



STATE OF ALASKA
DEPARTMENT OF
COMMERCE
COMMUNITY AND
ECONOMIC DEVELOPMENT

Division of Community & Regional Affairs

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Preliminary Report to the Local Boundary Commission

Regarding the Proposal
to Annex Approximately
.05 Square Miles of Territory to
the City of Fairbanks
by Legislative Review

August 2009



This is the Department of Commerce, Community, and Economic Development's Preliminary Report to the Local Boundary Commission on the proposal to annex territory to the City of Fairbanks. The report can also be found on the Internet at the following address:

http://www.commerce.state.ak.us/dca/lbc/fairbanks_2.htm

The report is preliminary in the sense that it is issued for public review and comment in accordance with 3 AAC 110.530(b), which also requires Commerce to issue a final report after considering written comments regarding the preliminary report.

Commerce complies with Title II of the Americans with Disabilities Act of 1990. Upon request, this report will be made available in large print or other accessible formats. Such requests should be directed to the Local Boundary Commission staff at 907-269-4580.

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Chapter 1 – Local Boundary Commission and Procedures

Local Boundary Commission

Constitutional Foundation of the Commission

The framers of the Alaska Constitution adopted the principle that, “unless a grave need existed, no agency, department, commission, or other body should be specified in the constitution.”¹ The framers recognized that a “grave need” existed when it came to establishing and altering municipal governments by providing for the creation of the Local Boundary Commission (LBC or commission) in article X, section 12 of the Alaska’s Constitution.² The LBC is one of only five state boards or commissions established in the constitution, among a current total of approximately 120 active boards and commissions.



Alaska Constitutional Convention in session, 1956.

The Alaska Supreme Court characterized the framers’ purpose in creating the LBC as follows:

An examination of the relevant minutes of [the Local Government Committee of the Constitutional Convention] shows clearly the concept that was in mind when the local boundary commission section was being considered: that local political decisions do not usually create proper boundaries and that boundaries should be established at the state level. The advantage of the method proposed, in the words of the committee: “. . . lies in placing the process at a level where area-wide or state-wide needs can be taken into account. By placing authority in this third party, arguments for and against boundary change can be analyzed objectively.”

Fairview Public Utility District No. 1 v. City of Anchorage, 368 P.2d 540, 543 (Alaska 1962).

1 Victor Fischer, *Alaska’s Constitutional Convention*, 1975, p. 124.

2 Article X, section 12 states, “A local boundary commission or board shall be established by law in the executive branch of the state government. The commission or board may consider any proposed local government boundary change. It may present proposed changes to the Legislature during the first ten days of any regular session. The change shall become effective forty-five days after presentation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house. The commission or board, subject to law, may establish procedures whereby boundaries may be adjusted by local action.”

Nature of the Commission

Boards and commissions frequently are classified as quasi-legislative, quasi-executive, or quasi-judicial, based on their functions within the separation of powers scheme of the Constitution. The LBC has attributes of all three.

Quasi-Executive

Article X, section 12 of the Alaska Constitution provides that the LBC, “*shall* be established by law in the executive branch of the state government.” (Emphasis added.) The duty of the LBC under AS 44.33.812(a)(1) to “make studies of local government boundary problems” is one example of the quasi-executive nature of the LBC.

Quasi-Legislative

In 1974, 1976, and again in 1993, the Alaska Supreme Court stated that the Constitution of the State of Alaska delegates legislative authority to the LBC to make fundamental public policy decisions, thus conferring quasi-legislative status upon the LBC. Specifically, the Court stated:

[T]he Local Boundary commission has been given a broad power to decide in the unique circumstances presented by each petition whether borough government is appropriate. *Necessarily, this is an exercise of delegated legislative authority to reach basic policy decisions.* [Emphasis added.] Accordingly, acceptance of the incorporation petition should be affirmed if we perceive in the record a reasonable basis of support for the commission’s reading of the standards and its evaluation of the evidence.

Mobil Oil Corp. v. Local Boundary Com’n, 518 P.2d 92, 98-99 (Alaska 1974) (emphasis added). See also *Moore v. State*, 553 P.2d 8, n. 20 at 36 (Alaska 1976); and *Valleys Borough Support v. Local Boundary Com’n*, 863 P.2d 232, 234 (Alaska 1993).

The LBC carries out under AS 44.33.812(a)(2) another quasi-legislative duty, when it adopts “regulations providing standards and procedures for municipal incorporation, annexation, detachment, merger, consolidation, reclassification, and dissolution. . . .” See *U.S. Smelting, Refining & Min. Co. v. Local Boundary Com’n*, 489 P.2d 140 (Alaska 1971), discussing application of due-process requirements to develop boundary change standards and procedures in commission proceedings.

Quasi-Judicial

Although it is part of the executive branch and exercises delegated legislative authority, the LBC also has a quasi-judicial nature. In particular, the LBC has a mandate to apply pre-established standards to facts, to hold hearings, and to follow due process in conducting hearings and ruling on petitions.

The quasi-judicial nature of the LBC requires that there be a reasonable basis of support for the LBC's reading of the standards and its evaluation of the evidence, even though the quasi-legislative nature of the LBC provides it with considerable discretion in the application of those standards and the weighing of evidence.

Duties and Functions of the LBC

The LBC acts on proposals for seven different municipal boundary changes. These are:

- incorporation of municipalities;³
- annexation to municipalities;
- merger of municipalities;
- consolidation of municipalities;
- detachment from municipalities;
- dissolution of municipalities; and
- reclassification of city governments.



Local Boundary Commission listening to public testimony during a boundary change hearing.

In addition to the above, the LBC has a continuing statutory obligation to:

- make studies of local government boundary problems; and
- adopt regulations providing standards and procedures for municipal incorporation, annexation, detachment, merger, consolidation, reclassification, and dissolution.

The LBC may make recommendations to the legislature concerning boundary changes under article X, section 12 of Alaska's constitution.

3 The term "municipalities" includes both city governments and borough governments.

LBC Decisions Must Have a Reasonable Basis and Must Be Arrived at Properly

LBC decisions regarding petitions that come before it must have a reasonable basis. That is, both the LBC's interpretation of the applicable legal standards and its evaluation of the evidence in the proceeding must have a rational foundation.⁴ The LBC must, of course, proceed within its jurisdiction; conduct a fair hearing; and avoid any prejudicial abuse of discretion. Abuse of discretion occurs if the LBC has not proceeded in the manner required by law or if its decision is not supported by the evidence.

Limitations on Direct Communications with the LBC

When the LBC acts on a petition for a municipal boundary change, it does so in a quasi-judicial capacity. LBC proceedings regarding a municipal boundary change must be conducted in a manner that upholds the right of everyone to due process and equal protection. Ensuring that communications with the LBC concerning municipal boundary proposals are conducted openly and publicly preserves those rights. To regulate communications, the LBC adopted 3 AAC 110.500(b) which expressly prohibits private (*ex parte*) contact between the LBC and any individual, other than its staff, except during a public meeting called to address a municipal boundary proposal. The limitation takes effect upon the filing of a petition and remains in place through the last date available for the commission to reconsider a decision. If a decision of the LBC is appealed to the court, the limitation on *ex parte* contact is extended throughout the appeal in the event the court requires additional consideration by the LBC.

In that regard, all communications with the commission must be submitted through staff to the commission. The LBC staff may be contacted at the following address, telephone number, facsimile number, or e-mail address:

4 See *Keane v. Local Boundary Commission*, 893 P.2d 1239, 1241 (Alaska 1995). When an administrative decision involves expertise regarding either complex subject matter or fundamental policy formulation, the court defers to the decision if it has a reasonable basis; *Lake and Peninsula Borough v. Local Boundary Commission*, 885 P.2d 1059, 1062 (Alaska 1994); *Mobil Oil Corp. v. Local Boundary Commission*, 518 P.2d 92, 97-9 (Alaska 1974). Where an agency action involves formulation of a fundamental policy the appropriate standard on review is whether the agency action has a reasonable basis; LBC exercises delegated legislative authority to reach basic policy decisions; acceptance of the incorporation petition should be affirmed if the court perceives in the record a reasonable basis of support for the LBC's reading of the standards and its evaluation of the evidence; *Rose v. Commercial Fisheries Entry Comm'n*, 647 P.2d 154, 161 (Alaska 1982) (review of agency's exercise of its discretionary authority is made under the reasonable basis standard) cited in *Stosh's I/M v. Fairbanks North Star Borough*, 12 P.3d 1180, 1183, nn. 7 and 8 (Alaska 2000); see also *Matanuska-Susitna Borough v. Hammond*, 726 P.2d 166, 175-76 (Alaska 1986).

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LBC Membership

The LBC is an autonomous commission. The governor appoints LBC members for five-year overlapping terms (AS 44.33.810). Notwithstanding the prescribed length of their terms, however, LBC members serve at the governor's pleasure (AS 39.05.060(d)).

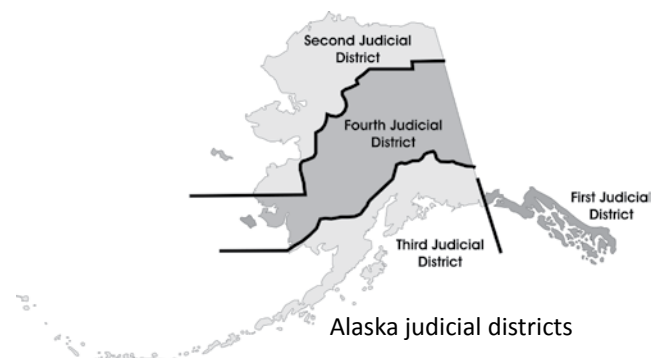
The LBC comprises five members. One member is appointed from each of Alaska's four judicial districts. The fifth member is appointed from the state at-large and serves as chair of the LBC.

State law provides that LBC members must be appointed "on the basis of interest in public affairs, good judgment, knowledge and ability in the field of action of the department for which appointed, and with a view to providing diversity of interest and points of view in the membership." (AS 39.05.060(b)).

LBC members receive no pay for their service. They are entitled, however, to reimbursement of travel expenses and per diem authorized for members of boards and commissions under AS 39.20.180.

The following is a biographical summary of the current LBC members.

Chairperson. The Chair position is presently vacant awaiting appointment by the Governor. Commissioner Harcharek, the commission's Vice Chair and Second Judicial District representative, is currently acting as Chair.



First Judicial District, Southeast Alaska. The seat for the First Judicial is currently vacant awaiting appointment by the Governor.



Robert "Bob" Harcharek, Vice-Chair, Second Judicial District, Barrow.

Commissioner Harcharek was appointed to the LBC on July 18, 2002 by then Governor Knowles. Governor Murkowski reappointed him to the LBC on March 24, 2004. In April 2007, his fellow commissioners elected him Vice Chair of the commission. On March 9, 2009, he was reappointed to the commission by Governor Palin. Dr. Harcharek has lived and worked on the North Slope for more than 30 years. He earned a Ph.D. in International and Development Education from the University of Pittsburgh in 1977. He served as a member of the Barrow City Council for fifteen years since 1993 and is currently Mayor and Chief Administrative Officer for the City of Barrow. Dr. Harcharek recently retired from the North Slope Borough as the Community and Capital Improvement Projects (CIP) Planner for the Department of Public Works. In his twenty-four years of employment with the North Slope Borough, Dr. Harcharek has served as North Slope Borough Senior Planner and Social Science Researcher, CIP and Economic Development Planner, Community Affairs Coordinator for the North Slope Borough Department of Public Safety, Director of the North Slope Higher Education Center (now known as Ilisagvik College), and Socio-cultural Scientist for the North Slope Borough Department of Wildlife Management. Prior to that, he served as Director of Technical Assistance for Upkeagvik Inupiat Corporation, and Dean of the Inupiat University of the Arctic. Commissioner Harcharek served for three years as a Peace Corps volunteer in Thailand and was also a Fulbright-Hays Professor of Multicultural Development in Thailand. He has served as a member of numerous boards of directors, including the North Slope Borough Board of Education, the Alaska Association of School Boards, the Alaska School Activities Association and the Northern Justice Society.



