

**Haines Borough  
Borough Assembly Meeting #327  
December 13, 2016  
MINUTES**

**Approved**

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

**Present:** Mayor Jan **HILL**, and Assembly Members Tresham **GREGG**, Ron **JACKSON**, Margaret **FRIEDENAUER**, Mike **CASE**, Tom **MORPHET**, and Heather **LENDE**.

**Staff Present:** Bill **SEWARD**/Borough Manager, Julie **COZZI**/Borough Clerk, Brad **RYAN**/Director of Public Facilities, Heath **SCOTT**/Chief of Police, Shawn **BELL**/Harbormaster, Jila **STUART**/Finance Director, Alekka **FULLERTON**/Deputy Clerk, Shawn **BELL**/Harbormaster, Helen **ALTEN**/Museum Director, and Gabe **THOMAS**/Assistant Harbormaster.

**Visitors Present:** John **STANG**/CVN, Emily **FILES**/KHNS, Don **TURNER Jr.**, Diana **LAPHAM**, Haynes and Katrina **TORMEY**, Sean **GAFFNEY**, Mike **DENKER**, Melissa **ARONSON**, Bill **MCCORD**, Andrew **GRAY**, Norman **HUGHES**, Paul **NELSON**, Thom **ELY**, Jolanta **RYAN**, Dana **HALLETT**, Eric **HOLLE**, Mary Kay **GERMAIN**/Magistrate (via telephone), and others.

- 2. APPROVAL OF AGENDA & CONSENT AGENDA**

The following Items were on the published consent agenda indicated by an asterisk (\*):

- 3 – Approve Assembly Meeting Minutes
- 11A1 – Adopt Resolution 16-12-694
- 11A4 – Adopt Resolution 16-12-697
- 11A6 – Adopt Resolution 16-12-699
- 11C1 – Adopt Board Appointments
- 11C2 – Adopt 2017 Meeting Preparation/Agenda Schedule

**Motion:** **CASE** moved to “approve the agenda/consent agenda,” and it was amended to remove Items 11C1 and 11C2 from the consent agenda and to remove Item 11A7 from the agenda. The motion, as amended, carried unanimously.

Mayor **HILL** reviewed two things learned during the 2016 AML and AAMC conferences, including 1) not putting board minutes and staff reports on the consent agenda since the assembly does not approve those items and 2) not adding new items to published agendas because doing so can be a violation of the Open Meetings Act.

- \*3. APPROVAL OF MINUTES** – 11/8/16 Regular

- 4. PUBLIC COMMENTS**

**J. RYAN** – Thanked the assembly for awarding the Takshanuk Watershed Council funding request.

**GRAY** – Suggested the assembly allow the public to comment before the assembly votes on amendments that change proposed legislation. Case in point, the removal of Add Alternate C from the boat harbor construction contract award. That amendment happened after the public got to comment.

**HOLLE** – Asked the borough to wait to consider heliskiing map amendments until the ADF&G report comes out in late spring. Also, there was a problem with the map committee composition. The proposals should be evaluated later and the committee should be reconfigured to be more representative of the community.

- 5. ASSEMBLY COMMENTS**

**CASE** – Noted there is an additional public comments period at the very end of each agenda.

**LENDE** – Recognized the community’s recent loss of four instrumental people: Olive Jackson, Lawrence Willard, Erwin Hertz, and Leo Smith.

- 6. MAYOR’S REPORT/COMMENTS**

Mayor **HILL** introduced the magistrate who attended by telephone. .

- A. Brief Presentation by Magistrate Mary Kay Germain**

**GERMAIN** explained the current schedule and staffing for the Haines District Court. She presented comparative crime and minor offense statistics and said Haines has more cases than Hoonah, Skagway, Petersburg, Yakutat, and Wrangell. She said she can be called on for assistance at any time.

## **B. Assembly Committee and Liaison Appointments**

**Motion:** **CASE** moved to "confirm the mayor's assembly committee and liaison appointments," and the motion carried unanimously.

