Resolution 13-08-482
- 11B1 – Introduction of Ordinance 13-08-340
- 11B2 – Introduction of Ordinance 13-08-341
- 11B3 – Introduction of Ordinance 13-08-342
- 11B4 – Introduction of Ordinance 13-08-343
- 11B5 – Introduction of Ordinance 13-08-344
- 11B6 – Introduction of Ordinance 13-08-345
- 11B7 – Introduction of Ordinance 13-08-346
- 11B8 – Introduction of Ordinance 13-08-347

Motion: **BERRY** moved to “approve the agenda/consent agenda,” and it was amended to remove items 11A2 and 11B6 from the consent agenda, to add a discussion item on the topic of scheduling a period of amnesty for code infractions, and to move item 11C4 up in the agenda just ahead of item 7A. The motion, as amended, carried unanimously.

During discussion, **SCHNABEL** moved to remove item 11A12 from the agenda, but it failed 4-3 with **VICK**, **WATERMAN**, and **SMITH** opposed, and the mayor breaking the tie in the negative. **SCHNABEL** also made a motion to remove item 11C1 from the agenda, and it failed with all opposed but **SCHNABEL**. She explained both of these items deal with noncompliance of code regulations, and she wanted to replace them with a discussion about the borough possibly offering a period of across the board amnesty to provide citizens an opportunity to come into compliance. She asked to add a discussion item on the topic of scheduling a period of amnesty for a variety of what she considers minor code infractions. There was no objection to that agenda change. Additionally, **SCHNABEL** asked for removal of items 11A2 and 11B6 from the consent agenda, and **VICK** requested item 11C4 be moved up on the agenda since several members of the public are at the meeting for that topic. There was no objection to these agenda changes.

*4. **APPROVAL OF MINUTES** – June 25 and July 23 Regular

5. **PUBLIC COMMENTS**

GOLDBERG spoke as chair of the planning commission. The commission is seeking direction from the assembly on the issue of fines in the code. Currently, the code calls for a \$250 fine if found to be in violation of a Title 18 provision. The commission would like to examine the fee structure and make the fines fit the infraction and also make it possible to allow for a warning.

LARI said he endorses Simon Ford as the new Chief of Police. On another issue, he has concerns about the dust on Fourth Avenue. It is a health hazard. He proposed that on days when the road would be heavily used he would water the road for free if the borough parked a water truck by his house. Right now, residents are trying to take care of various spots with a garden hose.

MORPHET spoke against Ordinance 13-08-347 There is a need for high-level employees' evaluations to be released to the public.

EINSPRUCH said the police chief should actually be evaluated.

GOLL said a good evaluation process is important for high-level employees.

EINSBRUCH said he was served this week with a notice of trespass by the borough manager. It is for an indefinite period of time but he was told by the magistrate that it cannot be indefinite.

KAMMERER spoke against the borough manager and said he was right in his criticism of the former police chief. He believes he is correct in his criticism of the manager.

BUTTON said the assembly should get rid of the \$1,000 fee he is required to pay in order to apply for a tour permit.

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

A. State's Response to Borough re. Herbicide Spraying

SCOTT said the assembly did authorize a letter to the state objecting to the new regulation allowing for the spraying of herbicides with only a public notification period. Petersburg and Skagway both submitted letters, as well. Petersburg received a similar response from the state, and they are talking about sending another letter. They have not yet decided whether to adopt an ordinance that would prevent the state from spraying within its borders. There are legal questions about whether or not a municipality could pass laws to prevent the state from doing something. Skagway has yet to receive a response from the state. **BERRY** believes the letter from the state to Haines is belittling, and it did not answer any of the questions.

11C4. (moved to this position during approval of the agenda) Borough Comment to ADOT&PF re. Highway Realignment

HOLLE read aloud a letter to ADOT&PF written by George Campbell who could not attend the meeting. He also stated his own concerns with the project and those of Lynn Canal Conservation. This project has potential for being divisive or bringing the community together.

FIGDOR urged the assembly to focus on the process rather than the particulars. He believes ADOT&PF has not followed a typical process for an Environmental Assessment (EA). Normally an agency offers several alternatives and then allows plenty of time for public comment. He believes this was an "eleventh hour" move by them, and there is insufficient time to provide input. Engineers make mistakes and overlook things. It's a complex project. He asked the assembly not to take sides in this.

MILLER was asked by George Campbell to read his letter aloud, but then he read the borough's draft letter. He didn't find the two letters to be that different. He doesn't want to see damage to the cultural artifacts and eagle preserve but the highway work also needs to be done. He supports the project but also supports the desire to reduce the damaging impacts.

P.GOLL asked the assembly to carefully consider the project. The current ADOT&PF plan does not give the due diligence that is required to avoid an Environmental Impact Study (EIS). If these things are not done, there will be no way to avoid it. They need to work through the EA process. He believes the agencies are ready to cooperate.

EINSPRUCH said one of the things that makes the Haines Highway wild and scenic is the curves. It's a 100-million dollar project. The fish are more valuable than the highway. He believes the project makes no sense. The road should remain the same and, even if it went away, people could still get in and out by ferry.