Lynn Chrystal, Third Judicial District, Valdez. Governor Palin appointed Lynn Chrystal to the Local Boundary Commission as the member from the Third Judicial District, effective March 27, 2007. Mr. Chrystal is a former mayor and member of the City Council of the City of Valdez. He has lived in Valdez for the past 32 years. Mr. Chrystal retired in 2002 from the federal government after four years in the Air Force and 36 years with the National Weather Service. He has worked in Tin City, Barrow, Yakutat, and Valdez.

He has served on the boards of several civic groups and other organizations including the Resource Development Council, Pioneers of Alaska, and Copper Valley Electric Cooperative. Commissioner Chrystal is retired but teaches on a substitute basis at Valdez schools. His current term on the LBC ends January 31, 2012.



Lavell Wilson, Fourth Judicial District. Lavell Wilson, a Tok resident, serves the Fourth Judicial District. Governor Palin appointed him to the commission on June 4, 2007. Commissioner Wilson is a former member of the Alaska House of Representatives, serving the area outside of the Fairbanks North Star Borough in the Eighth State Legislature. He moved to Alaska in 1949 and has lived in the Northway/Tok area since. Commissioner Wilson attended the University of Alaska Fairbanks and Brigham Young University. Commissioner

Wilson worked as a licensed aircraft mechanic, commercial pilot, and flight instructor for 40 Mile Air from 1981-1995, retiring as the company's chief pilot and office manager. Mr. Wilson became a licensed big game guide in 1963. He has also worked as a surveyor, teamster, and construction laborer, retiring from the Operating Engineer's Local 302 in Fairbanks. As a member of Local 302, he worked for 12 years on the U.S. Air Force's White Alice system, the ballistic missile defense site at Clear, and the radar site at Cape Newenham. He has also taught a course at the University of Alaska for the past few years on the history of the Upper Tanana Valley. His current term on the LBC ends January 31, 2010.

Commissioner Wilson is recused from this proceeding.

Constitutional Origin of the Local Government Agency

Alaska's constitutional framers provided for only one agency or department – the local government agency mandated by article X, section 14 to advise and assist local governments.⁵ The duty to serve as the constitutional local government agency is presently delegated to commerce.⁶ The constitutional standing granted to the LBC and the local government agency reflects the framers' strong conviction that successful implementation of the local government principles laid out in the Constitution depended, in large part, upon those two entities.

The framers recognized that deviating from the constitutional framework for local government would significantly and detrimentally impact the constitutional policy of maximum local self-government. They recognized that failing to properly implement the constitutional principles would result in disorder and inefficiency in local service delivery.

Statutory Authority

The Local Boundary Commission derives its authority from AS 29.06.040. Pursuant to 29.06.040(a) "the Local Boundary Commission may consider any proposed municipal boundary change." AS 29.06.040(a) reads further "the commission may amend the proposed change

⁵ Article X, section 14 states, "An agency shall be established by law in the executive branch of the state government to advise and assist local governments. It shall review their activities, collect and publish local government information, and perform other duties prescribed by law."

and may impose conditions on the proposed change. If the commission determines that the proposed change, as amended or conditioned if appropriate, meets the applicable standards under the state constitution and commission regulations and is in the best interests of the state, it may accept the proposed change. Otherwise it shall reject the proposed change. A Local Boundary Commission decision under this subsection may be appealed under AS 44.62.”

The petition submitted by the city of Fairbanks is to annex approximately 0.05 square miles of two territories (the enclave lots and Fred Meyer) by legislative review. AS 29.06.040(a) gives the commission the authority to consider this petition. AS 29.06.040(b) gives the Local Boundary Commission the ability to submit an approved municipal boundary change proposal to the legislature during the first 10 days of a regular session. This statute allows for municipal boundary changes to be approved by legislative review rather than by local action. According to AS 29.06.040(b) “the change becomes effective 45 days after presentation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house. “

Commerce Serves as Staff to the LBC

The Alaska Department of Commerce, Community, and Economic Development (Commerce), Division of Community and Regional Affairs (DCRA) carries out the duty to advise and assist local governments. DCRA staff also serves as staff to the LBC pursuant to AS 44.33.020(a)(4).

Commerce is required by 3 AAC 110.530⁶ to investigate and analyze each boundary-change proposal and to make recommendations regarding such to the LBC. As previously noted, LBC decisions must have a reasonable basis (i.e., a proper interpretation of the applicable legal standards and a rational application of those standards to the evidence in the proceeding). Accordingly, Commerce adopts the same standard for itself in developing recommendations regarding matters pending before the LBC. That is, the LBC staff is committed to developing its recommendations to the LBC based on a proper interpretation of the applicable legal standards and rationally applying those standards to the evidence in the proceeding. The LBC staff takes the view that due process is best served by providing the LBC with a thorough, credible, and objective analysis of every municipal boundary proposal.

Commerce’s commissioner, deputy commissioner, and the DCRA director provide policy direction concerning recommendations to the LBC.

6 Also see AS 29.04.040, AS 29.05.080, AS 29.06.110; and AS 29.06.480 - 29.06.490.

The recommendations of the LBC staff are not binding on the LBC. The LBC is an autonomous commission. While the commission is not obligated to follow the recommendations of the LBC staff, it has, nonetheless, historically considered Commerce's analyses and recommendations to be critical components of the evidence in municipal boundary proceedings. Of course, the LBC considers the entire record when it renders a decision.

The LBC staff also delivers technical assistance to municipalities; residents of areas impacted by existing or potential petitions for creating or altering municipal governments; petitioners; respondents; agencies; and others.

Types of assistance provided by the LBC staff include:

- conducting feasibility and policy analysis of proposals for incorporation or alteration of municipalities;
- responding to legislative and other governmental inquiries relating to issues on municipal government;
- conducting informational meetings;
- providing technical support during commission hearings and other meetings;
- drafting LBC decisional statements;
- implementing LBC decisions;
- certifying municipal boundary changes;
- maintaining incorporation and boundary records for each of Alaska's municipal governments;
- coordinating, scheduling, and overseeing public meetings and hearings for the LBC;
- developing orientation materials and providing training for new LBC members;
- maintaining and preserving LBC records in accordance with Alaska's public records laws; and
- developing and updating forms and related materials for use in municipal incorporation or alteration.

Commission Procedures

Procedures for establishing and altering municipal boundaries and for reclassifying cities are designed to secure the reasonable, timely, and inexpensive determination of every proposal to come before the commission. The procedures are also intended to ensure that decisions of the commission are based on analysis of the facts and the applicable legal standards, with due consideration of the positions of interested parties. The procedures include extensive public notice and opportunity to comment, thorough study, public informational meetings, public hearings, a decisional meeting of the commission, and opportunity for reconsideration by the commission. A summary of the procedures follows.

Preparing and Filing a Petition

The LBC staff offers technical assistance, sample materials, and petition forms to prospective petitioners. The technical assistance may include feasibility and policy analysis of prospective proposals. LBC staff routinely advises petitioners to submit petitions in draft form in order that potential technical deficiencies relating to petition form and content may be identified and corrected prior to circulating the petition for voter signatures or formal adoption by a municipal government sponsor.

Once a formal petition is prepared, it is submitted to LBC staff for technical review. If the petition contains all the information required by law, the LBC staff accepts the petition for filing.

Public Notice and Public Review

Once a petition is accepted for filing, extensive public notice is given. Interested parties are given at least seven weeks to submit responsive briefs and comments supporting or opposing a petition. The petitioner is provided at least two weeks to file one brief in reply to responsive briefs.

Analysis

Following the public comment period, the LBC staff analyzes the petition, responsive briefs, written comments, the reply brief, and other materials as part of its investigation. The petitioner and the LBC staff may conduct informational meetings. At the conclusion of its investigation, the LBC staff issues a preliminary report for public review and comment. The report includes a formal recommendation to the LBC for action on the petition.

The preliminary report is typically circulated for public review and comment for a minimum of four weeks. After reviewing the comments on its report, the LBC staff issues its final report. The final report typically discusses comments received on the preliminary report and notes any changes to the LBC staff's recommendations to the commission. The final report must be issued at least three weeks prior to the commission's public hearing on the proposal.

Commission Review of Materials and Public Hearings

Members of the LBC review the petition, responsive briefs, written comments, reply briefs, and the LBC staff reports. If circumstances permit, LBC members also tour the area at issue prior to the hearing in order to better understand the area. Following extensive public notice, the LBC conducts at least one hearing in or near the affected area or territory. The commission must act on the petition within ninety days of its final public hearing.

The LBC may take any one of the following actions:

- approve the petition as presented;
- amend the petition (e.g., expand or contract the proposed boundaries);
- impose conditions on approval of the petition (e.g., voter approval of a proposition authorizing the levy of taxes to ensure financial viability); or
- deny the petition.

While the law allows the commission ninety days following its last hearing on a petition to reach a decision, the LBC typically renders its decision within a few days of the hearing. Within thirty days of announcing its decision, the LBC must adopt a written statement setting out the basis for its decision. Copies of the decisional statement are provided to the petitioner, respondents, and others who request it. At that point, the decision becomes final but is subject to reconsideration. Any party may ask the LBC to reconsider its decision. Such requests must be filed within 18 days of the date that the decision becomes final. If the LBC does not approve a request for reconsideration within thirty days of the date that the decision became final, the reconsideration request is automatically denied.

Implementation

If the LBC approves a petition, the proposal is typically subject to approval by voters or the legislature. A petition that has been granted by the commission takes effect upon the satisfaction of any stipulations imposed by the commission. The action must also receive favorable review under the federal Voting Rights Act of 1965. The LBC staff provides assistance with Voting Rights Act of 1965 matters.

Legal Standards for Annexation to Cities

The criteria to be used by the commission to evaluate the City of Fairbanks' annexation proposal are set out in 3 AAC 110.090 - 3 AAC 110.140, and 3 AAC 110.900 to 3 AAC 110.982. A summary of the criteria follows:

1. There must be a reasonable need for city government in the territory proposed for annexation.
2. The territory may not be annexed if essential city services can be provided more efficiently and more effectively by another existing city, by an organized borough, or through a borough service area.
3. The territory must be compatible in character with the annexing city.
4. There must be sufficient human and financial resources in the proposed city boundaries (area within existing city, plus territory proposed for annexation) to provide essential city services on an efficient, cost effective level.
5. The population within the proposed city boundaries must be sufficiently large and stable to support the extension of city government.
6. The proposed city boundaries must be on scale suitable for city government and may include all land and water necessary to provide the full development of essential city services on an efficient, cost-effective level.
7. Absent a specific and persuasive showing to the contrary, the Local Boundary Commission will, presume that territory that is not contiguous to the annexing city or would create enclaves in the existing city, does not meet the minimal standards required for annexation.
8. The proposed boundaries of the city must include only that area comprising an existing local community, plus reasonably predictable growth, development, and public safety needs during the 10 years following annexation.
9. The proposed boundaries of the city must not include entire geographical regions or large unpopulated areas, except when boundaries are justified by the applying the annexation standards.
10. If a petition for annexation describes boundaries overlapping the boundaries of an existing organized borough, the annexation petition must also address and comply with the standards and procedures for either annexation of the enlarged city to the existing organized borough, or detachment of the enlarged city from the existing organized borough. If the annexation petition describes boundaries overlapping another existing

city's boundaries, the petition must address and comply with the standards and procedures for detachment of territory from a city, merger of cities, or consolidation of cities.

