

Haines Borough
Borough Assembly Meeting #280

AGENDA



October 28, 2014 - 6:30 p.m.

Location: Assembly Chambers, Public Safety Bldg.

Stephanie Scott,
Mayor
Jan Hill,
Mayor Elect

Dave Berry Jr.,
Assembly Member

Diana Lapham,
Assembly Member

Debra Schnabel, MPA
Assembly Member
Mike Case,
Assembly Elect

Joanne Waterman,
Assembly Member

George Campbell,
Assembly Member

Jerry Lapp,
Assembly Member
Ron Jackson,
Assembly Elect

David Sosa, MPA
Borough Manager

Julie Cozzi, MMC
Borough Clerk

Krista Kielsmeier
Deputy Clerk

1. CALL TO ORDER/PLEDGE TO THE FLAG/ROLL CALL

2. APPROVAL OF AGENDA & CONSENT AGENDA

[The following Consent Agenda items are indicated by an asterisk (*) and will be enacted by the motion to approve the agenda. There will be no separate discussion of these items unless an assembly member or other person so requests, in which event the asterisk will be removed and that item will be considered by the assembly on the regular agenda.]

Consent Agenda:

- 3 – Approve Assembly Meeting Minutes
- 8B – Museum Report
- 9A – Planning Commission Minutes
- 9B – Museum Board Minutes
- 9C – Parks and Recreation Committee Minutes
- 11A1 – Resolution 14-10-594

***3. APPROVAL OF MINUTES – 10/14/14 Regular Meeting; 10/14/14 Election Canvass**

4. PUBLIC COMMENTS [Any topics not scheduled for public hearing]

5. MAYOR'S COMMENTS/REPORT

6. 2014 BOROUGH ELECTION

- A. Certification of October 7th Borough Election
- B. Administration of Oath to Newly-Elected Mayor & Assembly Members

7. PUBLIC HEARINGS

- A. Ordinance 14-10-392 – First hearing
An Ordinance of the Haines Borough amending Haines Borough Code Title 3 Section 3.60.190 to modify the manager authorization limit for change orders.
This ordinance is recommended by the borough clerk. It was introduced on 10/14.
Motion: Advance Ordinance 14-10-392 to a second public hearing on Wednesday, 11/12/14.

8. STAFF/FACILITY REPORTS

- A. Borough Manager – 10/28/14 Report
- * B. Sheldon Museum Director – Report of September 2014**

9. COMMITTEE/COMMISSION/BOARD REPORTS & MINUTES

- * A. Planning Commission – Minutes of 9/11/14**
- * B. Museum Board of Trustees – Minutes of 8/18/14**
- * C. Parks and Recreation Advisory Committee – Minutes of 8/21/14 and 9/18/14**
- D. Assembly Standing Committee Reports

10. UNFINISHED BUSINESS - None

11. NEW BUSINESS

A. Resolutions

***1. Resolution 14-10-594**

A Resolution of the Haines Borough Assembly authorizing the Borough Manager to dispose of four surplus vehicles and a visitor information kiosk by public sealed bid auction to the highest bidder as specified in Haines Borough Code 14.24.010 (Disposal of personal property).

*This resolution is recommended by the Director of Public Facilities. **Motion:** Adopt Resolution 14-10-594.*

11A. NEW BUSINESS ---continued---

B. Ordinances for Introduction - None

C. Other New Business

1. Borough Comment – Juneau Access Road

On 9/18/14, the Alaska Department of Transportation and Public Facilities announced the release of the Juneau Access Improvements Project Draft Supplemental Environmental Impact Statement (SEIS) for review and comment. The public comment period will end November 10, 2014. Outgoing Mayor Scott has drafted a Haines Borough comment for assembly approval.

Motion: Authorize borough staff to send the SEIS comment, as drafted, to the Alaska Department of Transportation.

2. Executive Session – APC Rate Case Update

Motion: Move into executive session as allowed by AS 44.62.310(c)(2) and Haines Borough Charter Section 18.03 to get an update from the borough attorney on the APC Rate Case; this matter qualifies for executive session as attorney-client privilege; the borough manager and borough attorney Patrick Munson are requested to attend.

12. CORRESPONDENCE/REQUESTS

A. Reconsideration of 10/14/14 Motion to Postpone Introduction of Ordinance 14-10-391 (Veteran’s Center Tax Exemption) - Request by V.Hansen, HAL Community Manager

B. “Equal Protection and Property Qualifications for Appointment to the Haines Borough Port and Harbor Advisory Committee” - Request by M.Denker

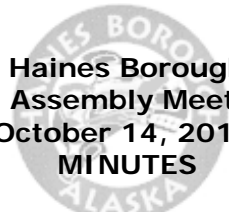
Possible Next Step: Refer to Government Affairs & Services Committee for Review

13. SET MEETING DATES

14. PUBLIC COMMENTS

15. ANNOUNCEMENTS/ASSEMBLY COMMENTS

16. ADJOURNMENT


Haines Borough
Borough Assembly Meeting #279
October 14, 2014
MINUTES

Draft

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**, Debra **SCHNABEL**, George **CAMPBELL** (via telephone), Joanne **WATERMAN**, and Diana **LAPHAM**. Absent: Dave **BERRY**.

Staff Present: David **SOSA**/Borough Manager, Julie **COZZI**/Borough Clerk, Bill **MUSSER**/Chief of Police, Phil **BENNER**/Harbormaster, Patty **BROWN**/Library Director, Leslie **ROSS**/Tourism Director, and Jila **STUART**/Finance Director.

Visitors Present: Karen **GARCIA**/CVN, Margaret **FRIEDENAUER**/KHNS, Ron **JACKSON**, Kristin **HATHHORN**, Mark **BATTAION**, Laurie **DADOURIAN**, Thom **ELY**, Scott **SUNDBERG**, Lucy **HARRELL**, James **STUDLEY**, Mike **CASE**, Vince **HANSEN**, Bill **KURZ**, Dana **HALLETT**, Jan **HILL**, David **KAMMERER**, Mike **DENKER**, and others.

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

The following items were on the published consent agenda:

Consent Agenda:

- 4 – Approve Assembly Meeting Minutes
- 8B – Financial Report
- 8C – Chilkat Center Report
- 8D – Library Report
- 8E – Fire Department Report
- 9A – Library Board Minutes
- 11A1 – Resolution 14-10-591
- 11A2 – Resolution 14-10-592
- 11A3 – Resolution 14-10-593
- 11B2 – Ordinance 14-10-392

Motion: **LAPP** moved to “approve the agenda/consent agenda,” and it was amended to remove 11A3, Resolution 14-10-593 from the consent agenda. The motion as amended carried unanimously.

* 4. **APPROVAL OF MINUTES** – 9/23/14 Regular

5. **PUBLIC COMMENTS**

HANSEN urged the assembly to introduce Ordinance 14-10-391. He looks forward to discussing the merits at the public hearings.

HARRELL asked the assembly to introduce Ordinance 14-10-391 to allow the community to debate the matter. The local population consists of 30% veterans, and they are owed a huge debt of gratitude.

CASE said Sockeye Cycle has been named one of the top ten bicycle shops in the country, and **ELY** thanked him for the recognition.

ELY believes the planning commission improperly (and possibly illegally) granted a conditional use permit (CUP) for heliports at 10-mile. He wasn't able to appeal it in a timely manner, but there could still be a legal challenge to it. He asked the assembly and manager to work with the planning commission on a revision to the CUP process.

STUDLEY encouraged the introduction of Ordinance 14-10-391. The Haines Assisted Living Inc. Board trusts the assembly will make the right decisions concerning the request for property tax exemption. He provided a printed email to the clerk for distribution to the assembly that was recently received from the state assessor.

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

A. ***Proclamation –November 1, 2014 - “Extra Mile Day” for Volunteerism***

Mayor **SCOTT** read aloud the proclamation, and she thanked everyone for volunteering.

7. **PUBLIC HEARINGS**

A. **Ordinance 14-08-390** – Second hearing

An Ordinance of the Haines Borough amending Borough Code Section 5.18.080 to allow up to two permits for special ski events each calendar year, to enable a request for temporary additions to the ski map to be submitted prior to a ski season, and to clarify that permitted special ski events are not subject to the Shared Use Policy.

Mayor Scott opened the public hearing at 7:22 p.m.

HATTHORN cannot understand how it could be okay to approve a special event taking place outside the boundaries. (Mayor **SCOTT** explained this is not new---that capability already exists in borough code.)

DADOURIAN thanked the assembly for the hours put into managing heliskiing. She asked them to drop the ordinance. She believes this is a ploy to circumvent the map boundaries and expand user days. The assembly should allow special events to operate within the existing boundaries.

SUNDBERG explained SEABA asked for this originally because of an entity (Freeride World Tour) that is interested in holding a special competitive event in Haines. It is directed primarily to a European market. SEABA is not looking at this as an opportunity to open up a map loophole, and the competition event will not be an economic boon for their company. The entity is looking for a 3-day event, at the most. To not approve this ordinance would send yet another negative message to the world community.

ELY is in favor of a ski competition event in Haines, but he does not support an out-of-bounds event. There is enough space in-bounds. However, if the assembly does decide to allow a competition to take place out-of-bounds, he asked that it please be limited to short periods of time.

Mayor **SCOTT** reiterated this ordinance does nothing to diminish the assembly possibly having to debate a request for out of bounds operation. That's part of the process outlined in code.

Hearing no further comments, the mayor closed the public hearing at 7:34 p.m.

Motion: **LAPP** moved to "adopt Ordinance 14-08-390."

Primary Amendment #1: **SCHNABEL** moved to "amend the ordinance by incorporating the 9/30/14 Commerce Committee-proposed amendments," and the primary amendment #1 motion carried unanimously.

Primary Amendment #2: **WATERMAN** moved to "amend subsection 5.18.080(G)(1) by replacing "14 days in length" with "7 days in length," and it was amended to replace "in length" with "of competition." The primary amendment #2 motion, as amended, carried unanimously.

Secondary Amendment: **SCHNABEL** moved to "amend to substitute "in length" with "of competition," and the secondary amendment motion carried unanimously.

The Main Motion, as amended, carried unanimously in a roll call vote.

B. Ordinance 14-05-383 – Fourth hearing

An Ordinance of the Haines Borough amending Haines Borough Code Title 18, Chapter 18.90 to provide clarification of purpose, sign standards by district, off premise signage, portable and sandwich signage.

Mayor **SCOTT** opened and closed the public hearing at 8:05 p.m.; there were no public comments.

Note: On 9/23, to give the commerce committee (CC) and the planning commission (PC) time for another review of the comprehensive changes, the ordinance was scheduled for a fourth hearing. The PC discussed the draft on 10/9 and recommended against adoption. Rather, they asked that it be returned to them. Also, the CC had not yet met. Therefore, it was suggested this be postponed until such time as the PC, CC, and staff were ready to move a new signage code forward.

Motion: **LAPP** moved to "postpone Ordinance 14-05-383 to a time when a new draft is ready for assembly consideration," and it was amended to specify it is to be postponed to a time when a "draft is presented by the planning commission through staff to the borough assembly." The motion, as amended, carried unanimously.

8. STAFF/FACILITY REPORTS

A. Borough Manager – 10/14/14 Report

SOSA summarized his written report.

*** B. Chief Fiscal Officer** – Financial Report

- * C. Chilkat Center – *Financial Report of September 2014*
- * D. Library Director – *Report of August 2014*
- * E. Fire Department – *Report of September 2014*
- F. Director of Public Facilities – *Snow Removal Plan*

JIMENEZ outlined the borough's snow removal plan.

9. COMMITTEE/COMMISSION/BOARD REPORTS & MINUTES

- * A. Library Board – *Minutes of 8/20/14*
- B. Assembly Standing Committee Reports

SCHNABEL reported on her attendance at Opportunities North, a conference in Whitehorse sponsored by the Yukon Chamber of Commerce. She attended in her capacity as chair of the Commerce Committee.

10. UNFINISHED BUSINESS

A. Resolution 14-09-590

A Resolution of the Haines Borough Assembly authorizing the Borough Manager to contract with Romtec in the amount of \$27,500 for the purchase of a Model 1008 pre-fabricated restroom building module as part of the Picture Point Wayside Improvements project.

Note: On 9/23, the assembly postponed this resolution at the manager's request to provide time to get additional information that has been acquired.

Motion: WATERMAN moved to "adopt Resolution 14-09-590," and it carried 4-1 in a roll call vote with CAMPBELL opposed.

11. NEW BUSINESS

A. Resolutions

*1. Resolution 14-10-591

A Resolution of the Haines Borough Assembly adopting written findings of the September 23, 2014 appeal hearing of the Keller Shooting Range cease and desist order.

The motion adopted by approval of the consent agenda: "adopt Resolution 14-10-591."

*2. Resolution 14-10-592

A Resolution of the Haines Borough Assembly authorizing the Borough Manager to contract with MRV Architects for an amount not-to-exceed \$51,318 for Haines Library Addition Design and an alternate cost estimation fee proposal.

The motion adopted by approval of the consent agenda: "adopt Resolution 14-10-592."

3. Resolution 14-10-593

A Resolution of the Haines Borough Assembly authorizing disposition of public records in accordance with HBC 2.64.030(B) and the Haines Borough Records Retention Schedule.

Motion: LAPP moved to "adopt Resolution 14-10-593," and it carried unanimously in a roll call vote.

B. Ordinances for Introduction

1. Ordinance 14-10-391

An Ordinance of the Haines Borough amending Haines Borough Code Title 3 to add the upper level of the Soboleff-McRae Veterans Village & Wellness Center owned by Haines Senior Assisted Living Inc. to the list of community purpose exemptions in HBC 3.70.040.

Note: state law mandates certain required exemptions, and the state assessor determined that all but the second floor of the new Veteran's Building (owned by Haines Assisted Living) qualifies for mandatory status. On 6/10/14, the assembly adopted Ordinance 14-02-370 removing HAL from the list of optional exemptions in code. The exempt HAL property includes the land and main floor of the new Veteran's Center. Subsequently HAL applied for an optional "community purpose exemption" status for the second floor of the Veteran's Building.

Motion: SCHNABEL moved to "introduce Ordinance 14-10-391 and set a first public hearing for 10/28/14," and the motion was seconded.

Motion to Postpone: LAPP moved to “postpone this until the borough staff develops and the assembly approves a borough policy on community purpose exemption,” and it carried 4-1 with **CAMPBELL** opposed.

*** 2. Ordinance 14-10-392**

An Ordinance of the Haines Borough amending Haines Borough Code Title 3 Section 3.60.190 to modify the manager authorization limit for change orders.

The motion adopted by approval of the consent agenda: “introduce Ordinance 14-10-392 and set a first public hearing for 10/28/14.”

C. Other New Business

1. Board Appointments

Note: Appointment applications were received for seats on the Library Board and the Public Safety Commission, and the boards recommended them. The mayor sought assembly confirmation.

Motion: LAPP moved to “confirm the mayor’s appointment of Tracy Wirak to the Library Board of Trustees for a term ending 11/30/16 and Judy Ewald to the Public Safety Commission for a term ending 11/30/17,” and the motion carried unanimously.

12. CORRESPONDENCE/REQUESTS

A. Alaska DOT&PF Regional Boundaries Changes

13. SET MEETING DATES

A. Assembly Training – Wednesday, 10/29, 5:00pm, Topic: Training in Assembly Procedures (there will be food).

B. Committee of the Whole – Tuesday, 10/28, 5:30pm, Topic: PND Presentation re. Lutak Dock.

C. Strategic Planning Session #3 – Tuesday, 10/21, 6:30pm.

D. Personnel Committee – 10/23, 4:00pm, Topic: Borough Clerk and Chief Fiscal Officer employment contracts, Location: Borough Administration Conference Room

E. Commerce Committee – 10/23, 5:30pm, Topic: Tax Incentive Program

14. PUBLIC COMMENTS

ELY thanked LAPP, SCHNABEL, and SCOTT for their service to the community.

15. ANNOUNCEMENTS/ASSEMBLY COMMENTS

SCOTT thanked everyone for allowing her the opportunity to serve. She has hopes and dreams including alternative fuel sources and developing hydro power on this side of the Canal. She also wants to see implementation of the grant to install pellet boilers in borough buildings and continued work with the school district through the regular major maintenance meetings.

LAPP said he has been pleased to serve the past many years as an assembly member, mayor, and school board member. He’s learned a lot and has watched the community grow. He has had no personal agenda beyond seeing it be a healthy, working community. Even now, every meeting is a learning experience for him.

WATERMAN thanked SCOTT, SCHNABEL, and LAPP for their service and said it has been a pleasure working with them. She has never doubted each one’s desire for the community’s best.

16. ADJOURNMENT – 9:34 p.m.

Motion: CAMPBELL moved to “adjourn the meeting,” and the motion carried unanimously.

ATTEST:

Stephanie Scott, Mayor

Julie Cozzi, MMC, Borough Clerk

Haines Borough
Borough Assembly Meeting
Election CANVASS
October 14, 2014
MINUTES

Draft

THIS WAS A SPECIAL MEETING HELD SOLELY FOR THE PURPOSE OF CANVASSING THE RESULTS OF THE OCTOBER 7, 2014 GENERAL MUNICIPAL ELECTION. NO OTHER BUSINESS WAS DISCUSSED.

1. **CALL TO ORDER**: Mayor Stephanie **SCOTT** called the election canvass to order at 6:16 p.m. in the Assembly Chambers of the Public Safety Building and led the pledge to the flag.
2. **ROLL CALL**: **Present**: Mayor Stephanie **SCOTT**, and Assembly Members Jerry **LAPP**, Debra **SCHNABEL**, Joanne **WATERMAN**, and Diana **LAPHAM**. **Absent**: Dave **BERRY** and George **CAMPBELL**

Staff Present: Dave **SOSA**/Borough Manager, Julie **COZZI**/Borough Clerk, Bill **MUSSER**/Chief of Police, and others.

Visitors Present: Karen **GARCIA**/CVN, Margaret **FRIEDENAUER**/KHNS, Jan **HILL**, and others.

3. **CANVASS – October 7, 2014 General Municipal Election**:

COZZI presented the Borough Clerk's written election canvass report and explained her recommendations. She reported a total of 52 ballots not counted on Election Day. 8 are disqualified because the voters were not properly registered, per the Division of Elections, returned the ballots past the deadline or did not complete or sign the required voter certifications or get this required witness signature. The remaining 44 uncounted ballots are valid and may be counted by the assembly during this canvass.

Absentee-by-Mail:	7
Absentee-by-Fax:	17
Questioned/Absentee-in-Person/Special Needs ballots:	<u>18</u>
Total:	44

Motion by **LAPP** to "accept the Borough Clerk's Election report and recommendations regarding ballots to be counted during the October 7, 2014 Election Canvass," and the motion carried unanimously.

Mayor **SCOTT** turned the proceedings over to Deputy Mayor **LAPP**, and **COZZI** delivered to him the 44 ballots to be counted. **LAPP** opened each ballot envelope with the assistance of **COZZI** and **WATERMAN**. Then, **LAPP** read aloud each vote with **COZZI** observing. Two teams tallied: 1) **WATERMAN/LAPHAM** and 2) **SCOTT/SCHNABEL**.

Following the counting, Mayor **SCOTT** called for a very brief recess to enable **COZZI** to complete the October 7, 2014 Election totals to be read into the record.

Following the recess, **COZZI** read the final election results into the record, as follows:

<u>MAYOR</u>	
HILL	<u>551</u> - WINNER
SCOTT	<u>473</u>
OTHER, WRITE-INS	<u>8</u>

BOROUGH ASSEMBLY

BENASSI	<u>405</u>	
CASE	<u>437</u>	- WINNER
ERNY	<u>368</u>	
JACKSON	<u>547</u>	- WINNER
PARNELL	<u>186</u>	
OTHER, WRITE-INS	<u>1</u>	

SCHOOL BOARD

CLAY	<u>678</u>	- WINNER
PALMIERI	<u>739</u>	- WINNER
OTHER, WRITE-INS	<u>60</u>	

PROPOSITION #1 – CHARTER AMENDMENT – 40% TO ELECT

YES	<u>567</u>	- PASSED
NO	<u>444</u>	

PROPOSITION #2 – BOND SCHOOL VOC-EC

YES	<u>602</u>	- PASSED
NO	<u>411</u>	

PROPOSITION #3 – BOND SCHOOL AHU

YES	<u>637</u>	- PASSED
NO	<u>383</u>	

PROPOSITION #4 – BOND HS ROOF

YES	<u>451</u>	
NO	<u>572</u>	- FAILED

4. ADJOURNMENT – 6:52 pm

Motion by **LAPP** to “adjourn the October 7, 2014 Election Canvass,” and the motion carried unanimously.

ATTEST:

Stephanie Scott, Mayor

Julie Cozzi, MMC, Borough Clerk



Haines Borough
Assembly Agenda Bill

Agenda Bill No.: 14-515
Assembly Meeting Date: 10/28/14

Business Item Description:	Attachments:
Subject: Certification of October 7, 2014 Borough Election Results	1. Official Election Results 2. 10/14/14 Canvass Results of October 7, 2014 Election 3. Certification Document (to be signed following certification and delivered to those persons elected)
Originator: Borough Clerk	
Originating Department: Administration	
Date Submitted: 10/16/14	

Full Title/Motion:
Motion: Declare the October 7, 2014 Borough Election valid and certify the election results

Administrative Recommendation:

Fiscal Impact:

Expenditure Required	Amount Budgeted	Appropriation Required
\$	\$	\$

Comprehensive Plan Consistency Review:

Comp Plan Policy Nos.:	Consistent: <input type="checkbox"/> Yes <input type="checkbox"/> No
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Summary Statement:
On October 14, 2014, the borough assembly served as the canvass board for the October 7, 2014 Haines Borough Election and tallied 44 valid uncounted ballots to determine the final outcome of each race. Per HBC 11.48.040, at the first regular meeting of the assembly following the canvass, unless the assembly orders an investigation or unless a contest has been previously filed pursuant to Chapter HBC 11.52, the assembly shall declare the election valid and certify the election results. No investigation has been ordered, and no contest has been filed.

Referral:

Sent to:	Date:
Recommendation:	Refer to: Meeting Date:

Assembly Action:

Workshop Date(s):	Public Hearing Date(s):
Meeting Date(s): 10/28/14	Tabled to Date:

Haines Borough General Election				849 valid ballots cast at the polls on Election Day [762-Haines #1; 87-Haines #2]						
October 14, 2014				158 absentee ballots counted on Election night						
Official Results				44 questioned & absentee counted during canvass						
				1051 total valid ballots cast (47% of 2226 registered voters) [Note: 2013 -1014 valid ballots cast or 45% of 2247 registered]						
	Haines #1 Precinct 33-545	Haines #2 Precinct 33-550	Absentee Ballots counted 10/7	TOTAL Counted Election Night	Canvassed on 10/14	Final Vote Total	Final Vote Total Divided by # of Vacancies	%		
Race #10 - Mayor (one vacancy)										
Jan Hill	425	50	67	542	9	551		53%	Winner	
Stephanie Scott	319	36	86	441	32	473		46%		
Write-in	5	0	2	7	1	8		1%		
Total Votes Cast Race #xx	749	86	155	990	42	1032	1032			
Race #20 - Borough Assembly (two vacancies)										
Mario Benassi	262	36	77	375	30	405		42%		
Mike Case	341	34	53	428	9	437		45%	Winner	
Jerry Erny	280	34	47	361	7	368		38%		
Ron Jackson	386	43	87	516	31	547		56%	Winner	
Joe Parnell	134	18	29	181	5	186		19%		
Write-in	0	0	1	1	0	1		0%		
Total Votes Cast Race #xx	1403	165	294	1862	82	1944	972			
Race #30 - School Board (three vacancies)										
Brian T. Clay	507	65	83	655	23	678		138%	Winner	
Anne Marie Palmieri	549	54	104	707	32	739		150%	Winner	
Write-in	48	2	8	58	2	60		12%		
Total Votes Cast Race #xx	1104	121	195	1420	57	1477	492			
Race #90 - Proposition 1 – Charter, 40% Required to Win										
Yes	422	46	82	550	17	567		56%	Passed	
No	308	39	71	418	26	444		44%		
Total Votes Cast Race #xx	730	85	153	968	43	1011				

HAINES BOROUGH

October 7, 2014 General Municipal Election
10/14/14 ELECTION CANVASS

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The tally below is a true and accurate record of all votes cast in the Haines Borough General Election held on October 7, 2014.