BROUILLETTE said the highway has impacted her family a lot. The house at 3-mile was there before the road was put in. It's very important to be careful, although she does support the project. It's not a good idea to fill in wetlands, and the burial site is sacred.

S.GOLL expressed concern with what she believes is a short public comment period. Many people have issues with this project. She personally wants the highway to stay the same.

HUNT said there are a number of areas on the highway that certainly need to be repaired, and he wondered if the monies could be used for reparation rather than widening and realigning.

Motion: **LAPP** moved to "forward the letter as written to ADOT&PF," and it was amended to add the following text:

Insert at the end of the first paragraph: *We understand that the ADOT&PF is continuing to address concerns regarding cultural resources and eagle and fish habitat. We recognize that there may be beneficial changes to the plan as a result of information received from community members. Please keep us apprised of any such modifications. Specifically, we are concerned with the following:*

- *Safety concerns must be addressed in a responsible manner.*
- *Cultural and burial sites should be respected and protected.*
- *New damage to fish passage must not occur.*
- *Habitats required for eagle gathering should be respected.*
- *Eagle feeding trees important to the tourism industry should be protected--it is understood that the trees on the river-side of the highway promote safety as they discourage birds from swooping low over the road causing accidents.*
- *Parking areas and speed limits should ensure safety in the Chilkat Bald Eagle Preserve.*
- *Guardrails should be improved and strengthened."*

The main motion as amended carried unanimously.

During the discussion, **LAPP** said he carefully read the draft letter and it contains the concerns brought up. He has driven school buses on the Haines Highway for the past twelve years and it jostles the bones. Back in March 2009, ADOT&PF held a public hearing at the Chilkat Center. Why are there concerns now but not then? **SCHNABEL** agreed with **LAPP**. The community has been very aware for the last five years that this is going on. The letter before the assembly is of a general nature. She would like it to be very specific about the issues of concern rather than a blanket, general support for the project. **BERRY** said he likes the opening statement in the borough's letter. The letter is well-written but there should be bullet points that identify all the concerns. **SCOTT** read an amendment that the manager and she propose. **VICK** did not object to the addition with the exception of the opening word "however."

SCHNABEL moved to amend the proposed draft letter by deleting in its entirety all language and simply having a letter that contains the single paragraph proposed by the mayor and manager in their 8/13/13 memorandum. However, it failed for lack of a second. **SMITH** said he worked on the Haines Highway in the 1980s and there were all kinds of inspectors. Undoubtedly, there will be all kinds of people watching during this project.

7. PUBLIC HEARINGS

A. Appeal of 2013 Commercial Tour Permit Revocation Alaska Cross Country Guiding & Rafting

*Certain business activities operating within the borough are required to obtain a permit in advance. These include commercial tour permits, commercial passenger vehicle permits and commercial passenger vehicle parking permits. The permits are initially issued by the clerk. Once issued a permit may be revoked by the manager. HBC 5.04.120(A) lists 5 specific reasons a permit may be revoked or suspended. When the manager revokes a permit, the person holding the permit has the right to appeal to the assembly, and that is what has happened here. When considering appeals from actions of the manager revoking a permit, the assembly is acting as a jury. As such, the ultimate decision must be based ONLY on the information submitted during the hearing process. For this reason, documents pertaining to this revocation and appeal will be provided during the hearing. The appellant and the manager will each make their presentations to the assembly with the appellant going first. Since code says this is to be a public hearing, any others present wishing to provide information will be allowed to briefly do so following the manager's presentation. At the conclusion of the hearing, the assembly will deliberate either in public or in executive session at the discretion of the assembly. **Assembly Action:** Code allows the assembly to either completely undo the action of the manager, approve the action of the manager or modify the action of the manager.*

COZZI explained the hearing procedure.

Appellant **COULTER** presented her case by reading her appeal letter and emphasizing the business and personal difficulties she has experienced this year. Manager **EARNEST** presented his case explaining the reasons for the revocation and the efforts to assist the appellant with compliance as

has been done in the past. **COULTER** then responded to the manager's presentation reiterating her particularly trying business and personal issues this year. The assembly members asked various questions of the appellant and the manager to clarify statements. Mayor **SCOTT** opened the public hearing portion and **BUTTON, EINSPRUCH, KURZ,** and **SUNDBERG** made comments for or against the manager's revocation action.