11. The petition for annexation is in the best interests of the state under AS 29.06.040(a).
12. Annexation under provisions of 3 AAC 110.140 requires that the territory to be annexed by legislative review must meet at least one of several specified criteria. Contiguous to the existing boundaries of the city to which annexation is proposed and that the boundary change include petitions from all registered voters and property owners within the territory proposed for annexation.
13. A petition for annexation must include a practical plan:
 - ▶ demonstrating the annexing municipality's intent and capability to extend municipal services to the territory proposed for annexation in the shortest practicable time after the effective date of the proposed boundary change;
 - ▶ providing for the assumption of all relevant and appropriate powers, duties rights and functions exercised by an existing borough, city, service area or other entity located in the territory proposed for change;
 - ▶ providing for transfer and integration of all relevant and appropriate assets and liabilities of an existing borough, city, service area or other entity located in the territory proposed for change.
 - ▶ must state the names and titles of all officials of each existing borough, city, and unorganized borough service area that were consulted by the petitioner. The dates on which that consultation occurred and the subject addressed during that consultation must also be listed. (3 AAC 110.900.)
14. The petition must include a statement of nondiscrimination. (3 AAC 110.910).
15. If a provision of this chapter calls for the identification of essential municipal services for a borough, the commission will determine those services to consist of those mandatory and discretionary powers and facilities that are reasonably necessary to the area and promote maximum local self-government. (3 AAC 110.970(a))
16. The commission may determine what the essential municipal services for a borough or a city are. (3 AAC 110.970(b)(c))
17. In determining whether a proposed boundary change promotes maximum local self-government under art. X, sec. 1, Constitution of the State of Alaska, the commission will consider for city incorporation or annexation in an organized borough, whether the

proposal would extend local government to territory or population of the organized borough where local government needs cannot be met by the borough on an areawide or non areawide basis, by annexation to an existing city, or through an existing borough service area. (3 AAC 110.981)

18. Among the factors to be considered in determining whether a proposed boundary change promotes a minimum number of local government units in accordance with art. X, sec. 1, Constitution of the State of Alaska, the commission will consider for city annexation, whether the jurisdictional boundaries of an existing city are being enlarged rather than promoting the incorporation of a new city or creation of a new borough service area. (3 AAC 110.982(7))
19. The commission cannot approve annexation if the effect of the change would be to deny any person the enjoyment of any civil or political right, including voting rights, because of race, color, creed, sex, or national origin. (3 AAC 110.910)
20. The commission is also guided by principles set forth in Article X of the Constitution of the State of Alaska in judging the merits of annexation proposals.

Chapter 2 – Proceedings to Date

Petitioners Pre-Petition Public Hearing

On November 21, 2008, the City of Fairbanks conducted a duly-noticed public informational meeting, as required by 3 AAC 110.425.

At the hearing, oral comments regarding the proposed annexation were provided by 17 individuals. A copy of the minutes of the meeting is included with this report as Appendix B.

Submission and Review of Petition

The Petition was submitted to LBC staff on December 10, 2008 and accepted for filing on January 26, 2009.

Public Notice

Notice was published in the *Fairbanks Daily News-Miner* on February 2, 2009, February 9, 2009, and February 16, 2009.

On February 27, 2009, a public service announcement was sent to the following radio stations for broadcast for 14 days:

- KUAC-FM
- KAKQ
- KFBX
- KIAK
- KKED
- KSUA
- KFAR
- KWLF
- KTDZ
- KXLR
- KCBF

On March 6, 2009, a shortened version of the public service announcement was provided to the above radio stations for broadcast over the next 14 days.

Service of Petition

On February 20, 2009, the Fairbanks North Star Borough and the City of North Pole were served via United States Postal Service, complete copies of the petition.

Posting of Notice

On February 2, 2009 notice was posted at the following locations within the area proposed for annexation:

- on Riverside Drive, just north of Ping's Laundry;

- at the intersection of Park Drive and Airport Frontage Road;
- at the north end of Park Drive, just south of the Park Drive and Kiska intersection;
- on the light pole at the northeastern entrance/exit to Fred Meyer subdivision;
- on the utility pole at northwest corner of Fred Meyer subdivision, intersection with Old Airport Way; and
- on the utility pole at southeastern entrance/exit to Fred Meyer subdivision.

On February 2, 2009, notice of the filing of the Petition was also posted within the existing boundaries of the City:

- Clerk's Office, City of Fairbanks City Hall, 800 Cushman Street, Fairbanks;
- Noel Wien Library Lobby, 1215 Cowles Street, Fairbanks;
- Clerk's Office, Fairbanks North Star Borough Administrative Office Building, 809 Pioneer Road, Fairbanks;
- United States Post Office, 315 Barnette Street, Fairbanks; and
- Rabinowitz State Court House, 101 Lacey Street, Fairbanks.

Deposit of Petition

On July 23, 2008, the City of Fairbanks provided a copy of the City's prospective petition in notebooks at the following locations:

- Clerk's Office, City of Fairbanks City Hall, 800 Cushman Street, Fairbanks;
- Noel Wien Library Lobby, 1215 Cowles Street, Fairbanks; and
- Clerk's Office, Fairbanks North Star Borough Administrative Office Building, 809 Pioneer Road, Fairbanks;

On February 27, 2009, the City updated those notebooks to include submitted petition, public notice, and copies of the laws establishing standards and procedures for city annexation.

Deadline for Initial Comments and Responsive Briefs

The notice of filing invited written public comment concerning the proposed annexation by April 17, 2009. The Fairbanks North Star Borough submitted a timely received responsive brief on April 17, 2009 before 4:30 p.m. via an internet link.

Comments and the responsive brief were submitted to Commerce by the parties listed in Table 2-1.

Table 2-1: Timely Received Public Comment and Responsive Briefs		
Name	Date Received*	Position Regarding Annexation Petition
Paul and Neva Renschen	02-05-2009	Fred Meyers Parcel: Opposed Enclaves: Support
Robert Grove	02-08-2009	Opposed
John Havard	02-10-2009	Opposed
Bartholomew Roberts	02-19-2009	Support
Micheline Patterson	02-27-2009	Neutral
Jerry Cleworth	03-11-2009	Fred Meyers: Oppose Enclaves: Support
Harry L. Davis	03-18-2009	Support
Craig Compeau	03-31-2009	Oppose
Carter Crawford	03-31-2009	Oppose
William Shechter	04-02-2009	Oppose
Bill Zorb	04-07-2009	Oppose
Kathy Zorb	04-07-2009	Oppose
Brenda Hewitt	04-10-2009	Support
Shawnee Dunham	04-14-2009	Support
Vicki Biondi Ferree	04-14-2009	Support
Steve Ferree	04-14-2009	Support
Sean White	04-14-2009	Support
Steve Thompson	04-14-2009	Support
Charles Bettisworth	04-16-2009	Support
Janette L. Hanneman, et. al.	04-16-2009	Fred Meyer: Oppose Enclave: Neutral
Dominic Lozano	04-12-2009	Support
Emily E. Bratcher	04-17-2009	Support
Gary Wilken	04-17-2009	Support
Fairbanks North Star Borough Responsive Brief	04-17-2009	Opposition
* Because of differing dates of received comments by the same submitters, the date staff first received comments is listed (see 3 AAC 110.480(d) and 3 AAC 110.700).		

A few technical errors have occurred which the staff would like to bring attention to. Firstly, when notice for public comment went out it should have told all potential commenters that if he or she filed electronically, which most of them did, he or she would also need to follow up with an original. Upon realizing the omission, staff contacted each commenter to inform him or her of the error and request that he or she file an original as well to comply the regulation. All but four did. The four comments that did not have an original filed are not in compliance with the statute. Lastly, according to statute the reply brief must be accompanied by an affidavit of service at the time the reply brief was timely filed. The reply brief was filed on time; however, the affidavit of service was submitted later which did not comply with the regulation.

To ensure the fairness of the process and to allow every commenter the opportunity to have his or her comments addressed, staff requested that the LBC relax the relevant regulations to allow in the four comments that were submitted on time (but without an original on file) and the reply brief. This request was part of an item on the agenda for the June 2, 2009 LBC public meeting titled "Relax procedural regulations to allow emailed comments and reply brief affidavits to be considered." Both the Fairbanks North Star Borough and the City of Fairbanks were notified and attended the meeting telephonically. Staff and the LBC did not know the four commenters' identity or position on the proposed annexations when the LBC considered the relaxation of the regulations. Staff felt it was in the interest of justice to allow all comments to be considered regardless of its position.

Both the borough and the city had an opportunity to provide comment or objection before the commission voted on the issue. The borough stated it did not object to relaxing the regulations. The city chose not to comment on the issue at that time. After lengthy discussion, the LBC took the following actions: (1) relaxed 3 AAC 110.480(d) requiring staff to include in the notice for public comment that any comments filed electronically would need to be followed up by an original to be considered; (2) relaxed 3 AAC 110.490 which required that the reply brief be accompanied by an affidavit of service at the time the reply brief was timely filed, and (3) relaxed 3 AAC 110.700(d) which required any comment regarding the petition filed electronically to be followed by an original document. Relaxation was approved by three votes yes to one vote no. This allowed comments made by Craig Compeau, Shawnee Dunham, John Havard, and Bartholomew Roberts to be considered by the staff and the LBC, as well as the reply brief.

Petitioner's Reply Brief Filed

On May 11, 2009, the City of Fairbanks filed a 139-page Reply Brief.

Deadline for Comments on Preliminary Report

The deadline for receipt of written comments concerning this report and recommendation by LBC staff is 4:30 p.m., September 16, 2009. Under 3 AAC 110.700(d), “[t]he original of a document served by electronic mail or facsimile transmission must be submitted to the commission within 10 days after the submission of the filing by either electronic method.” Submit comments to:

LBC Staff
550 West Seventh Avenue, Suite 1770
Anchorage, Alaska 99501-3510
Fax: 907-269-4539
E-Mail: LBC@alaska.gov


Final Report

After receipt of written comments regarding Commerce’s Preliminary Report, a final report regarding the Fairbanks annexation proposal will be issued at least 21 days prior to the LBC’s public hearing.

LBC Public Hearing

The location of the Local Boundary Commission’s hearing on the Fairbanks annexation proposal has not yet been determined. It is anticipated that the hearing and decisional meeting will be held Nov. 9th & 10th, 2009.

Formal notice of the date, time, and place of the hearing will be published as a display ad no less than two columns by three inches in one or more newspapers of local circulation. The initial



State of Alaska
Local Boundary Commission
 550 West Seventh Avenue, Suite 1770 • Anchorage, Alaska 99501
 Telephone: 907-269-4501 • Fax 907-269-4539

SAMPLE AGENDA

**PUBLIC HEARING
 REGARDING CITY OF FAIRBANKS
 ANNEXATION PROPOSAL**

- I. Call to order
- II. Introduction of LBC members, LBC Staff, and those attending by teleconference
- III. Roll call and determination of quorum
- IV. Approval of agenda
- V. Comments by members of the Local Boundary Commission
- VI. Comments by members of the public concerning matters that are neither on the agenda nor pending before the Commission
- VII. Public hearing regarding the Petition by the City of Fairbanks to Annex Territory
 - A. Summary and presentation by LBC Staff of its conclusions and recommendations;
 - B. Opening statement by the petitioner, not to exceed 10 minutes;
 - C. Opening statement by each respondent, not to exceed 10 minutes;
 - D. Sworn testimony of witnesses called by the petitioner;
 - E. Sworn testimony of witnesses called by each respondent;
 - F. Sworn responsive testimony of witnesses called by the petitioner;
 - G. Period of public comment by interested persons, not to exceed three minutes for each person;
 - H. Closing statement by the petitioner, not to exceed 10 minutes;
 - I. Closing statement by each respondent, not to exceed 10 minutes each; and
 - J. Reply by the petitioner, not to exceed five minutes.
- VIII. Comments from Commissioners and staff
- VIII. Adjournment

Sample LBC Hearing Agenda.

publication of the notice will occur at least thirty days prior to the hearing. Public notice of the hearing will also be posted in prominent locations throughout the community. Additionally, notice will be mailed to the Petitioner and each of the Respondents. (3 AAC 110.550)

The hearing will begin with a summary by Commerce staff of its conclusions and recommendations concerning the pending proposal.

Following Commerce's summary, the law allows the Petitioner to make an opening statement limited to ten minutes duration.

Following its opening statement, the Petitioner may present formal sworn testimony by individuals with expertise in matters relevant to the pending annexation proposal. The testimony must relate to whether the pending annexation proposal meets the legal standards for annexation and whether the Petition should be granted.

No time limit on testimony by the Petitioner is established in law. However, the LBC chair will regulate the time and content of testimony to exclude irrelevant or repetitious testimony.



Public audience at a Local Boundary Commission hearing.

Following the testimony by the Petitioner, Respondents will be allowed to make opening statements and present formal sworn testimony by individuals with expertise in matters relevant to the pending annexation proposal. As is required for the Petitioner, the testimony of witnesses for the Respondents must relate to whether the pending annexation proposal meets the legal standards for annexation and whether the Petition should be granted.

