

From: [Jim Brennan](#)
To: [James L. Baldwin](#); [Commission, Boundary \(CED sponsored\)](#); [Brooks Chandler](#); [Lea Filippi](#); [Macsalka, Mary Lynn \(LAW\)](#)
Cc: levyjan@gmail.com; Robert Heyano: ciugtaq@yahoo.com; cityofclarkspoint@gci.net; clp_villagecouncil@yahoo.com
Subject: Re: Ekuk letter to Chrm Crystal re reconsideration of consolidated Annexation petitions of Dillingham and Manokotak
Date: Thursday, January 19, 2017 4:13:03 PM

The City of Manokotak strongly objects to the Commission's consideration of today's letter from Jim Baldwin, counsel for Ekuk et.al., to the Commission. This letter was received by this office at 3 p.m. Thursday, after Manokotak had already filed its Responsive Brief due today.

As Mr. Baldwin was instructed during the Commission's January 10 meeting, the LBC's reconsideration regulation, at 3 AAC 110.580(f), does not authorize the party which itself requested reconsideration to file a "responsive brief" to its own request. Responsive briefs are to be filed by the other parties who are to be furnished with a first opportunity to file a full brief, in response to the full brief filed by Ekuk, et.al., in support of its request for reconsideration. The regulation could not be more clear, nor was there any ambiguity in the determination at the January 10 meeting that no further briefing by Ekuk was authorized. By filing a brief in the guise of a "letter", Mr. Baldwin is flouting the LBC's regulation and instruction.

The Ekuk parties have had their full opportunity to weigh in on Manokotak's annexation petition. The time at which their current arguments should have been raised was at the lengthy hearing conducted by the LBC Nov. 28-30; yet they did not then make these arguments.

Instead, they sought a second bite at the apple, in the form of their request for reconsideration, which was their right, though odd, considering the fact that they did not raise these arguments at hearing. However, they now seek a third bite, which is absolutely unauthorized by the regulations. Mr. Baldwin's letter is a combination of rehashed arguments from Ekuk's reconsideration request brief and new arguments, to which Manokotak will never have an opportunity to file a "responsive brief". All such arguments could have, but were not, raised by Mr. Baldwin or his client at the LBC's November hearing on the annexation petition, or in their request for reconsideration brief.

While time does not permit a full reply to Mr. Baldwin's brand new arguments, it should be noted that his reliance on Alaska Appellate Rule 506(a) to argue that the "failed to address" basis, under the Commission's own reconsideration regulation, includes "failure to correctly apply"

is misplaced. The Appellate Rule explicitly authorizes reconsideration where the court has "misapplied" a statute or principle, while the LBC's regulation does not, but only authorizes reconsideration where the Commission has fully "failed to address" a controlling principle of

law; see 3AAC 110.580 (e). This is a distinction with a difference; the words used (and not used) in a regulation matter.

The Commission should not consider this 11th hour filing of an unauthorized brief, and should not reverse a decision based upon extensive local testimony on the basis of an attorney's sleight of hand.

Jim Brennan, Attorney for the City of Manokotak

James T. Brennan

BRENNAN & HEIDEMAN
619 E. SHIP CREEK AVENUE, SUITE 310
ANCHORAGE, ALASKA 99501
Phone: (907) 279-5528
Facsimile: (907) 278-0877

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From: James L. Baldwin <redalderlaw@ak.net>
Sent: Thursday, January 19, 2017 2:56 PM
To: Commission, Boundary (CED sponsored); Brooks Chandler; Jim Brennan; Lea Filippi; marylynn.macsalka@alaska.gov
Cc: levyjan@gmail.com; Robert Heyano; ciugtaq@yahoo.com; cityofclarkspoint@gci.net; clp_villagecouncil@yahoo.com
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Brent or Eileen: Please find attached a letter to Chairman Crystal which we request be shared with members of the Local Boundary Commission. This letter contains comments regarding the procedures and issues relevant to the decisional meeting of the commission that has been scheduled for January 24, 2017. Thank-you.