MAYOR

HILL	ELECTION	<u>542</u>	CANVASS	<u>9</u>	TOTAL	<u>551</u>
SCOTT	ELECTION	<u>441</u>	CANVASS	<u>32</u>	TOTAL	<u>473</u>
WRITE-IN	ELECTION	<u>7</u>	CANVASS	<u>1</u>	TOTAL	<u>8</u>

BOROUGH ASSEMBLY

BENASSI	ELECTION	<u>375</u>	CANVASS	<u>30</u>	TOTAL	<u>405</u>
CASE	ELECTION	<u>428</u>	CANVASS	<u>9</u>	TOTAL	<u>437</u>
ERNY	ELECTION	<u>361</u>	CANVASS	<u>7</u>	TOTAL	<u>368</u>
JACKSON	ELECTION	<u>516</u>	CANVASS	<u>31</u>	TOTAL	<u>547</u>
PARNELL	ELECTION	<u>181</u>	CANVASS	<u>5</u>	TOTAL	<u>186</u>
WRITE-IN	ELECTION	<u>1</u>	CANVASS	<u>0</u>	TOTAL	<u>1</u>

SCHOOL BOARD

CLAY	ELECTION	<u>655</u>	CANVASS	<u>23</u>	TOTAL	<u>678</u>
PALMIERI	ELECTION	<u>707</u>	CANVASS	<u>32</u>	TOTAL	<u>739</u>
WRITE-IN	ELECTION	<u>58</u>	CANVASS	<u>2</u>	TOTAL	<u>60</u>

PROPOSITION #1 – Charter, 40% to Win

YES	ELECTION	<u>550</u>	CANVASS	<u>17</u>	TOTAL	<u>567</u>
NO	ELECTION	<u>418</u>	CANVASS	<u>26</u>	TOTAL	<u>444</u>

PROPOSITION #2 – Bond, Voc Ed Bldg Upgrades

YES	ELECTION	<u>574</u>	CANVASS	<u>28</u>	TOTAL	<u>602</u>
NO	ELECTION	<u>397</u>	CANVASS	<u>14</u>	TOTAL	<u>411</u>

PROPOSITION #3 – Bond, HS Air Handling Unit

YES	ELECTION	<u>609</u>	CANVASS	<u>28</u>	TOTAL	<u>637</u>
NO	ELECTION	<u>369</u>	CANVASS	<u>14</u>	TOTAL	<u>383</u>

PROPOSITION #4 – Bond, HS Roof Replacement

YES	ELECTION	<u>433</u>	CANVASS	<u>18</u>	TOTAL	<u>451</u>
NO	ELECTION	<u>549</u>	CANVASS	<u>23</u>	TOTAL	<u>572</u>

HAINES BOROUGH
October 7, 2014 General Municipal Election
ELECTION CANVASS

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THE CANVASS OF VOTES WAS COMPLETED BETWEEN THE HOURS OF 5:00 P.M. AND
8:00 P.M. ON TUESDAY, OCTOBER 14, 2014.

RESPECTFULLY SUBMITTED:

Joanne L. Waterman, ASSEMBLY MEMBER
Joseph L. Lapp, ASSEMBLY MEMBER
Diane D. Dapham, ASSEMBLY MEMBER
William P. Pincus, ASSEMBLY MEMBER
_____, ASSEMBLY MEMBER
_____, ASSEMBLY MEMBER

ATTEST:

Julie Cozzi 10/14/14
Julie Cozzi, MMC, Borough Clerk

Haines Borough
CERTIFICATE OF ELECTION

Pursuant to HBC 11.48.040, the undersigned members of the Haines Borough Assembly do hereby certify the following results of the Haines Borough General Municipal Election held on October 7, 2014 and canvassed on October 14, 2014:

Mayor, term ending October 2017 – **Jan Hill**

Assembly Seat, term ending October 2017 – **Mike Case**

Assembly Seat, term ending October 2017 – **Ron Jackson**

School Board Seat, term ending October 2017 – **Brian T. Clay**

School Board Seat, term ending October 2017 – **Anne Marie Palmieri**

Proposition #1 (Charter Amendment) – **Passed**

Proposition #2 (Bond – Voc Ed Bldg Upgrades) – **Passed**

Proposition #3 (Bond – School Air Handling Unit Reimbursement) – **Passed**

Proposition #4 (Bond – H.S. Roof Replacement) – **Defeated**

_____, Diana Lapham, Assembly Member

_____, Joanne Waterman, Assembly Member

_____, Dave Berry Jr., Assembly Member

_____, Debra Schnabel, Assembly Member

_____, Jerry Lapp, Assembly Member

_____, George Campbell, Assembly Member

I, the undersigned Borough Clerk for Haines Borough, Alaska, do hereby attest that this election certification was duly made by motion, seconded and passed and the results of the elections shall be noted in the October 28, 2014 record of the proceedings of the assembly. The record shall include the total number of votes cast during the election and the votes cast for each candidate and for and against the proposition. Furthermore, a copy of this certificate of election shall be delivered to each person elected and shall be prima facie evidence of its truth.

Julie Cozzi, MMC, Borough Clerk

Date: _____



Agenda Bill No.: 14-513
 Assembly Meeting Date: 10/28/14

Business Item Description:	Attachments:
Subject: Modify the Manager Authorization Limit for Change Orders	1. Ordinance 14-10-392
Originator: Borough Clerk	
Originating Department: Administration	
Date Submitted: 10/9/14	

Full Title/Motion:
 Motion: Advance Ordinance 14-10-392 to a second public hearing on 11/12/14.

Administrative Recommendation:
 This ordinance is recommended by the borough clerk.

Fiscal Impact:

Expenditure Required	Amount Budgeted	Appropriation Required	Projected Impact to Future Operating Budgets
\$	\$	\$	

Comprehensive Plan Consistency Review:
 Comp Plan Goals/Objectives: _____
 Consistent: Yes No

Summary Statement:
 The assembly on 4/22/14 adopted Ordinance 14-03-372, which updated the borough manager's purchasing authorization limits. As stated in that ordinance, "Supplies, materials, equipment, or contractual services not to exceed \$25,000 shall be made on the open market ... by the borough manager or by other borough personnel in accordance with written purchase authorization issued by the borough manager."
 According to Haines Borough Code Title 3 Section 3.60.190, "All change orders in excess of \$10,000 or 30 days shall require approval of the assembly." Ordinance 14-10-392, as proposed, would modify the manager authorization limit for change orders to align with the purchasing authorization limit of \$25,000 as set in Ordinance 14-03-372. These amounts have always matched and this part of the code was missed when the other ordinance was adopted.

Referral:
 Referred to: _____ Referral Date: _____
 Recommendation: _____ Meeting Date: _____

Assembly Action:
 Meeting Date(s): 10/14, 10/28/14 Public Hearing Date(s): 10/28/14
 Postponed to Date: _____

**An Ordinance of the Haines Borough amending Haines Borough Code Title 3
Section 3.60.190 to modify the manager authorization limit for change orders.**

BE IT ENACTED BY THE HAINES BOROUGH ASSEMBLY:

Section 1. Classification. This ordinance is of a general and permanent nature and the adopted amendment shall become a part of the Haines Borough Code.

Section 2. Severability. If any provision of this ordinance or any application thereof to any person or circumstance is held to be invalid, the remainder of this ordinance and the application to other persons or circumstances shall not be affected thereby.

Section 3. Effective Date. This ordinance is effective upon adoption.

Section 4. Amendment of Section 3.60.190 Section 3.60.190 of the Haines Borough Code is hereby amended as follows:

NOTE: **Bolded/UNDERLINED** ITEMS ARE TO BE ADDED
~~STRIKETHROUGH~~ ITEMS ARE DELETED

3.60.190 Change orders.

Changes to a contract may be accomplished after execution of the contract by change order. A change order shall be based upon agreement by the borough and the contractor and, if applicable, the engineer and shall be signed by all parties. It shall be the responsibility of the purchasing agent or the project manager, as applicable, to draft the change order. All change orders in excess of ~~\$10,000~~ **\$25,000** or 30 days shall require approval of the assembly.

ADOPTED BY A DULY CONSTITUTED QUORUM OF THE HAINES BOROUGH ASSEMBLY THIS ____
DAY OF _____, 2014.

ATTEST:

Stephanie Scott, Mayor

Julie Cozzi, MMC, Borough Clerk

Date Introduced: 10/14/14
Date of First Public Hearing: 10/28/14
Date of Second Public Hearing:



MANAGER'S REPORT

DATE: October 28, 2014
 TO: Mayor and Borough Assembly
 FROM: David B. Sosa, Borough Manager

BOROUGH ADMINISTRATION MISSION

Under the guidance and direction of the Borough Assembly, the mission of the Haines Borough Administration is to deliver critical and desired services; to protect the safety and well-being of the community; and to create conditions for a vibrant, sustainable economy that enhances and safeguards quality of life

Manager's Comments:

Strategic Planning Session: On 21 October from 6:30 PM to 9:00 PM the Committee of the Whole met along with Mayor Elect Hill and Assembly Members Elect to continue work on a 3 year Strategic Plan built upon the work of the 2012 Comprehensive Plan. This COW continued on the initial work of 3 September & 8 October during which the Borough staff provided an external and inter assessment of the environment and proposed a way forward to continue Strategic Planning. The session of 22 October was facilitated by Dr. Ginger Jewel Superintendent Haines Borough School District with assistance by the Borough Manager. The COW refined DRAFT Values, Vision, and Mission statement and provided more clarity for specified goals. The Manager and staff will process the result of these sessions into a DRAFT document for review by the Assembly. Once complete this Strategic Plan will help provide focus for the FY 16, 17, and 18 Budgets.

FY 2016 Budget Preparation: The Manager provided initial verbal and e-mail guidance to the staff on actions to prepare for the upcoming FY 16 Budget Discussion reinforcing the following themes:

- Review programs and projects through the lens of Strategic Goals.
- Weigh Programs and Projects against the following attributes:
 - Mandate to provide (Federal, State, Local, No mandate, best practice to provide)
 - Available providers (only Borough, few additional providers, many providers, etc)
 - Cost recovery: Assessing program, projects, and line items from both a fiscal and social perspective in terms of value provided to the community.
 - Demand for programs.
 - Portion of the community served by a program, project, or line item.

The Manager would continue to recommend that committees, boards, and advisory groups begin identifying their priority program, projects, line-items in preparation for the more formalized process.

Additionally, the Manager met with the CFO and the Clerk and produced a DRAFT Program of Actions and Milestones for developing the budget. This will be staffed and then presented to the Assembly for review.

APC Rate Case: I spoke with the Borough Attorney about the status of the APC rate case settlement talks. The Borough Attorney has requested an opportunity to brief the Assembly in Executive Session during the 28 October Assembly Meeting.

Borough Audit Initial Results: On Tuesday 21 October the Manager and the CFO held a teleconference with Mr. Max Mertz, of Elgee, Rehfeld, Mertz, LLC the Borough's Auditor. There were no findings noted and only recommendations for improved efficiencies. Of particular note was the review of Borough Grants and Loans which produced no findings. Mr. Mertz commented that it is highly unusual for no findings in this area and credited the hard work and attention to detail of the CFO and the Finance office in delivering these excellent results. Mr. Mertz is scheduled to brief the Assembly in November on the specific details of the annual audit.

Quarterly Financial Report: In November the CFO will provide a Quarterly Financial Report addressing the 1st Quarter of FY 2015. I have directed the Department Heads to each produce a document that shows their departments actions and accomplishments over the same period so that the Assembly can have a good sense of revenues received, expenditures made, and results delivered for the quarter.

Community & Economic Development Position: The Borough continues to advertise the Community & Economic Development position and the notice appears on bulletin boards, in the local paper, and on our website. As with the last posting this one has been sent to the Alaska Municipal League for distribution and the Manager posted a link on the jobs site for the International City/County Management Association (http://icma.org/en/icma/career_network/JobAd/107602?returnUrl=/en/icma/career_network/job_seekers/browse_jobs). We have also posted the position on the web versions of the Juneau, Anchorage, and Seattle newspapers.

To meet the needs of the Community & Economic Development Department the Manager and the Mayor signed an emergency hire notice appointing Ms. Leslie Ross as the interim director for a period of 90 days. Ms. Tammy Piper will assume the duties of Tourism Director to ensure that all departments' critical needs are met.

Skier Day Allocation: Between 7 and 9 October the Manager met with Haines' Heli-ski tour operators and received their briefs and rationale for Skier Day Requests. Per code the Manager has 10 days from 9 October to issue the 2015 Skier Day Allocation report. Notice of appeal must be filed with the Borough Clerk no later than close of business on 29 October 2015.

Lutak Dock: PND will brief the Assembly on 28 October on the details of the DRAFT Lutak Dock report. This report focused on structural integrity and the ability of the facility to deal with seismic related stress. The Manager has conducted initial conversations with the Alaska Industrial Development and Export Authority to assist in facilitating a community conversation on options for the Dock. Mr. Mike Catsi of ADEA has recommended the

services of a team at the University of Alaska Anchorage and the Manager has had several conversations with members of this team. After the brief by PND the Manager will continue coordination with the team at UAA and develop a plan for deciding a way forward for the facility.

SEARHC, Haines Volunteer Fire Department, and Haines Borough MOA for Emergency Medical Response and Ambulatory Services: In 1999 SEARHC received a grant from the US Health Resources and Services Administration under section 330(e) of the Public Health Services Act. A requirement of the act was for community health centers to provide professional coverage for medical emergencies. Prior to receiving the grant SEARHC had partnered with the HVFD and the Borough to provide services and resources for emergency medical treatment and the grant made it that much easier to provide assistance. The continuation of this MOA would continue to provision or medicines and other key supplies to our Emergency Medical Specialists and vehicles. The Manager recommends approving continued participation in the MOA

Haines Invasive Plant Meeting: The Borough Manager and Mayor met with Ms. Meredith Pochardt of Takshanuk Watershed Council and Mr. Brad Ryan on 6 October to discuss possible Borough participation the Northern Lynn Canal Cooperative Weed Management Area. This group is being formed to find and agree on ways to manage invasive species within our area. Ms. Pochardt presented a DRAFT MOA which the staff is currently reviewing. More information on invasive plant specials and the potential economic and environmental impacts is available here: <http://aknhp.uaa.alaska.edu/botany/akepic/> On 23 October the Manager updated the Parks and recreation Advisory Committee of this meeting and suggested they take lead, with Staff support, on this issue. The committee expressed support for this idea. The Manager recommends the Assembly direct the Committee to support this endeavor and that the Assembly reviews the MOA and approves participation.

Haines Klehini Bridge MOU: Mr. Matthew Van Alstine of the Alaska Department of Transportation sent a DRAFT MOA to the Borough on 29 September relating to the Klehini Bridge Replacement & Transfer project. This project is tied to an agreement between ADOT and the Borough adopted by Resolution #494 on 20 June 2000 in which the Borough agreed to accept responsibility for the Klehini Crossing, the Porcupine Road, and the Chilkat Lake Road in exchange for specific road upgrades. The staff is currently reviewing the MOA and will forward appropriate committees and boards shortly.

Legal: The Borough is currently tracking/awaiting feedback on the following items:

- A legal opinion regarding the Kochu Trust Property Tax determination
- A legal opinion on use of proceeds from sale of lands to fund utility extensions
- Finalization of the Minor Offenses Ordinance
- Platchka v. Haines

Maintenance Agreements: The Borough is in the process of negotiating Maintenance Agreements with the Haines Senior Citizens Center Inc and the Haines Borough School District to agree responsibilities regarding Operations & Maintenance of these facilities.

Snow Removal Plan: The Public Works department has completed revisions to the 2014/15 Snow Removal Plan. Details are available on the Borough Web Site here: <http://www.hainesalaska.gov/publicfacilities/townsite-service-area-2014-15-snow-plow-routes>

Freeride World Tour Permit: The FWT permit arrived with a request for out of bounds competition and an alternate in bounds competition. In accordance with borough code I approved the in-bounds permit and advised the event organizers that if they would like to hold the event out of bounds they will need to submit another permit and seek Assembly Approval. This allows the organization to conduct detailed planning for an event while seeking permission for their preferred venue if that is their desire.

Quit Claim Deed on Lot 2 Nukdik Point Subdivision reference Plat 2009-01: It was brought to my attention that Mr. Roger Beasley filed a quit claim deed at the Juneau Recorder's office on 10/08/2014 to the referenced property with Haines Borough as the grantee. Our review of records and official actions has determined that the Assembly has never approved acquisition of the referenced property as per HBC 14.04.030. Per code, the form of conveyance must be approved by the Borough Attorney and HBC 14.04.030 (B) specifically states that "Only upon a specific resolution of the assembly, the manager may act on its behalf in the acquisition of real property or interest in real property when the property to be acquired is for a valuable consideration or as part of a program of grants under which the borough may receive only a limited amount of acreage. The resolution shall set forth the terms, conditions, and manner of acquisition." As this requirement has not been met the Borough cannot accept the property at this time and does not recognize ownership. Mr. James Studley, who served as an agent for Mr. Beasley, has been notified of this via e-mail. Should Mr. Beasley desire to transfer the property to Haines Borough all appropriate measures directed in Borough Code must be observed.

Sale of Synthetic Drugs: As of October 14, 2014 a new law went into effect that now prohibits the possession, offering, displaying, marketing, advertising for sale, or selling of an illicit synthetic drug. The new law is Alaska Statute Title 17, Chapter 21, Sections 010, 020, 030, and 090. The employee of any business found in violation of this order and AS 17.21.010 et al, will be subject to the issuance of a citation as will the business owner. Several local businesses have been identified as having conducted business related to the sale, display, and marketing of synthetic drugs. The Haines Borough Police Department will begin active enforcement of violations of AS 17.21.010 et al, immediately. A violation of the statute is a minor offense, punishable by a fine of not more than \$500.00. The police Chief will be sending Cease & Desist Orders to the local businesses currently violating the referenced statutes.

Boat Storage: On 26 September the Manager sent a plan to provide boat storage at the Small Boat Harbor for local boat owners. The item was subsequently discussed at the Port & Harbor Advisory Committee. Given that no new fees were required and it involved use of a small portion of Borough land it was determined that the approval authority for the service rested with the Manager. In advance of this the Harbormaster canvassed the community to determine need. So far 17 vessel owners have requested permission to store their vessels at the Small Boat harbor. Per an e-mail from the Harbormaster dated 24 October 2014 "The vessels that we are storing and that are being removed with the trailer are vessels that have traditionally gone to Skagway to be taken out by that hydraulic trailer. This would not have been vessels that were stored in Haines previously..." Two local businessmen contacted the manager concerned that this was in competition with their business interests. As identified above these vessels would normally have been stored in Skagway and this represents new business for the community. This opportunity was available those business owners for some time but, for whatever reasons, they did not (or were unable to) take advantage of it. Additionally, one

of the businesses is licensed as a storage yard but the other only has a Haines Business License to operate a hotel. All this said, the Borough will operate the yard this year as a proof of concept. It is not the Managers' intent to operate a service of this nature long-term and the Borough will examine the potential to enter into a public-private partnership to continue to provide this service if warranted.

Facilities & Public Works:

Picture Point

Phase 1 design of the project is complete and we will be seeking bids from qualified contractors to begin work in early November. Phase 1 will include grade work and new rest rooms.

Chilkat Center for the Arts Window Replacement

New windows have been installed in the radio station and the dance studio. The window for the broadcast booth was not shipped. Installation of that window is expected to take place in November.

Administration Building Window Replacement

New windows have been installed in the finance office and the mail room at the Administration building.

Borough Administration Building Roof

Work on the roof began October 17. The contractor began with demolition and construction of the pitched roof. Once new framing is complete, the contractor will remove the old shingles and replace with new composite shingles. Some rot has been identified, and facilities staff is directing the contractor as to how we want to deal with it. These rot repairs are not expected to be substantial. Weather permitting, substantial completion will be during the first week in November.

Pool Lighting

The contract for new lighting at the Pool has been awarded to Dynamic Electric. Tentatively, the contractor is scheduled to begin the first week of December.

Chilkat Center Doors

Two new doors are being installed at the CCA to correct a fire code violation. One has been installed and one was damaged during shipping. This replacement door is expected to arrive in Haines October 28.

Pool Doors

New doors have been installed that separate the pool lobby and the locker rooms. This work recommended in a pool report to help minimize the use of energy from the air handling units.

High School Gym Doors

New entrance doors have been installed to the high school gym at the School's request.

Visitor Center

The Borough's maintenance staff is replacing the gable end truss at the Visitor's Center with a new laminated beam. The existing logs are no longer structurally sound and pose a risk to the structure.

Chilkat Center Heating

Maintenance Staff are finishing the first phase of zoned heating at the Chilkat Center. This work will help reduce fuel costs by heating areas of the facility more efficiently.

WWTP

A new blower has been installed at the WWTP. The blowers are used to aerate sewage digester and aerate sewage prior to treatment. This is a first of a three phase project.

Public Works

PW staff are actively grading road and performing pot hole repair in preparation for ground freezing conditions. Equipment is being set up for snow removal.

Snow Plow Contracts

Renewed Contracts:

- Tenani Bay- Turner Construction
- Letnikof Estates- Turner Construction
- Haines School- Southeast Roadbuilders
- Chilkat Center for the Arts- Southeast Roadbuilders
- Historic Dalton Trail (26 Mile)- Northern Lights Development (Juneau)

New Contracts:

- Cathedral/Piedad areas- Northern Lights Development (Juneau)
- Riverview Drive- TBD

Public Safety:

New Hire: Mr. Jeremy Groves accepted offer for employment as a police officer and will be joining the department Nov. 10, 2014. He is travelling from Boulder Colorado with his family.

Interviews: Interviews for the open dispatch position will be conducted on 10/31/2014. There are 6 applicants being interviewed for the position.

Public Announcement: posted on HBPD Facebook site to alert residents to unknown subjects getting into unlocked cars on Comstock. No known crimes of theft or criminal mischief reported with this information. Callers just wanted HBPD to be aware of finding vehicles had been gone through, so no criminal investigation proceeding at this time. Department is conducting extra patrols of the area.

MEMORANDUM OF UNDERSTANDING

Northern Lynn Canal Cooperative Weed Management Area

INTRODUCTION

Public, private and tribal landowners, land managers and land users throughout the Northern Lynn Canal (including the communities of Haines and Skagway) are concerned with invasive plant infestations. Both existing infestations and those that could occur in the future are of concern. Invasive plant infestations reduce the biological, agricultural, recreational and economic value of the land, decrease native plant populations and can also degrade salmon habitat and other aquatic ecosystems. Preserving the health and diversity of native plant and wildlife species and their habitats is thus vital to the economic and ecological well-being of the Northern Lynn Canal and all of Alaska.

The goal of the Northern Lynn Canal Cooperative Weed Management Area (NLC-CWMA) is to address invasive plant concerns and to facilitate the management of high priority infestations (through various treatment methods) for the purpose of preventing the reproduction and spread of weeds into, within and from the boundaries of the Cooperative Weed Management Area (CWMA). To accomplish this goal, members of the CWMA will work together to develop strategies for appropriate control efforts.

We are concerned about existing infestations and those that could occur in the future because preserving the health and diversity of native plant and wildlife species and their habitats is vital to the economic and ecological well-being of the Northern Lynn Canal and all of Alaska.

PURPOSE

The purpose of the Memorandum of Understanding (MOU) is to recognize the NLC-CWMA and to establish the basis for participants to cooperate, coordinate activities, and share resources necessary for the prevention, control, and promotion of public awareness of invasive plants on public, private, and tribal lands across ownership boundaries within the NLC-CWMA. This MOU creates a framework that promotes cooperation among participants to accomplish mutually beneficial projects and activities. Each participant will benefit from a unified strategy, combined expertise, shared resources, consistency of methods, and collective results. All participants are accepted as equal partners in this agreement.

AREAS OF AGREEMENT

Participants of the NLC-CWMA are aware of the problems caused by invasive plants and recognize that active management is necessary to control or eradicate existing invasive plants within the Northern Lynn Canal. The participants of the NLC-CWMA collectively agree to work together to achieve the following common goals:

1. Establish strategies and action plans as a means for working together and moving forward for the purposes of:
 - a. Preventing, containing and/or eradicating invasive plant infestations, by, but not limited to:
 - Recognizing and identifying point sources where introduction vectors for invasive plant and seed importation occur;
 - Promoting public awareness and land stewardship skills through education;
 - Developing a strategic plan designed to identify high priority infestations, and developing plans for management, control and/or containment of problem populations;
 - Developing standards to ensure “Best Management Practices” are being used for preventing the spread of invasive plants;
 - Encourage the inclusion of IP control and prevention plan into contracts for work that will disturb or import soil or fill materials, an invasive plants control and prevention plan;
 - Developing partnerships with key contacts, such as State of Alaska Department of Transportation and Public Facilities local field offices, local watershed councils, national and state parks, State of Alaska Marine Highway System, and local businesses; and,
 - Supporting the full implementation of appropriate control efforts.
 - b. Restoring natural ecosystem function to the extent feasible.
2. Provide a mechanism for obtaining grants for funding all activities associated with the CWMA.

THE SIGNATORIES’ UNDERSTANDING

We, the Signatories, collectively agree to the following:

1. Each signatory to this Memorandum of Understanding has primary responsibility for the lands and waters under its jurisdiction. To the extent permitted by the governing body and resources of each signatory, the signatories agree to provide where appropriate:
 - a. Land access for weed surveys with necessary approval and permits and/or;
 - b. Shared scientific and technical expertise and/or;
 - c. Participation in development of community strategies and action plans and/or;
 - d. Participation in prevention and control efforts and/or;
 - e. Participation in NLC-CWMA meetings and/or;

- f. Shared resources, when possible, including maps, imagery, reports, surveys and equipment and/or;
 - g. Participation in semi-annual meetings and project planning.
- 2. Members of NLC-CWMA may include, but are not limited to, any private citizen, local business, non-profit, citizens' group, and educational organization.
- 3. This Memorandum of Understanding in no way restricts signatories from participating in similar activities with other public or private agencies, organizations or individuals.
- 4. All signing parties will handle their own activities and utilize their own resources, including the expenditure of their own funds in pursuing the objectives of this MOU. Each party will carry out its separate activities in a coordinated and mutually beneficial manner.
- 5. Nothing in this Memorandum of Understanding obligates the signatories to expend funds, commit resources, provide volunteers or employees or enter into any contracts or other obligations. Any endeavor or transfer of anything of value involving reimbursement or contribution of funds between the parties to this MOU will be handled in accordance with applicable laws and regulations. Such endeavors will be outlined in separate agreements that shall be made in writing by representatives of the parties and shall be independently authorized by appropriate authority. This MOU does not provide such authority. Specifically this MOU does not establish authority for noncompetitive award to the parties of this agreement of any contract or other agreement. Any contract or agreement for training or other services must fully comply with all applicable requirements for competition.
- 6. The Southeast Soil and Water Conservation District agrees to:
 - a. Provide coordination for the start-up of the CWMA;
 - b. Actively seek funding for the CWMA to implement priority projects;
 - c. Provide expertise in development of the NLC-CWMA Strategic plan; and,
 - d. Work with or through the Alaska Association of Conservation Districts, when appropriate.