Assembly Deliberation: The assembly chose to deliberate in open session. **SCHNABEL** observed that taking away a person's business makes it difficult to pay delinquent taxes. **BERRY** wondered if the borough has the right to deny a person their ability to make a living. If the code is written in such a manner that there is no leeway for the administration to make it work, then it should be revisited. **WATERMAN** said the assembly has the ability to go forward with code changes if they so wish. The fact is, the administration showed leniency and finally there was no choice but to revoke. She agrees with the "debtor's prison" concerns, but it is also not the borough's responsibility to make sure all businesses practice good business. She has compassion but the borough is also dealing with the level playing field people want. She would like to entertain conversation along the lines of modifying the action of the manager. This operator needs to be shown this behavior is unacceptable. They need to start taking care of their business. Perhaps a probationary period requiring them to come before the assembly to renew their application would be in order. Definitely, this history should be placed in the appellant's file. There has been a lack of follow-through and attention to details---an egregious lack of attention by this tour operator. She would have a very hard time in the future with being lenient. **VICK** agreed and said there is precedent for a probationary period. Life happens but the follow-through was lacking. There should be consequences for this. **SCHNABEL** appreciates **WATERMAN**'s approach. She also extended appreciation to the manager for the difficulty of this situation. He doesn't have as much leeway as the assembly. She wondered about making the revocation date 9/30/13 with a community service component, as well. Additionally, allowing no late tax payments with all debts paid by the end of December. The season will be essentially over by the end of September. There should be acknowledgement that there could be no tour activity. **WATERMAN** envisioned that they would have to come before the assembly every year. **BERRY** sympathized with what the manager had to do. He likes the probationary period idea, and the appellant has to be current on taxes by the end of December. **VICK** also expressed appreciation to the manager. He followed the code to the letter. He did his job. He brought it to the assembly. People need to follow code. He would like a stronger consequence, himself. **SCOTT** observed people seem to be comfortable with a two-year probationary period that requires the appellant to come to the assembly for a permit renewal, and all current and delinquent taxes being paid by the end of December. It was also suggested that if the agreement is not upheld, the permit will be revoked with no option for appeal. **SMITH** asked if this would be applied to all tour operators. He sees a liability issue here---transporting people without a permit. These are known violations of the code. The appellant was cited for violating but continued to conduct business anyway. If there was an accident, the borough could get sued for everything. The reason for the code regulations is to cover ourselves, not to accommodate someone's lifestyle. It's not okay to drive people around on a tour without a permit. It has to be applied to everyone. If the borough code is not enforced across the board, we will be dealing with everyone's different life situations. **WATERMAN** explained what the assembly is trying to do is provide some disciplinary action the manager is unable to provide. The majority of the tour operators are operating lawfully. She would like to see the original payment agreement adhered to. It was suggested that possibly there could be a fine for a late payment, such as \$500. **SCOTT** said without penalty or disciplinary action, the assembly would be condoning the behavior of operating a tour without the required permits. **SCHNABEL** agreed. She suggested all past due taxes, penalties and interest, and the fine for operating without permits be due by the end of September 2013. In addition, the 2013 current taxes must be paid by the end of December 2013. **LAPP** suggested the \$1,000 fine must be paid by close of business tomorrow (8/14/13). Additionally, if 2013 taxes are not timely-paid by the regular 12/2/13 due date, the permits should be revoked. Plus, if the balance of delinquent taxes is not paid by October 5, 2013, revocation would take place. It was clarified that all tax obligations must be met, both property and sales tax. **WATERMAN** said the business owner has the responsibility to take this seriously. This is very lenient.

Deliberations completed at 9:22pm.

Motion: **WATERMAN** moved to "modify the action of the manager concerning the revocation of the Alaska Cross Country Guiding & Rafting permits, as follows:

Amend the June 21, 2013 Tax Payment and Permit Agreement to require: 1) payment of \$1,000 fine for operating without a commercial tour permit by close of business on August 14, 2013; 2) payment of all

past due sales and property taxes plus penalties and interest by October 4, 2013; 3) payment of all 2013 sales and property taxes by December 2, 2013; and 4) if any of these payments are not received as set forth, the tour permits will be revoked. Additionally, the tour operation was placed on a two-year probation, and as such, the applications for permit renewal for each of the 2014 and 2015 seasons will require assembly approval following a public hearing.

The motion carried unanimously.

B. Ordinance 13-07-333 – Second Hearing

An Ordinance of the Haines Borough authorizing the issuance of general obligation bonds in an amount not to exceed \$5,050,000 to finance a plan of capital improvements to school facilities of the Borough; authorizing submission to the qualified voters of the Borough at the regular election to be held on October 1, 2013, of a proposition approving this ordinance and ratifying the authorization of the Bonds; appropriating funds for the projects; and providing for an effective date.

Mayor **SCOTT** opened and closed the public hearing at 9:36pm; there were no public comments.

Motion: **BERRY** moved to “postpone Ordinance 13-07-333 indefinitely,” and the motion carried unanimously.

SCHNABEL asked for an explanation, and **EARNEST** said Department of Education approval for bond debt reimbursement has been delayed. The timing for a bond measure this year did not work.

C. Ordinance 13-07-335 – Second Hearing

An Ordinance of the Haines Borough, providing for the addition or amendment of specific line items to the FY14 budget.

Mayor **SCOTT** opened and closed the public hearing at 9:38pm; there were no public comments.

Motion: **WATERMAN** moved to “adopt Ordinance 13-07-335,” and it was amended to incorporate the changes outlined in the manager’s memorandum, specifically \$46,000 local match for the Picture Point Wayside Improvement Grant. The motion as amended carried 5-1 in a roll call vote with **SCHNABEL** opposed.

D. Ordinance 13-07-336 – First Hearing

An Ordinance of the Haines Borough amending Borough Code Section 2.10.010 to limit the length of borough assembly meetings.

Mayor **SCOTT** opened the public hearing at 9:39pm.