The mayor shared an email she received from an appreciative recent visitor to Haines. She thanked **MORPHET** for his written report on his AML/NEO attendance, and he summarized it for the record. Finally, Mayor **HILL** said at AML, she was elected to the AML Board of Directors and became the 2<sup>nd</sup> Vice President for the Alaska Conference of Mayors.

## **7. PUBLIC HEARINGS**

### **A. Ordinance 16-10-446 – Second Hearing**

**An Ordinance of the Haines Borough amending Haines Borough Code Title 18 Subsection 18.30.040(L) to adjust the comprehensive plan review frequency.**

Mayor **HILL** opened and closed the public hearing at 7:15pm; there were no public comments.

**Motion:** **LENDE** moved to "adopt Ordinance 16-10-446, and the motion carried unanimously in a roll call vote.

## **8. STAFF/FACILITY REPORTS**

### **A. Borough Manager – 12/13/16 and 11/29/16 Reports**

The manager summarized his written report and responded to a few questions from the assembly.

### **B. Chilkat Center – Facility Report for October 2016**

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

### **A. Parks & Recreation Advisory Committee – Minutes of 10/19/16 Meeting**

### **B. Port & Harbor Advisory Committee – Minutes of 10/27/16 Meeting**

### **C. Planning Commission – Minutes of 9/8/16 and 10/13/16 Meetings**

### **D. Tourism Advisory Board – Minutes of 10/13/16 Meeting**

### **E. Assembly Board Liaison Reports**

**JACKSON** – Parks and Recreation Advisory Committee

### **F. Assembly Standing Committee Reports**

**FRIEDENAUER** – Commerce Committee

## **10. UNFINISHED BUSINESS**

### **A. Ordinance 16-01-429**

**An Ordinance of the Haines Borough amending Haines Borough Code Section 18.30.040 to adjust code to match the actual planning commission meeting start time and to revise the review process for capital improvements and borough projects.**

*Clerk's Note: Due to the 11/29 meeting cancellation and the need to redistribute some less-time-sensitive items to a later meeting, this item was rescheduled to appear on the 1/10/17 agenda under Unfinished Business.*

## **11. NEW BUSINESS**

### **A. Resolutions**

#### **\*1. Resolution 16-12-694**

**A Resolution of the Haines Borough Assembly authorizing the allocation of FY17 Budgeted Funds to Non-profit Organizations.**

*The motion adopted by approval of the consent agenda: "adopt Resolution 16-12-694."*

#### **2. Resolution 16-12-695**

**A Resolution of the Haines Borough Assembly authorizing the Borough Manager to enter into a cooperative agreement with the Alaska Department of Fish and Game for the Portage Cove Boat Launch in the amount of \$500,000.**

There were no public comments.

**Motion:** **CASE** moved to "adopt Resolution 16-12-695," and the motion carried 4-2 in a roll call vote with **LENDE** and **MORPHET** opposed.

**3. Resolution 16-12-696**

**A Resolution of the Haines Borough Assembly authorizing the Borough Manager to execute a contract change order with Pacific Pile & Marine for the Portage Cove Harbor Expansion project for an amount not to exceed \$385,549.**

**RYAN** – Noted the price needs to be adjusted prior to adoption.

**HUGHES** – Said the Port & Harbor Advisory Committee supports this resolution.

**GRAY** – Strongly supports this resolution.

There were no other public comments.

**Motion:** **FRIEDENAUER** moved to “adopt Resolution 16-12-696,” and the motion was amended by changing \$385,549 to \$420,457 to reflect the amended amount provided by the contractor. The motion, as amended, carried 5-1 in a roll call vote with **GREGG** opposed.

**Motion:** **LENDE** moved to “direct the manager to draft a resolution designating \$420,457 for upland development for consideration at the 1/10/17 meeting,” and the motion carried unanimously.