MODIFICATION AND TERMINATION

This agreement will become effective from the date of last signature and will remain in effect until **January 1, 2018**, at which time it will expire unless extended prior to the expiration date.

Any signatory may terminate their involvement in the NLC-CWMA by providing 60-day written notice at any time before the date of expiration.

This MOU may be amended, as necessary, by mutual consent of the majority of signatories through a written amendment signed and dated by said majority.

NLC-CWMA Contacts

The regional contacts for this agreement are:

Meredith Pochardt

Takshanuk Watershed Council
118 Main St.
PO Box 1029
Haines, AK 99827
(907) 766-3542
meredith@takshanuk.org

Brian Maupin

Southeast Soil and Water Conservation District
175 S. Franklin St., Ste 424
Juneau, AK 99801
(907) 586-6878
bgmaupin4000@gmail.com

The list of all signatory stakeholders and each signed MOU will be kept on file with the above contacts and made available to all, upon request. In addition, the NLC-CWMA Charter, Budget, Strategic Plan and all annual plans will be similarly filed and available.

AUTHORIZED REPRESENTATIVES. The individuals signing below certify that they are representatives of the listed agencies and that they have the authority to act for their agencies for matters related to this agreement.

Haines Borough

(Signatory Agency)

(Signature)

(Date)

(Printed Name)

(Title)

Municipality of Skagway

(Signatory Agency)

(Signature)

(Date)

(Printed Name)

(Title)

Skagway Traditional Council

(Signatory Agency)

(Signature)

(Date)

(Printed Name)

(Title)

Chilkoot Indian Association

(Signatory Agency)

(Signature) (Date)

(Printed Name) (Title)

Chilkat Indian Village

(Signatory Agency)

(Signature) (Date)

(Printed Name) (Title)

Taiya Inlet Watershed Council

(Signatory Agency)

(Signature) (Date)

(Printed Name) (Title)

Takshanuk Watershed Council

(Signatory Agency)

(Signature) (Date)

(Printed Name) (Title)

Southeast Alaska Watershed Coalition

(Signatory Agency)

(Signature)

(Date)

(Printed Name)

(Title)

Southeast Soil and Water Conservation District

(Signatory Agency)

(Signature)

(Date)

(Printed Name)

(Title)

Alaska Department of Transportation

(Signatory Agency)

(Signature)

(Date)

(Printed Name)

(Title)

Alaska State Parks

(Signatory Agency)

(Signature) (Date)

(Printed Name) (Title)

Alaska Dept. of Natural Resources Division of Forestry

(Signatory Agency)

(Signature) (Date)

(Printed Name) (Title)

US Fish and Wildlife Service

(Signatory Agency)

(Signature) (Date)

(Printed Name) (Title)

National Park Service

(Signatory Agency)

(Signature) (Date)

(Printed Name) (Title)

White Pass and Yukon Route

(Signatory Agency)

(Signature)

(Date)

(Printed Name)

(Title)

Sheldon Museum and Cultural Center

Director's Report: September 2014

Visitor count: 1,254

(In 2013 we hosted Museums Alaska/Alaska Historical Society in Haines. 738 of our 1,692 museum visitors were from that event. If we subtract that number from the September 2013 totals, our museum visitation last year for the month of September was 954, making us 300 higher this year.)

Volunteer hours: 214

(In 2013, 466 volunteer hours were spent on the Museums Alaska and Alaska Historical Society meeting activities. 211 volunteer hours were spent at the museum, making the numbers comparable from last year to this year.)

Collections:

- Sept. 14: *Mysteries at the Museum* filmed the porthole from the Clara Nevada, the interior of the museum, and Pam Randle talking about the Clara Nevada. This will be broadcast next year during their 7th season.
- Four researchers worked on the Arts Confluence/Fort Seward signs project and on the Canneries class projects.

Exhibits and Programming

- Alexandra Feit Encaustic Paintings exhibit opened September 5 and runs through October 18, 2014.
- Apple Activities: Scheduled school children to participate in apple activities the first two weeks of September. Preschool, Kindergarten, and first through third grades participated.
- September 13: Apple Day at the museum. The community was invited to finish picking apples from our tree. Volunteers made apple sauce, did apple prints, cut up different apples for tasting, and read apple stories. A children's book about Charlie Anway was written and produced in-house for use in the children's area.
- September 13: Sketching with Alexandra Feit, 12 adults participated
- Changed the children's area into "Preparing for Winter" with a smoke house built by Diane Sly, a small stove, apple and pie-making activities. This will remain in place until the beginning of November when a winter Clan House will be installed in the children's area.
- Jim Heaton continued to carve and paint the totem pole outside of the museum. He worked most days of the week in September.

Staff Training

New Pathways Project with Rasmussen Foundation, EMCarts and Foraker Group:

New Pathways Virtual Workshops: Sept. 16 and Sept. 30 – learned how to identify complex challenges that the museum currently faces.

AASLH meeting (St. Paul, MN): Sept 17-20, Helen Alten attended. She attended a workshop about game design and how to use it to facilitate learning in exhibits and through mobile apps. She attended sessions on fundraising and building new museums / additions and spoke with national funders.

September 29-October 4: Museum was closed so staff could drive to Seward for the Museums Alaska annual meeting.

Upcoming Activities

- Museums Alaska (Seward, AK): October 1 – 4, three of staff will attend
- Doll Fair: October 25
- *Inside Out: Dollhouses and Historic Interiors* exhibit opens October 25 until January 6.
- Website overhaul and upgrade
- Hiring Collections and Exhibitions Coordinator
- Winter exhibit (title to be determined)

New Pathways Project with Rasmussen Foundation, EMCarts and Foraker Group:

New Pathways Virtual Workshops:

Oct. 21, 2014

Dec. 16, 2014 and Jan. 6, Jan. 20, 2015

Mar. 3, Mar. 24, Apr. 14, 2015

New Pathways Anchorage Workshops:

February 26, 2015 and May 7, 2015

New Pathways Coaching Sessions in Haines:

December 1, 10:30 a.m. to 3:30 p.m.

January 26, 2015 (Time is ferry dependent)

May 4, 2015 (Time is ferry dependent)



**Haines Borough
Planning Commission Meeting
September 11, 2014
MINUTES**

Approved

1. **CALL TO ORDER/PLEDGE TO THE FLAG** – Chairman **Goldberg** called the meeting to order at 6:30 p.m. in Assembly Chambers and led the pledge to the flag.
2. **ROLL CALL** – **Present:** Chairman Rob **Goldberg**, Commissioners Lee **Heinmiller**, Heather **Lende**, Andy **Hedden**, Robert **Venables** (called in), Danny **Gonce**, and Don **Turner III**.

Staff Present: Stephanie **Scott**/Mayor, Tracy **Cui**/Planning & Zoning Technician III.

Also Present: Don **Hess**, Karen **Hess**, Sean **Gaffney**, Margaret **Friedenauer** (KHNS), Karen **Garcia** (CVN), Eric **Kocher**, Ron **Jackson**, Glenda **Gilbert**, John **Floreske**, Vincent **Simkin**, Scott **Sundberg**, and Debra **Schnabel** (liaison), etc.

The commissioners and audience honored the victims of 9/11 with a moment of silence.

3. **APPROVAL OF AGENDA**

Motion: **Turner** moved to “approve the agenda”. **Hedden** seconded it. The motion carried unanimously.

4. **APPROVAL OF MINUTES** – August 14, 2014 Regular Meeting Minutes

Motion: **Turner** moved to “approve the August 14, 2014 regular meeting minutes”. **Heinmiller** seconded it. The motion carried unanimously.

5. **PUBLIC COMMENTS** - None

6. **CHAIRMAN’S REPORT**

Goldberg summarized his report.

7. **STAFF REPORTS**

- A. **Planning & Zoning Staff Report**

Cui reported monthly land use permitting, enforcement orders, and the status of on-going projects.

8. **PUBLIC HEARINGS**

- A. **Don Simkin – Bed & Breakfast (B&B) Conditional Use Proposal**

Goldberg opened the hearing at 6:50 p.m.

V. Simkin introduced the proposal on behalf of his father Don Simkin to the commission and audience.

Goldberg closed the hearing at 6:51 p.m.

Motion: **Heinmiller** moved to “approve Simkin’s conditional use proposal”. **Hedden** seconded it. The motion carried unanimously.

- B. **John Floreske – Heliport Conditional Use Proposal**

Goldberg opened the hearing at 7:00 p.m.

The representative of a property owner at 9.9 Mile opposed this proposal. The owners were concerned that the heliport would make their property not able to be sold.

Goldberg closed the hearing at 7:05 p.m.

Lende asked the types of flight operation at the heliport. **Floreske** said the heliport is privately owned, and it will be for commercial use.

Hedden was in favor of the conditions set forth in the manager's recommendation letter except for the one-year period limitation. He felt more comfortable with three or five years.

Turner said nobody will invest money for development and the permit may be taken away after one year. He didn't agree with the operation hours either. The hours are not practical for commercial use, especially in the summer. He spoke in favor of Floreske's proposal.

Venables spoke in favor of the proposal. He said the proposed site is a proper location.

Motion: Venables moved to "approve Floreske's heliport conditional use proposal with the following three conditions: 1) Allowance of emergency use for state and federal response, medical, firefighting; and 2) Conform to the terms and conditions set forth in the Department of the Army permit; and 3) Helicopters do not fly over residences between 9 Mile and 7.5 Mile Haines Highway except for emergency use". **Turner** seconded it.

Floreske said he cannot provide the volume of traffic that will go in and out of the site, and he did not plan to construct fuel storages on site at this point.

Several commissioners said they have been to the proposed heliport site. More discussion ensued.

Primary Amendment: Venables moved to "accept the findings in manager's recommendation letter and approve Floreske's heliport conditional use proposal with the following three conditions: 1) Allowance of emergency use for state and federal response, medical, firefighting; and 2) Conform to the terms and conditions set forth in the Department of the Army permit; and 3) Helicopters do not fly over residences between 9 Mile and 7.5 Mile Haines Highway except for emergency use". **Turner** seconded it. The motion carried 5-2 with **Lende** and **Heinmiller** opposed.

9. **UNFINISHED BUSINESS**

A. Replat of Primary School Subdivision

After reviewing the memo provided by **Cui**, the commission made the following recommendations:

- 1) Keep the 5th Avenue Right-of-Way, but place a barrier so that cars cannot drive from Main Street into the school parking lot; and
- 2) Shift western property line of Lot 2 approximately 50 feet to the west and eliminate the lot line between Lots 1 and 2; and
- 3) Shift western property line of Lot 3 approximately 50 feet to the west and make Lot 3 rectangular. A Memorandum of Understanding should be written to allow a portion of the running track to remain on Lot 3; and
- 4) Connect Admin Building parking lot with the Library parking lot and make it one way; and

- 5) The commission supports the idea of a safe walking route through this property, but recommends that it be postponed until after the property is re-platted; and
- 6) Reserve a 20-foot wide easement for utilities along the southern boundary of Lot 8A; and
- 7) Plat a new line from the northeast corner of Tract A-2 paralleling the north side of the running track and ending at a point on the western boundary of Lot 3. This will create a new Lot 4. Eliminate all lines south and west of this new line such that the southwest portion of Lot 4 and Lots 12, 13, 14, 15 and 16 become part of Tract A-2. This would make the running track part of the school property.

B. Temporary Residence in HBC 18.60.020(H)

Cui revised this ordinance based on the comments from the commission. She split off the temporary residence for construction use from the people who own a piece of property and park their RVs on it during the summer. **Goldberg** spoke in favor of it.

Lende was against allowing temporary residence permits to be granted for vacation purposes on private property. She said she didn't see any reason to allow this in the townsite service area. She said people who desire to live in RVs can choose to stay in RV parks.

Venables said he does not think it is a problem to allow temporary dwellings to be placed on private properties. He was in favor of the draft ordinance as written by **Cui**.

Motion: Gonce moved to "change '180 days in any 12-month period' to '45 days in any 18-month period'". **Heinmiller** seconded it. The motion failed 3-4 with **Venables, Hedden, Lende,** and **Heinmiller** opposed.

Lende said it will be an economic problem if the Borough allows temporary dwellings to be placed on vacant private properties, which will cause low occupancy of designated commercial RV parks.

Hedden spoke in favor of **Lende's** idea. He said this is a planning issue. In order to protect the integrity of neighborhoods, he believes it is the right thing to disallow that.

Motion: Hedden move to "recommend the Assembly adopt the draft ordinance as proposed by staff with the following changes: 1) Replace 3 in the first section with 2 from the second section; and 2) Strike 7; and 3) Delete the second section". **Lende** seconded it. The motion carried 5-2 with **Venables** and **Turner** opposed.

During the discussion, the commission wanted to make it clear that this applies only within the Townsite Service Area.

Motion: Gonce moved to "request for staff to check the Borough code to clarify HBC 18.60.020(H) applies only within the Townsite Service Area". **Heinmiller** seconded it. The motion carried unanimously.

10. NEW BUSINESS

- A. Historic District/Building Review – None**
- B. Haines Borough Code Amendments – None**
- C. Project Updates – None**
- D. Other New Business**

1. Vacation Rentals

Hess said there are existing structures that are already for residential use, and there are rentals that are already going on in the light industrial/commercial (LIC) zone. She requested for the commission to consider allowing vacation rentals in this zone. Operation of vacation rentals is a type of business; it should be allowed in LIC zone.

Goldberg said before the consolidation of the City of Haines and Haines Borough, the city planning commission did a broad-brush rezoning of this whole area. They put a lot of residences in the industrial zone, which currently does not allow any residential development.

The commission agreed to change the zoning use chart to allow vacation rentals as a conditional use in LIC zone. **Cui** will draft the ordinance and bring it to the commission for review at the next regular meeting.

2. Classification of Borough Lands for Sale

The commission discussed various Borough properties as possible future land sales. These properties included land across Mud Bay Road from the Carr's Cove subdivision, Carr's Cove and lower Small Tracts Road area, at the end of FAA road, north of the Skyline subdivision, at the end of Lutak Road and at Excursion Inlet. The next step is to investigate these properties on foot with Borough land department staff to determine their suitability for development.

11. **COMMISSION COMMENTS** – None
12. **CORRESPONDENCES** - None
13. **SET MEETING DATES** – The next regular Planning Commission meeting is scheduled for 6:30 p.m. on Thursday, October 9, 2014.
14. **ADJOURNMENT**– 10:20 p.m.

SHELDON MUSEUM AND CULTURAL CENTER, INC
Board of Trustees Meeting Minutes
Monday, August 18, 2014, 1:00 p.m. at the Sheldon Museum

CALL TO ORDER: 1:01 p.m. by Board President Jim Heaton

ATTENDANCE: BOARD: Jim Heaton, Michael Marks, Lorrie Dudzik, Jan Hill, Bob Adkins, Anastasia Wiley, and Ginger Jewell. STAFF: Helen Alten and Blythe Carter. BOROUGH LIAISON: George Campbell GUESTS: None

ADDITIONS TO THE AGENDA: None

APPROVAL OF AGENDA: M/S Michael & Anastasia to approve agenda - approved unanimously.

APPROVAL OF MINUTES: M/S Michael & Ginger to approve minutes of last meeting - approved unanimously.

STAFF REPORT: A complete Staff Report was included in the Board's packet. Helen emphasized:

- Visitor numbers are up significantly, admission funds are up significantly .
- Our computer server has been upgraded.
- Free coffee, tea, etc. has been working out well, and has not been an extra burden on staff.
- Ginger Jewell has been confirmed by the Borough as our new Board member. Welcome aboard, Ginger.
- Helen will be out of town from Sept. 16 through Sept 22.
- Blythe, John, Nancy, and Anastasia will be SMCC delegates for the first New Pathways virtual meeting. Jan will be our alternate delegate.
- Lorrie Wolf will be in Haines Dec. 1 to chair an on-site New Pathways meeting.
- The newly advertised position for Collections needs union approval on the salary step chart before we can proceed with hiring. A discussion followed about simply renaming positions as "museum aide I", "museum aide II", etc. in order to prevent similar delays in the future.

PRESIDENT'S REPORT:

- No president report at this time

OLD BUSINESS:

- Education Committee – Ginger was assigned to the committee and given a list of prospective committee members.
- Fund Raising – Totem Walk – We still need sponsors and volunteer help. Venture Scouts and track team were suggested as possible volunteers.
- The \$15 registration fee will just barely cover our costs. The goal for this year is to break even.
- Assignments were given to call local businesses to solicit either prizes or financial support. Blythe will e-mail a copy of the SMCC solicitation letter to each Board member.
- Joe Hotch (Eagle Clan), Marilyn Wilson (Raven Clan), and Ron Horn (Presbyterian minister) were suggested to deliver pre-event prayers for the Totem Trot.
- Totem Trot Volunteers will meet at 5:30 Thursday (8/21/14) for instructions, vests, etc.
- Haines Womens Club is supplying 120 muffins, plus fruit. Discussion followed re: allocation of prizes, and possible participation lottery,
- Helen will contact Ralph Borders regarding traffic direction signs and route markers.
- Lorrie will open Chilkat Center lobby so bathrooms are available.
- Discussion regarding location of SMCC's new totem pole, when dedication would be held, whether we need a building permit, etc.

NEW BUSINESS:

- All Rasmuson Art Initiative funds for 2014 have been spent. More funds will become available in July 2015.
- The question of acquiring one or more Ma' or Cohen paintings was tabled until the question of her non-Alaskan residency can be determined.
- The question of acquiring one or more John Hagen photos was tabled until we can discuss John's preferences with him.

- New Photo/Reproduction price list – discussion tabled until next meeting.

BOARD DISCUSSION: ESPN is sponsoring the World Free Ride Tour (*skiing and snowboarding competition*) in Haines this coming March. This event will bring approx. 300 ESPN employees and competitors (plus spectators) to Haines. This could become an annual event, providing the Borough makes some changes in their heli-skiing regulations. SMCC needs to be thinking about winter-themed exhibits and activities that will provide both publicity and income from this event.

NEXT BOARD MEETING: Friday, September 12, 2014 at 10:00 a.m.

MEETING ADJOURNED: at 2:20 p.m.

Respectfully submitted,

Bob Adkins, Secretary

Parks & Recreation Advisory Committee (PARC)

August 21, 2014

Location: Library Conference Room

Members Present: Rich Chapell, Susan Luescher, Ron Jackson, Daymond Hoffman, George Campbell

Absent: Al Giddings, Meredith Pochardt

Visitors: Jon Gellings, Ginger Jewel, Mike Case, David Sosa, Christina Baskaya

Call to Order: 5:11pm

APPROVAL OF AGENDA

Add Old Business: Rich requested to add Update on Battery Point Trail and State Parks Trail, Update from Borough on Chilkat Cabin and Pool going back to the School.

Add New Business: George requested to add discussion of Bike trail use.

Motion: Damon moved to accept the agenda as amended.

Second: Rich

Passed unanimously

APPROVAL OF MINUTES

No minutes present to approve.

OLD BUSINESS

Trail Marker Status Discussion: Trail markers to be given Jon Gellings of State Parks. He would like to organize a volunteer effort on National Parks Day on Sept. 27th. Ron Jackson will take over the purchase of the Lutak Lumber.

Cabin Letter Discussion: Borough Letter will be supplied to Jon addressed to Mike Eberhardt. The new Park Ranger will decide if he wants to take on the management of the cabin rental.

Pool Update Discussion: Pool not going back to the school. Ginger reported that she and manager are working out a plan to display that the school does use the pool. They will be calculated the number of hours for that usage. She confirmed that is will not be an ownership transfer. She said that swim team currently cannot be part of the school sports program because they currently do not fit the requirement, such as grades, that restricts them from being part of the school. She also pointed out that the swim team are mostly younger kids and a competitive team through the school needs to be at the high school level.

George and Daymond reflected on the original purpose of the pool being that it was to teach water safety.

George reported that the Assembly needs to look at the 41 some facilities that the borough maintains and the limited future funding on Federal, State and Local level to set priorities for facility maintenance.

7 Mile Saddle Update: Jon said SAGA brushed out 7mile saddle trail, as well as a bit of the Kelsall Road. Ron asked Jon Gellings that the committee be sent an email update from the crew.

Battery Point Update: Jon says they are waiting for the super sacks of dirt to arrive. Then they have safety training and coordinating with the helicopters. He hopes to start next few weeks. He said they secured lumber from a heliport site.

They will use the trailhead of Battery Point trailhead as the launching area and only close trail when the helicopter is overhead. Borough funds have not been spent yet, but it will be soon.

NEW BUSINESS

Nomination of New Chair

Motion: Daymond moved to nominate Rich as PARC Chair.

Seconded: Sue

Passed unanimously

PARC Mission

Discussion: Ginger presented her draft of a mission and vision. George warned against PARC demanding a separate budget and staff within the borough. Ron suggested massaging the wording, and brought up new words, such as promote and support. Jon suggested changing the word "Preservation" to "Providence". George added "Participation Activities". Ginger brought up that there is a law that requires the school to implement a wellness policy. It may be possible that local governments are required to as well. Ron presented a new vision: "Haines is known far and wide ..." That affords endless recreational active for residents and visitor a broad and diverse endless recreational activities. George suggested: "endeavor to promote and recreational activities in Haines". George said that you can communicate ideas thru email but not decide. The email chain can be presented at a later meeting and voted on.

Ginger offered to revise the mission that she presented based on the input from the rest of the committee. PARC will discuss the revised mission at the next meeting.

New Committee Members

Motion: Daymond moved to request the mayor appoint Jon Gellings and Ginger Jewell to the PARC.

Second: Rich

Passed unanimously

Set Goals for Strategic Planning

Discussion: Ginger brought up the set goals for the strategic planning. George suggested that the PARC pick a project and focus the group on that and/or support a group because the assembly. Ron brought up the purpose statement.

Bike Trails Discussion: Jon informed the group that all State Parks trails are closed to Bike use unless specifically opened. They cannot open a trail to bike use unless it is built to that standard, see attachment. No trails in Haines are at this time. Money needs to be found to upgrade the trail tread then they can look at making a reg to open to bikes. Might want to do pubic process first to see what the public says about a trail being open to bikes.

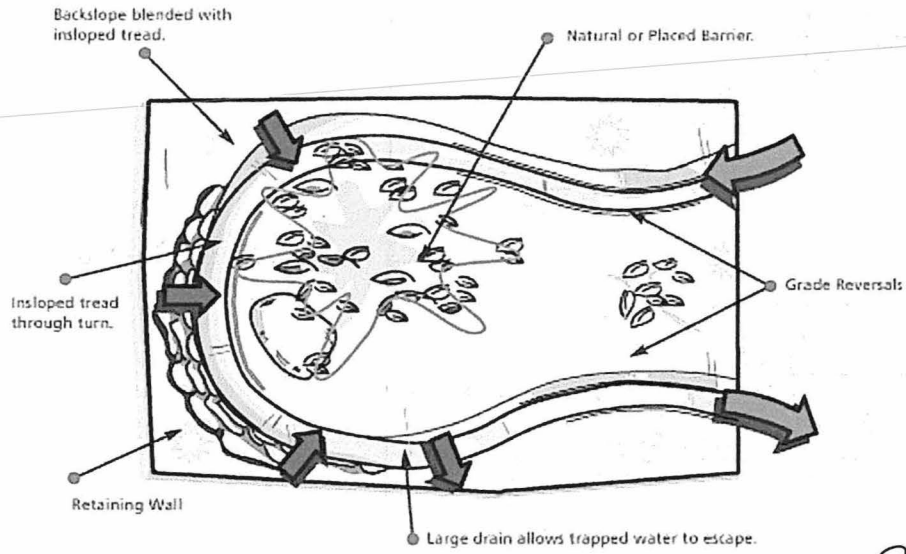
As far as the State Forestry trails are concerned, bicycling is a generally allowed use.

Ski Club Grooming Equipment Discussion: George inquired about the status of the Ski Club grooming equipment. Christina said that staff has assessed two options and sent them back to the ski club in answer of HSHC request. She also mentioned that an MOA was drafted, in the event that the HSHC would allow the borough to purchase the equipment. PARC requested a copy of the MOA and request.