EINSPRUCH spoke against the ordinance, because he believes it will further restrict the assembly’s ability to function and also the public’s ability to speak.

MORPHET doesn’t believe this should be codified. The assembly always has the ability to adjourn or recess a meeting.

Hearing no further comments, the mayor closed the public hearing at 9:41pm.

Motion: **BERRY** moved to “advance Ordinance 13-07-336 to a second public hearing on 8/27/13,” and the ordinance was amended to replace the phrase “at 9:45pm” with “by 9:30pm.” The motion as amended carried 4-2 with **WATERMAN** and **SCHNABEL** opposed.

During the discussion, **VICK** said the Government Affairs & Services Committee talked about this during their meeting the previous day. The committee suggested changing the second sentence to say that the vote to continue the meeting would need to take place by 9:30pm.

E. Ordinance 13-07-337 – First Hearing

An Ordinance of the Haines Borough approving the conveyance by quitclaim deed of Tract B of Alaska Tideland Survey (“ATS”) 1464 to the state of Alaska, Department of Transportation and Public Facilities (“ADOT&PF”) for the Haines Ferry Terminal Improvements project (state Project #68433) and amending Haines Borough Ordinance No. 12-07-299 to authorize the conveyance of Parcel 3 (Tract C of ATS 1464) to ADOT&PF by quitclaim deed rather than warranty deed.

Mayor **SCOTT** opened the public hearing at 9:46pm.

EINSPRUCH spoke against the ordinance. This borough asset should instead be exchanged for the right for borough residents to park overnight at the ferry terminal.

Hearing no further comments, the mayor closed the public hearing at 9:47pm.

WATERMAN disclosed a potential conflict of interest since she is a ferry system employee, and the mayor ruled there was not a conflict in this case.

Motion: BERRY moved to "advance Ordinance 13-07-337 to a second public hearing on 8/27/13 and it was amended to replace the ordinance in its entirety with the proposed substitute ordinance prepared by the attorney," and the motion carried unanimously. There was no discussion.

- F. **Ordinance 13-07-338** – First Hearing
An Ordinance of the Haines Borough, providing for the addition or amendment of specific line items to the FY13 budget.

Mayor SCOTT opened and closed the public hearing at 9:51pm; there were no public comments.

Motion: BERRY moved to "advance Ordinance 13-07-337 to a second public hearing on 8/27/13," and the motion carried unanimously.

8. **STAFF/FACILITY REPORTS**

A. **Borough Manager - 8/13/13 Report**

EARNEST summarized his written report. He added that he plans to put out an RFP for assessment services and bring the recommended proposals back to the assembly for approval.

* B. **Borough Clerk - 8/13/13 Report**

* C. **Sheldon Museum - Staff Report of June/July 2013**

9. **COMMITTEE/COMMISSION/BOARD REPORTS & MINUTES**

* A. **Museum Board of Trustees - Minutes of 6/10/13 and 6/17/13**

B. **Assembly Standing Committee Reports**

VICK said the Government Affairs & Services Committee met and, in addition to reviewing the ordinance to limit the length of assembly meetings, reviewed the ordinance concerning runoff elections. It is ready for another hearing.

Motion: VICK moved to "schedule 13-07-334 for a second public hearing on 8/27/13," and it carried unanimously.

10. **UNFINISHED BUSINESS**

11. **NEW BUSINESS**

A. **Resolutions**

1. **Resolution 13-08-477**

A Resolution of the Haines Borough Assembly authorizing the Borough Manager to enter into a professional services contract with Haines Animal Rescue Kennel to provide animal control services during FY14 for an amount not to exceed \$47,813.

The motion adopted by approval of the consent agenda: "adopt Resolution 13-08-477."

NOTE: This motion was subsequently reconsidered (between agenda items 11A10 and 11A11) so VICK could recuse himself from the vote. The motion to adopt carried unanimously 5-0 with VICK abstaining.

2. **Resolution 13-08-478** (removed from the consent agenda during approval of the agenda)

A Resolution of the Haines Borough Assembly authorizing the Borough Manager to enter into a grant agreement and notice to proceed with the Alaska Department of Transportation and Public Facilities for the Picture Point Wayside Improvements project funded through the National Scenic Byways Grant Program.

There were no public comments.

Motion: SCHNABEL moved to adopt Resolution 13-08-478, and it carried unanimously in a roll call vote.

EARNEST clarified this resolution is just to accept the grant funds. There will be a process to fine-tune the project, and it will be the borough's plan.

*3. **Resolution 13-08-479**

A Resolution of the Haines Borough Assembly authorizing the Borough Manager to apply to the State of Alaska, Department of Environmental Conservation (ADEC) for a loan from the Alaska Clean Water Fund for the project entitled Sewer Treatment Plant Health and Safety Upgrades.

The motion adopted by approval of the consent agenda: "adopt Resolution 13-08-479."

* 4. **Resolution 13-08-480**

A Resolution of the Haines Borough Assembly authorizing the Borough Manager to apply to the State of Alaska, Department of Environmental Conservation (ADEC) for a loan from the Alaska Drinking Water Fund for the project entitled Replace Allen Road AC Pipe.

The motion adopted by approval of the consent agenda: "adopt Resolution 13-08-480."

