

LOCAL BOUNDARY COMMISSION

STATE OF ALASKA

In the Matter of the Petition to )  
Incorporate Nikiski as a Home Rule )  
City, )  
\_\_\_\_\_ )

KENAI PENINSULA BOROUGH'S OBJECTION TO PETITIONERS' REQUEST TO THE LBC TO  
RELAX OR SUSPEND PROCEDURAL REGULATIONS UNDER 3 AAC 110.660

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Background

A third request for extension was filed on August 10, 2017, by the petitioners for the incorporation of Nikiski as a home rule city ("CON") which was granted and the time for public comment was extended until September 22, 2017. The Kenai Peninsula Borough ("KPB") was not served with this request for extension by CON. The CON also filed a "Request for LBC Suspension/Relaxation of Current Process" ("Request") on August 10, 2017. The KPB was also not served with this motion.<sup>1</sup> While CON did not serve its Request on the KPB on August 10<sup>th</sup> three of the CON petitioners testified at the August 15<sup>th</sup> KPB assembly meeting regarding the incorporation and never mentioned this remarkable Request had

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<sup>1</sup> Senator Micciche, Representative Chenault, the Peninsula Clarion, Radio station KDLL, and TV Station KTUU were all copied with the Request by CON, however, the KPB which has actively participated as a party in this incorporation process was not.

been filed with the LBC.<sup>2</sup> The KPB was not informed of the request until the LBC staff (“Staff”) notified the KPB on August 23, 2017 that a hearing would be held on Thursday, August 31st. At this point the Request has been accepted both for filing by staff and consideration by the LBC. Pursuant to 3 AAC 110.500 a document, letter, or brief for filing and consideration are not to be accepted except in accordance with 3 AAC 110.410-700. Nothing in these regulations authorizes the unorthodox Request for a reset filed by petitioners and the borough questions whether the Request should have been accepted for filing and consideration without notice to other interested parties or the opportunity to object. The KPB hereby objects to the Request.

### Argument

As a basis for its Request CON relies on the language of 3 AAC 11.660 which provides the procedural requirements of 3 AAC 11.400-3AAC 110.700 are meant to “secure the reasonable, speedy, and inexpensive determination of every action and proceeding”. CON’s Request is inconsistent with the purposes of this provision. CON is now under a third extension to file public comments which defies speediness. The belated Request claiming that LBC Staff should have rejected CON’s petition as technically deficient was filed three months after a thorough analysis had been issued in Staff’s Preliminary Report (“PR”). The

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<sup>2</sup> Audio, August 15, 2017 assembly meeting. Agenda item J, “Public Comments on Items not appearing on Agenda.” <https://kpb.legistar.com/Calendar.aspx>

Request does not state how CON would have revised the petition if it had been rejected during technical review. The Request is unreasonable because under the rules the CON could still amend the petition by following Staff's recommendations in the PR to the LBC. There is no need for a reset of the entire process for the petitioners to revise their petition, especially considering the guidance they have received from Staff in how the petition could be amended in order to make it meet the legal standards. A reset would also be more expensive than a petition amendment as the entire process that has occurred thus far including the substantial fact-gathering, briefing and meetings would begin again. CON's request is not reasonable, speedy, or inexpensive in light of how far along we are in the current process and that there are other alternatives to a reset.

CON's position is essentially that Staff should have reviewed the petition on its merits during the technical review process. This is not called for by either AS 29.05 or 3 AAC 110.440. The technical review of the petition as required by 3 AAC 110.440, a procedural requirement, is nowhere near as involved as the detailed standards a petition must meet under Article 1, "Standards for Incorporation of Cities", 3 AAC 110.005-420 and Article 14, "General Provisions" at 3 AAC 110.900 *et seq.* 3 AAC 110.440 requires that the technical review have a budget sufficient for commission review, a transition plan sufficient for commission review, and adequate signatures. These three requirements did not lead to the negative recommendation from Staff once they reviewed the petition on the merits. The preliminary recommendation to the LBC noted that the transition plan was



adequate (but there were details to be worked out with the borough). [PR, p.99] The PR found the budget to be plausible in terms of revenue; (however, a substantive review indicated no capital budget was proposed and that the cost savings currently enjoyed by the borough's general government support of the service areas will be lost in the CON.) [PR, p.59, 62-63] An "adequate" transition plan and a "plausible" budget are all that were required in a technical review. The petition also met the statutory signature requirement which is a standard for the technical review. When the petition was reviewed on the merits, however, the disbursement of that population within the proposed CON did not meet the standards. 95% of the residents in the proposed CON live in only 1.5% of the area. [PR, p.75] Upon review on the merits it appeared a large geographical region including Cook Inlet and the westside of Cook Inlet were included in the petition while scant population to be served resided in this area in violation of 3 AAC 110.040(b).