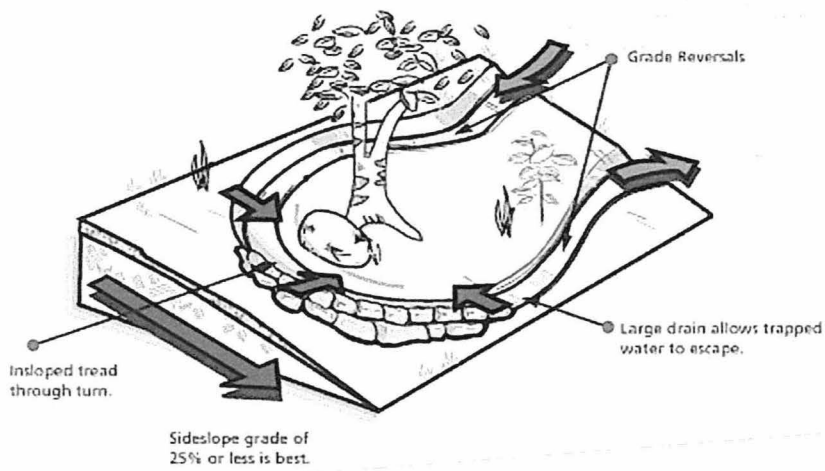
NEXT MEETING

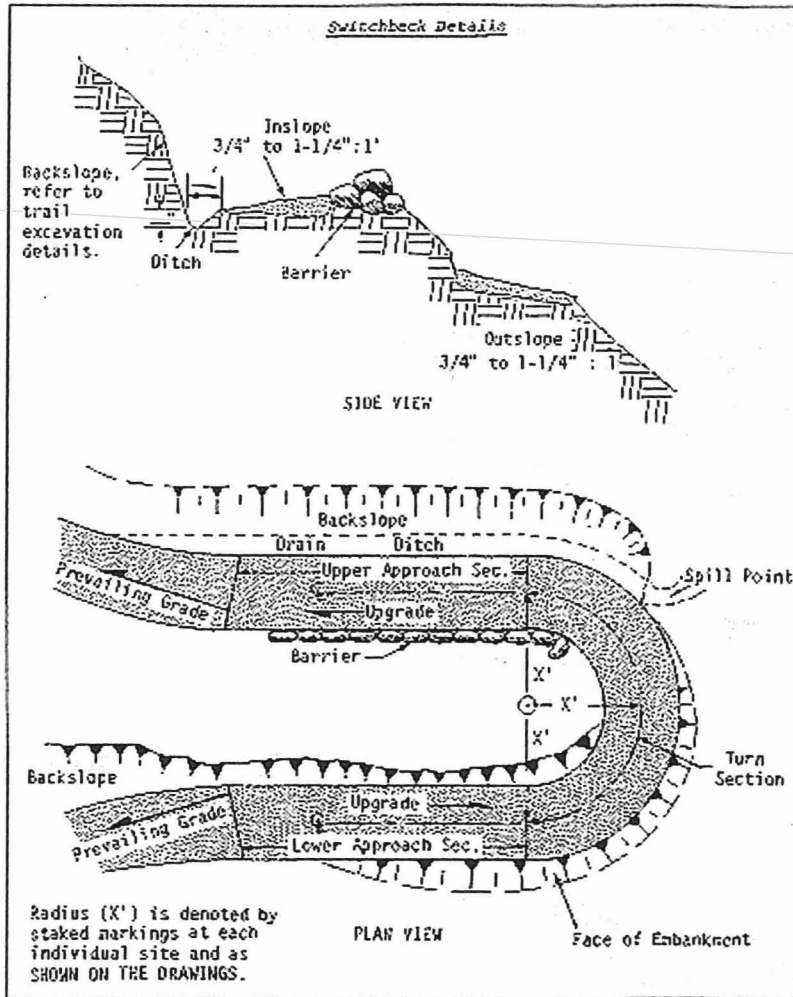
Sept 18 at 5pm

Inslope Turn



Biking Standard





Hiking Standard

Haines Parks and Recreation Advisory Committee (PARC)

September 18, 2014, 5:00 PM, Haines Borough Public Library

Members present: Al Giddings (CYD), Ginger Jewell, Daymond Hoffman, Jon Gellings, Rich Chapell, Ron Jackson

Absent: Meredith Pochardt, Susan Leuscher, George Campbell,

Visitors: Senior Village resident Joan Snyder, Tourism Director Leslie Ross, Haines Ski and Hike Club (HSHC) President Bill Holton, HSHC member Jon Hirsh

Approval of Agenda

Add Public Comment, requested by Joan Snyder

Motion/Second: Jewell/Hoffman

Passed unanimously.

Public Comment

Snyder informed the committee that construction vehicles are accessing a downtown lot using Borough roads adjacent to Senior Village and Tlingit Park playground. She feels this large vehicle traffic is a hazard to Tlingit Park users. Could the Borough direct the owner to reduce hazard by accessing the lot from 2nd Ave.?

Action: Jewell will discuss with Borough Public Works Dept. head.

Approval of minutes from 8/21/2014 meeting

Motion/Second: Hoffman/Gellings

Passed unanimously.

Approval of minutes from 7/18/2014 meeting

Cannot locate minutes. Pochardt typed on whose computer?

Action: Chapell will ask Borough staff if minutes are on Christina Baskaya's Borough work computer.

Old Business

PARC Mission, Vision, and Goals

Members collaborated on edits to Jewell's draft presented at meeting. Hoffman requested Jewell's draft presented at 8/21/2014 meeting for comparison.

Action: Jewell will distribute 8/21/14 non-edited and 9/18/14 edited versions by email before next meeting. Members will make final edits and approve at next meeting.

Ski Club Grooming Equipment MOA

Ross provided update: Haines Ski and Hike Club (HSHC) and Borough Manager David Sosa did not reach agreement on MOA. Sosa encouraged HSHC to apply for next round of Community Chest funds.

Action: none at this time. Jewell and other members expressed that PARC welcomes and would strongly support a proposal to develop groomed X-C ski trails which will benefit Haines residents and will attract winter tourists from Whitehorse and Juneau.

National Public Lands Day Sept. 27, 2014 - activity such as trail marker installation?

Gellings: AK State Parks staff (Gellings) will organize volunteer trail work project: distribute gravel on Battery Point trail. Gellings will publicize by Hainesak.com, KHNS, Chilkat Valley News Save the Date, and flyers posted around town. AK State Parks will provide 2 motorized wheelbarrow, 1 manual wheelbarrow. Volunteers are encouraged to bring their own wheelbarrows.

Action: Jewell will solicit Haines High School athletes to help for community service credits they need.
Action: Members are encouraged to spread the word, enlist friends, and participate.

Battery Point trail update

Gellings: 12 super sacks of gravel were airlifted to a spot on the trail and must now be distributed by wheelbarrow. Work stopped due to trail staff leaving for other work commitments. \$7,500 of Borough funds were spent on gravel, super sacks, dump truck, and 2 hrs helicopter time. The remaining \$7,500 of Borough funds will be spent on a 2nd gravel purchase and delivery in the spring.

Chilkat State Park public use cabin update

Gellings: AK State Parks Ranger will consider the Borough proposal after he starts work in Haines in early October.

New Business

ATV park in the Haines townsite

Jackson: Item in the Chilkat Valley News said the Borough Assembly had resolved to refer this idea to the PARC. Chapell and other members said they had not received any direction or referral from the Mayor or Borough staff. There was no discussion on the merits of the idea or suitable sites. Jackson and Hoffman, the longest serving PARC members, said they could not recall this idea being considered previously.

Next meeting date

October 23, 2014, 5:00 pm, Haines Borough Public Library

Adjourned

6:50 pm



**Haines Borough
Assembly Agenda Bill**

Agenda Bill No.: 14-516

Assembly Meeting Date: 10/28/14

Business Item Description:	Attachments:
Subject: Authorize Disposal of Four Surplus Vehicles and Visitor Information Kiosk	1. Resolution 14-10-594
Originator: Director of Public Facilities	
Originating Department: Public Facilities	
Date Submitted: 10/23/14	

Full Title/Motion:
Motion: Adopt Resolution 14-10-594.

Administrative Recommendation:
This resolution is recommended by the Director of Public Facilities.

Fiscal Impact:

Expenditure Required	Amount Budgeted	Appropriation Required	Projected Impact to Future Operating Budgets
\$	\$	\$	Reduced Maintenance Costs

Comprehensive Plan Consistency Review:
Comp Plan Goals/Objectives: _____
Consistent: Yes No

Summary Statement:
The Director of Public Facilities has recommended four Borough vehicles and a visitor information kiosk to be declared surplus. The vehicles include a 1965 Peterbilt tanker truck; 1968 Dodge flatbed truck; 1996 Ford Bronco; and a 1999 Dodge pickup truck. The visitor information kiosk proposed for disposal was replaced with a new structure at the Port Chilkoot Dock in 2013. Haines Borough Code 14.24.010 (Disposal of personal property) states the borough assembly shall, by resolution, determine which method or methods shall be used to dispose of personal property valued between \$1,000 and \$25,000. The Director of Public Facilities recommends disposing of the vehicles and visitor information kiosk by public sealed bid auction to the highest bidder.

Note: The Borough also plans to accept sealed bids for a 1998 Ford Explorer that was authorized for disposal by Resolution 14-01-529. The proposed timeline would have bids due by Thursday, November 6th.

Referral:
Referred to: _____ Referral Date: _____
Recommendation: _____ Meeting Date: _____

Assembly Action:
Meeting Date(s): 10/28/14 Public Hearing Date(s): _____
Postponed to Date: _____

A Resolution of the Haines Borough Assembly authorizing the Borough Manager to dispose of four surplus vehicles and a visitor information kiosk by public sealed bid auction to the highest bidder as specified in Haines Borough Code 14.24.010 (Disposal of personal property).

WHEREAS, the Director of Public Facilities has recommended four Borough vehicles and a visitor information kiosk to be declared surplus; and

WHEREAS, the vehicles include a 1965 Peterbilt tanker truck; 1968 Dodge flatbed truck; 1996 Ford Bronco; and a 1999 Dodge pickup truck; and

WHEREAS, the visitor information kiosk proposed for disposal was replaced with a new structure at the Port Chilkoot Dock in 2013; and

WHEREAS, Haines Borough Code 14.24.010 (Disposal of personal property) states the borough assembly shall, by resolution, determine which method or methods shall be used to dispose of personal property valued between \$1,000 and \$25,000; and

WHEREAS, Code states personal property not authorized for abandonment, destruction, sale, or recycling by the manager and no longer needed for municipal purposes shall be disposed of in one or more of the following means: by public outcry auction to the highest bidder; by public sealed bid auction to the highest bidder; to the best qualified proposer who responds to a request for proposals to acquire the property; by sale or transfer to an educational, religious, charitable or nonprofit association or corporation providing service to residents of Haines; or by sale or transfer to the United States, the state of Alaska or an Alaska municipal corporation or any agency or department thereof; and

WHEREAS, the Director of Public Facilities recommends disposing of the vehicles and visitor information kiosk by public sealed bid auction to the highest bidder,

NOW, THEREFORE, BE IT RESOLVED that the Haines Borough Assembly authorizes the Borough Manager to dispose of four surplus vehicles and a visitor information kiosk by public sealed bid auction to the highest bidder as specified in Haines Borough Code 14.24.010 (Disposal of personal property).

Adopted by a duly-constituted quorum of the Haines Borough Assembly on this ____ day of _____, 2014.

Janice Hill, Borough Mayor

Attest:

Julie Cozzi, MMC, Borough Clerk

October 28, 2014

Juneau Access Improvement Project
ATTN: Deborah Holman
DOT&PF Southeast Region
P.O. Box 112506
Juneau, AK 99811-2506
juneauaccess@alaska.gov

The position of the Borough has not changed regarding Alternative 2B, the state's preferred alternative. The Borough continues to oppose an East Lynn Canal road and continues to support improved marine access. (Resolutions attached.) This is in keeping with a 2003 McDowell survey that 67% of Haines residents preferred better ferry service than a road to Juneau (See Appendix EE at page 214).

Our concerns are primarily about:

- Safety – Road would run underneath 41 active avalanche paths and 99 rock, debris, and landslides. Accidents and fatalities will occur, as will unpredictable travel delays.
- Reliability - AMHS is not weather-dependent, offering reliable access to Juneau year round. If Alternative 2B is built, both road and air access will be weather-dependent. 19% of trips to Juneau are medical or business related, and 18% of Juneau trips are for jet service. Reliability is key.
- Emergency Services – 20 miles of road will be in the Haines Borough, spreading our emergency service providers thin.
- Economy – Alternative 2B will likely provide a net economic loss for Haines with expected retail leakage to Juneau and resulting decreased sales tax revenues.
- Foot Passengers – Additional costs and inconvenience to this large segment of the traveling public is an on-going concern.
- Regional School Activities and Competitions – Student travel is frequent and is almost always as AMHS walk-on. If built, Alternative 2B will force the District to either drive students to Juneau, or fly. Either option would be far more expensive

for our District – perhaps cost-prohibitive - and we would have safety concerns for our students.

- Funding Priorities – Existing infrastructure should be maintained including replacing aging AMHS vessels. With declining federal highway funding and declining state funds, Alternative 2B is too expensive to build and maintain. Local transportation priorities could be postponed or cancelled due to huge capital and maintenance costs for 2B.

Thank you for the opportunity to comment.

Sincerely,

Jan Hill, Mayor on behalf of the Haines Borough Assembly

Attachments:

HB Resolution 11-11-316

HB Resolution 07-11-116

HB Resolution 04-08-046

HB Resolution 418

Resolution, Haines Chamber of Commerce

A RESOLUTION OF THE HAINES BOROUGH ASSEMBLY REAFFIRMING ITS SUPPORT OF RESOLUTIONS 04-04-042 AND 07-11-116, AND ITS CONTINUED PREFERENCE FOR IMPROVED FERRY SERVICE RATHER THAN AN EAST LYNN CANAL HIGHWAY.

WHEREAS, the Alaska Department of Transportation and Public Facilities has requested public input on the Southeast Alaska Transportation Plan *2011 Update Scoping Report*; and

WHEREAS, the *2011 Update Scoping Report* includes an alternative that would build an East Lynn Canal Highway; and

WHEREAS, through Resolutions 04-04-042 and 07-11-116 the Haines Borough has expressed and reaffirmed its preference for improved Alaska Marine Highway service in the Lynn Canal and opposed development of an East Lynn Canal Highway; and

WHEREAS, Appendix C of the Juneau Access Draft Environmental Impact Statement states a majority of residents surveyed in Juneau, Haines and Skagway prefer improved ferry service rather than road access to Juneau; and

WHEREAS, the Record of Decision of the Juneau Access Final Environmental Impact Statement determined an East Lynn Canal Highway would be twice as expensive to operate and maintain as existing ferry service; and

WHEREAS, the Golder Associates Geotechnical Investigation found 112 geological hazards that, in addition to 36 active avalanche paths, would endanger public safety and close an East Lynn Canal Highway frequently, thereby decreasing Juneau access; and

WHEREAS, the Juneau Access Final Environmental Impact Statement determined there would likely be 600 non-fatal and 8 fatal accidents over a 40 year period on an East Lynn Canal Highway; and

WHEREAS, the Alaska Marine Highway has an excellent safety record; and

WHEREAS, the Marine Transportation Advisory Board advocates investments in new ferries,

NOW, THEREFORE, BE IT RESOLVED that the Haines Borough Assembly:

Section 1: Reaffirms its support of Resolutions 04-04-042 and 07-11-116 and its continued preference for improved ferry service rather than an East Lynn Canal Highway;

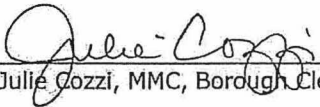
Section 2: Recommends that the state focus planning and funding strategies for transportation improvements in Southeast Alaska on enhancing marine transportation options recommended by the Marine Transportation Advisory Board with special emphasis on the deployment of Alaska Class ferries and that consideration of a Berner's Bay ferry terminal include an inherent public transportation component to support walk-on ferry passengers;

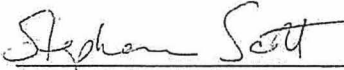
HAINES BOROUGH
Resolution No. 11-11-316
Page 2

Section 3: Shall submit copies of this resolution to Andy Hughes, Planning Chief for the Southeast Alaska Transportation Plan, Governor Sean Parnell, Senator Albert Kookesh, and Representative Bill Thomas.

ADOPTED BY A DULY CONSTITUTED QUORUM OF THE HAINES BOROUGH ASSEMBLY THIS 15th DAY OF NOVEMBER 2011.

ATTEST:


Julie Cozzi, MMC, Borough Clerk


Stephanie Scott, Mayor



HAINES BOROUGH
RESOLUTION 07-11-116

Adopted

A RESOLUTION OF THE HAINES BOROUGH ASSEMBLY REAFFIRMING ITS SUPPORT OF RESOLUTION 04-04-042 AND ITS PREFERENCE FOR IMPROVED FERRY SERVICE RATHER THAN AN EAST LYNN CANAL HIGHWAY.

Whereas, on October 29, 2007 Governor Sarah Palin's office issued a statement urging people to contact their legislators to support an East Lynn Canal Highway; and,

Whereas, the Haines Borough has repeatedly expressed its preference for improved Alaska Marine Highway service in the upper Lynn Canal and opposed the development of an East Lynn Canal Highway; and,

Whereas, the Haines Borough Assembly adopted resolution 04-04-042 on April 7, 2004, which states:

"WHEREAS, the Alaska Marine Highway System was created as a public transportation network, serving all Alaskans, supported in part by public funds; and,

WHEREAS, the Alaska Marine Highway System serves as Southeast Alaska's road system, effectively providing ferry service to connect the remote communities of Southeast Alaska and promote economic development within the region for over forty years; and,

WHEREAS, the construction of new roads would offer minimal enhancements to SE Alaska's transportation system due to the geographic challenges unique to this region; and,

WHEREAS, Alaska Marine Highway System is currently in need of investments to ensure continued and improved ferry service in the future; and

WHEREAS, the Haines economy is largely dependent upon being a transportation link between Southeast and interior Alaska, the Yukon, and Lower 48; and,

WHEREAS, a majority of Haines residents and businesses support improved marine access over a Juneau Road;

THEREFORE BE IT RESOLVED that the Haines Borough Assembly requests that state and federal governments focus planning and funding strategies for transportation improvements in Southeast Alaska on enhancing marine transportation within the region."; and,

Whereas, the estimated funds needed for the proposed East Lynn Canal Highway have recently been increased to \$350 million, and this amount would significantly address the many needs of the Marine Highway System,

NOW, THEREFORE, BE IT RESOLVED by the Haines Borough Assembly:

Section 1: That the Haines Borough Assembly reaffirms its support of Resolution 04-04-042 and preference for improved ferry service rather than an East Lynn Canal Highway;

Section 2: That the Haines Borough Assembly requests the Governor establish a segregated fund for the purpose of replacing the aging fleet and construction of needed ferry terminal modifications;

Section 3: That the Haines Borough pledges its full support and cooperation to develop the Haines Ferry Terminal into a regional hub that will support daily service to the ports of Juneau and Skagway; and

Section 4: That copies of this resolution will be sent to Senator Albert Kookesh, Representative Bill Thomas, and Governor Sarah Palin.

ADOPTED by a duly constituted quorum of the Haines Borough Assembly on the 20th day of November, 2007.

Fred Shields, Mayor

ATTEST:

Julie Cozzi, Borough Clerk

HAINES BOROUGH

Adopted

RESOLUTION 04-08-046

A RESOLUTION OF THE HAINES BOROUGH, EXPRESSING APPRECIATION FOR THE ALASKA MARINE HIGHWAY'S PROPOSED 2004/2005 FALL/WINTER/SPRING FERRY AND ADVOCATING FOR THE ESTABLISHMENT OF A HAINES-BASED SHUTTLE FERRY TO OPERATE BETWEEN HAINES AND SKAGWAY, BEGINNING IN THE SUMMER OF 2005.

WHEREAS, the Haines Borough is a coastal community that depends on the Alaska Marine Highway as a critical means of moving people, vehicles, and goods; and,

WHEREAS, the Alaska Marine Highway System has proposed a Fall/Winter/Spring schedule of service that is very favorable to the community of Haines; and,

WHEREAS, the Haines Borough Assembly recognizes and appreciates this level of service; and,

WHEREAS, the regional economy depends upon consistent and regular transportation service between Haines and Skagway; and

WHEREAS, the Department of Transportation's various plans for future transportation in the Upper Lynn Canal call for the deployment of a shuttle ferry between Haines and Skagway;

THEREFORE BE IT RESOLVED that the Haines Borough Assembly expresses appreciation for the Alaska Marine Highway's proposed 2004/2005 Fall/Winter/Spring ferry and advocates for the establishment of a Haines-based shuttle ferry to operate between Haines and Skagway beginning in the summer of 2005.

Adopted by a duly constituted quorum of the Haines Borough Assembly on this 4th day of August, 2004.

Attest:


Julie Cozzi, Borough Clerk


Mike Case, Borough Mayor

S E A L:



HAINES BOROUGH
RESOLUTION #418

A RESOLUTION OF THE HAINES BOROUGH ASSEMBLY OPPOSING THE CONSTRUCTION OF THE EAST LYNN CANAL ROAD, AS CURRENTLY PROPOSED FOR THE JUNEAU ACCESS PROJECT.

WHEREAS, construction of the East Lynn Canal Road as proposed by DOT, bypassing the community of Haines would be devastating to our economy; and

WHEREAS, the Haines Borough has one of the highest unemployment rates in the state due to loss of our sawmill and decline in the fishing industry; and

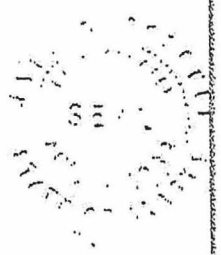
WHEREAS, there are other alternatives available that would not adversely affect the community of Haines or Skagway.

NOW THEREFORE, BE IT RESOLVED that the Haines Borough supports other alternatives for the Juneau Access Road that would be fair and equitable to both the Haines and Skagway communities.

ADOPTED: 3/18/97

Jerry L. Mapp
Jerry L. Mapp, Mayor

ATTEST:
Jacki Martin
Jacki Martin, Clerk/Treasurer



Haines Chamber of Commerce

A resolution of the Haines Chamber of Commerce opposing construction of road options of the Juneau Access Project and supporting improved Ferry Service.

WHEREAS, the Department of Transportation and Public Facilities is currently taking public comment on proposed access improvements to Juneau; and

WHEREAS, the Juneau Access Project has identified the East Lynn Canal road as the preferred alternative; and

WHEREAS, the East Lynn Canal Road will cross designated wilderness lands (LUD-2) and will negatively impact wildlife habitat for bald eagles, sea lions and salmon; and

WHEREAS, the East Lynn Canal Road could negatively impact the Lynn Canal Commercial fishery due to construction and an increase in sports fishing activity as a result of improved access to the Lynn Canal; and

WHEREAS, the East Lynn Canal Road will traverse fifty-eight avalanche chutes and will have the highest avalanche hazard rating of any highway in North America, with the resulting increase in project and maintenance costs due to avalanche mitigation and clearing; and

WHEREAS, avalanches will result in the loss of any surface access due to road closures, will result in high maintenance costs and will create the potential for the loss of life to maintenance workers and users of the road; and

WHEREAS, increased maintenance costs due to the East Lynn Canal Road will further impact maintenance of existing State transportation facilities such as highways, airports, terminals and marine vessels, which are presently maintained at sub-standard levels; and

WHEREAS, according to Appendix C of the Juneau Access Draft Environmental Impact Statement a majority of residents surveyed in Juneau, Haines and Skagway prefer improved ferry service rather than road access to Juneau.

NOW THEREFORE BE IT RESOLVED, that the Haines Chamber of Commerce opposes construction of the East Lynn Canal Road and other road options as currently proposed by the State of Alaska Department of Transportation and Public Facilities and favors improved ferry service to the communities of Haines, Skagway and Juneau.

Adopted:

11/20/97
By Janice M. Hill
Janice M. Hill, President

By Marilyn R. Huitger
Marilyn R. Huitger, Manager

11/18/97



**Haines Borough
Assembly Agenda Bill**

Agenda Bill No.: 14-501

Assembly Meeting Date: 10/28/14

Business Item Description:	Attachments:
Subject: Second Floor Veteran's Center Community Purpose Property Tax Exemption	1. Ordinance 14-10-391 - draft 2. 10/21/14 Letter from HAL Requesting Reconsideration 3. Borough Manager Recommendations 4. Borough Attorney Opinion 5. Property Tax Exemption Analysis 6. AAAO Standards for Community Purpose Exemptions
Originator: Assessor	
Originating Department: Assessment	
Date Submitted: 3/12/14	

Full Title/Motion:
See the Summary Statement.

Administrative Recommendation:
The manager recommends against reconsideration & encourages first the development of a CP Exemption Policy.

Fiscal Impact:			
Expenditure Required	Amount Budgeted	Appropriation Required	Projected Impact to Future Operating Budgets
\$ n/a	\$ n/a	\$ n/a	Impact to Prop Tax Revenue

Comprehensive Plan Consistency Review:	
Comp Plan Goals/Objectives:	Consistent: <input checked="" type="checkbox"/> Yes <input type="checkbox"/> No

Summary Statement:
<p>State law mandates certain required exemptions, and the state assessor determined that all but the second floor of the new Veteran's Building (owned by Haines Assisted Living) qualifies for mandatory status. On 6/10/14, the assembly adopted Ordinance 14-02-370 removing HAL from the list of optional exemptions in code. The exempt HAL property includes the land and main floor of the new Veteran's Center. Subsequently HAL applied for an optional "community purpose exemption" status for the second floor of the Veteran's Building. On 10/14/14, the assembly considered whether to introduce the ordinance and opted rather to: "Postpone this until the borough staff develops and the assembly approves a borough policy on community purpose exemption." Vince Hansen, Community Manager for HAL, has requested reconsideration of that motion to postpone. If a motion to reconsider is made and passed, the motion to postpone would be back on the table for debate. In that case, if the new vote for postponement failed, a new motion to introduce the ordinance and set a first public hearing would be in order.</p>

Referral:	
Referred to:	Referral Date:
Recommendation:	Meeting Date:

Assembly Action:	
Meeting Date(s): 10/14, 10/28/14	Public Hearing Date(s):
	Postponed to Date:

An ordinance of the Haines Borough amending Haines Borough Code Title 3 to add the upper level of the Soboleff-McRae Veterans Village & Wellness Center owned by Haines Senior Assisted Living Inc. to the list of community purpose exemptions in HBC 3.70.040.

BE IT ENACTED BY THE HAINES BOROUGH ASSEMBLY:

Section 1. Classification. This ordinance is of a general and permanent nature and the adopted amendment shall become a part of the Haines Borough Code.