* 5. **Resolution 13-08-481**

A Resolution of the Haines Borough Assembly specifying the percentage of National Forest Receipts funding to be allocated to Title I and Title II.

The motion adopted by approval of the consent agenda: "adopt Resolution 13-08-481."

* 6. **Resolution 13-08-482**

A Resolution of the Haines Borough Assembly supporting the Borough's application to host the Alaska Municipal League Summer Meeting in 2015.

The motion adopted by approval of the consent agenda: "adopt Resolution 13-08-482."

7. **Resolution 13-08-483**

A Resolution of the Haines Borough assembly authorizing acceptance of the late-filed 2013 Senior Citizen/Disabled Veteran Property Tax Exemption for John Schnabel (Property # C-ERM-00-0200).

There were no public comments.

Motion: BERRY moved to "adopt Resolution 13-08-483," and the motion was seconded.

There was some discussion about whether the assembly needs to see the additional documentation. Mayor SCOTT suggested the assembly might consider saving this and the other remaining agenda items to another date when everyone is more rested.

Motion to Recess: WATERMAN moved to "recess this meeting until Wednesday, August 14, 6:30pm," and the motion carried unanimously.

The meeting recessed at 10:04pm to pick up at this point on August 14, 2013 at 6:30pm.

AUGUST 14, 2013 – 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.

Discussion resumed for Item 11A7 and the motion already on the floor: "adopt Resolution 13-08-483."

The mayor stated she does not believe SCHNABEL has a conflict of interest even though it involves her father. Additional medical-related documents were distributed to the assembly for review. The assembly declined to go into executive session.

The motion to adopt Resolution 13-08-483 failed 1-5 in a roll call vote with SCHNABEL, VICK, LAPP, SMITH, and WATERMAN opposed.

8. **Resolution 13-08-484**

A Resolution of the Haines Borough assembly authorizing acceptance of the late-filed 2013 Senior Citizen/Disabled Veteran Property Tax Exemption for Teresa Hura (Property # C-HGL-05-0200).

There were no public comments.

Motion: SMITH moved to "adopt Resolution 13-08-484," and the motion failed unanimously in a roll call vote.

SCHNABEL said this person is a registered voter in Tennekee Springs, and SCOTT concurred.

9. **Resolution 13-08-485**

A Resolution of the Haines Borough assembly authorizing acceptance of the late-filed 2013 Senior Citizen/Disabled Veteran Property Tax Exemption for Dorothy Willard (Property # C-OCV-00-0700).

There were no public comments.

Motion: **LAPP** moved to "adopt Resolution 13-08-485," and the motion carried 4-3 in a roll call vote with **BERRY, VICK,** and **WATERMAN** opposed and the mayor breaking the tie in the affirmative.

BERRY noted the doctor note was after the deadline. **LAPP** did not realize that during the vote.

Motion: **LAPP** moved to "reconsider the motion to adopt Resolution 13-08-485," and it carried unanimously.

The second vote on the motion to adopt Resolution 13-08-485 failed 1-5 in a roll call vote with **VICK, BERRY, LAPP, WATERMAN,** and **SMITH** opposed.

10. Resolution 13-08-486

A Resolution of the Haines Borough assembly authorizing acceptance of the late-filed 2013 Senior Citizen/Disabled Veteran Property Tax Exemption for Albert Morgan (Property # C-MEA-01-1900).

There were no public comments.

Motion: **BERRY** moved to "adopt Resolution 13-08-486," and the motion failed 1-5 in a roll call vote with **VICK, LAPP, BERRY, WATERMAN,** and **SMITH** opposed.

LAPP asked if the primary residence was verified. **STUART** said there were 250 Senior and Disabled Veterans exemptions this year. **SCOTT** asked the manager to look into residency verification.

Motion: **VICK** moved to "reconsider Resolution 13-08-477 that was adopted as part of the approval of the consent agenda (item 11A1)," and the motion carried unanimously. This put the motion to adopt the resolution before the assembly for discussion.

VICK believes he has a conflict of interest since he is the executive director of HARK, and the mayor agreed. **SCHNABEL** said the disclosure is noted so the adopted resolution should just ride, and **BERRY** agreed. **SCOTT** said it was wrong for **VICK** to vote on this issue, even indirectly as part of a consent agenda, and process is important. **EARNEST** explained the borough attorney said recusing **VICK** was important this year given the history of last year's HARK contract vote.

11. Resolution 13-08-487

A Resolution of the Haines Borough Assembly authorizing the allocation of FY14 Budgeted Funds to Non-profit Organizations.

There were no public comments.

Motion: **BERRY** moved to "adopt Resolution 13-08-487," and the motion carried 5-1 in a roll call vote with **LAPP** opposed.

BERRY asked if there would be an opportunity to fine-tune the application process. The mayor confirmed that work would be done on both the application and the scoring matrix. She thanked the ad hoc review committee for their work.

12. Resolution 13-08-488

A Resolution of the Haines Borough Assembly waiving the \$250.00 after-the-fact fee for the vacation rental located on parcel # 4-MBR-06-0500 belonging to Mark Sogge and Cecily Stern within the Mud Bay Planning/Zoning District.