AS 29.05.060 sets forth the requirements for the petition. For purposes of a technical review these requirements appear to have been met. The city's proposed class, name, boundaries, governing body, the powers, adequate voter signatures, and a proposed charter were all included in the petition. Again, the inclusion of these items for purposes of accepting the petition for filing is a separate process than the more detailed analysis of the petition under the standards largely set forth in Article 1 "Standards for Incorporation of Cities" at 3 AAC 110.005-042 and Article 14 "General Provisions" at 3 AAC 110.900 *et seq.*

Upon a meritorious review against these standards staff found the petition met the standards for resources and population, and potentially could meet the requirements of transition and nondiscrimination. [PR, p.99] However, the petition failed to meet the standards pertaining to community, need, best interests of the state, and provision of essential municipal services. [PR, p.99] At the risk of oversimplifying the recommendation, the LBC staff found the boundaries of the city to be unjustifiably large and found no new services were being provided. [PR, p.99] Neither of these findings would necessarily be evident in a mere technical review.

CON has not provided an adequate explanation for why it can't amend the petition at this point. 3 AAC 110.540 provides that a petition may be amended if the hearing on the petition has not been advertised. There is a reasonable rule that the same number of voters are required to sign the amended petition as signed the original petition. A majority of the voters who signed the original petition must sign the amendment. These rules make sense to ensure that whatever amendment is proposed still has adequate voter support to go forth for further analysis by Staff and consideration by the LBC. Additionally, the LBC chair may set an additional informational session, responsive briefing, and additional public meeting by the department, or a repeat of other steps set forth in 3 AAC 110.410-700. It is more reasonable for the petitioners to amend their petition rather than burdening the other participants in this matter with a reset, especially

when there is no indication that the new petition would look any different than the one currently proposed.

There is also a process set forth in 3 AAC 110.545 for withdrawal of a petition. The CON's Request is an attempt to withdraw its petition without following the applicable regulation. CON has not submitted a valid justification for not following the regulatory withdrawal process.

If Staff would have reviewed the petition on its merits at the time of the technical review would the petitioners have revised their petition to increase the services offered and reduce the size of the proposed city to Nikiski proper where a significant majority of the population of the proposed city lives and where a significant amount of the services to be offered by the city will be delivered? If so, then there is no reason not to amend the petition at this point as Staff has given a detailed analysis of where the petition is flawed, where it meets the standards, and has suggested how it can otherwise meet the standards with modification.

A reset would further violate 3 AAC 110.660 which disallows relaxation of the rules which would work injustice, would result in a substantially uninformed decision, or would not serve relevant constitutional principles and the broad public interest. A decision for a reset works an injustice to the parties to this petition who have participated in good faith touching all the bases and following all the rules of the commission while rewarding an entity that has filed an extraordinary Request and a third extension without service on the compliant parties. A decision



to reset would be an unformed decision because despite Staff's detailed analysis and recommendations CON has not informed Staff or the other parties how a new petition would differ from the current petition, nor has an adequate explanation been offered as to why the CON cannot modify or withdraw its petition at this point. Since it is unknown what a revised petition would propose in terms of city boundaries and city services, we do not know if it would do anything to address the constitutional principles and broad public interest that the current petition violates. The current petition violates Article X, §1 of the Alaska Constitution which requires a minimum number of local government units and the prevention of duplicative taxing authorities. The petition does not provide the least amount of local government jurisdictions as it proposes to add a city with taxation powers that will do nothing more than what the borough already does. The broad public interest is also undermined by the petition because as Staff has observed the application is not in the state's best interest since the lack of services offered by the CON does nothing to relieve the state of the burden of providing a service, especially with regards to police protection. The public interest of borough residents is also undermined by the petition; at a minimum an industrial tax base that is not part of Nikiski proper that has supported a very large road service area comprising most of the borough will be diverted to a very small population and geographical area, namely the current North Region of the KBP Road Service Area.

**Conclusion**

There is no justification for accepting for filing or consideration the Request. There is no justification for granting the Request when CON can modify its petition and has received guidance from Staff in the PR of how to do so in order to present a more compliant application for incorporation as a home rule city.

RESPECTFULLY SUBMITTED this 30<sup>th</sup> day of August, 2017, at Soldotna, Alaska.

KENAI PENINSULA BOROUGH

  
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Mike Navarre  
Borough Mayor



LOCAL BOUNDARY COMMISSION

STATE OF ALASKA

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AFFIDAVIT OF SERVICE

STATE OF ALASKA )  
 ) ss.  
THIRD JUDICIAL DISTRICT )

I, Cynthia Balsler, upon oath, hereby state the following based upon my information and belief and not otherwise:

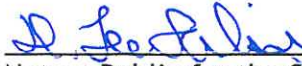
1. I am employed by the Kenai Peninsula Borough; and,

2. On the 30<sup>th</sup> day of August, 2017, I caused to be served a true and correct copy of the Kenai Peninsula Borough's Objection to Petitioners' Request to the LBC to Relax or Suspend Procedural Regulations Under 3 AAC 110.660 by US 1<sup>st</sup> Class Mail and Email on the following party(s):

Stacy Oliva, Petitioner's Representative  
Email: [info@nikiskiinc.org](mailto:info@nikiskiinc.org)  
PO Box 7925  
Nikiski, AK 99635

  
\_\_\_\_\_  
Cynthia Balsler

SUBSCRIBED AND SWORN to before me, the undersigned Notary Public for the State of Alaska on this 30<sup>th</sup> day of August, 2017, at Soldotna, Alaska.

  
\_\_\_\_\_  
Notary Public for the State of Alaska  
My commission expires: 9/27/19



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