Section 2. Severability. If any provision of this ordinance or any application thereof to any person or circumstance is held to be invalid, the remainder of this ordinance and the application to other persons or circumstances shall not be affected thereby.

Section 3. Effective Date. This ordinance shall become effective immediately upon adoption.

Section 4. Amendment of Section 3.70.040. Haines Borough Code 3.70.040 is amended, as follows:

NOTE: **Bolded/UNDERLINED** ITEMS ARE TO BE ADDED OR CHANGED
STRIKETHROUGH ITEMS ARE DELETIONS

HBC 3.70.040 Local exemptions and exclusions.

A. The following property is exempt from general taxation:

1. Business inventory and items held for resale;
2. All motor vehicles which are subject to the motor vehicle registration tax described in Chapter 3.85 HBC.

B. The assembly may by ordinance exempt or partially exempt from taxation privately owned land, wetland and water areas for which a scenic, conservation, or public recreation use easement is granted to the borough. To be eligible for a tax exemption, or partial exemption, the easement must be in perpetuity. However, the easement is automatically terminated before an eminent domain taking of fee simple title or less than fee simple title to the property, so that the property owner is compensated at a rate that does not reflect the easement grant.

C. The increase in assessed value of improvements to real property shall be exempt from taxation if an increase in assessed value is directly attributable to alteration of the natural features of the land or to new maintenance, repair or renovation of an existing structure, and if the alteration, maintenance, repair, or renovation, when completed, enhances the exterior appearance or aesthetic quality of the land or structure.

An exemption may not be allowed under this subsection for the construction of an improvement to a structure if the principal purpose of the improvement is to increase the amount of space of occupancy or nonresidential use in the structure or for the alteration of land as a consequence of construction activity. An exemption provided in this subsection shall continue for four years from the date the improvement is completed, or from the date of approval for the exemption by the assessor, whichever is later.

D. Pursuant to AS 29.45.050(b)(1)(A), the below-listed properties shall remain exempt from property taxation so long as they remain the property of their present owners

(organizations not organized for business or profitmaking purposes) and so long as they remain used exclusively for community purposes:

1. Southeast Alaska Fairgrounds: that area containing 42 acres, more or less, in USS 735, currently owned by Southeast Alaska State Fair, Inc.;

2. Port Chilkoot Parade Ground, currently owned by Alaska Indian Arts, Inc., that area surrounding Block G, Port Chilkoot Subdivision, containing 7.58 acres, more or less, not used for commercial purposes;

3. Land and improvements situated on Lots 1 through 7, Block O, Presbyterian Mission Subdivision, currently owned by the American Bald Eagle Foundation;

4. Land and improvements situated on Small Tracts Road, specifically the north 300 feet of the west 100 feet of Lot 40, Section 2, Township 31 South, Range 59 East, of the Copper River Meridian, currently owned by the Haines Animal Rescue Kennel;

5. Charles Anway Cabin: Land and improvements situated on Lot 2C within the resubdivision of Lot 2, Meacock Subdivision within Survey 206 currently owned by the Chilkat Valley Historical Society;

6. Land and improvements situated on Lots 1 through 5, Block 12, and Lots 5 through 8, Block 6, Townsite, currently owned by Takshanuk Watershed Council;

7. The upper level (second story) of the improvement known as the Soboleff-McRae Veterans Village & Wellness Center situated on Lot 5A, Block 8, Haines Townsite per Plat 2013-4 and owned by Haines Assisted Living Inc.

E. The borough exempts from taxation an interest, other than record ownership, in real property of an individual residing in the property if the property has been developed, improved, or acquired with federal funds for low-income housing and is owned or managed as low-income housing by the Alaska Housing Finance Corporation under AS 18.55.100 through 18.55.960 or a regional housing authority formed under AS 18.55.996.

F. Any firm that begins operation after July 1, 1986, in the Haines Borough to process timber after it has been delivered to the processing site, if the firm has a yearly payroll of at least \$250,000, shall have 75 percent of the real property exempted from taxation for a period of five years.

G. Land and improvements situated on Lots 17, 19, 22, 23, and 24, Block F, Mission Subdivision, owned by Haines Senior Citizens' Center, Inc.

H. Land and improvements in the SE1/4, SE1/4, Section 22, T28S, R55E, CRM, managed by Klehini Valley Sports and Recreation. This exemption shall require a review on a yearly basis and becomes void if property is not used exclusively for nonprofit recreation.

I. Hardship Exemption. That portion of the property tax levied on the residence of a qualified senior citizen or disabled veteran who applies for the exemption and meets the standards set forth in 3 AAC 135.040(b) and (c), which exceeds two percent of their gross household income.

1. In order to qualify for this exemption, the applicant must:

a. Have gross family income, from all sources in the prior year, which does not exceed 135 percent of the poverty guideline as established by the United States Department of Health and Human Services for a similar sized household in the state of Alaska for the year requested;

b. Be eligible for a permanent fund dividend under AS 43.23.005 for the same year or for the immediately preceding year;

c. Not own more than one parcel of real property in Alaska on the date of application, excluding an adjacent parcel that is necessary for the use of the primary residence; and

d. Have net worth as of the date of application of less than \$250,000 including the first \$150,000 of the market value of the principal residence of the applicant.

2. This exemption will be apportioned in the same manner and formula as applied to the standard senior citizen/disabled veteran exemption previously granted.

3. An exemption may not be granted under this subsection except upon written application for the exemption on a form provided by the borough assessor. The applicant must also submit an affidavit, supplied by the borough, attesting that the applicant meets the subscribed criteria. The assessor shall require proof, in the form the assessor considers necessary, of the right to and amount of an exemption claimed under this subsection, and shall require a disabled veteran claiming an exemption to provide evidence of disability rating. The assessor may require additional proof under this section at any time. If the applicant fails to respond to a request for additional proof, such failure may be considered by the assessor in determining whether to grant the exemption.

4. The claimant must file the application no later than March 31st of the assessment year for which the exemption is sought. The claimant must file a separate application for each assessment year in which the exemption is sought.

5. If an application is filed by the deadline, and approved by the assessor, the assessor shall allow an exemption in accordance with the provisions of this section. If the claimant has already paid taxes for that year prior to approval of a timely application, the exempted tax amount shall be refunded to the claimant.

6. If an otherwise qualified claimant is unable to comply with the March 31st application filing deadline, the claimant may submit an application to the assessor's office for review by the assembly. If the claimant has submitted a valid application, the assembly may, by resolution, waive the claimant's failure to file the application by the March 31st deadline, and authorize the assessor to accept the application as if timely filed. For purposes of this subsection, an inability to comply must be caused by a serious medical condition of the applicant or member of the applicant's family, or an extraordinary event beyond the claimant's control. No late applications can be submitted after November 1st of the qualifying year. This section does not create any private rights whatsoever, nor does it in any manner require the assembly to introduce or adopt any such resolution.

7. Upon receipt of the completed application, any additional proof required, and affidavit, the borough assessor shall evaluate the request and grant or deny the hardship exemption within 15 borough business days. If denied, the borough assessor shall specify the reasons for the denial.

8. A person may appeal the apportionment of a hardship exemption granted under this chapter or a denial of an application to the board of equalization in accordance with HBC 3.72.100 through 3.72.120.

Haines Borough
Ordinance No. 14-10-391
Page 4 of 4

ADOPTED BY A DULY CONSTITUTED QUORUM OF THE HAINES BOROUGH ASSEMBLY THIS
____ DAY OF _____, 2014.

Stephanie Scott, Mayor

ATTEST:

Julie Cozzi, MMC, Borough Clerk

Date Introduced: ___/___/___ On 10/14/14, postponed for staff development; it was NOT introduced
Date of First Public Hearing: ___/___/___
Date of Second Public Hearing: ___/___/___

Haines Assisted Living, Inc.

P.O. Box 916 Haines, Alaska 99827
Ph: (907) 766-3616 Fax: (907) 766-3617
halincn@aptalaska.net

October 21, 2014

Haines Mayor and Assembly
Haines Borough
Box 1209
Haines, AK 99827

Honorable Mayor and Assembly,

I apologize for having to leave the October 14 Assembly Meeting before your discussion on the introduction of ordinance 14-10-391, regarding the Soboleff-McRae apartment property tax exemption request. The Assembly tabled the request until a policy on community purpose exemptions can be developed and implemented, and the Borough Manager has asked that I serve on a working group to revise the ordinance.

I have listened to the recording of the discussion. The Manager recommended denial of the exemption based upon: 1) the Borough attorney's opinion and 2) the guidelines of the Alaska Association of Assessing Officers (AAAO). The Borough Attorney's main point was based on incomplete information and is incorrect. As for the guidelines of the AAAO, they are advisory only.

The Borough Attorney's opinion presumes that HAL will make a profit on the apartments. This is not correct, and was pointed out to the Manager and Assembly. A budget for the project was provided, but not taken into account. HAL expects to subsidize the cost of the new building until it is capable of covering its own costs. When that occurs, if excess revenue should be realized, it will go back into the project, potentially allowing for more low-income apartments. This is the only legal issue in the Borough Attorney's opinion. As for the Community Purpose issue, he simply states that "...the Assembly can decide whether the proposed facility qualifies as a community purpose using whatever factors it deems appropriate."

I understand the Assembly's desire to better define "community purpose", but this is really a redundancy. If an entity is an IRS approved charity, and uses the property for that purpose, it should be able to obtain the exemption. If it ceases to use the property or a part of the property, for that purpose, the exemption should be taken away or modified. HAL's charitable purpose includes providing affordable housing. It does this by using its own ongoing revenues to make available apartments affordable for low-income individuals.

October 21, 2014

Page Two

I have to admit that I was taken aback when I heard some assembly members say that "this is just another apartment complex". It is not just another apartment complex. It was paid for by tax dollars and substantial donations. Nearly 40% of the apartments are set aside for persons who are certified as very low-income. It was built and is run by a volunteer board. There are many other factors that also distinguish it from others.

HAL will find a way to pay property tax if the assembly says that this does not serve a community purpose, but the Assembly should make that decision now. Work on a revised ordinance will be difficult. I am willing to assist, but this is likely to take considerable time. In the meantime, HAL will have increased costs, diverting it from its charitable purpose. If this is taken up now, there is still time to have a decision before the new tax year begins. Thank you for your consideration.

Sincerely,

A handwritten signature in cursive script that reads "Vince Hansen".

Vince Hansen, Community Manager
Haines Assisted Living, Inc.

Cc: David Sosa, Borough Manager



DATE: 9 October 2014

To: Mayor and Borough Assembly

From: David B. Sosa, Borough Manager

Subject: **MANAGER COMMENTS ON THE SOBOLEFF-MCCRAE VETERANS VILLAGE COMMUNITY PURPOSE EXEMPTION**

What is at issue? The only concern for the Assembly is to determine if the 2d Floor of the Soboleff-McRae Veterans Village (SMVV) qualifies for a Community Purpose Exemption (CPE). Since this is about a property tax exemption this issue is only about the use to which that specific portion of the property is put and whether it meets criteria for a CPE.

What is required for a property to receive a CPE? To obtain a CPE in Haines Borough ALL of the following criteria MUST be met

- The property must be owned by a non-profit entity (per legal memorandum dated 24 July 2014)
- The rental income derived from the property cannot exceed the actual cost to the owner of the use by the renter (per legal memorandum dated 24 July 2014)
- The property must be used exclusively for community purposes (AS 29.45.050 (b) (1) (A))

Does the 2nd Floor of SMVV meet the threshold defined above for a CPE? Based on a legal memorandum completed by the firm that represents the Borough the "property appears to fail the second test" (per legal memorandum dated 24 July 2014, Pg. 3 of 5). The anticipated use also appears to fail the third test. The third test forms part of a two critical standards (numbers 2 and 5) established by the Alaska Association of Assessing Officers Standard on Community Purpose Exemption in 2006 (http://www.commerce.state.ak.us/dnn/Portals/4/pub/Community_Purpose.pdf)

Are there any other concerns? Yes there are other concerns, specifically the requirement that the property be used "exclusively for community purpose" as required by AS 29.45.050 (b) (1) (A).

- The Borough does not clearly define what constitutes "community purpose". The best measure is to infer community purpose from the types of properties currently granted a CPE (Legal memorandum pg 4 of 5)
 - Public Fair and Parade Grounds

- Dog Rescue Kennel
- Other properties serving what appears to be “exclusively” public, cultural, or historical purposes.
- The Borough Attorney memo further notes that “These properties are open to the public, serve a community wide need, or are considered sufficiently important to preserving the historical or natural resources of the area that the Borough has agreed to essentially subsidize them by allowing them not to pay property taxes.” (Legal memorandum pg 4 of 5)

What Criteria are required to live in the SMVV that would justify granting a CPE? The Manager conferred with Mr. Vince Hansen, Community Manager Haines Assisted Living and with Mr. James Studley and determined that the only requirement to be a resident of the SMVV is that an applicant must have received an Honorable or General Discharge from the US Military or that the applicant be the spouse of an individual who met the aforementioned conditions. Of note-

- With the exception of 4 subsidized apartments there is no requirement to demonstrate financial need
- There is no requirement to demonstrate medical need
- There is no requirement that an individual be of legal retirement age

What does the lack of specific requirements other than status as a Veteran mean to the Borough?

Based on the criteria established by SMVV the organization could, if so desired, rent solely to financially stable, medically sound, veterans under the legal retirement age. This situation would be of concern because of the following:

- Absence of specified written criteria results in individuals without need occupying Borough subsidized housing which is a detriment to the community
- Absence of specified written criteria means subsidized housing competes at an advantage to other rental properties within the community
- The sole criterion that one be a veteran may restrict the units to too small a subset of the community and thus violate the precept that a CPE benefit the community as a whole.

Could the SMVV establish reasonable, acceptable, and objective criteria which would meet the threshold for a CPE?

In several conversations with Mr. Hansen and Mr. Studley the Manager identified several reasonable criteria that would likely meet the threshold for a CPE. After consideration, the Haines Assisted Living Board decided to not apply any other criteria. The criteria recommended by the Manager were:

- Ensure that applicants have a Service Connected Disability as rated by the Veteran’s Administration (VA) of 30% or higher and/or...
- Ensure that the applicants have a demonstrated medical condition as defined by competent medical authority and that such condition require a supportive living environment and/or...

- Ensure that applicants demonstrate financial need as defined by federal and/or state guidelines for poverty and/or
- Ensure that resident be of legal retirement age and/or...
- Demonstrate that the applicant is the victim of abuse requiring access to safe, affordable housing

While not “open to the public”, application of any of the above criteria would meet the definition of community purpose by meeting the “community wide need” of ensuring that individuals with needs (medical, financial, age related, etc) would have access to safe, affordable, housing proximate to necessary services. Of note the seventh standard of the Alaska Association of Assessing Officers Standard on Community Purpose Exemption in 2006 specifically addresses a Senior Housing Provision stressing that “many communities have determined that affordable senior housing may be a benefit to the community and may, in some cases, lessen a burden on the community. Some municipalities have therefore, granted a community purpose exemption to these units” (Alaska Association of Assessing Officers Standard on Community Purpose Exemption in 2006, pg 4)

Who currently resides in the SMVV? Based on a letter from Mr. Vince Hansen dated 6 August 2014 the population of SMVV at that time consisted of 6 tenants, 5 of whom were seniors, and 3 of whom were disabled. These individuals appear to meet the criteria proposed by the Manager so it is surprising that the board would not enact these criteria.

Does it matter that there be specific criteria? It is of the utmost importance that there are clear, objective, reasonable, criteria for residence in the SMVV for the following reasons:

- By granting a CPE the Borough is effectively subsidizing this housing unit. The Borough must ensure that the subsidy only applies to individuals and portions of the property used “exclusively” for a community purpose.
- Reticence by SMVV to define clear, objective, reasonable criteria could result in a situation where financially stable, medically sound veterans, under the legal retirement age are living in subsidized housing. This would not be in the interests of the Borough or the community
- It is essential that all entities granted a CPE meet a clearly defined threshold that is objective and not subjective. This is in the best interests of Open, Responsible, and Transparent Governance. Failure to do this can result in situations subject to waste, fraud, and abuse.

What is not at issue? Making a determination of whether or not the specific property rates a CPE does not involve:

- **A consideration of HAL’s history of service.** This issue is solely about the 2d Floor of SMVV.
- **A consideration of who the SMVV currently serves.** The consideration should focus solely on the current criteria.
- **Feelings about HAL, SMVV, or the people who manages the entities.** This review must be objective and focused only on the property, the criteria for residence, the criteria for a CPE, and the use to which the property is put.

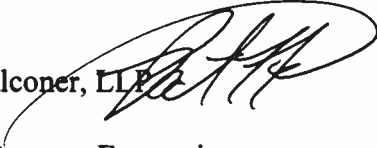
What should the next steps be? The Manager recommends that, before considering SMVV's request for a CPE, the Borough first adopt a policy on Community Purpose Exemption that is clear and objective. The City Borough of Juneau Assessor office Policy is provided as a guide (following). Should the Assembly not desire that a Policy be produced, the Manager recommends the following:

- That this item be brought to the Assembly at the next scheduled session
- That SMVV request for a CPE be denied on the grounds that
 - The organization has not demonstrated that the property will benefit the “community as a whole”
 - The property fails the second test as identified by the Borough Attorney's Office
 - The lack of suitable approval criteria by SMVV can result in the property failing to provide a community purpose and actually serving to disadvantage others in the community
- That the Borough staff prepare, and the Assembly approve, a Policy on Community Purpose Exemptions that:
 - Replaces HBC 3.70.040 (D) and removes the permanent exemptions granted in code replacing these with a process for regular review and approval similar to that provided for Property Tax Exemptions.
 - Establishes a definition of Community Purpose Exemption that is in line with those of other communities and in accordance with the Alaska Association of Assessing Officers Standard on Community Purpose Exemption
 - That entities afforded a Community Purpose Exemption are required to resubmit on a designated basis (annually or every other year) for continued approval of the exemption in order to ensure a responsible, transparent, just, and fair situation.

BOYD, CHANDLER & FALCONER, LLP
ATTORNEYS AT LAW
SUITE 302
911 WEST EIGHTH AVENUE
ANCHORAGE, ALASKA 99501
TELEPHONE: (907) 272-8401
FACSIMILE: (907) 274-3698
bcf@bcf.us.com

MEMORANDUM

TO: David Sosa
Haines Borough

FROM: Patrick W. Munson
Boyd, Chandler & Falconer, LLP 

RE: SMVV Community Purpose Exemption

DATE: July 24, 2014

You asked for an opinion on whether the second level of the Soboleff-McRae Veterans Village ("SMVV") qualifies for a community purpose exemption. Although Borough law does not define the requirements for such an exemption, state law suggests that units rented at market rates are not eligible for the CPE. Units rented at below-market rates are potentially eligible, but the Assembly would need more information before it grants an exemption for such units. The Assembly may also decide whether the apartments are exclusively for community purposes, but it need not decide right now. The reasons for these conclusions are set forth below.

BACKGROUND

The lower level of the SMVV will consist of non-profit office space. The State Assessor suggests that this space will be eligible for a mandatory exemption as a charitable use. The upper level will be residential apartment units for veterans. The only requirement to live in these units is that the individual be an honorably discharged veteran or the spouse of a deceased honorably discharged veteran. Most of the apartments will be rented at a market rate. Some, however, will be offered at a discounted rate to individuals who can demonstrate financial need. Specific units are not dedicated as "low income" units, nor will they be leased to non-profit entities. The number of reduced rate units and the discount offered for each will be made on a case by case basis. The State Assessor calculated an approximate annual rent of just under \$100,000 for the residential units. The basis of this estimate is unknown. The State Assessor reports that the rental income from the market-rate units will "subsidize other lower income units."

APPLICABLE LAW

State of Alaska

AS 29.45.050. Optional Exemptions and Exclusions.

(b) A municipality may by ordinance

(1) classify and exempt from taxation

(A) the property of an organization not organized for business or profit-making purposes and used exclusively for community purposes if the income derived from rental of that property does not exceed the actual cost to the owner of the use by the renter;....

Haines Borough

HBC 3.70.040 Local exemptions and exclusions.

D. Pursuant to AS 29.45.050(b)(1)(A), the below-listed properties shall remain exempt from property taxation so long as they remain the property of their present owners (organizations not organized for business or profitmaking purposes) and so long as they remain used exclusively for community purposes:

1. Southeast Alaska Fairgrounds: that area containing 42 acres, more or less, in USS 735, currently owned by Southeast Alaska State Fair, Inc.;
2. Port Chilkoot Parade Ground, currently owned by Alaska Indian Arts, Inc., that area surrounding Block G, Port Chilkoot Subdivision, containing 7.58 acres, more or less, not used for commercial purposes;
3. Land and improvements situated on Lots 1 through 7, Block O, Presbyterian Mission Subdivision, currently owned by the American Bald Eagle Foundation;
4. Land and improvements situated on Small Tracts Road, specifically the north 300 feet of the west 100 feet of Lot 40, Section 2, Township 31 South, Range 59 East, of the Copper River Meridian, currently owned by the Haines Animal Rescue Kennel;

5. Land and improvements situated on Lots 5, 6 and 11 through 14, Block 8, Townsite Addition, dedicated to the Haines Senior Assisted Living Facility and owned by Haines Assisted Living Inc.;
6. Charles Anway Cabin: Land and improvements situated on Lot 2C within the resubdivision of Lot 2, Meacock Subdivision within Survey 206 currently owned by the Chilkat Valley Historical Society;
7. Land and improvements situated on Lots 1 through 5, Block 12, and Lots 5 through 8, Block 6, Townsite, currently owned by Takshanuk Watershed Council.

ANALYSIS

SMVV seeks a community purpose exemption. In order for the property to be exempt from taxation, the Assembly must adopt an ordinance adding the second level of the property to the list of exempt properties in HBC 3.70.040(D). In order to be eligible for inclusion on that list, a property must satisfy certain conditions, including ownership by a non-profit or similar entity and use “exclusively for community purposes.” *Id.* If the Borough decides that a property is eligible for the exemption, it may, but is not required to, pass the ordinance exempting the property from *ad valorem* taxation.

We have been told and assume that the owner of the SMVV is a qualifying non-profit entity. Thus, the main question is whether the second level of the SMVV qualifies for the community purpose exemption. Borough Code does not define “community purpose.” It does not offer any specific guidance on the factors to be considered. Consequently, it is helpful to refer to AS 29.45.050(b)(1)(A), the state statute that grants authority to municipalities to enact the community purpose exemption. The statute states that the Borough may, but is not required to, provide an exemption for the property of a nonprofit entity that is “used exclusively for community purposes if the income derived from rental of that property does not exceed the actual cost to the owner of the use by the renter.” This qualifying language is incorporated in Borough Code by reference (HBC 3.70.040(D): “Pursuant to AS 29.45.050(b)(1)(A),...”). The Borough’s ordinance must also be consistent with this requirement because the statute sets a threshold requirement for any municipal CPE. Thus, to qualify for a CPE in Haines 1) a property must be owned by a non-profit entity, and 2) rental income derived from the property cannot “exceed the actual cost to the owner of the use by the renter.”

Income derived from the property

The property appears to fail the second test. “The property” under consideration is the second level apartment units, not the entire facility. That is the portion of the SMVV for which

the owner has requested a CPE. It is also the portion from which income will be derived. Thus, in order to be eligible for the community purpose exemption, the rent derived from the upper level apartment units must not exceed the actual cost to the owner of the use by the renters.

It is not entirely clear whether this rule applies to individual apartments or the entire second floor as whole. If it applies to individual units, then the apartment units that are expected to rent at “market rates” will not qualify for the exemption. Market rate almost by definition will exceed the actual cost of providing the use of the apartment to a tenant. More specifically, the rent charged for some SMVV apartments will be used to subsidize other lower rent units (and possibly some of the costs of operating the lower level and/or SMVV generally). Thus, individual units rented at market rates are unlikely to qualify for the CPE.

Units rented at a lower cost would only be eligible if the rate does not exceed the actual cost to the owner of the use by the renter. We do not have enough information to determine what rental rate would satisfy this test, but it is likely to be an extremely low rental rate. The landowner would need to provide more information to request a CPE on each less-than-market rate unit individually.

Alternatively, if the income limitation rule applies to the entire upper level then that level is eligible for the exemption if, and only if, the property owner can demonstrate that the entire upper level does not generate income that exceeds “the actual cost to the owner of the use by the renter.” Because the property owner has not provided that detailed financial information, the Assembly cannot conclude that he has met the burden of proving he is eligible for the exemption. We therefore recommend that the Assembly reject an ordinance that would add the entire second level or individual apartments to the list of exemptions in HBC 3.70.040(D).

Community purpose

Even if the property satisfied the financial test above, the Assembly might nevertheless decide that renting below-market rate rental apartments for veterans and their widows/widowers does not qualify as a “community purpose” under HBC 3.70.040(D). Because the Code does not provide much guidance, the Assembly can decide whether the proposed facility qualifies as a “community purpose” using whatever factors it deems appropriate. As noted above, the types of properties currently exempt under this provision provide an indication of the types of “community purposes” that have typically been approved for the exemption. These include public fair and parade grounds, the dog rescue kennel, and other properties serving what appear to be “exclusively” public, cultural, or historical purposes. These properties are open to the public, serve a community-wide need, or are considered sufficiently important to preserving the historical or natural resources of the area that the Borough has agreed to essentially subsidize them by allowing them not to pay property taxes.