There were no public comments.

Motion: **BERRY** moved to "adopt Resolution 13-08-488," and the motion carried 4-2 in a roll call vote with **SCHNABEL** and **LAPP** opposed.

GOLDBERG, planning commission chair, offered to answer assembly questions. **SCHNABEL** asked if there was a business license and **GOLDBERG** answered yes. She said the borough should cross check when individuals apply for permit-dependent types of business. She disagreed with #3 of the planning commission written findings. **GOLDBERG** responded it had to do with the definition of "lodge." The planning commission has recently suggested a code amendment to define "vacation rental." **LAPP** asked why the property owners went to **GOLDBERG** instead of the clerk, and **GOLDBERG** said they could have, but there was no planning & zoning staff available at the time. **SCOTT** believes the fine should be upheld. **SCHNABEL** asked if the manager had a recommendation on this matter. **EARNEST** said he was a part of the initial fine. Because of the extenuating circumstances, he believed the appeal should go forward. The couple came into pay the fee and was told there was no need. **GOLDBERG** stated there is no prohibition to renting. **SCHNABEL** said the difference was this was a commercial enterprise. **WATERMAN** noted they

have now applied and been granted a conditional use permit. **VICK** asked how a conditional use permit applied to an undefined activity. **GOLDBERG** explained a "lodge" which is a short term rental also requires a conditional use permit.

B. Ordinances for Introduction

* 1. **Ordinance 13-08-340**

An Ordinance of the Haines Borough amending Borough Code Section 3.70.030 to extend the application deadline for senior and disabled veterans property tax exemptions and to remove the provision for late applications.

The motion adopted by approval of the consent agenda: "introduce Ordinance 13-08-340 and set a first public hearing for 8/27/13."

* 2. **Ordinance 13-08-341**

An Ordinance of the Haines Borough amending Borough Code Section 18.90.060(I) to add a size limitation for small informational signs.

The motion adopted by approval of the consent agenda: "introduce Ordinance 13-08-341 and set a first public hearing for 8/27/13."

* 3. **Ordinance 13-08-342**

An Ordinance of the Haines Borough amending Borough Code Section 18.60.010(I) to remove the requirement for a wastewater disposal system to be inspected every two years by the Alaska Department of Environmental Conservation.

The motion adopted by approval of the consent agenda: "introduce Ordinance 13-08-342 and set a first public hearing for 8/27/13."

* 4. **Ordinance 13-08-343**

An Ordinance of the Haines Borough amending Borough Code Section 18.80.030(B) to add setback regulations to the General Use Zone.

The motion adopted by approval of the consent agenda: "introduce Ordinance 13-08-343 and set a first public hearing for 8/27/13."

* 5. **Ordinance 13-08-344**

An Ordinance of the Haines Borough amending Borough Code Section 18.20.020 to define temporary use dwellings.

The motion adopted by approval of the consent agenda: "introduce Ordinance 13-08-344 and set a first public hearing for 8/27/13."

6. **Ordinance 13-08-345** (removed from consent agenda during approval of agenda)

An Ordinance of the Haines Borough amending Borough Code Chapter 3.80 to clarify that sales of games of chance and contests of skill are subject to sales tax and to require persons conducting charitable gaming in the borough to file periodic reports with the borough.

Motion: **WATERMAN** moved to "refer Ordinance 13-08-345 to the finance committee," and it failed unanimously.

During the discussion, **SCHNABEL** said this issue was raised as a tangent of the non-profit sales tax discussion. She is not sure it is a good idea to tax pull-tab or other non-profit unrelated income, as the money may just be turned around to the non-profits as a grant. For-profits who sell pull-tabs or tickets do pay taxes on their portion of the income. **VICK** said the borough may want to investigate state code and the definition of games of chance. He believes that 70% of the pull-tab money is a "donation" and therefore cannot be taxed. **BERRY** said he called the gaming expert with the Department of Revenue. Juneau taxes pull-tabs, but Sitka does not. **LAPP** said this may hinder the community and non-profit activities, and **WATERMAN** agreed. **SCOTT** reported she had spoken with Brian Lemcke who said the Fogcutter Bar paid sales tax on their 30% and was against the idea of taxing the non-profits' portion.

* 7. **Ordinance 13-08-346**

An Ordinance of the Haines Borough authorizing the borough manager to enter into a loan agreement in the amount of up to \$787,500 with the Alaska Department of Environmental Conservation for the Muncaster Road Asbestos Cement Pipe Replacement project.

The motion adopted by approval of the consent agenda: "introduce Ordinance 13-08-346 and set a first public hearing for 8/27/13."

* 8. **Ordinance 13-08-347**

An Ordinance of the Haines Borough amending Haines Borough Code Chapter 2.72.080 to specify what categories of personnel records are available to the public.

The motion adopted by approval of the consent agenda: "introduce Ordinance 13-08-347 and set a first public hearing for 8/27/13."

