

To: Members of the Heli-ski Map Committee
From: Dana Hallett, HC 60 Box 3710, Haines, AK 99827
Re: Heli-ski Map Committee Member(s) Voting on Issues in which Member(s)
has/have a Conflict of Interest
Date: November 7, 2016

I would like to formally request that the Heli-ski Map Committee reconsider any votes taken or decisions made that are not in compliance with Haines Borough Code 2.62.040. In light of the code of ethics, the Haines Borough Charter, the Alaska State Statutes and the Borough Attorney's "Ethics Opinion", it is my contention that the Heli-ski Map Committee Chair erred when he allowed both members of the committee, who have a significant financial interest, to vote on any Heli-ski map changes regardless of who proposed them.

To fix this error, I request that any and all members of the Heli-ski Map Committee, who voted on the prevailing side of the motion that was in violation, make a motion or decision that was in violation of HBC .262.040 make a motion at this meeting to reconsider any and all motions that the members who have a "significant financial interest" voted on. Then, the committee should take another vote on the issue or issues without the participation of those member(s), who have a "significant financial interest."

This action is necessary because:

- The will of the people must be expressed. When 40% of a committee is comprised of special interests, those who have a significant financial interest in the outcomes of motions, the will of the people can not be assured.
- The Haines Borough Charter guarantees to the people of the Haines Borough "*the right to a government of the people, by the people and for the people, which safeguards our diversity, harmony between neighbors and respect for the environment . . . 1*". In other words, when governing bodies disproportionately represent special interests over the interests of the general public, the will of the people cannot be safeguarded.
- Adherence to the code of ethics ensures that the public interest is protected.

Question

Was the Heli-ski Map Committee Chair in error when he allowed members, who have a "significant financial interest," to vote on the Heli-ski Map change proposals that have been submitted to the committee for consideration?

STATEMENT OF FACTS

On September 13, 2016, the Haines Borough Assembly passed a resolution that established the current Heli-ski Map Committee. *Haines Borough Assembly Meeting #322, September 13, 2016, Minutes*

The Heli-ski Map Committee convened on Oct. 17, 2016. The committee is made up of five members: a representative of a local conservation organization, a borough assembly member, a representative from the heli-skiing industry, and two members chosen randomly from Haines Borough residents. 5.18.080.I (c)

As it happened, Mr. Sundberg applied for and was chosen at random to serve as one of the seats designated as representing Haines Borough residents. *William Seward email, Oct 4, 2016, re: 2016 HELI MAP AMENDMENT COMMITTEE SELECTION*

Scott Sundberg, who has 42.39% ownership in Southeast Alaska Backcountry Adventures (SEABA,) submitted proposals to change the Heli-ski map. <https://www.commerce.alaska.gov/cbp/Main/CorporationDetail.aspx?id=72465D> These areas are designated S1, S2, S3, S4, S5, S6 on the draft map.

Sean Brownell, who is 49% owner in Alaska Heliskiing, also submitted a proposal to change the Heli-ski Map. <https://www.commerce.alaska.gov/cbp/Main/CorporationDetail.aspx?id=91558> These areas are designated AH1, AH2, AH3, AH4, AH5, AH6, and AH7 on the draft map.

After the formation of the Heli-ski Map Committee, there were concerns expressed that two-fifths of the committee was made up of members who were a part of the heli-ski industry. Due to this concern, the Borough Attorney, Patrick W. Munson was asked, "to provide an ethics opinion regarding the selection of a Borough heli-ski permit holder for membership on the Heli-ski Map Committee." *Memorandum, Patrick W. Munson; October 26, 2016, pg 1*

In Munson's ethics opinion memorandum, the questions presented were:

(A) *Is the heli-ski permit holder eligible to serve in the "random resident" seat on the Heli-ski Map Committee?*

(B) *Does the Haines Borough Code of ethics preclude a heli-ski permit holder from deliberating and voting on matters before the Committee? Memorandum, Patrick W. Munson; October 26, 2016, pg. 2*

In his analysis of question (A), Mr. Munson wrote, *"The heli-ski permit holder is eligible to sit on the committee as long as he is a Borough resident."* Memorandum, Patrick W. Munson; October 26, 2016, pg. 2

In his analysis of question (B), Mr. Munson wrote, *"The permit holder and the committee must decide whether any of its members should be disqualified from deliberating and voting on a particular issue."* Memorandum, Patrick W. Munson; October 26, 2016, pg. 3

Subsequently, the Heli-ski Map Committee chair, Assembly Member Ron Jackson ruled that one of the two heli-ski permit holders on the Committee, Scott Sundberg was not allowed to vote, but could answer specific questions directed to him during the proceedings. *Heli-ski Map Committee meeting, November 1, 2016*

Argument

The concern presented is whether the Heli-ski Map Committee Chair erred when he allowed a member(s) of the committee who is a Heli-ski permit holder to deliberate and to vote on any of the proposed heli-ski map changes.

The will of the people must be expressed. The Haines Borough Charter guarantees to the people of the Haines Borough *"the right to a government of the people, by the people and for the people, which safeguards our diversity, harmony between neighbors and respect for the environment . . ."* Haines Borough Charter, Preamble and Bill of Rights

A preamble expresses the purpose and underlying philosophy of a document. In this case, the preamble tells us the purpose of the Charter. We govern ourselves for the purpose of taking care of the people's needs. The preamble explains the fundamental belief that we govern for the sake of all the people, not for the few. When governing bodies disproportionately represent some interests over others, the will of the people cannot be protected nor guaranteed.

The Haines Borough Code of Ethics requires high moral and ethical standards of its public officers.