The below-market rate apartment units of the SMVV would not be open to the public because they would be private residences. This may preclude a finding that any of the apartments are “exclusively for community purposes.” The apartments do not help preserve cultural or historical areas in or around Haines. Rather, they would assist individuals by providing more affordable housing. This is certainly a reasonable and, indeed, laudable goal but it is not necessarily or “exclusively” a community purpose. There may be a community purpose served by providing a space for veterans to live in proximity to one another. However, this benefit is somewhat mitigated by the fact that the veterans will pay market rates for the units.

In short, the Assembly can decide whether providing below-market rates to veterans or their windows/widowers serves a community-wide purpose. It can arguably reach that decision now, but given the analysis above it may be more appropriate to deny the exemption as currently submitted. The property owner may submit a more detailed application showing that the income generated by the apartments will “not exceed the actual cost to the owner of the use by the renter.” If the financial analysis supports that conclusion, then the Assembly may decide whether the proposed use is exclusively a community purpose.

IV. ANALYSIS

A. Principles of Real Property Taxation

The Alaska Constitution and state statutes confer on municipalities the right and obligation to collect real property taxes from those residing within the boundary of the municipality.' Legislators and courts have long realized that property taxes are the critical component that allow local governments to provide services that citizens demand. Thus, the general rule is that real property is subject to taxation unless it is clearly exempt. Tax exemptions are narrowly construed because they disturb the general rule that everyone must contribute relatively proportionately to the common good.¹ The Alaska Supreme Court has explained:

All property is benefitted by the security and protection furnished by the State, and it is only just and equitable that expenses incurred in the operation and maintenance of government should be fairly apportioned upon the property of all. An exemption from taxation releases property from this obligation to bear its share of the cost of government and serves to disturb to some extent, that equality in the distribution of this common burden upon all property which is the object and aim of every just system of taxation. While reasonable exemptions based upon various grounds of public policy are permissible, yet taxation is the general rule....It is for this reason that statutes granting exemptions from taxation are strictly construed. A taxpayer is not entitled to an exemption unless he shows that he comes within either the express words or the necessary implication of some statute conferring this privilege upon him.¹

Moreover, even when an exemption exists, "courts will not utilize the public policy behind the exemption statute to extend its coverage beyond what is clearly included on the face thereof."²

This single canon of statutory construction defeats the ██████'s principal argument that the policy underlying the senior exemption requires the Borough to read the exemption broadly. The law is precisely the opposite. The text of the exemption is strictly construed against the taxpayer.

In short, a person claiming to be exempt from contributing funds to the local government must prove that he or she is entitled to shed that responsibility. If the person does not satisfy that burden, the exemption should not be granted.

¹ *Greater Anchorage Area Borough v. Sisters of Charity*, 553 P.2d 467,469 (Alaska 1976).

² *McKee v. Evans*, 490 P.2d 1226, 1230 (Alaska 1971).



ALASKA ASSOCIATION OF ASSESSING OFFICERS



**STANDARD ON COMMUNITY PURPOSE EXEMPTION
IN ACCORDANCE WITH
ALASKA STATUTE 29.45.050 (b) (1) (A)**

Approved: 07-14-06

Alaska Association of Assessing Officers

The assessment standards set forth herein represent a consensus of thought within the assessment profession in the State of Alaska. The standard has been introduced and deliberated by the Alaska Association of Assessing Officers (AAAO) general membership combined with review and adoption by the Executive Board of the AAAO with the objective of providing a means by which assessing officers can improve and standardize the operations of their respective offices. The standard presented here is advisory in nature and the use of, or compliance with this standard, while recommended by the AAAO, is advisory.

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I. SCOPE

This standard provides relevant issues and guidance for administrative analysis regarding the “Community Purpose” property tax exemption as a non-compulsory optional exemption authorized by AS 29.45.050 (b) (1) (A).

This policy endorses the AAAO “Community Purposes Exemption Application”. The intent of this standard is to establish uniform guidelines and a framework to assist decision makers in deciding applications for community purpose tax exemptions.

II. INTRODUCTION

Alaska law provides for both mandatory and optional exemptions. One of the optional exemptions, provided for in AS 29.45.050, is the community purposes exemption. The specific statutory language is as follows:

AS 29.45.050 (b) (1) (A).

(b) a municipality may by ordinance

(1) classify and exempt from taxation

(A) the property of an organization not organized for business or profit-making purposes and used exclusively for community purposes if the income derived from rental of that property does not exceed the actual cost to the owner of the use by the renter;

III. ALASKA CASE LAW HISTORY

Alaska Superior Court Case

Kachemak Heritage Land Trust Vs Kenai Peninsula Borough
Case No. 3KN-96-115 CI January 21, 1996 ^{a, b}

^a De minimus nonexclusive uses, which provide collateral benefit to the general public in addition to the specific local community, does not defeat a claim of tax exempt status under the community purposes exemption.

^b If the property also confers more than a de minimus private benefit to the non-profit organization that owns it or to the individuals that control that organization, then it does not qualify for the tax exemption.

IV. PRIMARY ISSUES

The Community Purposes Exemption is an exemption that individual municipalities may optionally grant, by ordinance. In order to qualify for the exemption under the statute, this property must be used exclusively for community purposes and be the property of an organization not organized for business or profit-making purposes. Community Purposes Exemption is relatively unique, in that it is not an exemption common to other States and thus, carries negligible case law history or precedent. Its origin comes from the State Legislature's intent to create an exemption opportunity for Municipalities, for non-profit organizations that don't meet the rigid minimal qualification for Charitable Purposes Exemption. In certain cases, a tax immunity may be provided on a local basis for those properties which the local governing body determines is for the overall good of the community and has determined that the community will support the activity with their tax dollars.

It is preferred, that by means of this standard, assessors, property tax administrators and municipal governing bodies, may administer a more dispositive analysis and that the application pose a uniform "standard of review" statewide.

THE FOLLOWING STANDARDS APPLY ONLY TO THE COMMUNITY PURPOSES OPTIONAL PROPERTY TAX EXEMPTION AUTHORIZED BY 29.45.050 (b) (1) (A)

V. STANDARD 1: COMMUNITY PURPOSES

Community purpose means:

The exclusive use of property within the municipality based upon the culture and demographics of a particular area and which benefits the general public in a manner that enhances the quality of life through programs, public facilities, or services. A community purpose, however, may primarily benefit only a distinct area within the municipality.

VI. STANDARD 2: EXCLUSIVE USE REQUIREMENT

The community purposes optional exemption includes a requirement that the property be exclusively used for that purpose. Exclusive use includes a requirement for spatial apportionment if the property is used for both exempt and nonexempt purposes.^c

^c *City of Nome* (exempt use cannot be apportioned by time)

2a. Definition of Exclusive Use:

Exclusive use requires that all uses of the property be for the "direct and primary" exempt purpose. The community purpose, for which the property is exclusively used, is a purpose that benefits the general public in the community in which the property is located.

2b. Smallest Practical Usage:

The smallest practical portion, in which is integrally related to the property for the actual and exclusive use as community purposes, may be eligible for the exemption.

VII. STANDARD 3: OWNERSHIP REQUIREMENTS

AS 29.45.050 (b) (1) (A) states in part: "the property of an organization...." (emphasis added). The property of an organization must be in the ownership of the organization seeking the exemption. Application for exemption must be made by the owner of record.

VIII. STANDARD 4: EXEMPTION DATE

The date for determination of eligibility for the Community Purpose property tax exemption is January 1, of the assessment year for which the exemption is sought.

IX. STANDARD 5: PROPERTY MUST BE OPEN TO THE GENERAL PUBLIC

1. Individuals cannot be restricted from using the property on any basis, including a restriction based on:
 - (a) race, culture, ethnic origin or religious belief,
 - (b) the requirement to become a member of an organization,
 - (c) the requirement to pay fees of any kind, other than minor entrance or service fees, and
2. The requirement to become a member of an organization does not make the use of the property ineligible so long as:
 - (a) Membership in the organization is not restricted on any basis, other than the requirement to fill out an application and pay a minor membership fee, and
 - (b) Membership occurs within a short period of time after any application or minor fee requirement is satisfied.

X. STANDARD 6: THE OWNERSHIP ORGANIZATION

1. Must be governed by a volunteer board of directors; and
2. Must be recognized as a legally formed state or federal non-profit entity.
3. The statutory term "not organized for business or profit-making" means:

There must be no evidence of a dominant profit motive. Income derived must not exceed operating expenses. Operating expenses must not include debt service.

XI. STANDARD 7: SENIOR HOUSING PROVISION

Many municipalities have determined that affordable senior housing may be a benefit to the community and may, in some case, lessen a burden on the community. Some municipalities have therefore, granted a community purpose exemption to these units.

Fair and equitable application of the existing, mandatory Senior Citizen Exemption compels consideration for commensurate treatment by a municipality of senior housing projects. The following standard is offered as a model for a local ordinance granting an exemption to these projects.

1. AS 29.45.030 provides for a mandatory \$150,000 assessed value exemption for eligible seniors. Eligibility for this program requires that seniors be 65 years of age, own and reside on the property as of January 1 of the assessment year. The property is required to be their permanent place of abode.
2. It is recommended that when a Community Purposes Exemption is considered for these senior housing projects, consideration be given to criteria that is consistent with the (AS .29.45.030) senior citizen exemption eligibility requirements.

XII. STANDARD 8: THE APPLICATION

The application for exemption shall be submitted to the assessor by a date established by the governing body. It is recommended that the following information be submitted:

1. Declaration of Exemption sought.
2. Current copy of Articles of Incorporation.
3. Latest copy of the Constitution and By-Laws.
4. Copy of federal tax exempt status (current IRS 501 (c) (3) or (c) (4) or Forms 990 & 990 T
5. A detailed statement describing the current use of the property.

6. A current copy of income and expenses.
7. Current schedule of fees, dues and or charges.

The assessor may, from time to time require such information as is reasonably necessary to determine the character of the organization and the nature of uses made.

It is the advice of this policy document, that municipalities shall, through their governing body, administer the hearing for review, analysis, provide findings of fact and determination of a “Community Purposes Exemption” request. That subsequent to advice and counsel by the assessor, legal counsel and or designated property tax administrator, the governing body may enact and confer the exemption upon an eligible request, by ordinance.

October 10, 2014

Equal Protection and Property Qualifications for Appointment to the Haines Borough Port and Harbor Advisory Committee

An equal protection argument respectfully submitted to the Mayor and Members of the Borough Assembly of Haines, Alaska.

by Haines Borough, Alaska resident
Michael Denker

SUMMARY

The Haines Borough provides port and harbor facilities that are designed for residents, visitors and businesses alike to access the navigable waters of northern southeast Alaska. To assist with the management of these facilities, the borough provides for a seven member Port and Harbor Advisory Committee (PHAC) “comprised of three commercial vessel owners, two noncommercial vessel owners, one tariff regulated company owner or representative, and a community member at large who has a business related to harbor activities.” *Haines, Alaska, Borough Code § 16.08.010 (B)*. The PHAC is tasked “to deliberate over matters concerning the construction, improvement, maintenance, use, operation, and regulation of borough port and harbor facilities, and make recommendations regarding these issues to the assembly.” *Haines, Alaska, Borough Code § 16.08.010 (C)*.

The main contention of this paper is that the Haines Borough is violating the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution by requiring a resident to own specific types of property to qualify for appointment to the PHAC. The property qualification in HBC § 16.08.010 (B) constitutes a government classification that discriminates on its face. This discriminatory government classification deprives otherwise qualified residents of the “constitutional right to be considered for public service without the burden of invidiously discriminatory qualifications”. *Turner v. Fouche*, 396 U.S. 346, 347 (1970). The Haines Borough fails to have the sufficient justification, as demanded by the Equal Protection Clause, to deprive otherwise qualified residents of this federal constitutional right.

The remedy here is simple. The borough must remove all references to the ownership of property specified in HBC § 16.08.010 (B). Instead, qualifications should be based on relevant criteria such as a resident’s experience, expertise, or demonstrated interest to more appropriately accommodate the borough’s compelling interest in public safety. Doing so will realign HBC § 16.08.010 (B) to the Equal Protection Clause.

PREFACE

The following equal protection argument is my attempt at highlighting an issue that I believe affects the ability of the people of the Haines Borough to effectively govern the affairs that affect their lives. I believe the property qualification in HBC § 16.08.010 (B) speaks to the dangers of government institutions that fail to fairly represent all members of the community. Property qualifications result in government institutions that underrepresent the people they serve. Underrepresentation strikes at the root of representative democracy by negatively affecting the ability of elected officials to gauge the will of the people as a whole.

Accordingly, I am submitting this paper to the Mayor and members of the Haines Borough Assembly on behalf of the following:

- Residents who may be interested in serving the public as a member of the PHAC, but are ineligible simply because they do not own the property specified in HBC § 16.08.010(B); and
- Individuals who believe that all residents of the borough have a legitimate stake in Haines ports and harbors, regardless of whether they own the property specified in HBC § 16.08.010 (B) or not; and
- Residents who believe that property qualifications for appointment to government bodies are inconsistent with American representative democracy.

I must state at the outset that I am by no means an expert in legal matters. That being said, I have invested a significant amount of time researching equal protection analysis after first coming across this property qualification in Haines Borough Code. The project has required many hours of study in American history, political science, constitutional law, and legal argumentation in preparation. My goal has been to present a well-reasoned and readable argument with accurate citations and sources. Ultimately, I feel it important to not only state my contention that the property qualification in HBC § 16.08.010 (B) violates the Equal Protection Clause, but also to illustrate why it does so.

I would like to extend my appreciation to a few individuals. First, I must acknowledge the work of Akhil Reed Amar, Sterling Professor of Law and Political Science at Yale University. This argument has partially evolved from a free online Constitutional Law class taught by professor Amar that I completed in the spring of 2014. This class, along with his two books *America's Constitution: a Biography* and *America's Unwritten Constitution*, has been highly instructive.

I would also like to thank Dana Hallett for his editing contributions to this work. His time and assistance in reviewing this piece and making it accessible to the reader was invaluable.

Most of all, however, I must thank my wife, Lisa, for her patience and understanding. Without her support, this effort would not have been possible.

Michael Denker

*“that we here highly resolve ... that government of the people, by the people, and
for the people, shall not perish from the earth.”*

Abraham Lincoln, Gettysburg Address, November 19, 1863

“All political power is inherent in the people. All government originates with the people, is founded upon their will only, and is instituted solely for the good of the people as a whole.”

Alaska Constitution, Art. I, § 2 – Source of Government

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ISSUE PRESENTED FOR REVIEW

**WHETHER THE HAINES BOROUGH IS VIOLATING THE
EQUAL PROTECTION CLAUSE OF THE FOURTEENTH
AMENDMENT OF THE UNITED STATES CONSTITUTION BY
REQUIRING A RESIDENT TO OWN SPECIFIC TYPES OF
PROPERTY TO QUALIFY FOR APPOINTMENT TO THE PORT
AND HARBOR ADVISORY COMMITTEE (PHAC).**

BACKGROUND

The Haines Borough borders the navigable waters of northern Southeast Alaska. Residents, visitors and businesses alike use these navigable waters to travel, engage in interstate commerce, and access natural resources. *Haines Borough 2025 Comprehensive Plan*, pg. 23, 30-31; *See 33 CFR 329.4*, (Definition of “navigable waters”). These waters are essential to the social, cultural, subsistence and economic well being of the region. *Id.*

The Haines Borough provides port and harbor facilities that are designed to provide access to the navigable waters of northern Southeast Alaska. These public facilities include the Haines Small Boat Harbor, the Port Chilkoot Dock, the Lutak Dock, the Letnikof Cove Small Boat Harbor and Launch Ramp, and Swanson Harbor. *Id.*, Pg. 121-128. Haines port and harbor facilities include a deep-water port, breakwaters, floating docks, boats slips, tidal grids, launch ramps, an icehouse, fuel dispensary, a cruise ship dock, restrooms, pedestrian access ramps, a freight dock, and a seaplane float. *Id.*, Pg. 121. The facilities “support commercial and subsistence fishing, recreation and tourism”, and are “capable of handling containerized cargo (break and bulk), manual loading and unloading operations, petroleum products transshipment and passenger operations.” *Id.*, Pg. 122-123.

Title 16 of Haines Borough Code governs local port and harbor facilities and infrastructure. The primary purpose of Title 16 is “to protect the lives, health, safety and well-being of the residents of the Haines Borough and those persons

who have property in or use or work upon the vessels using the borough port and harbor facilities or who make sales and deliveries of goods and merchandise to vessels therein or who use the facilities for mooring commercial or pleasure vessels.” *Haines, Alaska, Borough Code § 16.04.020*. Secondary to public safety is “to protect the property of such vessel owners by regulating the borough port and harbor facilities to ensure the widest possible public use thereof”; “to prevent the maintenance of nuisances and fire and health hazards”; and “to make reasonable charges for the use of certain facilities” so that the borough may pay the costs of operating the facilities from these revenues. *Id.*

To assist with the management of local ports and harbors, Haines Borough Code provides for a seven-member Port and Harbor Advisory Committee (PHAC). *Haines, Alaska, Borough Code § 16.08.010 (B)*. The PHAC is “comprised of three commercial vessel owners, two noncommercial vessel owners, one tariff regulated company owner or representative, and a community member at large who has a business related to harbor activities.” *Id.* The PHAC is tasked to “deliberate over matters concerning the construction, improvement, maintenance, use, operation, and regulation of borough port and harbor facilities, and make recommendations regarding these issues to the assembly, either directly or through the manager or harbormaster.” *Haines, Alaska, Borough Code § 16.08.010 (C)*.

There are two separate requirements to qualify to be considered for appointment to the PHAC. First, a person must meet the residency requirements

that pertain to all borough committees, boards and commissions. This entails “maintain[ing] the persons principle place of residence within the corporate boundaries of the borough...for at least 30 days” immediately preceding appointment, and “physically occupy[ing] said residence” for those 30 days. *Haines, Alaska, Borough Code § 2.60.020*. Provided these residency requirements are satisfied, to qualify for appointment to the PHAC a person must then own a “commercial vessel”, a “non-commercial vessel”, a “business related to harbor activities”, or own or represent a “tariff regulated company”. *Haines, Alaska, Borough Code § 16.08.010 (B)*. Satisfying both of these requirements allows a person to qualify to be considered for appointment to the PHAC.

SUMMARY OF ARGUMENT

It is the main contention of this paper that the Haines Borough is violating the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution by requiring a resident to own specific types of property to qualify for appointment to the PHAC. The Fourteenth Amendment of the United States Constitution states the following:

“No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; *nor deny to any person within its jurisdiction the equal protection of the laws.*”

U.S. Const. Amend. XIV, § 1. (emphasis added)

To accommodate the requirements of a complete equal protection analysis, the following issues will be decided:

- Does the property qualification in HBC § 16.08.010 (B) constitute a government classification that discriminates?
- If a discriminatory government classification is determined to exist, does it deprive otherwise qualified residents of a federal constitutional right?
- If the property qualification in HBC 16.08.010 (B) does indeed deprive otherwise qualified residents of a federal constitutional right, does the Haines Borough have the sufficient justification demanded by the Equal Protection Clause to do so?

As will be demonstrated, the property qualification in HBC § 16.08.010 (B) violates the Equal Protection Clause on the merits of the issue. Therefore, to satisfy a complete equal protection analysis, a remedy will be provided as a conclusion. This remedy will advise the Haines Borough to remove all references of property ownership from the PHAC membership qualifications specified in HBC § 16.08.010 (B). It will then recommend that the Haines Borough include language in HBC § 16.08.010 (B) that bases qualifications for appointment on relevant criteria such as a resident's experience, expertise, or demonstrated interest to more appropriately accommodate the borough's compelling interest in public

safety. Doing so will realign HBC § 16.08.010 (B) to the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution.

ARGUMENT

I. THE PROPERTY QUALIFICATION IN HBC § 16.08.010 (B) CONSTITUTES A GOVERNMENT CLASSIFICATION THAT DISCRIMINATES ON ITS FACE.

The first step in an equal protection analysis is to determine whether a state or local municipality discriminated using a classification. Government classifications are “action[s] imposing a burden or conferring a benefit on one class of persons to the exclusion of others.” *Galloway, Russell W. Jr., Basic Equal Protection Analysis*, Santa Clara Law Review, Vol. 29 | No. 1, Article 4, Pg. 123 (1989). For the Equal Protection Clause to apply, a government classification must first be determined to exist so that its validity may be measured. *San Antonio Independent School District v. Rodriguez*, 411 U.S. 1, 59 (1973), Stewart, J., concurring, (“The function of the Equal Protection Clause, rather, is simply to measure the validity of *classifications* created by state laws.”). The United States Supreme Court has stated, “Only when it is shown that the legislation has a substantial disparate impact on classes defined in a different fashion may analysis continue on the basis of the impact on those classes.” *Califano v. Boles*, 433 U.S. 282, 294 (1979).

A government classification can be either “facial” or “in effect”. *Yick Wo v. Hopkins*, 118 U.S. 356, 362-363 (1886); *See also Galloway*, Pg. 123. Government classifications are “Facial” if they are readily apparent in the wording of a statute. *See Galloway*, Pg. 123. A government classification is considered “in effect” if the provisions within a statute are neutral on the face of the law, “but [have] the effect of distributing burdens or benefits unequally.” *Galloway*, Pg. 123. The Equal Protection Clause does not apply should a government classification not have been determined to exist, either facially or in effect. *Id.*

A. The property qualification in HBC § 16.08.010 (B) qualifies as a discriminatory government classification because it treats residents unequally based solely on the ownership of property.

To begin this argument, it must first be decided whether the property qualification in HBC § 16.08.010 (B) qualifies as a discriminatory government classification. To do so, it must be determined whether the ordinance “has a substantial disparate impact on classes defined in a different fashion.” *Califano* at 294.

Government classifications are “action[s] imposing a burden or conferring a benefit on one class of persons to the exclusion of others.” *Galloway*, Pg. 123; *See also Rodriguez* at 59. The Court has stated that, as a general rule, “Class legislation, discriminating against some and favoring others, is prohibited.” *See Yick Wo* at 368, (quoting *Barbier v. Connolly*, 113 U.S. 27 (1885)).

Government classifications discriminate because they treat people unequally by distinguishing between individuals based upon some type of defining characteristic. The word “discriminate” originates from the Latin “discriminat”, meaning to ‘distinguish between’. “discriminate”, *Oxforddictionaries.com*. It refers to the “unequal treatment of persons, for a reason which has nothing to do with legal rights or ability.” “discrimination”, *Dictionary.law.com*. To discriminate is “to make a difference in treatment or favor on a basis other than individual merit.” “discriminate”, *Merriam-Webster.com*.

First, it is plainly apparent that the property qualification in HBC § 16.08.010 (B) establishes a scheme whereby residents are distinguished between two ‘classes’. The ordinance draws a distinction between those who own the property specified in HBC § 16.08.010 (B), and those who do not. To qualify for appointment to the PHAC, the borough requires that an otherwise qualified resident be the owner of a “commercial” or “noncommercial” vessel, be an “owner or representative” of a “tariff regulated company”, or own a “business related to harbor activities”. *Haines, Alaska, Borough Code § 16.08.010 (B)*. This requirement defines Haines residents “in a different fashion”, *See Califano* at 294, by using property ownership as the distinguishing characteristic.

Second, the property qualification confers the benefit of eligibility to one class of resident to the exclusion of others. Residents who do not own the property specified in HBC § 16.08.010 (B) are excluded from the ability to qualify for appointment to the PHAC. Only residents owning the property specified in

HBC § 16.08.010 (B) are conferred this benefit. Excluding otherwise qualified residents from the ability to qualify for appointment to the PHAC constitutes a “substantial disparate impact on classes defined in a different fashion.” *See Califano* at 294; *See also* “disparate”, *Merriam-Webster.com*, (“different from each other”). These two classes are treated substantially different from each other based on nothing more than the ownership of property.

Third, distinguishing between Haines residents and treating them unequally based solely on the ownership of property satisfies the definition of ‘discriminatory’. The Haines Borough’s unequal treatment is not based on legal rights or ability. “discrimination”, *Dictionary.law.com*; *See also* “discriminate”, *Oxforddictionaries.com*. The property qualification favors one class of resident over another “on a basis other than individual merit.” “Discriminate”, *Merriam-webster.com*. The result is otherwise qualified residents being arbitrarily excluded from the ability to be considered for appointment to the PHAC.

Therefore, the property qualification in HBC § 16.08.010 (B) constitutes a government classification that discriminates because it treats residents unequally based solely on the ownership of property.

B. The property qualification in HBC § 16.08.010 (B) discriminates “on its face” because it is explicitly worded in code.

The next issue to determine is whether the discriminatory government classification is “facial”, or “in effect”. *See Yick Wo* at 362-363; *See also Galloway*, Pg. 123. Recall that a “facial” classification “appear[s] on the face of”

a statute”, *Galloway* Pg. 123, and is plainly apparent in the wording of the code. Also recall that “in effect” means the government classification is neutral on its face, and only apparent in the government’s administration or application of the law. *Id.*

In this matter, the discriminatory government classification based on property ownership is plainly apparent in the wording of HBC § 16.08.010 (B). The ordinance’s use of the terms “owner”, “owner or representative”, and “has a business”, *See Haines, Alaska, Borough Code § 16.08.010 (B)*, arbitrarily divides residents into two classes; those who own the specified property, and those who do not. No further proof is required of the Borough’s intent with the classification. The explicitly worded language in HBC § 16.08.010 (B) is used to distinguish between residents based solely on the ownership of property for the expressed intent of determining qualifications for appointment to the PHAC.

Because this discriminatory government classification appears on the face of HBC § 16.08.010 (B), the Equal Protection Clause applies. *See Galloway*, Pg. 123. Therefore, the analysis may continue to determine if the borough is complying with equal protection standards.