C. Other New Business

1. Appeal of Planning Commission Decision

Note: the borough manager issued an enforcement order to property owner Neil Einsbruch requiring the payment of a \$250 after-the-fact fee for failure to file a construction declaration within 60 days of the start of construction, as required by HBC 18.30.010(A)(2)(c). Einsbruch appealed to the planning commission and, after consideration of it on 7/11, the planning commission voted to deny the appeal and thereby not recommending the assembly waive the fee (HBC 18.30.070(D)). HBC 18.30.060 allows for an appeal to the assembly of a planning commission decision, and Einsbruch submitted an appeal to the borough clerk on 7/23. The burden of proof is on the appellant to make the case that the planning commission erred in their decision and that a rehearing by the assembly is warranted. The appellant may be out of town during this meeting and, if so, would like his written appeal to make his case.

Assembly Action Needed at THIS meeting: *Per HBC 18.30.060, at this meeting, and following the appellant's presentation if he is in attendance, the assembly must decide by motion:*

- *whether or not to rehear the commission's decision and, if so,*
- *whether to rehear the entire decision or a particular portion.*

Note: *Any rehearing must take place at the next regularly scheduled assembly meeting (8/27) and include a duly-noticed public hearing.*

The appellant was not present.

Motion: **SCHNABEL** moved to "rehear the planning commission's decision concerning the appeal of Neil Einsbruch," and the motion failed unanimously.

During the discussion, **SCHNABEL** said she understands this violation was performed in 2011 and discovered in 2013. She would like to hear Einsbruch's explanation. She is concerned that while the construction declaration requirement may have recently been well publicized, it may not have been back in 2011. **BERRY** is not in favor of rehearing the appeal but would like to encourage discussion. Einsbruch did not pay property tax on his extension for several years. **WATERMAN** believes the planning commission conducted a very thorough appeal hearing and doesn't think it should be reheard by the assembly. **BERRY** took exception with the appellant's written statement that the borough never issues fines. **EARNEST** said the burden of proof is on the appellant to prove that the case should be reheard.

- 2. Request to Purchase Borough Property – Former School Property** – Discussion Item
Note: the borough received a request to purchase a portion of the former school property. On 8/8/13, the planning commission considered whether to classify that property for sale, and that is their recommendation.

SCHNABEL clarified this only classifies this property for sale, and does not specify how it may be used.

Motion: **VICK** moved to "concur with the recommendation of planning commission," and it carried unanimously in a roll call vote.

GILBERT said she believes this should be sold and put back on the tax roll. Aspen Hotels would like to purchase the property and build a 49-54 room hotel with a small meeting room. The potential buyer visited numerous lots, and this was his first choice. **SCHNABEL** clarified Lots 6 and 7 are the only ones being considered. A map was distributed. **LAPP** supports this and believes it would fulfill a previous discussion several years ago about selling that property to recoup the cost of buying property for the new school. **BERRY** supports this because it will add needed rooms and create jobs. **SCHNABEL** reminded this discussion is just whether the land is for sale. The debate of a 50-room hotel is inappropriate at this time. **VICK** remembered this was one of the first issues he worked on as an assembly member, and the original idea was to hold on to the land until the public

facilities needs were ascertained. He is in favor. **SCHNABEL** has plans for a 20-room supper club on Old Haines Highway, and so she is conflicted. As an assembly member she agrees with the property sale, as an individual she is against a hotel. **DUBBER** said he remembers the agreement to sell the property, and he thinks this is a good opportunity. Copies of the plat map were distributed. **KURZ** said he wants to better the economy and competition is a good thing. A proposed motion to sell for fair market value was determined to be premature.

3. Amendments to the Borough Manager's Contract Language

Note: the personnel committee was asked to review the content of the borough manager contract document. On June 11, 2013, committee chair Waterman reported the committee had met in a meeting that was well attended by members of the public. She said the committee recommended changes to the leave portion of the contract, and they were still working on the language. That work is complete, and the main thrust of the amendment is to clarify existing contract language and move to a consolidated leave system by combining annual, sick, and (the existing) personal leave into a combined personal leave.

Motion: BERRY move to "approve changes to the borough manager contract, as proposed in the draft amendment dated August 13, 2013, and it carried 4-2 in a roll call vote with **SMITH** and **SCHNABEL** opposed.

SMITH moved to postpone indefinitely, but it failed for lack of a second. **SCHNABEL** said **EARNEST** is currently under contract but has submitted his resignation. The assembly should go with whatever option will cost the borough the least amount of money. **BERRY** asked what the fiscal impact of these changes would be between now and the manager's departure.

Motion: VICK moved to "direct staff to determine the fiscal impact of the proposed contract amendments and report back for the next meeting on Aug. 27th," and the motion carried.

WATERMAN believes the contract amendment negotiation was done in good faith, and believes the manager did not know at the time that he would be leaving earlier than planned. She is also not in support of the cheapest option. She asked the assembly to consider not factoring in the resignation when considering this amendment. **VICK** apologized for missing the last personnel committee meeting due to work. He believes this contract amendment will possibly carry forward to the next manager. **SCHNABEL** agreed with **WATERMAN** that the manager had no foreknowledge of the resignation. The benefits are greater than she would like to offer to the current or future manager. **SCOTT** reminded that the personnel committee only hammered out language, but the assembly is the body with the authority to negotiate the manager's contract. She believes it is a good contract model and collapses all the leave into one category. **EARNEST** said he had no thought of early departure during these discussions. He is not looking to maximize his compensation but rather how the contract is currently structured and the best way to move forward with combined leave. **WATERMAN** explained the reasons for condensing leave into one category. It is the trend for leave usage because it is more efficient and good for both parties. The personal leave has to take into account the use of sick leave and it is a long term solution to budget questions. **BERRY** reported that both SEARHC and CIA employees are enjoying the consolidated leave system. **EARNEST** said this sets the structure for on-going contracts. He believes this is a legacy amendment.