Here again, no time limit on testimony by the Respondents is established in law. However, the LBC chair will regulate the time and content of testimony to exclude irrelevant or repetitious testimony.

Because the Petitioner bears the burden of proving that its Petition meets the standards and should be approved, the Petitioner has the opportunity to provide sworn responsive testimony to refute testimony of the Respondents. Rebuttal witnesses of the Petitioner must have expertise in matters relevant to the proposed annexation about which they intend to testify.

The laws governing the Commission's hearing make no provision for cross examination of witnesses by the Petitioner or Respondents. A Commission member may, however, question any person appearing as a sworn witness. The Commission may also call additional witnesses.

At the conclusion of the testimony phase of the hearing, the Commission will receive public comment from any interested person, not to exceed three minutes per person. A member of the Commission may question persons providing public comment.

Following the period of public comment, the Petitioner is allowed to make a closing statement not to exceed 10 minutes. Next, the Respondents are allowed to make a closing statement not to exceed 10 minutes for each respondent.

Because the Petitioner bears the burden of demonstrating that its Petition should be granted, the City is allowed to reply to the closing statements of the Respondents. The reply is limited to five minutes.

No brief or other written materials may be filed at the time of the public hearing unless the Commission determines that good cause exists for such materials not being presented in a timely manner for consideration by Commerce and others.

In compliance with Title II of the Americans with Disabilities Act of 1990, Commerce will make available reasonable auxiliary aids, services, and/or special modifications to individuals with disabilities who need such accommodations to participate at the hearing on this matter. Persons needing such accommodations should contact Commerce's staff to the Commission at 269-4559 at least one week prior to the hearing.

If anyone attending the hearing does not have a fluent understanding of English, the Commission will allow time for translation. Unless other arrangements are made before the hearing, the individual requiring assistance must arrange for a translator.

LBC Decisional Meeting

The LBC must render a decision within ninety days of the hearing (3 AAC 110.570). If the Commission determines that it has sufficient information to properly judge the merits of the annexation proposal following the hearing, the LBC is likely to convene a decisional session shortly after the conclusion of the hearing. During the decisional session, no new evidence, testimony, or briefing may be submitted. Commission members, however may ask their staff or another person for a point of information or clarification.

Within thirty days after the Commission renders its decision, it must adopt a written statement explaining all major considerations leading to its decision concerning the City of Fairbanks's annexation petition. A copy of the statement will be provided to the Petitioner, Respondents, and any others who request a copy.

Reconsideration

Any interested person or organization may ask the Commission to reconsider its decision in this matter. A request for reconsideration may be filed within 18 days after the written decisional statement has been mailed to the Petitioner and Respondents.

A reconsideration request must describe in detail the facts and analyses that support the request for reconsideration. Typically, the LBC will reconsider a decision only if:

- there was a substantial procedural error in the original proceeding;
- the original vote was based on fraud or misrepresentation; or
- new evidence not available at the time of the hearing relating to a matter of significant public policy has become known.

If the Commission takes no action on a request for reconsideration within thirty days after the decisional statement was mailed to the Petitioner, the request is automatically denied. If the Commission grants a request for reconsideration, the Petitioner may file a responsive brief for consideration by the Commission. Ten days are allotted for the filing of such briefs.

Federal Voting Rights Act Preclearance

If the Commission approves the Petition for annexation, the boundary change will be subjected to review by the U.S. Department of Justice under the federal Voting Rights Act of 1965.

Federal law (43 U.S.C. 1973) subjects municipal annexations in Alaska to review under the federal Voting Rights Act of 1965. The act forbids any change to municipal jurisdiction that has the purpose or effect of denying or abridging minority voting rights.

The municipality proposing annexation is responsible for initiating the necessary review of the annexation proposal by the U.S. Justice Department or the U.S. District Court for the District of Columbia. The review may be initiated once the opportunity for the LBC to reconsider its decision has expired under 3 AAC 110.580. A request for review prior to such time would be considered premature (see 28 CFR § 51.22). Annexation will not take effect until the City provides Commerce with evidence that the Justice Department or the U.S. District Court has favorably reviewed the annexation proposal (see 3 AAC 110.630). Commission staff are available to assist cities in meeting their obligations under the Voting Rights Act of 1965.

Judicial Appeal

A decision of the LBC may be appealed to Alaska Superior Court. The appeal must be made within thirty days after the last day on which the Commission may order reconsideration. (Alaska Rules of Appellate Procedure, Rule 601 et seq.)

Legislative Approval or Denial

The Alaska Legislature will review the proposed annexation if the City's Petition is granted in whole or in part by the LBC. If the Petition is approved (with or without amendments and/or conditions), the LBC will file a recommendation for the annexation with the next regular session of the Alaska Legislature under the terms of Article X, § 12 of the Constitution of the State of Alaska. The Legislature will then have forty five days to consider the recommendation. If the Legislature takes no action within the forty five day review period, the recommendation is automatically approved. If the Senate and House of Representatives adopt a joint resolution rejecting the recommendation, the annexation is denied.

If the legislature does not deny the Commission's recommendation, the boundary change will take effect on the date that the City provides the LBC staff with documentation that the annexation has successfully passed the requisite federal Voting Rights Act of 1965 review. After such documentation is received by Commerce, a certificate of boundaries for the City reflecting the annexation will be issued.

Chapter 3 - Introduction

For each sub chapter for standards for annexation to cities (e.g. 3 AAC 110.090 – 3 AAC 110.140) the regulatory standard will be stated. Next, the city's position, the borough's position, and the comments will be addressed. The city's position will be prefaced by "City," the borough's by "Borough," and the comments by "Comments" (followed by the commenter's name). Anything within the "City," "Borough," or "Comments" sections will be the Local Boundary Commission (hereafter "LBC" or "commission") staff's summary of the city's, borough's or commenter's position, as the staff understands it. It is intended not as factual statements, but as a paraphrasing or quoting of that entity's position.

Please note that there are often factors mentioned in the pertinent regulations which the LBC **may** [emphasis added] consider. The commission is not required to address all of those factors, and it may consider others as allowed by 3 AAC 110.435(c). For consistency, however, and because both the petitioner and the respondent address their positions in that manner, we do so in numerical order of the regulations' sub chapters.

The city's petition, the borough's responsive brief, and the city's reply brief have been read, reviewed, and considered by the LBC staff in writing this preliminary report. In its responsive brief, the borough does not address every regulatory sub chapter that the city does. Notwithstanding, LBC staff addresses each sub chapter's factors, whether a party addressed it or not.

All of the comments are attached in Appendix A. All of the comments have been read, reviewed, and considered by LBC staff in writing this report. A list of the comments and whether they oppose annexing the enclave lots or the Fred Meyer Subdivision are listed on page 17 in Table 2-1. The comments did not address every sub chapter. As some of the comments take similar positions, we will not address each comment for each sub chapter. Again, every comment has been considered in writing this report. The applicable comments are summarized and analyzed, along with a summary and analysis of the petitioner's position and the respondent's position.

The summary is not intended to be a verbatim repetition of each point either party or a commenter makes. Rather, it is meant to show the gist of the points either party or a commenter makes. The positions are cited to the appropriate page. If only one cite appear in a paragraph, and it follows the last sentence in the paragraph, that cite applies to all the material in the paragraph.

The LBC staff, part of the Department of Commerce, Community and Economic Development (hereafter "department" or "Commerce") will then analyze the parties' and the commenters' positions. The conclusion will come at the sub chapter's end. A final recommendation to the Local Boundary Commission will appear at the report's end.

The respondent Fairbanks North Star Borough (hereafter “the borough”) states in page 1 of its responsive brief that it opposes the proposed annexation by the City of Fairbanks (hereafter “the city”) of the Fred Meyer subdivision (hereafter “Fred Meyer”). It also states that it does not oppose the proposed annexation by the city of the enclave lots (hereafter referred to as “the enclave lots”). For that reason, the summary of the borough’s position for the enclave lots is often succinct.

3 AAC 110.090. Need

(a) The territory must exhibit a reasonable need for city government. In this regard, the commission may consider relevant factors, including

(1) existing or reasonably anticipated social or economic conditions, including the extent to which residential and commercial growth of the community has occurred or is reasonably expected to occur beyond the existing boundaries of the city during the 10 years following the effective date of annexation;

Enclave Lots:

City: The city states that in the territory proposed to be annexed substantial development has occurred and can continue. There is a need to extend full city services into the enclave lots. (*Petition*, Ex. H, p. 1). “Both the enclave lots and the Fred Meyer Subdivision are identical in character to the existing City that is either contiguous or surrounding.” (*Reply brief* p. 10).

Borough: The borough does not oppose the proposed annexing of the enclave lots. It does state that “[a]nnexation of the enclave lots to the City will provide a more reasonable and equitable system of taxation and benefit for that area.” (*Responsive brief* p. 5).

Commerce Findings: The enclave lots are largely developed and are unlikely to expand. They have already grown. The growth is largely residential, but also includes commercial entities such as the Boatel Bar. There are nearby similar lots that are within the city limits.

Commerce finds that there is unlikely to be future development in the enclave lots because they are already developed. The above factor, however, addresses existing or reasonably expected social or economic conditions. It is not necessary that growth be measured in future terms. It can suffice that growth is measured in present terms.

The growth in the Fairbanks area extends beyond the city limits. The enclave lots are beyond the city limits. Judging from the map provided (*Petition, Ex. C p. 3*) the enclave lots are similar in size to those around them within the city. As the enclave lots' growth has extended beyond the present city limits,

Commerce finds that there are existing economic conditions which indicate a reasonable need for city government for the enclave lots.

Fred Meyer:

City: The city states that in the territory proposed to be annexed substantial development has occurred and can continue. (*Petition, Ex. H, p. 1*). The city contends that the above factor allows the LBC to consider whether commercial growth already has or is reasonably expected to happen. (*Reply brief p. 23*).

Borough: The borough argues that the city did not address this issue for Fred Meyer, and has not shown that Fred Meyer needs city services as the enclave lots do. The city has not shown that the development in Fred Meyer causes the necessity for Fred Meyer to be annexed. The city has not shown that there will be any anticipated growth in Fred Meyer. As there is little room in Fred Meyer to expand, the social and economic growth in Fred Meyer does not show a need for city government. (*Responsive Brief, p. 9*).

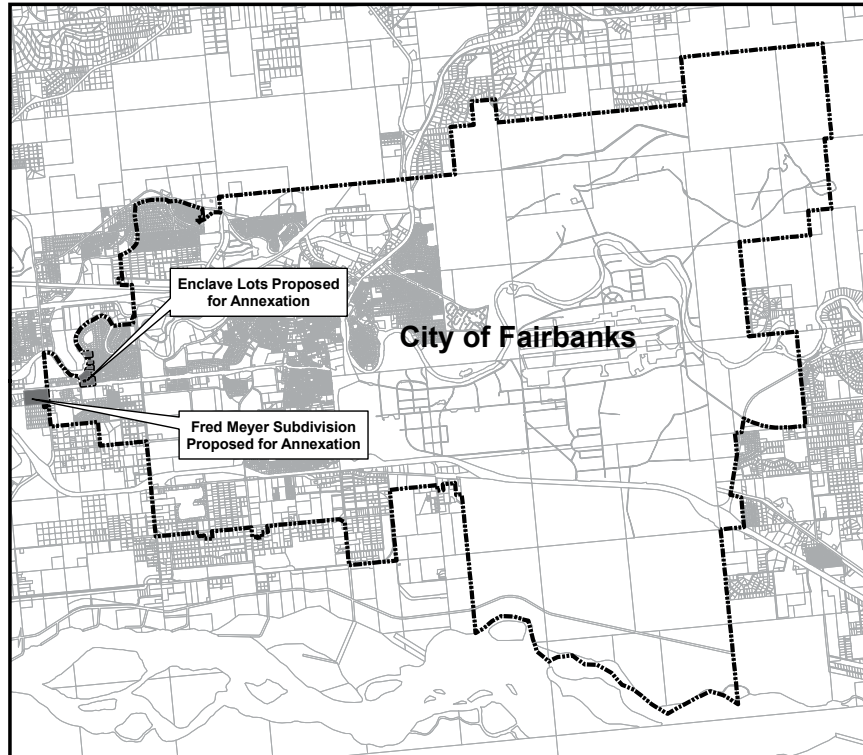


Figure 3-1. Map showing the parcels inside and directly surrounding the City of Fairbanks Municipal Boundary.