**II. THE PROPERTY QUALIFICATION IN HBC § 16.08.010 (B)
DEPRIVES OTHERWISE QUALIFIED RESIDENTS OF A
FEDERAL CONSTITUTIONAL RIGHT.**

Because a government classification has been determined to exist, it must next be decided “whether the [government classification] operates to the

disadvantage of some suspect class or impinges upon a fundamental right explicitly or implicitly protected by the Constitution.” *See Rodriguez*, at 17. A classification is considered “suspect” if it is “based on race, ethnicity, [or] national origin.” *See Galloway*, Pg. 125. However, the Court also “treat[s] as presumptively invidious those classifications that...impinge upon the exercise of a fundamental right.” *Plyler v. Doe*, 457 U.S. 202, 216 (1982).

Classifications determined to be invidiously discriminatory violate the Equal Protection Clause. *Rodriguez* at 17. Discrimination is considered “invidious” if it “treat(s) a class of persons unequally in a manner that is malicious, hostile, or damaging.” “invidious discrimination”, *Legal Information Institute, Cornell University*, law.cornell.edu/wex/invidious-discrimination. It is a type of discrimination that is “arbitrary, irrational and not reasonably related to a legitimate purpose.” *Black’s Law Dictionary*, 6th Ed., West Publishing Co., 1990; *See also Eaton v. State*, Del., 363 A.2d 440, 441; *McLaughlin v. Florida*, 379 U.S. 184, 191.

This section of the argument will demonstrate that the borough’s discriminatory classification based on property ownership does indeed deprive otherwise qualified residents of a fundamental constitutional right. As such, the property qualification in HBC § 16.08.010 (B) constitutes an invidious discrimination in violation of the Equal Protection Clause.

A. In *Turner v. Fouche*, the United States Supreme Court held that there is a “constitutional right to be considered for public service without the burden of invidiously discriminatory qualifications.”

In *Turner v. Fouche*, the United States Supreme Court ruled on a case involving African American residents of Taliaferro County, Georgia, and a statutory scheme used to select juries and members of school boards. *Turner v. Fouch*, 396 U.S. 346 (1970). This statutory scheme “provide(d) for a county school board of five freeholders” that were selected by a grand jury drawn from a jury list selected by jury commissioners. *Id.*; “freeholder”, *Dictionary.com*, (a registered voter who owns local property and has been a local resident for a specified length of time.) The African American appellants challenged the constitutionality of the statutory scheme that required a resident to be a “freeholder” to qualify for selection to the county school board. *See Turner* at 346.

In it’s decision, the *Turner* Court held that there is “a constitutional right to be considered for public service without the burden of invidiously discriminatory qualifications.” *Id* at 347. They stated, “On this record, the limitation of school board membership to freeholders violates the Equal Protection Clause of the Fourteenth Amendment.” *Id.* In the opinion of the Court, Mr. Justice Stewart expounded by saying “the State may not deny to some the privilege of holding public office that it extends to others on the basis of distinctions that violate federal constitutional guarantees.” *Id* at 362-363; *See also Carrington v. Rash*,

380 U.S. 89, 380 U.S. 91; *Lassiter v. Northampton County Board of Elections*, 360 U.S. 45, 360 U.S. 50-51; *Pope v. Williams*, 193 U.S. 621, 193 U.S. 632.

The *Turner* Court determined the property qualification at issue “amounts to...invidious discrimination”. See *Turner* at 362-364. And while the Court was unable to say whether a property qualification could survive constitutional scrutiny in “other circumstances [that] might present themselves”, See *Turner* at 364, they nevertheless determined that this type of invidious discrimination infringed upon the appellant’s constitutional right to be considered for public service to this county school board. *Id.*

B. In *Chappelle v. Greater Baton Rouge Airport District*, the Court extended the constitutional right in *Turner* to include government bodies related to transportation.

Seven years after *Turner*, the United States Supreme Court ruled on another matter whereby the ownership of property was required for appointment to a municipal airport commission. In this case the appellant, Mr. E. C. Chappelle Jr., wanted to serve, upon appointment, as a commissioner on the Greater Baton Rouge Airport Commission. *Chappelle v. Greater Baton Rouge Airport District*, 431 U.S. 159 (1977). He was deemed “not qualified, since, at the time of his appointment, he owned no ‘property assessed in East Baton Rouge Parish.’” *Id.* at 159, (Mr. Justice Rehnquist, in dissent). The sole requirement for appointment to the commission was that “he own property, whether real or personal, that is assessed in the parish.” See *Chappelle* at 159.

The Court relied exclusively on *Turner* to rule this property qualification unconstitutional. *See Chappelle* at 159. Here the Court extended the constitutional right identified in *Turner* to government bodies outside of the specific merits of education. *See Turner* at 346-347; *See Chappelle* at 159. In doing so, the “constitutional right to be considered for public service without the burden of invidiously discriminatory qualifications” was expanded to include consideration for appointment to government bodies related to transportation. *See Chappelle* at 159.

C. *Turner* and *Chappelle* apply here because the PHAC is a government body related to transportation.

In both *Turner* and *Chappelle*, at issue was the ability of an otherwise qualified person to be considered for public service on a government body of a public entity without classifications deemed invidiously discriminatory. *See Turner* at 346-347, (the selection of a school board in Taliaferro County, Georgia); *See also Chappelle* at 159, (the appointment of a person to an airport commission by the Parish Council of the Parish of East Baton Rouge, Louisiana). In *Chappelle*, however, the Court expanded the *Turner* ruling outside of education to include government bodies related to transportation. *Id.* Therefore, while both *Turner* and *Chappelle* apply to the property qualifications at issue here, they apply for different reasons.

First, the State of Alaska defines the PHAC as the same type of government body of a public entity that was addressed in both the *Turner* and *Chappelle*

rulings. To illustrate, Alaska Law defines “government body” and “public entity” as follows:

“Government Body” means an assembly, council, board, commission, committee, or other similar body of a public entity with the authority to establish policies or make decisions for the public entity or with the authority to advise or make recommendations to the public entity; "governmental body" includes the members of a subcommittee or other subordinate unit of a governmental body if the subordinate unit consists of two or more members.

Alaska Stat. § 44.62.310 (h)(1).

"Public entity" means an entity of the state or of a political subdivision of the state including an agency, a board or commission, the University of Alaska, a public authority or corporation, a municipality, a school district, and other governmental units of the state or a political subdivision of the state; it does not include the court system or the legislative branch of state government.

Alaska Stat. § 44.62.310 (h)(3).

The PHAC plainly operates as a government body of a public entity. The meetings of the PHAC are part of a public process and must be properly noticed and open to the public. *See Alaska Stat. § 44.62.310 (e), (a); See also Haines, Alaska, Borough Code § 2.60.070.* The members of the PHAC provide a public service and are appointed according to a public process. *See Haines, Alaska, Borough Code § 2.60.055.* Thus, both *Turner* and *Chappelle* apply because the PHAC is a government body of a public entity as defined by the State of Alaska and the Haines Borough.

Unlike *Turner*, however, the *Chappelle* court extended this constitutional right to merits outside of education. Recall that in *Chappelle* the issue was the ability of a person to be considered for appointment to a municipal airport commission. *See Chappelle* at 159. Airports are facilities designed for a person’s

ability to access airspace. People use airspace to freely travel and engage in interstate commerce. Thus, *Chappelle* extended the constitutional right in *Turner* to government bodies related to transportation and interstate commerce.

The matter at issue here involves the ability of a person to be considered for appointment to a borough committee dealing with ports and harbors. Ports and harbors are facilities designed for a person's ability to access navigable waters. People use navigable waters to freely travel and engage in interstate commerce. Therefore, the municipal airport commission in *Chappelle*, and the borough's Port and Harbor Advisory Committee at issue here, both involve government bodies whose primary focus is on facilities designed to provide access to transportation and interstate commerce.

Therefore, both *Turner* and *Chappelle* apply because the PHAC is a government body of a public entity related to transportation and interstate commerce. As such, all Haines residents, including those who do not own the property specified in HBC 16.08.010 (B), have a constitutional right to be considered for public service on the PHAC without the burden of invidiously discriminatory qualifications.

D. The property qualification in HBC § 16.08.010 (B) constitutes an invidious discrimination in violation of the Equal Protection Clause.

It remains to be determined why and how the property qualification in HBC 16.08.010 (B) deprives otherwise qualified residents of this constitutional right. To settle this issue, focus must be drawn to the wording of the *Turner* decision.

The Court settled that there is “a constitutional right to be considered for public service *without the burden of invidiously discriminatory qualifications.*” *See Turner* at 347 (emphasis added); *See also Chappelle* at 159. Key to the wording here is the focus on “invidious discrimination”. Recall that discrimination is considered “invidious” if it “treat(s) a class of persons unequally in a manner that is malicious, hostile, or damaging.” “Invidious discrimination”, *Legal Information Institute, Cornell University*. Applying this definition to the matter at issue here is instructive.

First, property qualifications damage the effective representation of the excluded class. Property qualifications act as institutional barriers between otherwise qualified residents and their ability to serve as members of government bodies. These barriers deprive the excluded class of their ability to participate as members of government bodies in which they may have an interest. This negatively affects the excluded class by underrepresenting their interests at key points within the political process. Ultimately, underrepresentation permanently damages the ability of excluded classes to effectively influence policy and legislation as it moves through the political process.

Second, property qualifications intimidate by implying a sense of inferiority within the excluded class. Property qualifications imply that the excluded class has less to offer in the deliberations and decisions within the political process. The implication here is that the contributions from the excluded class are “of less importance, value or merit.” “inferior”, *Merriam-Webster.com*. This can have the

affect of alienating the disaffected class and creating discontent within the population.

Third, property qualifications create a hostile political atmosphere. Property qualifications function as “Keep Out” signs in the political process. They provide only one class of resident a voting seat at the table. Residents who would otherwise qualify are excluded from membership in key roles within the political process in which they may have an interest. This exclusion is offensive in nature by welcoming only one class of resident into positions of political power. This can lead to resentment in the community from those who are excluded.

Finally, property qualifications damage the legitimacy of the political process. Residents who are excluded from membership lose the ability to participate in setting agendas at key points in the political process. These residents also lose voting seats at the table during key points in the decision making process. In essence, the public process becomes a filter through which one class of resident is provided an unfair advantage at directing policy and legislation in matters affecting the entire community. This can drift policy and legislation away from the interests of the community. Thus, the filtering of public policy and legislation through favored classes dismantles the legitimacy of the political process.

The Court was correct to settle that the property qualifications in both *Turner* and *Chappelle* constituted an invidious discrimination in violation of the Equal Protection Clause. Property qualifications damage the effective representation of the residents who otherwise qualify, and intimidate by implying

a sense of inferiority within the excluded class. They also create a hostile atmosphere within the political process. Ultimately, this type of invidious discrimination dismantles the legitimacy of the political process.

Accordingly, the property qualification in HBC 16.08.010 (B) constitutes an invidious discrimination in violation of the Equal Protection Clause. The next section will further explore the arbitrary, irrational, and unreasonable nature of invidious discrimination. *See Black's Law Dictionary.*

III. THE HAINES BOROUGH FAILS TO HAVE THE SUFFICIENT JUSTIFICATION DEMANDED BY THE EQUAL PROTECTION CLAUSE TO DEPRIVE OTHERWISE QUALIFIED RESIDENTS OF THE FEDERAL CONSTITUTIONAL RIGHT TO BE CONSIDERED FOR PUBLIC SERVICE ON THE PHAC.

To determine whether or not there has been a violation of the Equal Protection Clause, one “must consider the facts and circumstances behind the law, the interests which the State claims to be protecting, and the interests of those who are disadvantaged by the classification.” *Williams v. Rhodes*, 393 U.S. 23, 393 U.S. 30 (1968). The United States Supreme Court has ruled that “whenever a state law infringes a constitutionally protected right, [the court] undertake[s] intensified equal protection scrutiny of that law.” *Attorney General of New York v. Soto-Lopez*, 476 U.S. 904 (1986); *See also Cleburne v. Cleburne Living Center, Inc.*, 473 U.S. 432, 473 U.S. 440 (1985); *Martinez v. Bynum*, 461 U.S. 321, 461 U.S. 328, n. 7 (1983); *Plyler* at 202, 216-217, and n. 15; *Memorial Hospital v. Maricopa County*, 415 U.S. 258, 262 (1974); *Rodriguez* at 1, 16, and n. 39, 30-32,

40; *Police Dept. of Chicago v. Mosley*, 408 U.S. 92, 408 U.S. 101 (1972); *Dunn v. Blumstein*, 405 U.S. 335, 405 U.S. 342; *Shapiro v. Thompson*, 394 U.S. 634.

In fact, classifications that infringe upon a fundamental right must withstand “strict judicial scrutiny.” *Plyler* at 217. Equal Protection analysis must be “mindful that, where fundamental rights and liberties are asserted under the Equal Protection Clause, classifications which might invade or restrain them must be closely scrutinized and carefully confined.” *Harper v. Virginia Board of Elections*, 383 U.S. 668, 670 (1966), (Mr. Justice Douglas opinion of the Court); *Referenced also were Skinner v. Oklahoma*, 316 U.S. 535, 541 (1942); *Reynolds v. Sims*, 377 U.S. 561, 562 (1964); *Carrington v. Rash*, 380 U.S. 89 (1965); *Baxstrom v. Herold*, 383 U.S. 107 (1966); *Cox v. Louisiana*, 379 U.S. 536, 580-581 (1965) (Black, J., concurring). Strict scrutiny attempts to determine if sufficient justification exists to support the government’s classification. *See Galloway*, Pg. 123.

Ultimately, it must be proven that the discriminatory classification is “necessary to further a compelling interest.” *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 202 (1995). This requires the discriminatory classification to be reasonable, necessary, and properly tailored to the government’s objective. *See Galloway*, Pg. 148-157; Gordon Harrison, *Alaska’s Constitution: A Citizen’s Guide*, Alaska Legislative Affairs Agency, Fifth Ed., Pg. 11-12. Where fundamental rights are involved, only classifications that can survive this strict judicial scrutiny will satisfy the demands of the Equal Protection Clause. And as

will be demonstrated, the borough's property qualification for appointment to the PHAC fails this analysis.

A. The property qualification in HBC § 16.08.010 (B) is improperly tailored to further the Borough's compelling interest in public safety.

One issue to determine here is whether HBC § 16.08.010 (B) is properly tailored to meet the borough's stated interest. This element of equal protection analysis is key where a fundamental right is involved.

The Equal Protection Clause was intended as a restriction on state or municipal actions "inconsistent with elemental constitutional premises." *Plyler* at 216. The Court has "treated as presumptively invidious those classifications that...impinge upon the exercise of a fundamental right." *Plyler* at 216-217. Such classifications affecting the exercise of a fundamental right requires government "to demonstrate that its classification has been precisely tailored to serve a compelling government interest." *Id.* at 217.

To be considered "precisely" or "narrowly" tailored, "there must be a sufficient nexus between the stated government interest and the classification created by [an] ordinance." *Nunez v. City of San Diego*, 114 F.3d 935 (1995); *Referenced from Plyler* at 216-217, 102; "nexus", *Merriam-Webster.com*, (a thing or place of greatest importance to an activity or interest.). This important element of equal protection analysis reconciles fundamental constitutional premises against the government classifications in question. *See Plyler* at 216-217. Ultimately, it must be determined whether the interest of greatest importance can be furthered by

the ordinance in question without classifications that are “presumptively invidious”. *Id.*

Therefore, to adhere to equal protection standards in this matter, the borough requires a compelling interest to justify the property qualification in HBC § 16.08.010 (B). This compelling interest is required because the ordinance infringes upon a federal constitutional right. And to determine what the boroughs compelling interest might be, one need look no further than Title 16 governing Haines ports and harbors.

The Haines Borough tasks the PHAC to “deliberate over matters concerning the construction, improvement, maintenance, use, operation, and regulation of borough port and harbor facilities, and make recommendations regarding these issues to the assembly.” *Haines, Alaska, Borough Code § 16.08.010 (C)*. However, to properly accommodate this task, all deliberations and decisions of the PHAC must necessarily comply with the purpose and construction of Title 16.

It is in the opening statement of Title 16’s purpose and construction that the borough identifies its compelling interest regarding local ports and harbors:

“The purpose of this title is to protect the lives, health, safety and well being of the residents of the Haines Borough and those persons who have property in or use or work upon the vessels using the borough port and harbor facilities or who make sales and deliveries of goods and merchandise to vessels therein or who use the facilities for mooring commercial or pleasure vessels.”

Haines, Alaska, Borough Code § 16.04.020, Purpose and Construction

This statement clearly identifies public safety as the borough's compelling interest. *Id.* The placement of this statement at the head of this section, along with general common sense, arguably leads to this conclusion.

To illustrate, consider the boroughs priority should a significant tsunami threaten local ports and harbors. In a tsunami, would the borough risk the lives of Haines residents to save property, or instead waive the protection of property to save the lives of Haines residents? It seems obvious here that Title 16 would mandate the borough to prioritize public safety over the protection of property.

Thus, the property qualification in HBC § 16.8.010 (B) must be reconciled against the borough's compelling interest in public safety to determine if it adheres to the Equal Protection Clause.

1. Basing qualifications for appointment to the PHAC on property ownership is unreasonable and wholly irrelevant to public safety.

Government classifications “must always rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed, and can never be made arbitrarily, and without such basis.” *McLaughlin v. Florida*, 379 U.S. 184, 191 (1964); *Referenced from Gulf, Colorado & Santa Fe Ry. Co. v. Ellis*, 165 U.S. 150, 155. This analysis must “reach and determine the question whether the classifications drawn in a statute are reasonable in light of its purpose.” *See McLaughlin* at 191.

Government classifications must also demonstrate relevancy to the purpose of the law. *McGowan v. Maryland*, 366 U.S. 420, 425 (1961). The Equal

Protection Clause is offended “if the classification rests on grounds wholly irrelevant to the achievement of the State’s objective.” *Id.* This “traditional test” of relevancy is used to determine if there has been a denial of equal protection standards. *See Turner* at 362; *Referenced also were McGowan* at 420, 425-426; *Kotch v. Board of River Port Pilot Commissioners*, 330 U.S. 552, 556.

The property qualification at issue here fails this traditional equal protection test. First, it is unreasonable to consider that the ownership of property somehow qualifies a resident in public safety. Property ownership does not equate to experience or expertise in public safety.

Consider, for instance, a thirty-year resident of the borough who owns a commercial fishing vessel. There can be no doubt that this resident has a level of experience that more than qualifies for matters concerning public safety at Haines ports and harbors. However, consider if this thirty-year fisherman were to sell his boat to a person who moved to the Haines Borough from Oklahoma forty-five days earlier. If this happened, the thirty-year resident fisherman would no longer qualify for appointment to the PHAC. In fact, now the forty-five day resident from Oklahoma with no boating experience in local waters would qualify the moment the purchase was made. It is totally unreasonable to consider a forty-five day resident with no local boating experience more qualified in matters concerning public safety than a seasoned, thirty-year fisherman.

Second, property ownership is wholly irrelevant to matters concerning public safety. Personal qualifications such as experience or expertise are much

more relevant to public safety than whether a resident owns specific property. Consider the example of a retired port director who resides in the borough but does not own the property listed in HBC § 16.08.010 (B). This individual, through many years of port experience, more than qualifies in matters concerning public safety at local ports and harbors. However, because this highly experienced resident does not own the property specified in HBC § 16.08.010 (B), this person would fail to qualify to be considered for public service on the PHAC.

Proof of purchase is no valid qualification for matters involving public safety. Instead, personal attributes such as experience and expertise are qualifications much more reasonable and relevant. Thus, arguments that a resident must own property to participate responsibly in the deliberations and decisions of the PHAC are unreasonable and wholly irrelevant considering the borough's Title 16 mandate in public safety.

B. The property qualification in HBC § 16.08.010 (B) is unnecessary because property interests are adequately represented in Title 16.

The Court has ruled, “The State cannot choose means that unnecessarily burdens or restricts constitutionally protected activity.” *See Dunn* at 343. State or municipal laws that do infringe on constitutional rights “must be drawn with ‘precision’, and must be ‘tailored’ to serve their legitimate objectives.” *Id*; *Also referenced were NAACP v. Button*, 371 U.S. 415, 438 (1963); *United States v. Robel*, 389 U.S. 258, 265 (1967); *Shapiro* at 631. Government infringement of constitutionally protected fundamental rights such as political association, the

right to vote, and the right of ballot access, must satisfy strict judicial scrutiny by proving that the classification is “necessary to further a compelling government interest.” *See Dunn* at 330, 337, 342; *See also Illinois State Board of Elections v. Socialist Workers Party*, 440 U.S. 174 (1979); *Storer v. Brown*, 415 U.S. 724 (1974); *Williams v. Rhodes*, 393 U.S. 23 (1968); *Kramer v. Union Free School District*, 395 U.S. 621 (1969); *Harper* at 663.

The property qualification at issue here is unnecessary given the existing property protections in HBC § 16.04.020. Haines Borough Code states that the secondary interest for the borough is, “to protect the property of such vessel owners by regulating the borough port and harbor facilities to ensure the widest possible use thereof.” *Haines, Alaska, Borough Code § 16.04.020*. Thus, property interests are adequately represented because they are explicitly codified within this section of code. *Id.*

A member of the PHAC must provide for property protection regardless if this member owns the property specified in HBC § 16.08.010 (B) or not. All deliberations and decisions of the PHAC must consider the protection of property to properly adhere to HBC § 16.04.020. Unfortunately, the addition of a property qualification for appointment to the PHAC appears as an attempt to ensure that property owners are represented over and above that of the community as a whole.

The fact that property is represented in HBC § 16.04.020 makes the property qualification for appointment to the PHAC unnecessary. More precise

means are available to properly tailor PHAC membership qualifications to the borough's stated interests identified in Title 16.

C. The advisory nature of the PHAC does not give the Haines Borough immunity from equal protection standards.

Another issue to determine is whether equal protection standards can be skirted if the PHAC merely makes recommendations and does not exact legislation on its own. In other words, can a municipality violate equal protection standards simply because a committee under its charge serves only in an advisory capacity?

It is relevant here that “a city, town, or county may no more deny the equal protection of the laws than it may abridge freedom of speech, establish an official religion, arrest without probable cause, or deny due process of law.” *Avery v. Midland County*, 390 U.S. 480 (1968). A municipality must provide the equal protection of the laws regardless of whether a government body enacts laws of its own, or serves only to recommend plans of action to a public entity vested with those general governmental powers. *Quinn Et. Al. v. Millsap Et. Al.*, 491 U.S. 95, 105 (1989). Arguments that claim the Equal Protection Clause “has no relevancy” because a governmental body is only empowered to make recommendations “reflects a significant misreading of (the) Court’s precedents.” *Quinn* at 104-106, *See also Kramer* at 629.

These Supreme Court decisions find a foothold here. Arguments that the Equal Protection Clause does not apply for appointment to government bodies that

merely advise and make no legislation on their own have been found to conflict with equal protection standards. *See Quinn* at 95, 105. There is a constitutional limitation against such actions that attempt to skirt equal protection standards. *See Quinn* at 95, 105; *See also Kramer* at 629.

The Court no doubt understands what is at stake when considering membership to these advisory bodies. To appreciate the significance, it is important to consider the meaning of the term “advisory”. The word “advisory” literally means “having the power or right to make suggestions about what should be done.” “advisory”, *Merriam-Webster.com*. To be granted advisory authority literally carries with it an implied political power that is not shared by other members of the community. Thus, the Court is correct to demand that equal protection standards be maintained even with advisory bodies.

Therefore, the Haines Borough is not “immunize(d)...from equal protection scrutiny” simply because the PHAC acts only in an advisory capacity. *See Quinn* at 95, 105. The members of these types of advisory bodies are empowered with rights that other residents of the Haines Borough do not share. All matters concerning the PHAC must necessarily align with the Equal Protection Clause, and this includes the member qualifications for appointment to the PHAC.

D. The PHAC does not qualify as a “limited purpose entity” because it provides an important government function concerning general public services related to transportation.

Another issue is whether a municipality such as the Haines Borough can withstand equal protection scrutiny if a government body serves a very specific purpose. In other words, can the borough skirt equal protection standards if the PHAC is considered what is called a “limited purpose entity”?

In *Salyer Land Co. v. Tulare Water District*, the United States Supreme Court ruled on a case whereby “only landowners [were] qualified to elect the district’s board of directors.” *Salyer Land Co. v. Tulare Water District*, 410 U.S. 719 (1973). The Court ruled on the constitutionality of a scheme whereby votes were “apportioned according to the assessed value of the lands.” *Id.* The appellants in this case claimed that the limitation of the franchise to landowners violated equal protection requirements. *Id.*

The Court held that “restricting the votes to landowners who may or may not be residents [did] not violate the principle...that governing bodies should be selected in a popular election in which every person’s vote is equal.” *Id.* They held that “since assessments against landowners [were] the sole means by which expenses...are paid”, that “it is not irrational to repose the franchise to landowners, but not residents.” *Id.* Thus, the Court here ruled the scheme was constitutional whereby only landowners could vote for the water district’s board of directors. *Id.*

However, it is relevant to consider the reasoning behind the Court's decision. The Court ruled the scheme constitutional because the district in question "provide[d] none of the general public services ordinarily attributed to a governing body." *See Salyer* at 719. They stated that the water district served a "special limited purpose" in this case. *Id.* at 728. This "special limited purpose" was defined to mean that the district "provides no other general public services such as schools, housing, transportation, utilities, roads, or anything else of the type ordinarily financed by a municipal body." *Id.* at 728-729; *See also Ball v. James*, 451 U.S. 355, 366 (1981) ("limited purpose" entity could not impose taxes, enact laws, maintain streets, or operate schools, health, or welfare services). They also stated that "there are no towns, shops, hospitals, or other facilities designed to improve the quality of life within the district boundaries." *Id.* at 729. Thus, the *Salyer* Court found rationale to provide exception to strict equal protection scrutiny for a person's right to vote for members of a district considered a "limited purpose entity". *See Salyer* at 728-730.