Motion: WATERMAN moved to "accept the manager's resignation," and it carried 5-1 with **SMITH** opposed.

Motion: LAPP moved to "reconsider the 7/23/13 motion to adopt Resolution 13-07-472 amending the heliskiing map," and the motion failed 2-4 with **WATERMAN**, **SMITH**, **BERRY**, and **VICK** opposed.

During the discussion, **LAPP** expressed his concern the assembly acted without enough information. The assembly may have acted on emotion. It took the assembly only 15 minutes when the committee heard comments for a month. The previous vote removed areas 1, 2, and 21. **SMITH** believes it would be a disservice to the public to bring this back to the table tonight without public notice. **SCOTT** understands **LAPP** has a plan to notify the public. **WATERMAN** said she did not act with emotion. **BERRY** voted against the original motion, but the perception to act now would be poor without public notice. **LAPP** said his plan would be to move to postpone to the next assembly meeting where **CULBECK** would project a 3D model and the public could be given notice.

4. Borough Comment to ADOT&PF re. Highway Realignment – *Note: this was moved during approval of the agenda to be ahead of Item 7 – Public Hearings.*

5. Amnesty for code infractions – Discussion Item

Note: this item was added during approval of the agenda.

SCHNABEL distributed a white paper regarding a potential amnesty plan to build confidence within the community. As staff becomes more proficient, she anticipates there will be even more enforcement. She suggested a period of perhaps 30 days to allow people to come into compliance. **BERRY** asked it was retroactive, and **SCHNABEL** responded the fine would not be assessed if action was taken. **GOLDBERG** said the planning commission would be happy to work on this issue at the assembly's direction. Currently, there is only a single fine of \$250.00, but he personally would like to see a tiered fine system and also give staff the ability to send warning letters. This lack of warning has made many people very emotional. It was noted the police department is still not issuing parking tickets, and **EARNEST** said he would investigate the status of that. **WATERMAN** asked if a warning letter could just be policy and not codified. **EARNEST** suggested staff and administration document the current procedures and any existing latitude, as well as the current infractions. He stressed ignorance of the code and permitting process are not acceptable excuses. He does support the idea of looking at the idea of making the fine fit the infraction and also providing staff with the ability to send warning letters.

Motion: WATERMAN moved "to ask the Planning Commission to work with the administration to come up with code enforcement procedure recommendations for the assembly's consideration," and the motion carried unanimously.

VICK agreed the fee structure will be important but citizens do have the personal responsibility to follow the laws and code. **SMITH** said after eleven years of consolidation, the community is still suffering from code infractions that have not been addressed. A policy should be in place to warn people of the issue and a graduated timeline. He agrees with the idea of a policy change, and perhaps an amnesty that would apply only to some things that are not related to property taxes. **SCOTT** showed a list of 71 permits issued in 2013 that involve people who complied with the regulations. She is not interested in an amnesty period but is in favor of the notification and tiered system. She encouraged the staff to do more to educate the public about code.

12. CORRESPONDENCE/REQUESTS - None

13. SET MEETING DATES

A. Committee of the Whole – Monday, 8/19, 6pm – Topic: meet to consider the method for recruiting a new manager, whether professional service or traditional.

SCHNABEL believes the assembly should discuss the qualities and experience most important to look for. **SCOTT** agreed and said the professional recruiters go through the same kind of process.

B. Ad hoc Ferry Committee – Monday, 8/26, 10am

C. Government Affairs & Services Committee – Wednesday, 9/4, 5pm – Topic: Heliskiing GPS Policy.

14. PUBLIC COMMENTS

MORPHET endorsed the idea of using a service to hire the manager. They conduct a strong investigation and advertise through a more informed network.

15. ANNOUNCEMENTS/ASSEMBLY COMMENTS

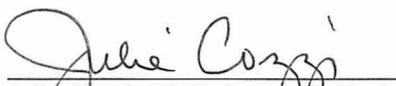
SCHNABEL asked the status of recruitment for a new Chief of Police. **EARNEST** believes four applications were received by the 8/12/13 first review deadline. He wants to schedule a Public Safety Commission meeting to review the applicants.

LAPP asked how the agenda got so long, and the mayor said she believes multiple appeals contributed to the length. **SMITH** said he may forward an ordinance to limit the length of agendas.

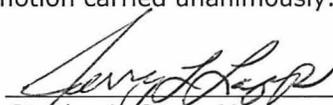
16. ADJOURNMENT – 9:08pm on 8/14/13

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

ATTEST:


Julie Cozzi, MMC, Borough Clerk




Stephanie Scott, Mayor