Commerce Findings: On pages 1 - 2 of the Petition's Exhibit H, the city refers to the territory to be annexed, then refers to the enclave lots, and then again to the "territory to be annexed." It does not use the phrase "Fred Meyer" on those pages. It defines "the territory proposed for annexation" as consisting of both the enclave lots and Fred Meyer. (*Petition* p. 2). While the city could have been clearer, Commerce finds that the city did address this issue for Fred Meyer.

The borough has a valid point when it said that given the four businesses and the parking at Fred Meyer, that it is difficult to see how there could be new development there. But, the factor's language clearly states that there may be either "existing or reasonably anticipated social or economic conditions" including growth that has occurred or is reasonably expected to occur" [emphasis added]. The language is clear that by using the word "or," conditions, including growth, may either be present or in the future.

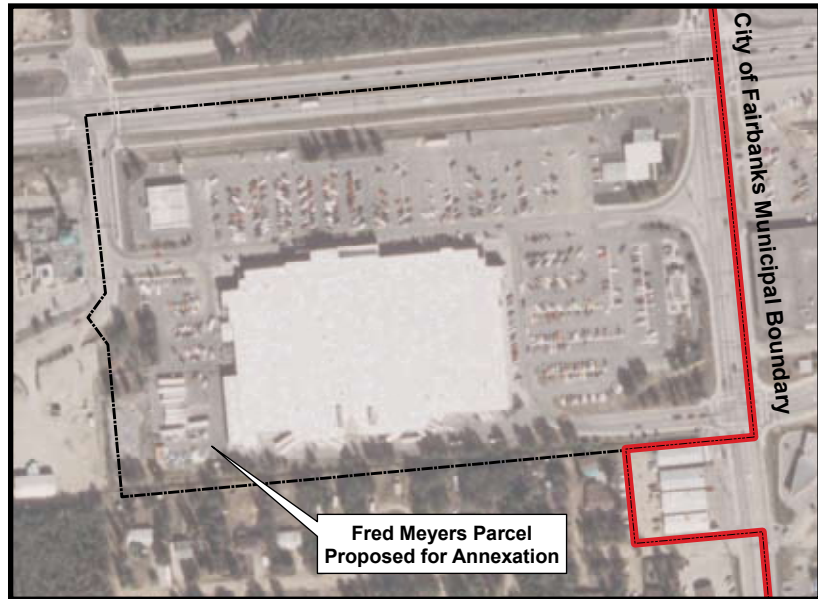


Figure 3-2. Aerial photography showing the Fred Meyer parcel proposed for annexation by the City of Fairbanks.

Given the fact that 110.090 merely lists factors which the LBC may consider, these factors are optional, not mandatory. Any omissions by the city by possibly failing to mention Fred Meyer does not mean that there is not a reasonable need for city government.

Commerce finds that because there is present commercial growth at Fred Meyer that the existing or reasonably anticipated social or economic conditions indicate a reasonable need for city government for Fred Meyer.

(2) *existing or reasonably anticipated health, safety, and general welfare conditions;*

Enclave Lots:

City: The city states that annexation would provide increased police, fire, and paramedic services. (*Petition* p. 8). Currently the enclave lots do not receive fire protection. (*Petition* p. 5). The enclave lots would now receive the above services, as well as residential trash collection, city building code inspections,

and city fire marshal inspection services. (*Petition* p. 8). The enclave lots (and Fred Meyer) already receive the benefits of city services through city support of the Fairbanks Economic Development Corporation (hereafter known as “FEDC”) and the Fairbanks Convention and Visitor Bureau (hereafter known as “FCVB”) (*Petition* p. 8).

The city states that the enclave lots (and Fred Meyer) receive police protection from the Alaska State Troopers (hereafter known as “AST”). The city avers that it has a higher ratio of officers per capita than does the AST. (*Reply brief* p. 8).

The city states that currently the enclave lots are not protected by fire service. (*Petition* p. 5). Currently it, not the University Fire Service Area (hereafter known as “UFSA”) provides rescue squad service without compensation to the enclave lots. (*Petition* p. 6). (The UFSA provides EMTs, and the city provides paramedics. The use of the term “rescue squad” is used deliberately to be neutral). “[S]ome residents of the area mistakenly believed that their lots received fire protection.” (*Petition* p. 9). “The checkerboard arrangement in the enclave lots, where some buildings are protected by a fire service and built

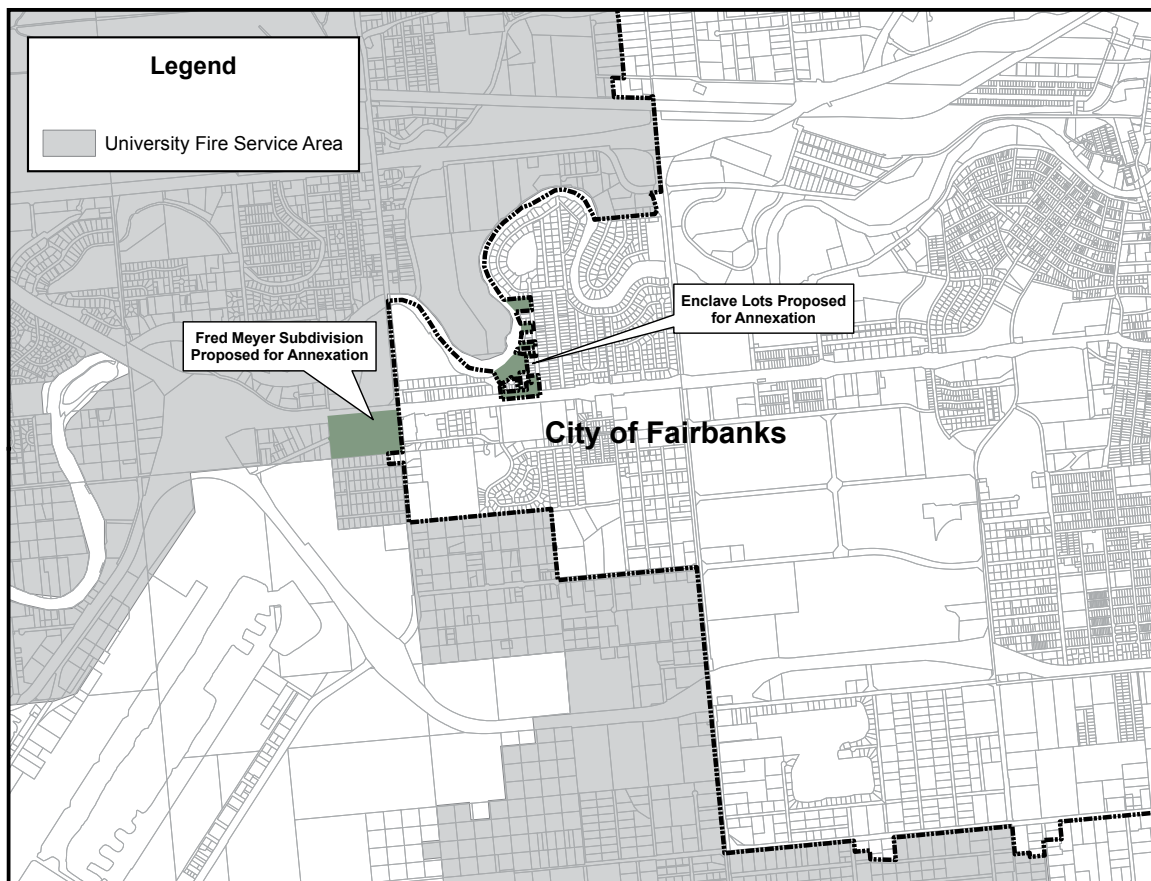


Figure 3-3. Areas proposed for annexation to the City of Fairbanks including the boundaries of the City of Fairbanks and University Fire Service Area.

to the standards of the building code, but the house next door is not, does not promote proper development. If there are structural fires in buildings in the enclave lots, as there have been in the past, the property of neighboring City residents is placed at risk.” (*Petition* p. 9).

The city states that both the enclave lots and Fred Meyer are within the national standards for emergency responses. (*Reply brief* p. 9).

The city contends the city’s building code, and fire code for new development, will be benefit the health, safety, and welfare of people using facilities in the area proposed for annexing. (*Petition, Ex. H, p. 1*). (*Reply brief* p. 7).

The city further contends that it can provide increased safety because it has a better emergency dispatch system that will eliminate the delay from transferring emergency cell phone calls to another dispatcher. (*Petition, Ex. E, p. 7*).

The streets serving the enclave lots are “in very poor condition.” (*Petition* p. 8). Presently within the enclave lots Riverside Drive and Strand Avenue need to be resurfaced. The city alleges, and it is uncontested by the borough, that encroachments need to be removed. (*Reply brief* p. 7). It would survey Riverside Drive to ascertain the degree of encroachments, remove them, and then reconstruct Riverside Drive. (*Reply brief* p. 7). This would involve installing drainage and then paving. (*Petition* p. 8). It would survey how far encroachments have extended into the right of way and remove them. (*Reply brief* p. 7). The city would perform thorough reconstruction. Its annexation budget includes funding this work on Riverside Drive. (*Reply brief* p. 7).

The city further states that it would provide trash collection to the enclave lots. (*Reply brief* p. 7).

Borough: The borough does not oppose the proposed annexing of the enclave lots. “[T]he enclave lots are a patchwork of lots interspersed between lots within the city on two to three sides of each lot and the Chena River to the North.” It also states that “the enclave lots share City maintained roads with their neighbors who pay for those services.” “[T]he enclave lots are not within a Borough fire service area and receive no fire service.” (*Respondent brief* pp. 4 - 5).

Commerce Findings: A map indicates that the enclave lots are interspersed with lots that are inside the city. (*Petition Ex. C p. 3*). The city referred to the present arrangement as “checkerboard.”

The enclave lots would benefit from having more police officers. If the city can provide more officers than can the AST, that would benefit the enclave lots. It is more efficient to have the neighborhood served by a single entity that would provide emergency services. This relates to safety conditions.

Commerce finds that the fire fighting service in the enclave lots is grossly inadequate. Those lots are not served by the UFSA. (*Responsive brief Ex. 3*). The enclave lots are not served by the city. While individual owners in the enclave lots may have chosen in the past not to be part of the city and receive fire fighting service a house on fire presents a danger not only to the residents but to any guests, and to adjoining properties. Commerce finds that the present lack of fire fighting service seriously undermines the public safety.

The city’s building and fire code might not benefit the enclave properties because the area is already built up, and is unlikely to expand. Should a present structure expand or remodel, the city could provide that code service. The contention by the city that it will be able to inspect is belied by its own fire 2007 department report which cites inadequate staffing as preventing its mission. The city cites the “[t]he continuing lack of reoccurring fire safety inspections due to the shortage of personnel in the [city’s] Fire Marshall’s office.” (*Petition, Ex. M p. 9*; p. 7 of the *Fire Department Report*). Much the same is said later when the lack of staffing hampers the fire department’s ability to inspect facilities. (*Petition, Ex. M p. 12*). Notwithstanding, the city does have a fire department which has the ability to inspect if given proper staffing. Code enforcement and inspection relates to safety conditions. Commerce finds, that even with the present fire department staff levels, that the enclave lots would be better served if they had the city fire department’s code and inspection services.