**\*4. Resolution 16-12-697**

**A Resolution of the Haines Borough Assembly supporting a Department of Transportation Nationally Significant Freight and Highway Projects (FASTLANE Grant) application for fiscal year 2017 for Lutak Dock improvements.**

*The motion adopted by approval of the consent agenda: “adopt Resolution 16-12-697.”*

**5. Resolution 16-12-698**

**A Resolution of the Haines Borough Assembly authorizing the Borough Manager to contract with PND Engineers, Inc. on a Time and Expenses (T&E) reimbursable basis for an amount not to exceed \$872,941 for the Portage Cove Harbor Expansion project for Contract Administration and Construction Inspection Services during construction.**

There were no public comments.

**Motion:** **CASE** moved to “adopt Resolution 16-12-698,” and the motion carried unanimously in a roll call vote.

**\*6. Resolution 16-12-699**

**A Resolution of the Haines Borough Assembly accepting a grant offer entitled Sewer Treatment Plant Health & Safety Upgrades (MMG #39543) of up to \$1,000,000 from the State of Alaska, Department of Environmental Conservation.**

*The motion adopted by approval of the consent agenda: “adopt Resolution 16-12-699.”*

- 7. Resolution 16-12-700** – Removed during approval of the agenda at the request of staff  
**A Resolution of the Haines Borough Assembly authorizing the Borough Manager to execute a contract with Wolverine Supply for the 2016 Wastewater Treatment Plant Upgrade project for an amount not to exceed \$1,933,900.**

**B. Ordinances for Introduction** - None

**C. Other New Business**

**1. Board Appointments – Removed from Consent Agenda**

*(Re)appointment applications were received for seats on advisory groups. The mayor planned to make the appointments and sought assembly confirmation.*

**Motion:** **MORPHET** moved to “confirm the mayor’s (re)appointment of 1) Rob Goldberg and Jeremy Stephens to the Planning Commission for terms ending 11/30/19; 2) Kelleen Adams, Diana Lapham, Lori Smith, and Barbara Mulford to the Tourism Advisory Board for terms ending 11/30/19; and 3) to the Solid Waste Working Group: Stephanie Scott (Alt. Darsie Culbeck) (Takshanuk Watershed Council); Melissa Aronson (Haines Friends of Recycling); Reilly Kosinski (Chamber of Commerce); Sally Garton (Community Waste Solutions); Diana Lapham, Jeremy Stephens and Philip Reeves (Residents); and two non-voting members—Margaret Friedenauer (Commerce Committee chair) and Brad Ryan (Director of Facilities),” and the motion carried unanimously.

**2. 2017 Assembly Meeting/Agenda Preparation Schedule Removed from consent agenda**

**Motion:** **CASE** moved to “adopt the 2017 Haines Borough Assembly Meeting Agenda Preparation Calendar,” and the motion carried 5-1 with **MORPHET** opposed.

### 3. **Appeal of Planning Commission Decision**

*Note: the borough manager issued a land use permit to the director of public facilities for phase one of the harbor expansion project. Paul Nelson appealed to the planning commission and on October 13 the planning commission voted to uphold the manager's decision. On November 10, the planning commission adopted written findings of fact, so the PC's action became appealable on that date. HBC 18.30.060 allows for an appeal to the assembly of a planning commission decision. Mr. Nelson submitted an appeal to the borough clerk on November 16. The burden of proof was on the appellant to make the case that the planning commission erred in its decision and that a rehearing by the assembly was warranted.*

**LENDE** disclosed a potential conflict of interest since she was on the planning commission and involved with the decision that is being appealed. The mayor believes it is indeed a conflict.

**Motion: GREGG** moved to "allow assembly member Lende to participate in the appeal proceedings," and the motion **FAILED** 1-5 with **FRIEDENAUER, JACKSON, CASE, MORPHET** and **LENDE** opposed.

**NELSON** was provided an opportunity to explain to the assembly why he believes they should rehear his appeal. He said his appeal is based on the Alaska Constitution, various code citations, the comprehensive plan, and the coastal management plan were not followed.

**Motion: FRIEDENAUER** moved to "hear the appeal in its entirety," and the motion **FAILED** 2-3 with **JACKSON, FRIEDENAUER,** and **CASE** opposed (and **LENDE** abstaining).