To begin the analysis, it must first be argued that the merits in *Salyer* involving the "right" to vote for members of a government body share no similarity with the argument being presented here. The matter at issue here involves the right to be considered for public service as a member of a government body, not the "rights" of those selecting the members to that government body. Nevertheless, justifications based on a "limited public entity" rationale could be inferred for placing restrictions on a political franchise, whether that franchise is

voting or whether it involves appointment to a government body acting in an advisory capacity.

However, regardless of whether this rationale is applicable or not, the PHAC does not qualify for a “limited purpose” exception to equal protection standards. First, the PHAC provides a vital public service assisting in the management of facilities designed to access transportation. Recall that the PHAC is tasked to deliberate and make recommendations on matters concerning local port and harbor facilities. *Haines, Alaska, Borough Code § 16.08.010 (C)*. These port and harbor facilities serve the vital government function of providing access to navigable waters that provides residents with the ability to freely travel, engage in interstate commerce, and access natural resources. Thus, it is plainly apparent that the PHAC does not meet the requirements of a “limited purpose entity” because Haines ports and harbors provide “general public service[s]” related to the access to transportation as defined by the *Salyer* Court. *See Salyer* at 728-729.

Second, local ports and harbors are designed to enhance the quality of life of Haines residents. Along with the ability to freely travel and engage in commerce, these facilities provide residents with the ability to recreate, subsistence and sport fish. Therefore, these local port and harbor facilities are central to the quality of life of the all residents of the borough.

Now recall that in *Salyer* the rationale for the equal protection exception was partially attributed to the fact that the water district had “no towns, shops, hospitals, or other facilities designed to improve the quality of life within the

district boundaries.” *Id.* at 729. Thus, *Salyer* clearly does not apply in the matter at issue here because the PHAC assists with the management of facilities that are central to the quality of life of the region.

Therefore, no justification can be inferred for the borough’s property qualification based on a “limited purpose entity” argument. The PHAC serves a vital government function because it assists with the management of facilities that provide a “general public service” related to the access of transportation. These facilities also enhance the quality of life of residents by providing them the ability to freely travel, engage in commerce, and access natural resources. Thus, the *Salyer* “limited purpose” exception does not apply in the matter at issue here.

E. The Haines Borough fails to recognize that all residents, regardless of property ownership, have a legitimate stake in Haines ports and harbors.

Another issue to consider is whether otherwise qualified residents who do not own the property specified in HBC § 16.08.010 (B) have a vested stake in Haines ports and harbors. Specifically, do all residents utilize the services of these facilities? Do these facilities serve a vital function to the residents and the community as a whole? Also, do all residents, regardless of whether they own the property specified in HBC § 16.08.010 (B) or not, contribute financially to Haines ports and harbors?

These are important questions to ask because the Court has ruled, “Any unjustified discrimination in determining who may participate in political affairs

or in the selection of public officials undermines the legitimacy of representative democracy.” *Kramer* at 626, Mr. Chief Justice Warren opinion of the court. This type of unjustified discrimination “always pose[s] the danger of denying some citizens any effective voice in the governmental affairs which substantially affect their lives.” *Id.* at 627.

This section of the argument will demonstrate that each resident of the Haines Borough, regardless of property ownership, is a legitimate stakeholder in Haines port and harbors. These facilities substantially affect the lives of all Haines residents, not merely those owning the property specified in HBC § 16.08.010 (B).

1. There is a strong public interest in facilities designed to exercise the constitutional rights to travel, engage in interstate commerce, and access natural resources.

The navigable waters of northern Southeast Alaska provide each resident, regardless of property ownership, with the ability to freely travel, engage in interstate commerce, and access natural resources. These freedoms are constitutional rights not predicated by conditions such as property ownership. Accordingly, all residents, regardless of whether they own property or not, have a strong vested interest in Haines ports and harbors.

The freedom to travel has long been recognized by the Court as a federal constitutional right. *See Corfield v. Coryell*, 6 Fed. Cas., 552 (1823); *Crandal v. State of Nevada*, 73 U.S. 35, 49 (1868); *Paul v. Virginia*, 75 U.S. 180 (1869); *United States v. Wheeler*, 254 U.S. 281 (1920); *United States v. Guest*, 383, U.S.

757 (1966); *Shapiro* at 629; *Saenz v. Roe*, 526 U.S. 489 (1999). The right to travel is “inherent in citizens of all free governments.” *See Wheeler* at 281. The Court has held that travel “occupies a position fundamental to the concept of our federal union.” *See Guest* at 383. As such, government actions are closely scrutinized that infringe on a person’s ability to freely travel. *See Corfield* at 552; *Crandal* at 49; *Paul* at 180; *Wheeler* at 281; *Guest* at 757; *Shapiro* at 629; *Saenz* at 489.

The freedom to engage in interstate commerce is also recognized as a federal constitutional right. *See Crutcher v. Kentucky*, 141 U.S. 47, 57 (1891); *Western Union Telegraph v. Kansas ex rel. Coleman*, 216 U.S. 1, 26 (1910); *Garrity v. New Jersey*, 385 U.S. 493, 500 (1967); *Dennis v. Higgins*, 498 U.S. 439, 446-450 (1991). In *Crutcher v. Kentucky*, Mr. Justice Bradley stated in the opinion of the Court, “to carry on interstate commerce is not a franchise or a privilege granted by the state; it is a right which every citizen of the United States is entitled to exercise under the Constitution and laws of the United States.” *See Crutcher* at 57. This means, “Engaging in interstate commerce is a ‘right of constitutional stature’.” *See Crutcher* at 448, quoting *Garrity* at 493, 500 (1967). This right, originating with the Commerce Clause of the United States Constitution, *See U.S. Const., Art. 1, Sec. 8, Clause 3*, was “intended to benefit those who...are engaged in interstate commerce.” *See Crutcher* at 449.

Additionally, the Alaska Constitution provides for the right of each person to have equal access to the state’s natural resources. This article contains several clauses that constitutionalize this right. First, the article provides that “free access

to the navigable water of the state...shall not be denied any citizen of the United States or resident of the state.” *Alaska Const. Art. VIII Sec. 14*. Second, it states the “fish, wildlife, and waters are reserved to the people for common use.” *Alaska Const., Art. VIII Sec. 3*. Third, there shall be “no exclusive right or special privilege of fishery...created or authorized in the natural waters of the state.” *Alaska Const. Art. VIII Sec. 15*. Fourth, laws and regulations “shall apply equally to all persons similarly situated with reference to the subject matter and purpose to be served by the law or regulation.” *Alaska Const. Art. VIII Sec. 17*. Taken together, these clauses constitutionalize the management of the state’s natural resources “for the benefit of all the people.” *Owsichek v. State, Guide Licensing and Control Board*, 763 P.2d 495, (1988). Thus, in Alaska, everyone has a constitutional right for equal access to the state’s natural resources.

The constitutional rights to freely travel, engage in interstate commerce, and access natural resources are not predicated on conditions such as a person’s ownership of property. Accordingly, the ownership of property is not required for a person to use Haines ports and harbors. For example, not all residents own the boat they use when subsistence fishing, sport fishing, or recreating. Some residents borrow a friend or family member’s boat to subsistence fish. Others ride along in a friend’s boat to recreate or sport fish. And even though these residents do not own these small vessels, they nevertheless rely on Haines port and harbor facilities to exercise their constitutional rights to travel and access Alaska’s natural resources.

Also, some residents who do not own the property in HBC 16.08.010 (B) use Haines ports and harbors to make a living. Some are deckhands who work on commercial fishing vessels or small fast ferries and rely on ports and harbors for their livelihood. Others use port and harbor facilities so they can travel by small fast ferry to locations such as Skagway and Juneau to earn their living. These residents use and depend on port and harbor facilities to earn a living even though they do not own the property specified in HBC § 16.08.010 (B).

Port and harbor facilities also provide access to transportation for residents who own small, local businesses. These small business owners use port and harbor facilities to get their products aboard vessels used in interstate commerce. Other small business owners rely on the small fast ferries to transport visitors to and from Skagway and Juneau so they can shop in their stores. These small local businesses most likely do not qualify as being “directly related to harbor activities”, *See Haines, Alaska, Borough Code § 16.08.010 (B)*. Yet, they rely on ports and harbors for the health of their businesses.

These examples illustrate that even though a resident may not own the property specified in HBC § 16.08.010 (B), they nevertheless rely on Haines ports and harbors to exercise their constitutional rights. The constitutional rights to freely travel, engage in interstate commerce, and access natural resources are not predicated on a resident’s ownership of this property. They belong to each and every resident regardless of property ownership. As such, all residents have a

strong public interest in port and harbor facilities that provide such a vital government service.

2. All residents have a vested interest in public health and safety.

The primary purpose of Title 16 governing Haines ports and harbors is public safety. *See Haines, Alaska, Borough Code § 16.04.020.* The primary interest here involves the safety of “residents of the Haines Borough”, individuals “who have property in or work upon the vessels”, those “who make sales and deliveries of goods and merchandise to vessels”, and those “who use the facilities for mooring commercial and pleasure vessels.” *See Haines, Alaska, Borough Code § 16.04.020.* The Court has ruled that Public health and safety is a legitimate end of local and state regulation involving transportation issues. *See Bibb v. Navajo Freight Lines, Inc.*, 359 U.S. 523-524 (1959); *S.C. State Highway Department v. Barnell Bros, Inc.*, 303 U.S. 177, 184 (1938); *Maurer v. Hamilton*, 309 U.S. 598, 611 (1940).

Even residents not owning the property specified in HBC § 16.08.010 (B) have a legitimate stake in public safety at Haines ports and harbors. Take, for instance, the spouse of a boat owner who has resided in Haines for 40 years and whose family commercial fishes to earn a living. This resident has a legitimate interest in the health and safety of their family members who regularly use Haines ports and harbors. And even though the spouse of this fisherman may not qualify

for membership to the PHAC, this person nevertheless has a valid, legitimate interest in public health and safety.

Consider also a resident who is an employee for a local company that uses Haines port facilities daily on the job. This person regularly is exposed to hazards associated with working around the local port. These hazards include slips, trips, and falls; working near frigid waters; and working around heavy equipment moving on the facility. Because this individual works daily on these borough port facilities, they have a legitimate interest in, and an intimate knowledge and experience of, the public safety aspects of local ports.

Public safety affects the entire community of Haines. The thought of the health and safety of family members, friends or neighbors being jeopardized by unsafe conditions is a matter of concern for each and every resident of Haines. It is a serious matter in which everyone in a small community has a legitimate stake, whether a resident owns the property specified in HBC 16.08.010 (B) or not.

3. All residents, regardless of property ownership, contribute financially to Haines ports and harbors.

Another issue to determine is whether the funding for Haines ports and harbors comes solely from the owners of the property listed in HBC § 16.08.010 (B), or whether this funding is spread throughout the community involving all residents of the borough. Funding is relevant because the Court has demonstrated that discriminatory classifications are inappropriate where the burden of financing public activity is spread throughout a municipal population.

For instance, in *Cipriano v. Houma*, the Court found unconstitutional a provision that only “property taxpayers have the right to vote in elections called to approve the issuance of revenue bonds by a municipal utility system.” *Cipriano v. City of Houma*, 395 U.S. 701 (1969). In this case the Court found “the benefits and burdens of the bond issue fall indiscriminately on property owner and nonproperty owner alike.” *Id.* The Court here determined the classification “unconstitutionally excludes otherwise qualified voters who are as substantially affected and directly interested in the matter voted on as those who are permitted to vote.” *Id.*

This rationale was expanded in *City of Phoenix v. Kolodziejski*. This case revolved around an election where the issuance of general obligation bonds was proposed to finance various municipal improvements. *City of Phoenix v. Kolodziejski*, 399 U.S. 204 (1970). This Arizona scheme permitted only “real property taxpayers” to vote on the issue. *Id.* The Court held this scheme unconstitutional stating, “the differences between the interest of property owners and nonproperty owners are not sufficiently substantial to justify excluding the latter from voting.” *Id.* They noted,

“half of the debt service requirements will be satisfied not from real property taxes, but from revenues from other local taxes paid by nonproperty owners as well as those who own real property. Not only do those person excluded from the franchise have a great interest in approving or disapproving municipal improvements, but they will also contribute, as directly as property owners, to the servicing of the bonds by the payment of taxes to be used for this purpose.” *Id.* at 209-210

Thus, the Court ruled this scheme violated the equal protection clause because both property and non-property owners paid these taxes. *See Phoenix* at 204.

These court rulings indicate that residents who fund a municipal activity have a right to participate in all aspects of the political process affecting these activities. These rulings correctly defend the tradition in American government of *no taxation without representation*. These decisions, along with the decisions in *Turner* in *Chappelle*, indicate that this defense is justified whether the issue involves the franchise of voting, or whether it involves the ability to be considered for public service on a government body.

Turning to the matter at issue here, this defense is appropriate because the funding for local ports and harbors is spread throughout the community, not just to the owners of the property specified in HBC 16.08.010 (B). To begin, Haines ports and harbors are funded through three public enterprise funds; the Boat Harbor Enterprise Fund, the Lutak Dock Enterprise Fund, and the Port Chilkoot Dock Fund. *See Haines, Alaska, Borough Code Chapter 3.19, Chapter 3.3, Chapter 3.33*. These funds provide for “the proper accounting and management of public funds derived from charges for services for utilization” of these three facilities. *See Haines, Alaska, Borough Code § 3.19.010, § 3.31.010, § 3.33.010*.

The operational revenue for these funds is derived from a variety of sources. The Boat Harbor Enterprise Fund receives its revenue from transient moorage, annual slip rentals, ramp fees, ice sales, fuel sales, miscellaneous revenue, and interest. *See Haines, Alaska, FY 15 Manager’s Budget, Pg. 19*. The

Lutak Dock Enterprise Fund receives its operational revenue from land sales proceeds and Lutak Dock fees. *See Haines, Alaska, FY 15 Manager's Budget*, Pg. 20. The Port Chilkoot Dock Enterprise Fund receives its operational revenue from Port Chilkoot usage fees and Port Chilkoot Dock parking permits. *Id.*, Pg. 21. These three enterprise funds are used to financially support the “activities necessary to provide such services includ[ing], but not limited to, administration, operations, maintenance, billing and collections” of Haines ports and harbors. *See Haines, Alaska, Borough Code § 3.19.020, § 3.31.020, § 3.33.020.*

Even residents who do not own the property specified in HBC 16.08.010 (B) directly fund the operations of the local harbor. Direct funding comes from items such as user fees and harbor fuel purchases. *Haines, Borough, FY 15 Manager's Budget*, at Pg. 19. As mentioned above, the residents paying these fees do not always own the vessels they operate. Recall that some residents borrow a friend or family members boat to subsistence fish, sport fish or recreate. Residents borrowing these vessels must ensure the daily ramp fee is paid prior to using the harbor facilities. They may also need to purchase fuel at the harbor fuel dock. The payment of these fees, services and products directly contributes to the operational funding of local harbor facilities.

Direct funding may also come from residents who lease commercial fishing vessels. These residents are required to pay for their slip rental or transient moorage. They also pay for the purchase of fuel and ice for their operations. These residents financially contribute to the operation, maintenance and

administration of Haines ports and harbors even though they do not own the property specified in HBC § 16.08.010 (B).

Additionally, funding for local port and harbor operations comes from the General Fund. This fund is “the operating fund of the borough.” *Haines, Alaska, Borough Code § 3.13.020 – Purpose*. For the 2015 Fiscal Year, Borough Manager David Sosa has “recommend[ed] a transfer of \$43,000 of Raw Fish Tax Revenues from [the General Fund] to [the Boat Harbor Fund] to help cover cash expenses related to support the fishing fleet.” *See Haines, Alaska, FY 15 Manager’s Budget, 2015 Manager’s Budget Transmittal Letter, Pg. 5*. This recommendation was required because, in his analysis, “The Harbor Enterprise Fund continues to struggle to raise enough revenue to pay its operating expenses.” *Id.* Thus, the General Fund will be relied on to partially subsidize the Harbor Enterprise Fund. This will result in less overall funding for general borough-wide operating expenses that affects all residents of the borough regardless of whether they own the property in HBC 16.08.010 (B) or not.

More significantly, however, are the funding sources used to pay for port and harbor capital improvement projects. Funding for port and harbor capital improvement projects originates from the Capitol Improvement Fund, state revenue generated from the Commercial Passenger Vessel Tax (CPV), and from legislative funding requests. *See Haines, Alaska, FY 15 Manager’s Budget, Haines, Alaska, Capital Improvement Projects (CIP) Six-Year Plan FY15-FY20, Pg. 1-4*. These funding sources pay for port and harbor capital projects such as

LED lighting systems, FSM management systems, nautical flagpoles, vehicles, snowplows for harbor pickup trucks, and the repair and repainting of bathrooms. *See Haines, Alaska, FY 15 Manager's Budget, Haines, Alaska, Capital Improvement Projects (CIP) Six-Year Plan FY15-FY20*, Pg. 1-4. They are also currently slated to pay for 'big-ticket' future infrastructure projects such as the South Portage Cove harbor expansion, Lutak Dock upgrades, Port Chilkoot Dock improvements, a Portage Cove drive-down dock facility, and a new Portage Cove shower restroom facility. *Id.*

Each and every resident of the borough contributes financially to pay for these capital improvement projects. For instance, all Haines residents pay sales tax when purchasing goods and services in the borough. These purchases include those made for food at the grocery store, lumber at the hardware store, or fuel at the gas station. When making these purchases, residents are assessed a 1.5% sales tax for "Capital Improvement Projects". *Stuart, Jila, Haines Borough Chief Fiscal Officer* (personal communication, August 21, 2014); *See also Haines, Alaska, FY 15 Manager's Budget*, Pg. 14. The borough then in turn uses these funds "for purchases and repairs" of port and harbor related infrastructure by transferring them into the Boat Harbor, Lutak Dock, and Port Chilkoot enterprise funds. *Id.*

Additionally, legislative funding from the State of Alaska is used to fund capital improvement projects. These state funds appear as legislative requests for major port and harbor infrastructure upgrades and repairs. *See Haines, Alaska, FY 15 Manager's Budget, Capital Improvement Projects (CIP) Six-Year Plan FY15-*

FY20, Pg. 1-4. These state funds are public and belong to the citizens of Alaska, including those residents not owning the property specified in HBC 16.08.010 (B).

Thus, all residents of the Haines Borough, including those not owning the property specified in HBC § 16.08.010 (B), are legitimate funders of Haines ports and harbors. Residents directly and indirectly contribute to pay for operational, administrative and maintenance requirements of these facilities. Every resident also provides significant financial support for major infrastructure upgrades and repairs, which originate from contributions such as sales taxes.

The fact that each and every resident contributes financially to these facilities demonstrates that all residents have a legitimate stake in Haines ports and harbors. Because all residents have a vested financial interest in local ports and harbors, all aspects of the political process must remain open to them to provide for equal participation and representation. Free, open and equal access to the institutions within this political process is essential to realizing the fundamental principle of *no taxation without representation*. And unfortunately, the property qualification in HBC 16.08.010 (B) clashes with this fundamental principle.

F. The property qualification in HBC § 16.08.010 (B) is a bad fit reconciled against the fundamental principles of representative democracy.

It remains to be determined whether the property qualification in HBC § 16.08.010 (B) reconciles against the form of government guaranteed to the residents of the Haines Borough. At this point it is appropriate to ask exactly what

this form of government is. To answer this question, a quick review of the founding documents of our borough, state and federal governments are instructive.

First, the United States Constitution “guarantees to each State in the Union a Republican Form of Government.” *U.S. Const. Art. IV, § 4, cl. 1*. By this the Framers understood to mean a government that “derives all its powers directly or indirectly from the great body of the people.” James Madison, *Federalist No. 39: “The Conformity of the Plan to Republican Principles”*, Independent Journal, January 16, 1788. The character of such government is representational in form, with power distributed between three separate branches. *See United States Const, Art. I (Legislative Powers), Art. II (Executive Powers), Art. III (Judicial Powers)*.

The Alaska Constitution is consistent with the federal form. Governmental powers in Alaska are also distributed between three branches. *See Alaska Constitution, Art. II (Legislative Powers), Art. III (Executive Powers), Art. IV (Judicial Powers)*. And once again, the character of Alaska government is representational in form.

In contrast to the federal constitution, however, the Alaska Constitution provides explicit textual detail as to the source of political power:

“All political power is inherent in the people. All government originates with the people, is founded upon their will only, and is instituted solely for the good of the people as a whole.”

Alaska Constitution Art. I, § 2 – Source of Government

This explicit wording clearly articulates the American ideal of popular sovereignty inherent within our system of government.

Locally, the Haines Borough Charter reflects this ideology as well. In its opening statement, the Preamble and Bill of Rights indicates the Charter was established “to achieve common goals, to support individual rights, to form a more responsive government, and to secure maximum control of our own local affairs.” *Haines, Alaska, Borough Code, Charter Preamble and Bill of Rights*. It also guarantees to the people of the Haines borough “the right to a government of the people, by the people and for the people”. *Id.* These ideals are expressed “so that the citizens of the borough may retain control over the affairs of their government. *Id.*

These three founding documents clearly express fundamental principles essential to our American system of governance. This ideology – packaged around popular sovereignty, political equality, and political liberty - accurately defines the source of authority in American government. In the United States, we believe that the ultimate authority rests with “the people”.

Yet, identifying exactly who “the people” are has evolved since our nation’s founding. Initially, many were excluded from fully experiencing civil liberty, equality and justice. They were also excluded from full political participation and representation in government. This exclusion was based upon arbitrary classifications such as race, gender, wealth and the ownership of property.

However, the American people have evolved to fully embrace equality, justice and fairness for all persons. Reconstruction following the Civil War, the

progressive era of the early Twentieth Century, and the Civil Rights Movement have fulfilled the Framers' Constitutional argument that republican government "be derived from the great body of society, not from an inconsiderable proportion, or favored class of it." *See Madison, Federalist No. 39*. America has now come to realize the ideology behind the argument that "We the People" are:

"not the rich, more than the poor; not the learned, more than the ignorant; not the haughty heirs of distinguished names, more than the humble sons of obscurity and unpropitious fortune."

James Madison, Federalist No. 57: "*The Alleged Tendency of the New Plan to Elevate the Few at the Expense of the Many Considered in Connection with Representation*", The New York Packet, February 19, 1788.

In America today, "We the people" literally means *not some more than others*.

Property qualifications, however, move us away from this ideological progress. First, property qualifications threaten political equality. Property qualifications arbitrarily allocate authority resulting in an unequal distribution of political power within government institutions. Unfair representation becomes inevitable, whereby "inconsiderable proportions" or "favored classes" are represented over and above "the great body of the people". The Supreme Court has recognized that constitutionality depends on government institutions that are "structured so as to represent fairly all the people." *See Kramer* at 628. Lines drawn between classes of individuals that lead to unfair representation "pose the danger of denying some citizens any effective voice in the governmental affairs which substantially affect their lives." *Id.* at 627. As such, this type of exclusive, unfair representation threatens political equality.

Second, political liberty is threatened by property qualifications. Political liberty, or the ability of a person to freely participate in political affairs, demands no interference or obstruction from government in areas such as voting or holding public office. This is crucial so that “the people be afforded the opportunity of expressing their will on the multitudinous issues which confront them.” *Boucher v. Bomhoff*, 495 P.2d 77 (1972). Property qualifications interfere with a person’s ability to be considered for public service in government institutions so they can freely express their will on the issues that significantly affect their lives.

Ultimately, once political equality and political liberty come under threat, popular sovereignty within government institutions suffers. No longer are government institutions “derived from the great body of the society.” *See Madison, Federalist No. 39*. All policy and legislation bends away from the people as a whole. It becomes filtered through the “inconsiderable proportions” and “favored classes” of the population. This negatively affects the ability of elected officials to accurately gauge the will of the society as a whole.

Thus, the property qualification in HBC § 16.08.010 (B) ultimately calls into question the very type of government that has been guaranteed to the residents of the Haines Borough. Nowhere in the founding documents of this nation, this state, or the Haines Borough can “We the people” be interpreted to justify restrictions, exclusiveness or partial participation in political affairs. “We the people” implies free and full participation in government and the political process.

CONCLUSION

Requiring a resident to own specific types of property to qualify for appointment to the PHAC violates the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution. The property qualification in HBC 16.08.010 (B) constitutes a government classification that discriminates on its face. This discriminatory government classification deprives otherwise qualified residents of the “constitutional right to be considered for public service without the burden of invidiously discriminatory qualifications.” *See Turner* at 347. The Haines Borough fails to have the sufficient justification as demanded by the Equal Protection Clause to deprive these residents of this federal constitutional right.

For these reasons, the Haines Borough must remove all references to property ownership in HBC § 16.08.010 (B). The borough should instead base qualifications for appointment to the PHAC on relevant criteria such as a resident’s experience, expertise, or demonstrated interest to more appropriately accommodate the borough’s compelling interest in public safety, along with the matters of concern listed in HBC § 16.08.010 (C). Doing so will realign HBC § 16.08.010 (B) to equal protection standards.

Respectfully submitted.

Michael Denker
203 Union Street / P.O. Box 298
Haines, Alaska 99827
(907) 766-3235
denker99827@gmail.com