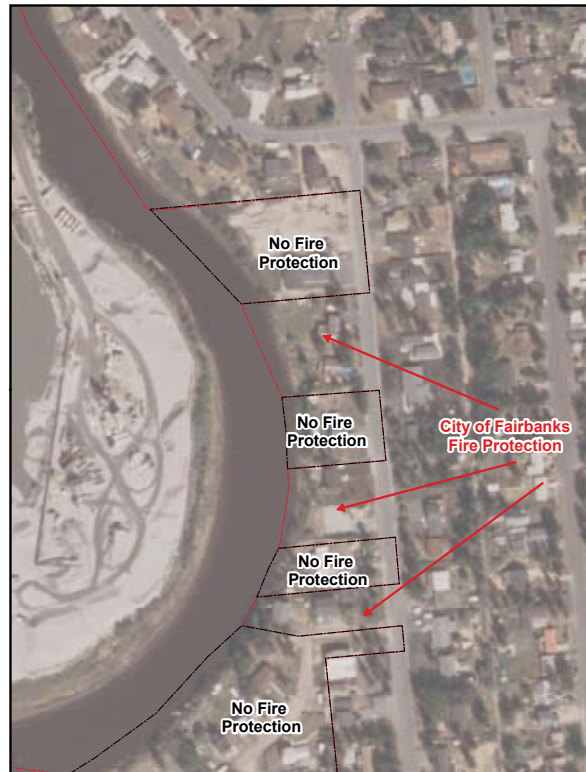


Figure 3-4. Aerial photograph showing the intertwined fire protection districts in the “Enclave Area” proposed for annexation to the City of Fairbanks.

Commerce finds that the city dispatch center could do a better job of handling calls than the present bifurcated system. Please see the below “Commerce Findings” after the “Fred Meyer” section for factor (4) for further analysis.

At least some of the roads in the enclave lots are not paved. The city alleges that there are encroachments as well. Commerce finds that the road quality relates to general welfare conditions, and that these conditions could be improved by annexation to the city. Commerce finds that the enclave lots do not have adequate health, safety, and general welfare conditions. Commerce finds that the city could remedy those conditions. For that reason the enclave lots exhibit a reasonable need for city government

Fred Meyer:

City: The city contends that the existing health system and general welfare conditions will be improved if the city annexes Fred Meyer. Please see its position under 110.090(a)(4) and 110.090(b) for a more extensive summary.

Borough: The borough generally avers that the existing or reasonably anticipated health, safety, and general welfare conditions at Fred Meyer are adequate as they are or can be reasonably anticipated. Further, the borough states that the proposed annexation will not help Fred Meyer because the city will not improve those conditions. Please see its position under 110.090(a)(4) and 110.090(b) for a more extensive summary.

Commerce Findings: As mentioned in the preface, the factors mentioned in the sub chapters are factors which the LBC may consider. In Commerce’s opinion many of these factors overlap and they will be addressed more extensively under 110.090(a)(4) and 110.090(b). Commerce finds that annexing Fred Meyer would improve the existing or reasonably anticipated health, safety, and general welfare conditions for the reasons articulated below – namely that the borough and the UFSA cannot provide emergency services on a more efficient or more effective level. For that reason, Commerce finds that Fred Meyer exhibits a reasonable need for city government.

(3) *existing or reasonably anticipated economic development;*

Please see (1) above. Commerce finds that the criteria to be considered here have been considered in (1) above (existing or reasonably anticipated social or economic conditions). Commerce has found that both the enclave lots and Fred Meyer exhibit a reasonable need for city government due to existing or reasonably anticipated social or economic conditions. Commerce also finds that both the enclave lots and Fred Meyer exhibit a reasonable need for city government based on existing or reasonably anticipated economic development.

(4) adequacy of existing services;**Enclave Lots:**

City: The city states that the enclave lots (and Fred Meyer) receive police protection from the AST. The city avers that it has a higher ratio of officers per capita than does the AST. (*Reply brief* p. 8).

The enclave lots currently receive no fire protection service. (*Petition* p. 5).

The city states that currently firefighters enter the enclave lots carrying a city map to discern which lots are in the city's borders and which are not. Needing to decide which lots receive fire fighting protection hampers fire fighting efforts. The present checkerboard system is inadequate because not all of the lots in the neighborhood receive fire protection, and that those lots which do not receive fire protection pose a fire hazard to those which do. (*Reply brief* p. 9).

The city currently provides paramedic service without compensation to the enclave lots because it is not practical for the borough to provide that service. (*Petition* p. 6).

The city states that the enclave lots do not receive the benefits of city building code inspection or fire code enforcement and that the services provided by the state do not match the city's level of service. (*Reply brief* pp. 5 – 6).

Within the enclave lots Riverside Drive and Strand Avenue need to be resurfaced and encroachments need to be removed. (*Reply brief* p. 7). This would involve installing drainage and then paving. (*Petition* p. 8).

Borough: The borough does not oppose the proposed annexing of the enclave lots.

Comments:

Steve Thompson supports annexing “the lots along the river that should have been annexed many years ago. Both the areas in question are integral parts of our City which would receive the benefits of full time paramedic level Emergency Medical Service, a highly experienced police and fire staff, building and fire code enforcement as well as much needed road construction and maintenance to the lots along the river.”

Emily Bratcher supports annexing the enclave lots because the lot owners and residents have for decades benefited from city services.

Commerce Findings: Commerce finds that the enclave lots do not have adequate existing services. At least some of the Fred Meyer arguments apply to the enclave lots as well. The borough does not oppose the city annexing the enclave lots.

Regarding police, the enclave lots are currently served only by the AST. The lots near the enclave lots are in the city and are served by city police. If they are annexed the lots would be served by the city police. The city avers that it would provide more police per capita than the AST. Neither the borough nor any of the comments challenge that position. As will be discussed below in the “Fred Meyer” section, the city’s own police chief said that there was an insufficient number of officers. Notwithstanding, it makes sense for the enclave lots to have city police as their neighbors do..

Regarding fire service, the enclave lots are not currently served by any service area. While it is conceivable that some enclave property owners may have chosen to eschew fire protection by not becoming part of the city, it is also true that a fire from an unserved lot could endanger with smoke or flames a nearby house that does receive fire service. For that reason, the enclave lots’ present fire service is inadequate. Further, Commerce finds that the enclave lots would be better served by the city fire departments inspections and enforcement of the fire code.

Presently, the enclave lots receive rescue squad service from the city (without compensation). It would appear that the present rescue squad service is thus adequate. As the enclave lots are not part of the city, there is no guarantee that the city will continue that service. Still, the standard is adequacy of existing services, and the present rescue squad service is adequate.

The present emergency dispatch system is inadequate because the neighborhood is a checkerboard of lots in the city and lots outside the city. A more efficient dispatch system would enable emergency responders and dispatchers to know who is in and who is out of the city. It is harder to respond if responders (or at least fire fighters) must use a map to determine who is in the city and who is not.

Presently Riverside Drive and Strand Avenue are unpaved. The city avers that there are encroachments that need to be removed, and that is uncontested by the borough. Unpaved roads might be considered to be adequate by some Alaskans. Commerce finds that the existing road service is not adequate service due to encroachments, at a minimum.

As Commerce finds that most of the above conditions are inadequate, the enclave lots exhibit a reasonable need for city government.

Fred Meyer:

City: The city avers that it would provide improved police protection because it would offer about 47 police officers, or about 1.5 officers/1,000 population. This differs from the 0.4 officers/1,000 population that the AST offers for the non rural component of D Detachment. D Detachment currently protects the territory proposed for annexation. This is roughly one third of the coverage offered by the city. (*Petition, Ex. E* p. 6).

The AST figure is slightly different for the entire “D” detachment - that figure is about 52 officers per “over 100,000 people.” The city says that annexation revenue “will provide the City Council with the **option** [emphasis added] to further increase police staffing or other City services.” (*Reply brief* p. 24).

The city quotes an earlier LBC decision (*Statement of Decision, In the Matter of the February 12, 1998 Petition by the City of Fairbanks to Annex 42.46 Acres*) when it states “Neither is the Fairbanks North Star Borough presently capable of providing the needed services more efficiently or effectively than the City of Fairbanks. In particular, the Borough does not provide police protection.” (*Reply brief* p. 26).

On March 9, 2009, then city police chief Daniel Hoffman wrote that “the city of Fairbanks continues to staff its police department at inadequate levels.” “[I]t is a simple fact that our City Police Department is staffed at an officer-to-citizen ratio that is significantly less than comparable communities of our size throughout the nation.” “While additional federal support is available over the short term, over the long term I feel that voters should be asked to authorize additional public safety funding.” (*Reply brief* Ex. 8).

In a March 15, 2009 letter from Chief Hoffman that the city had secured grant-funding for seven (7) critical sworn positions within the police department, representing 15 percent of our entire police force.” (*Reply brief* Ex. 5). The letter does not state how long the grants will run, or what will happen to those officer positions when the grants expire.

The city suggests that it can better provide enhanced response to bank robberies for the two banks at Fred Meyer (Mt. McKinley Bank and apparently one within Fred Meyer itself). AST does not provide this service. (*Reply brief* p. 17).

The city suggests that it can provide better fire and rescue squad service than can the UFSA because of its level of service. Its paramedics receive 1,280 hours of training for a year long course, in addition to refresher training. The UFSA EMTs normally “receive only a fraction of the training.” The city states that roughly 80 percent of its calls are medical. (*Petition, Ex. E* pp. 4 - 5).

The city submitted an affidavit from Dr. Marc Dumas, MD stating that the UFSA EMTs are required to receive 240 hours of training, but the city paramedics receive 1200. The increased training makes the paramedics more proficient than the EMTs. (*Reply Brief Ex. 4*).

The FFD’s response time to Fred Meyer will be nearly identical to its response time that it provides to the nearby Sophie Station Hotel and the University Safeway shopping center. **That response time is within national standards** [emphasis added]. The area it serves is flatter and hence easier to travel in for that reason. (*Petition, Ex. E* pp. 4 - 5).

But, the city also states that “for **forty-three percent** (43 percent) of emergency calls, the apparatus were in route to the call in less than one minute of the tone. Ninety percent (90 percent) is required to meet the national standards. For **45 percent** of emergency calls, the first arriving apparatus was on-scene within four minutes of the alarm. Ninety percent (90 percent) is required to meet the national standard.” (*Petition Ex. M* p. 16).

The city fire department’s (hereafter FFD) average turnout time has dropped from 1:26 in 2003 to 1:17 in 2007 (although the figure has varied considerably from year to year). The average response time has decreased from 5:25 to 5:13 in the same period. The total volume of calls of both fire and EMS has increased from 3513 in 2003 to 4089 in 2007. (*Petition Ex. M* p. 22).

The city is converting part of Cushman Street from one way to two way, which will reduce response times. (*Petition Ex. E* p. 5). City fire chief Warren Cummings states in an affidavit that an Alaska Railroad train could block University Avenue causing a detour or a delay to the UFSA. (*Reply brief Ex. 13*).



The City provides the only two aerial platform fire trucks in the Interior.

“As a percent of total volume, the City receives mutual aid less often than the University Fire Service area.” (*Reply brief* p. 27). “The Responsive Brief looks at mutual aid without regard to scale and does not acknowledge that the City accepts mutual aid on fewer than 1 percent of total calls.” (*Reply brief* p. 29).

The FFD’s mutual aid given has risen from 17 in 2003 to 31 in 2007. The mutual aid received has risen from 29 to 48 in that same time. (*Petition Ex. M* p. 22). In Ex. 15 of its reply brief the city gave figures for given and received mutual aid. The figures are for 2004 to 2008 [on the fourth page, no years are provided]. The city cites that the FFD gave an average of 24 mutual aids, and that the UFSA gave an average of 85. (*Reply brief* Ex. 15 first page). On the fourth page the city repeats its figure of 24 mutual aid calls that the FFD provided (this includes both mutual aid and auto aid, which had not been previously broken down), but cites a different figure of 98 mutual aid calls given by the UFSA. On the same page the city cites a combined 37 mutual aid calls received by the FFD, and 85 received by the UFSA. The figures of 98 combined mutual aid calls given by UFSA and 85 received are repeated on the sixth page. (*Reply brief* Ex. 15).

The city fire department has an Insurance Services Office (hereafter known as “ISO”) rating of 3, and the UFSA has a rating of 2. The city regards this as a “minor difference.” The ratio is based on a scale of 1-10. If the rating is lower, the greater the likelihood of lower insurance rates. (*Petition, Ex. E* p. 6).