**Motion: FRIEDENAUER** moved to finish the agenda even if it goes after 10:00pm."

**Primary Amendment: MORPHET** moved to "amend to limit it to 10:30pm," and the motion **FAILED** 1-5 with **FRIEDENAUER, JACKSON, CASE, GREGG,** and **MORPHET** opposed.

The main motion carried 5-1 with **CASE** opposed.

**Motion: JACKSON** moved "direct the manager to create a resolution pursuant to HBC 5.18.080(I)(2) to postpone the map committee and manager's recommendations, to be considered at a future date in summer 2017 when reports from ADF&G are available and a new committee has been established after code has been revised," and the motion carried unanimously.

### 4. **Appeal of Heliski Map Committee Action (November 7, 2016)** – D.Hallett

*Note: on 9/13/16, the assembly adopted Resolution 16-06-681 authorizing the borough manager to convene an advisory committee to consider 2016 heliski map amendment proposals. The manager appointed the committee per the requirements of HBC 5.18.080(I)(1)(c). That committee met several times to consider the proposals by going area-by-area. Subsequent to the 11/7/16 meeting, a member of the public, Dana Hallett, appealed the committee's action under HBC 2.60.130. Mr. Hallett contended the Heli-ski Map Committee Chair erred when he allowed committee members with a substantial financial interest to vote on any portion of the map change proposals.*

**HALLETT** suggested **JACKSON** may have an ethical reason to be recused. Mayor **HILL** disagreed. **HALLETT** read his statements relative to his appeal. He believes the remedy would be to start the process over with a newly-constituted committee and disregard any committee recommendations. He would like an affirmation regarding his appeal.

**Motion: FRIEDENAUER** moved to "deny the appeal in recognition of the previous motion [postponing the map recommendations]," and the motion was amended to add 'which made it moot'. The main motion, as amended, carried 5-1 with **LENDE** opposed.

**LENDE** said the assembly was being responsive to the appeal as evidenced by the previous motion. **JACKSON** agreed a lot has been learned and there will be changes for future efforts.

### 5. **Manager's Recommendation – Heliski Map Amendment Proposals**

*Two proposals were received in 2016 requesting amendments to the Commercial Ski Tour Areas map. After considering the advisory committee's recommendation and other information, the manager prepared a recommendation for the assembly's consideration at this meeting.*

Clerk's Note: The previous motion postponing the map recommendations made this moot, so the agenda item was bypassed.

### 6. **Appeal of Tourism Advisory Board Action (November 10, 2016)** – E.Holle

*Note: on 10/25/16, the assembly referred Ordinance 16-10-445 to the Tourism Advisory Board (TAB). That draft ordinance sought to clarify the composition of heliski map amendment*

committees. On 11/10/16, the TAB reviewed the draft ordinance as requested by the assembly. Subsequently, a member of the public, Eric Holle, appealed the TAB's action under HBC 2.60.130. Mr. Holle did not believe this assignment was in the purview of the TAB, but the primary basis for his appeal was a belief two members of the TAB had a conflict of interest and should not have participated in the discussion or voting.

**HOLLE** made his statements relative to his appeal. He disagreed with the borough attorney's opinion in the matter. The remedy he sought was for the manager and assembly to disregard the recommendations of the TAB related to the composition of a heliskiing map committee and, in fact, not to be involved with heliskiing matters at all. He believes there is a legal issue and, in his opinion, advisory boards make binding decisions. He thinks the TAB acted illegally.

**JACKSON** said all committees are advisory to the assembly. There is a check and balance. The attorney opined there was not a significant financial interest. **FRIEDENAUER** noted the TAB's recommendation has not yet come to the assembly.

**Motion:** **FRIEDENAUER** moved to "deny the appeal because she doesn't believe the Tourism Advisory Committee violated code," and the motion passed 4-3 in a roll call vote with **GREGG, LENDE,** and **MORPHET** opposed and Mayor **HILL** breaking the tie in the affirmative.

**Motion:** (10:27pm) **LENDE** moved to "adjourn the meeting to 6:30pm on 12/14/16," and the motion carried 4-2 with **JACKSON** and **FRIEDENAUER** opposed.