HBC 2.06.010 Declaration of Policy

It is declared that high moral and ethical standards among public officers of the borough are essential to the conduct of free government and that the assembly believes that a code of ethics for the guidance of public officers will encourage those officers to act in the public interest. This will improve standards of public service, and will promote and strengthen the faith and confidence of the people of this borough in their public officers. It is further declared that

holding public office or employment is a public trust and that the people require public officers to adhere to a code of ethics.

In order to safeguard the will of the people and encourage our public officials to act in the best interest of the public, it is important that our public officials adhere to the standards of our code of ethics. Acting in the public's best interest also promotes and strengthens the faith and confidence that the public has in our public officials.

AS 29.20.010. Conflict of Interest.

(a) Each municipality shall adopt a conflict of interest ordinance that provides that

(1) a member of the governing body shall declare a substantial financial interest the member has in an official action and ask to be excused from a vote on the matter;

"Governmental 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; AS 44.62.310 (h)

A "public entity" is 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. AS 44.62.310 (h)

In other words, a member of the Heli-ski Map Committee, a governing body that makes recommendations to the Haines Borough Assembly, a governing body that makes decisions for the Haines Borough, a public entity.

AS 29.20.010 applies to this committee. The member of the governing body **shall** declare a substantial financial interest that the member has in an official action. The statute further states that the member shall ask to be excused from a vote on the matter.

If it were not for the Haines Borough Code, the committee on which the member serves, could make the decision as to whether the member has a "significant financial interest." However, the Haines Borough Code is more restrictive than the Alaska State Statutes.

HBC 2.62.040 Voting on certain questions prohibited.

A. No assembly member or the member of any committee, board or commission may vote on any question on which the member has substantial financial interest.

This part of the code states that no member of any committee may vote on any question in which the member has a substantial financial interest. There are no exceptions to this law. It does not give any member of a committee the right or responsibility to vote on any issue which the member has a significant financial interest.

HBC 2.06.030 Misuse of official position.

A. A public officer may not use, or attempt to use, an official position in order to gain a benefit, and may not intentionally secure for, or grant to, any person unwarranted benefits, treatment, or advantage.

B. A public officer may not:

. . . 4. Take or withhold official action in order to affect a matter in which the public officer has a personal or financial interest;

C. An assembly member or member of any board or commission may not deliberate or vote on any matter in which the member has a substantial personal or financial interest.

The Haines Borough Code makes it clear under HBC 2.06 CODE OF ETHICS that a member of a committee may not deliberate or vote on a question in which the member has a substantial financial interest.

5.18.080 Commercial ski tours, commercial ski productions and special ski competition events.

A. Number of Permits.

3. A permit does not create an exclusive right of use of an area by the permittee. However, the borough may specify areas of the map in which a permittee may operate.

There are no areas that are exclusive to one permit holder or another. All areas open on the heli-ski map are available for the use of all permit holders.

October 26, 2016, Haines Borough Attorney, Patrick W. Munson, offered an opinion “regarding the selection of a Borough heli-ski permit holder for membership on the Heli-Ski Map Committee.”

Mr. Munson posited that, "It seems much more likely that the member has a 'personal or financial interest' in such proposals because the member has already taken a position on the issues in the proposal." Mr. Munson opined that, *"Having a member deliberate or vote on changes submitted by the member also creates a fairly obvious perception of a conflict of interest that may (understandably) trouble the public."* Borough Attorney Memorandum, 10-26-16, page 6

It would also follow that since the areas approved for heli-ski tours are not exclusive, and are open to all permit holders, all permit holders would have a "significant financial interest" in each proposal.

Mr. Munson concluded, *"We therefore recommend that the member recuse himself or herself from the deliberations regarding the map changes submitted by the member. The member should step down from the deus [sic] and participate in the discussion as a member of the public presenting his or her map changes."* Borough Attorney Memorandum, 10-26-16, page 6

Mr. Munson felt that there would be a conflict of interest if the member voted and/or deliberated on the submissions to the heli-ski map that he or she proposed. Mr. Munson left open the question of whether there is a conflict of interest when considering changes to areas that the member did not submit, but another party had.

Conclusion

The purpose of our municipal government is to safeguard the public's interest. To best ensure this, the State Statutes and the HBC spells out the law that must be followed. We have a code of ethics that ensures, when followed, that the public's best interest is protected. In short, when there is a conflict of interest, a member of a governing body, or a public official may not "deliberate or vote" on issues that the member has a "significant financial interest."

The Heli-ski Map Committee has two members who have a "significant financial interest". The Haines Borough Attorney, Patrick W. Munson, expressed the opinion that one member has a conflict and has advised that the member recuse himself. He further advised that the member should therefore refrain from deliberating on the issues that he brought before the committee, remove himself from the discussion, except as another member of the public.

Mr. Munson concluded that the Industry Representative would be allowed to participate in all committee matters. However, HBC 2.62.040 states, *"No assembly member or the member of any committee, board or commission may vote on any question on which the member has*

substantial financial interest.” In addition, like his fellow permit holder, he too has submitted proposals to the Heli-ski Map Committee and should not vote on any Heli-ski map proposals.

Mr. Munson did not address the interest that both permit holders have in all areas of the heli-ski map. Since there is no exclusive right to any given area of the map, all permit holders have a financial interest in all of the proposals, not just the proposals put forth by their company.

Remedy Requested

A member of the committee who voted on the prevailing side of any and all relevant issues should make a motion to reconsider. Then, another vote should be taken, without the deliberation or vote from a member who has a “significant financial interest” in the matter.