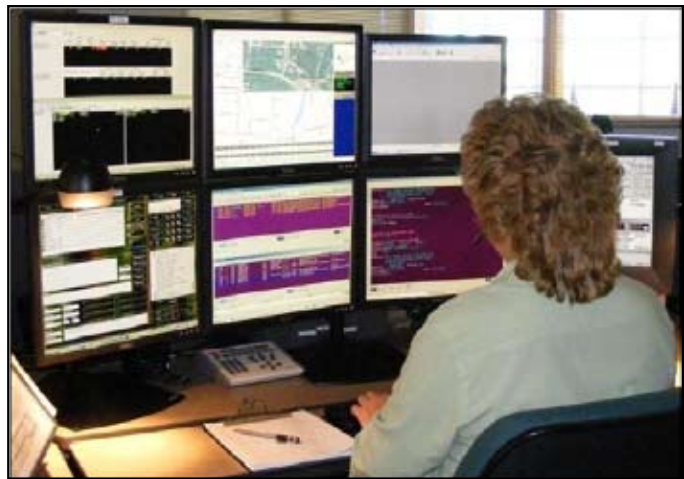
The city’s fire trucks are superior to those of the UFSA because it has two fire trucks with platforms, as oppose to a ladder truck. (*Petition, Ex. E* p. 6). A platform truck offers more advantages than a ladder truck in that it can hold more firefighters, and provides faster and safer response. (*Reply brief* Ex. 13). The city recently acquired a 2007 fire truck with a 100’ reach platform. The city also has a 102’ platform truck. (*Petition Ex. E* p. 5).

As of 2007, the city planned to apply for grants to hire three more fire fighters. (*Petition Ex. E* p. 5). The city avers that the number of fire department employees/1000 population has exceeded the national average since 2006. (*Reply brief* p. 31).

But, the city also states it has a goal to “[i]ncrease on-duty Fire Suppression staff to seventeen from to current average of ten. (This would bring us to the recommended national level and meet our Insurance Service Office goals)”. (*Petition Ex. M* p. 11). “The continued lack of adequate staffing in the fire Prevention Division continues to impact the daily operation of the Division.” (*Petition Ex. M* p. 12).

The city states that enforcing its fire code would reduce the chance of injury or loss of life at the commercial properties in the areas proposed for annexing. (*Petition* p. 21). The city cites the deputy director of the state division of fire and safety when it states that there was no construction inspections conducted on these facilities. Carol Olsen of that office gives a 2003 inspection date for Sam's Sourdough, and Taco Bell, a 2002 inspection for Fred Meyer, and states that Mt. McKinley is "not an inspectable facility." (*Reply brief* p. 7 and *Ex. 3*). The city would inspect any new remodeling or construction, as well as providing routine fire code inspections. (*Reply brief* p. 7).

The city counters that it would provide an integrated dispatch service for both fire and police, and that such a service is better than currently provided by the AST and UFSA. Its dispatch center answers all local 911 cell calls, including from the territories proposed for annexation. 911 cell calls are answered by the city and transferred to the AST or the University Dispatch Center. This causes a delay and a risk of the transfer being lost. In the event of a combined fire/police/rescue squad call, only one dispatch center would need to respond. (*Reply brief* pp. 8-9).



The City's Regional Dispatch Center currently receives E-911 cell phone calls from the territory to be annexed.

The city dispatch also answers most landline 911 calls in the borough, but not for UFSA. If the city dispatch answers all 911 calls, there would be no need to coordinate emergency response. Instead, it would all originate from city dispatch. The difference between taking the call and dispatching it is that call taking consists of screening the call to collecting information and dispatch then provides that information to the police, fire, and rescue squads. For cell calls transferred from one dispatcher to another, the second dispatcher must rescreen the call for location and kind of emergency. It takes less time to coordinate responses from different agencies if there is a single dispatch center. (*Reply brief* *Ex. 22*).

The city dispatchers are also certified in Emergency Medical Dispatch where the dispatcher determine the medical emergency, prioritize a response, dispatches that response, and give instructions to the caller. The city dispatch provides this service for every medical emergency call. (*Reply brief* Ex. 22).

The city states that while Fred Meyer is bordered by state maintained roads, it is also accessible by city maintained Rewak Street. It is also within the jurisdiction of the Fairbanks Metropolitan Area Transportation System (FMATS). FMATS plans metropolitan transportation and development. (*Reply brief* pp. 7 – 8).

Borough: “The Fred Meyer Subdivision does not exhibit a reasonable need for city government.” (*Responsive brief* p. 6).

The borough states that “annexation of the Fred Meyer Subdivision will result in increased revenues to the City and decreased revenues to the Borough and University Fire Service Area while not substantially changing any services the Subdivision will receive.” (*Responsive brief* p. 5).

The borough states that Fred Meyer currently receives police protection from the AST, and that the city claims that Fred Meyer will receive better police protection from the city. The city does not say how often the AST is called to Fred Meyer. It is unclear whether the city has enough resources and staff to handle the increased service, let alone an improved service. In the worst case scenario, the city will only add one half an officer position to handle both the enclave lots and Fred Meyer. Adding that half officer position doesn’t prove that the current AST service is inadequate, nor has the city shown that Fred Meyer needs different or additional police service. Substituting one police force for another does not show a need to annex. (*Responsive brief* pp. 10 -11).

The borough disagrees with the city’s contention that the city fire department is superior to the UFSA because the city states that the UFSA is not professional and because the city paramedics are superior to the UFSA EMTs. (*Responsive brief* p. 11). The UFSA EMTs are at Level III. That level incorporates about “80 percent of the training required to be a nationally recognized paramedic.” The city has not shown a need for paramedics at Fred Meyer. (*Responsive brief* p. 12).

UFSA records indicate that in the past 15 years of answering calls at Fred Meyer, there has never been an occurrence requiring a paramedic. (*Responsive brief* pp. 11 – 12; Ex 7, p. 3).

“Since 2000, the City has made no mutual aid runs to the Fred Meyer Subdivision. Conversely, the University Fire Department has made 243 runs to the Fred Meyer Subdivision. Also notable is the fact that the City’s fire department has only provided mutual aid to the entire University Fire Service Area 65 times in the past five year while the University Fire Department has provided mutual aid to the City 227 times in that same time period. Thus, these figures provide no support for the City assertion that it can more efficiently and more effectively serve the Fred Meyer Subdivision than the University Fire Service Area. Rather they prove only that, if annexed, the fire service area will probably continue to provide service to the Fred Meyer Subdivision only now without any revenue to support it.” (*Responsive brief* p. 18).

Under the mutual aid agreement the city fire department has used the UFSA over 200 times during the past five years to make calls within the city. If the city believes that the UFSA was inadequate, it would not have relied on the UFSA an average of 45 times a year. (*Responsive brief* p. 12).

Regarding the types of fire trucks used (aerial ladders versus aerial platforms), Shechter states that “[a]erial ladders require less room to operate and can reach just as high. High-level resource in the Fred Meyer property is not an issue regarding the use of aerial devices. The most important attribute is the ability to deliver large quantities of water – a feature of both types of aerial devices equally.” He also states that the UFSA has recently ordered a new aerial ladder truck. (*Responsive brief* Ex. 7, p. 5).

“The number of simultaneous multiple emergency EMS calls places a real drain on the ability of FFD to respond to fire emergencies. (*Responsive brief* Ex. 7, p. 8).

The borough states that new commercial construction is subject to the state’s building codes. “[W]hile the City building code may help construction in the enclave lots, it adds nothing to the commercial lots in the Fred Meyer Subdivision.” (*Responsive brief* pp. 12 - 13).

David Gibbs, the borough’s Emergency Operations Department director wrote that “[t]he City does not provide centralized dispatch for the University Fire Department. A call from a land line to 911 from the University Fire Service Area, which includes the Fred Meyer Subdivision on Airport Road, is routed to the Alaska State Troopers and transferred to the University dispatch on the University of Alaska campus. The call would not go to the City of Fairbanks centralized dispatch.” (*Responsive brief* Ex. 14).

“The Borough also has a 911 call-taking contract with the city of Fairbanks and pays the City to answer all 911 calls from cell phones within the Fairbanks North Star Borough area. The City then transfers those calls to the relevant dispatch center if the City is not the proper center. (For example, the University, Airport, or State Troopers) The City is paid by the Borough for those services under the contract.” (*Responsive brief* Ex. 14).

“The enhanced 911 system used by the City dispatch center as well as the State Troopers, Airport and University dispatch centers was purchased by the Borough and was paid for with funds collected by the Borough from individual users under A.S. 29.25.131 and with a grant from the Department of Justice.” (*Responsive brief* Ex. 14).

William Shechter, UFSA Commission Secretary, wrote that “[A]ll calls can be electronically transferred between the Public Safety Answering Points (PSAP). This means that calls initially handled by the city dispatch center, when needed, are instantaneously transferred to the UFD dispatch center or to AST dispatch center, along with all caller information (phone number and location). In summary – this means that dispatches at FFD/FPD, UFD, AST, and the Airport can all receive the same electronic information.” (*Responsive brief* Ex 7, p. 2). [note that Mr. Shechter sent comments to the LBC. His comments are also included in the borough’s responsive brief. His opinions are mentioned under “Borough,” not under “Comments].”

Likewise the work load placed on one city fire prevention/inspection/ fire cause & origin officer will also get worse by annexing the Fred Meyer property.” (*Responsive brief* Ex 7, p. 8).

“The Fred Meyer Subdivision is accessed by two major, state-maintained roads, University and Airport Road while the enclave lots share City maintained roads with their neighbors who pay for those services.” (*Responsive brief* p. 5). The borough contends that any city road services such as street construction, maintenance, and snow removal will not benefit Fred Meyer because the roads bordering Fred Meyer are state maintained roads (*Responsive brief* p. 13). If the petition to annex Fred Meyer is approved, those roads (University Avenue, Airport Road, and Old Airport Road) would still be state maintained. (*Responsive brief* p. 13).

There would not be any residential trash collection. (*Responsive brief* p. 13).

Comments:

Robert Grove opposes annexing Fred Meyer. He wrote that the city cannot provide essential municipal services better than any other organized entity. The city fire department (and police) is already understaffed. The UFSA University Ave. fire station is closer to Fred Meyer than either of the FFD's stations. The city cannot handle snow removal within the city now.

Bartholomew Roberts supports annexing Fred Meyer because the city can provide many services that the borough cannot. This should not be viewed as a comparison of the two fire departments, but should be analyzed on the merits of the city's growth as a city and "providing the highest form of government available to the people." The paramedics provide a higher service level than do the EMTs. The city also provides many services which the borough does not (e.g. building codes, police protection, fire code and code enforcement, and public works [Commerce: the borough does have a public works department]. Service areas were intended to be temporary, not permanent solutions.

Jerry Cleworth (Fairbanks city council member) opposes annexing Fred Meyer. The UFSA provides faster response than does the city fire department. He says that a higher level of rescue squad training is "secondary to who can respond fastest in the critical first minute." UFSA has a higher ISO rating than the city does. He also is concerned that this proposed annexation would reduce the UFSA's revenues.

Harry Davis supports the annexation due to safety concerns. He states that: "A paramedic certification requires 1500 hours of training while an EMT3 is certified with 120 hours of training. Unlike an EMT3, a paramedic is trained to perform life saving procedures such as a nasal intubation or a cricothyrotomy. Furthermore, EMT3 can't administer 10 medications that paramedics can timely administer which in some situations such as with a cardiac arrest can mean the difference between life and death. The fact that the University Fire Department may be able to get an EMT3 to arrive few minutes sooner won't do you much good if he can't perform the procedures or administer the medications necessary to save your life." He also argues that annexing would enable the AST to divert officers to the rest of the borough, and that the FPD can better respond to bank robberies

Carter Crawford protests the annexation because "The reason for annexation is to provide unmet public safety needs first and foremost. None exists. The University Fire Department provides excellent service and is less than ½ mile

away.” Also, the AST is at least as good as the FPD. “As for EMT service, yes there are a few rarely used services the volunteers at university can not perform, but they are rare and the City can easily back up.”

Steve Thompson supports annexing Fred Meyer because it “will enhance the City’s ability to provide essential public service.”

Janette Hanneman opposes annexing Fred Meyer because she and other persons who signed a petition opposing the proposed annexation do not want or need city services or taxes. She also has concerns about the city managing to keep its streets cleared the whole width.