#### **Continued Meeting --- December 14, 2016**

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

**Present:** Mayor Jan **HILL**, and Assembly Members Tresham **GREGG**, Ron **JACKSON**, Margaret **FRIEDENAUER**, Mike **CASE**, Tom **MORPHET**, and Heather **LENDE**.

**Staff Present:** Bill **SEWARD**/Borough Manager, Julie **COZZI**/Borough Clerk, Brad **RYAN**/Director of Public Facilities, Alekka **FULLERTON**/Deputy Clerk, Heath **SCOTT**/Chief of Police, Holly **SMITH**/Planner, Dean **OLSEN**/Assessor, Tina **OLSEN**/Accounting Clerk, and others.

**Visitors Present:** John **STANG**/CVN, Emily **FILES**/KHNS, Don **TURNER Jr.**, Diana **LAPHAM**, Haynes **TORMEY**, Mike **DENKER**, Gershon **COHEN**, Bill **MCCORD**, Andrew **GRAY**, Cindy **JONES**, Cary **SEWARD**, Debra **SCHNABEL**, Joe **PARNELL**, Mark and Lori **SMITH**, and others.

#### **7. Borough Manager Six-Month Performance Evaluation**

Rather than an executive session as stated on the published agenda, **SEWARD** opted to have this discussion take place in open session.

Mayor **HILL** distributed the tallied evaluation scores and compiled comments. The assembly and manager were provided ten minutes to review the documents.

**Motion:** **MORPHET** moved to "suspend the rules," and there was no objection.

**MORPHET** read a lengthy statement regarding the Manager's performance. The assembly discussed **SEWARD**'s evaluation.

**Motion:** **FRIEDENAUER** moved to "go into executive session as allowed by AS 44.62.310(c)(2) and Haines Borough Charter 18.03(B) to discuss with the manager and Gershon Cohen an alleged interaction between the manager and Cohen's employer; this matter qualifies because a public discussion may tend to prejudice the reputation and character of others; the borough manager and Gershon Cohen are requested to attend." The motion carried 5-1 with **MORPHET** opposed.

Present: Mayor Hill; Assembly Members Morphet, Jackson, Lende, Friedenauer, Case, and Gregg; Manager Bill Seward; and Gershon Cohen. The executive session convened at 7:36 p.m. and ended at 9:17 p.m.

**Motion:** **CASE** moved to "reinstate the rules," and the motion carried unanimously.

**Motion:** **CASE** moved to "establish a three-month probation period beginning 12/19/16 and perform another evaluation after that time."

**Primary Amendment:** **CASE** moved to "delegate the responsibility to the personnel committee for developing performance measurements to be applied to the probation period," and the motion carried unanimously.

The main motion FAILED 2-4 with **JACKSON, FRIEDENAUER, MORPHET**, and **GREGG** opposed.

**Motion:** **MORPHET** moved to "terminate the manager's contract immediately for cause," and the motion carried 4-2 in a roll call vote with **CASE** and **LENDE** opposed.

**12. CORRESPONDENCE/REQUESTS**

**13. SET MEETING DATES**

**14. PUBLIC COMMENTS**

**LAPHAM** – Is appalled at the action taken.

**TURNER Jr.** – Believes the assembly is part of the problem, and he plans to start a recall petition.

**PARNELL** – Is sad to see the police blotter in the paper go away. The public's getting shafted, and he asked for the assembly's assistance to see it restored.

**GRAY** – Said there should be a limit to the time the assembly members are allowed to speak. He asked the mayor to use her gavel more when people interrupt each other.

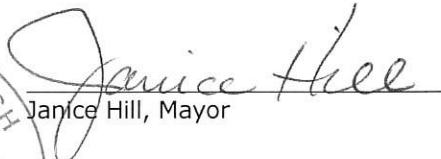
**15. ANNOUNCEMENTS/ASSEMBLY COMMENTS**

**16. ADJOURNMENT** – 9:38 p.m.

ATTEST:

  
Julie Cozzi, MMC, Borough Clerk



  
Janice Hill, Mayor