Dominic Lozano supports annexing Fred Meyer because the city paramedics have more training than the UFSA EMTs. The paramedics can also administer several medications that the EMTs can, and can “perform several potentially life saving procedures that EMT III’s cannot.” Either fire department can handle the volume at Fred Meyer and do so within national time standards

Emily Bratcher supports annexing Fred Meyer because the city is ready to provide essential municipal services to Fred Meyer e.g. paramedics, and a highly trained fire prevention and suppression service. “The proximity of the University Fire Service Area sub-station does not translate into full municipal public safety services. As is the case currently, any major episode will still require mutual aid of more than one jurisdiction, which is the prevailing norm.”

Commerce Findings: As opposed to the enclave lots, the borough definitely opposes annexing Fred Meyer. The standard here is not whether the existing borough or service area can perform essential municipal services better than the city (that is addressed in 110.090 (b) below). The standard is whether the existing services are adequate.

Regarding the police, the city avers that it can supply more police per capita than can the AST. That figure is not contested by the borough but the borough maintains that even if the city adds half an officer position under the worst case scenario, that the city has not shown that the present police services are inadequate. The Commerce finds that, even if it accepts the city’s contention that there are more city police per capita than the AST, that the AST is a well respected and capable police agency. There has been no evidence introduced that the AST is not providing adequate services.

“The Fairbanks Department of Public Safety was awarded \$530,000 to cover two positions” in federal stimulus money for police officers. (*Anchorage Daily News*, July 29, 2009. http://www.adn.com/news/alaska/ap_alaska/story/880358.html).

Commerce finds that while the city might be able to provide more officers, that the existing police service does not appear to be inadequate.

Regarding fire service, the city has not shown that the present services are inadequate. Again, this is not a standard of whether the UFSA can perform better than the city fire department. It is merely a standard of whether the USFA provides adequate fire services. Here the USFA is an agency with two fire stations and a long history of providing fire and rescue squad service. The nearer station is 0.82 miles from Fred Meyer (according to MapQuest that is the distance from the station at 1959 University Avenue S to the Fred Meyer at 3755 Airport way. It appears that distance include going north on University, west on Airport Way, making a u turn at Airport Road onto Airport Way, and then to 3755 Airport Way. That is not likely the most direct route, and hence the mileage might be shorter than indicated). The city contends that the UFSA EMTs are inadequate, or at least inferior to the city's paramedics. The UFSA paramedics do not appear to be inadequate *per se*, and at a minimum are nearby. The USFA enjoys an ISO rating for "2" on a scale of 1 to 10, compared with the FFD's rating of "3" (the lower the rating, the better it is).

In its 2008 FFD report, the city states that the FFD received a \$150,000 state grant for a new ambulance and another \$500,000 grant for a new fire engine. It also undertook an emergency repair of the Aurora station's roof. (*Fairbanks Fire Department 2008 Annual Report* p. 16). (<http://www.ci.fairbanks.ak.us/documents/fire/Fire%202008%20Annual%20Report.pdf>).

It continues to cite a lack of staffing as the cause of non-occurring fire safety inspections, which results in serious life safety and fire problems going uncorrected. (*Fairbanks Fire Department 2008 Annual Report* p. 7).

The FFD's goals include delivery of the 1997 fire engine's replacement with state grant funding, securing funding for a new pumper/engine to replace the 1997 pumper/engine, delivery of a new ambulance to replace the 1994 model, and to remodel the Aurora fire station living quarters and replacing its garage roof.

For the 2009 capital budget the UFSA requested \$200,000 in state funding to replace the 1988 aerial ladder fire truck that has 137,000 miles and "has been spending more and more time in the shop. In 2007, it was out of service for a total of three months." (http://gov.state.ak.us/omb/09_omb/budget/CapBackup/FY09/proj49859.pdf).

As of January 2008, a UAF Fact Sheet states that one of the UFSA's goals was to "Replace the aging [main] fire station with one that meets modern standards for life safety and provides adequate living quarters for all firefighters and medics." The current station has suffered seismic damage. The estimated cost is \$10 -12 million. (http://gov.state.ak.us/omb/09_omb/budget/CapBackup/FY09/proj49859.pdf).

The department is ranked in the top 1 percent (ISO Class 2) for fire departments throughout the United States. (http://gov.state.ak.us/omb/09_omb/budget/CapBackup/FY09/proj49859.pdf).

Based on the parties' evidence, Commerce finds that UFSA's service is at a minimum, adequate.

Regarding the building code, the city states that there was no construction inspections conducted on businesses at Fred Meyer. The city stated that Sam's Sourdough was inspected in 2003, and Taco Bell and Fred Meyer were inspected in 2002.

The borough states that Fred Meyer is subject to the state's building codes and "while the City building code enforcement may help improve construction in the enclave lots, it adds nothing to the commercial lots in the Fred Meyer Subdivision" because the new construction would be subject to the state codes. (*Responsive brief* pp. 12 – 13).

Commerce finds that because there was no construction inspection done at Fred Meyer, that the existing code enforcement or construction inspection services are inadequate.

Regarding the dispatch, there is considerable discussion about the merits of the present dispatch services. That is an area better left to discuss under 110.090 (b). Notwithstanding, the AST and UFSA do provide dispatch systems. While it is conceivable that the AST and the UFSA dispatch systems could be faster or more efficient, Commerce finds that they are adequate because the calls are answered and dispatched to the responding emergency service providers.

The roads at Fred Meyer are state maintained. There was no evidence introduced that the state maintenance was inadequate, and no indication that Fred Meyer needs city government on that account.

Commerce finds that the majority of conditions in Fred Meyer are adequate. This does not mean that the conditions cannot be improved upon. There are many factors which the LBC may consider in approving or disapproving an annexation petition, and this factor is merely one of many to consider.

(5) *extraterritorial powers available to the city to which the territory is proposed to be annexed and extraterritorial powers of nearby municipalities; and*

Enclave Lots:

City: The city contends that "The enclave lots...already receive police services to the area as well as street maintenance and snow removal services that enable residents and property owners to access their property without payment of City taxes. There is no logical way to recover this cost other than annexation." (*Reply Brief* p. 17). The city does provide paramedic service to the enclave lots without compensation. (*Petition* p. 6).

Borough: The borough does not oppose the proposed annexing the enclave lots.

Commerce Findings: Commerce finds that it is uncontested that the city is providing uncompensated paramedic service to the enclave lots. Commerce finds that this is exercising extraterritorial powers because the city is already providing the enclave lots with at least one municipal service (see (6) below).

On the issue of road maintenance and snow removal service, if the city is providing services that benefit the enclave lots on territory outside the city, then it appears that the city is already exercising extraterritorial powers in a territory outside the city.

Commerce finds that the city is providing services in the enclave lots, and is so exercising extraterritorial powers in the enclave lots. For those reasons the enclave lots exhibit a need for city government.

Fred Meyer:

City: The city contends that it provides more proportionally than the borough to the FEDC and the FCVB. (*Petition ex. H. p. 2, Reply brief p. 28*).

Borough: The borough contends that it also provides support to the FEDC and the FCVB, and therefore the extraterritorial powers that the city describes are also provided by the borough. (*Responsive brief p. 14*).

Commerce Findings: For Fred Meyer, regardless of how much money the city and the borough have each provided, that funding the above entities does not rise to the level of extraterritorial powers. Commerce finds that this factor does not carry much weight for Fred Meyer, and that Fred Meyer does not exhibit a reasonable need for city government based on this factor alone.

(6) whether residents or property owners within the territory receive, or may be reasonably expected to receive, directly or indirectly, the benefit of services and facilities provided by the annexing city.

Enclave Lots:

City: “Residents of the enclave territory use and rely upon City of Fairbanks services and infrastructure. These lots share the urban character of the city. The owners and residents travel to their homes over city-maintained streets receive the general benefits of City street construction, snow removal and maintenance of the surrounding neighborhood, including police protection and

economic development. Many of the properties use the waste water system built by the City.” (*Petition* p. 5). Currently, the enclave lots do not receive fire protection. (*Petition* p. 5).

Currently the city provides rescue squad service to the enclave lots, but without receiving compensation. (*Petition* p. 6).

Regarding future benefits, the city would resurface Riverside Drive and Strand Avenue. It would further follow the recommendations of city engineer Michael Schmetzer and install drainage on those streets. (*Petition* p. 8).

Borough: The borough does not oppose the proposed annexing of the enclave lots.

Comments:

Charles Bettisworth wrote that the enclave lots “enjoy the benefits of some of the City of Fairbanks services provided to adjacent lots; particularly street maintenance and repair, and City police protection services.”

Commerce Findings: Commerce finds that the enclave lots benefit from the services provided to their neighbors such as street maintenance and fire protection. Commerce finds that this indicates that the enclave lots exhibit a reasonable need for city government on that basis.

Fred Meyer:

City: The city avers that the Fred Meyer owners, customers, and employees benefit from city services that are provided up to Fred Meyer’s eastern edge. (*Petition* p. 5).

Fred Meyer benefits from city service because event of a bank robbery the FPD would respond because of “its ability to provide enhanced response to any bank robbery.” (*Reply brief* p. 17).

Borough: The borough states that the city has not proved that Fred Meyer “needs, or will benefit from any new services provided by the City. All services provided by the City are already provided to the area either by the Borough, the fire service area or the State.” (*Responsive brief* p. 15).

Comments:

Harry Davis said that if there was a bank robbery at Fred Meyer the FPD would be the primary responder.

Commerce Findings: Commerce finds that if arguendo, Fred Meyer benefits from services provided up to its border, that is not the same as receiving benefits provided by the city. Under that rational, much of the borough who works, shops, or visits the city benefits in some way from city services. Commerce finds that the services must be provided to the territory proposed for annexation, not services provided up to the border.

Regarding the assertion that the FPD is the primary responder for any bank robberies at Fred Meyer (an assertion uncontested by the borough), if that is so, that would be a benefit received by Fred Meyer. Receiving a benefit from the city would satisfy this factor's requirement. It is not clear if the FPD is the primary responder in such an incident, if there is any formal arrangement for the FPD to be the primary responder, or how often the need for FPD has previously arisen. For these reasons Commerce finds that city has not shown that property owners within Fred Meyer receive or may be reasonably expected to receive the benefit of bank robbery protection by the city. Commerce finds that the argument that Fred Meyer shows a reasonable need for city government based on this factor is speculative. Commerce finds that the city's argument does not meet the factor's requirements, and that Fred Meyer does not exhibit a reasonable need for city government based on this factor alone.

(b) Territory may not be annexed to a city if essential municipal services can be provided more efficiently and more effectively by another existing city or by an organized borough, on an areawide basis or non areawide basis, or through a borough service area that, in the determination of the commission, was established in accordance with art. X, sec. 5, Constitution of the State of Alaska.

Much of the argument for this factor from both the parties and the commenters was articulated in 110.090 (a)(4) above, and not repeated here.

Enclave Lots:

City: The city contends that it is best able to provide all essential municipal services. The city avers that the FPD provides police service to the enclave lots (and Fred Meyer). The city avers that it has a higher ratio of officers per capita than does the AST. (*Reply brief* p. 8).

The enclave lots currently receive no fire protection service. (*Petition* p. 5). The city states that the enclave lots do not receive the benefits of city building code inspection or fire code enforcement. (*Reply brief* pp. 5 – 6). The city would offer professional fire fighting service and paramedics. (*Petition, Ex. H.* p. 2).

The enclave lots will receive improved street maintenance. (*Petition, Ex. H.* p. 2).

Borough: The borough does not oppose the proposed annexing of the enclave lots.

Commerce Findings: In addressing essential municipal services for a borough, 3 AAC 110.970 (a) states that:

“If a provision of this chapter calls for the identification of essential municipal services for a borough, the commission will determine those services to consist of those mandatory and discretionary powers and facilities that

(1) are reasonably necessary to the area; and

(2) promote maximum local self-government.

(b) The commission may determine essential municipal services for a borough to include

(1) assessing the value of taxable property if the proposed or existing borough proposes to levy or levies a property tax;

(2) levying and collecting taxes if the proposed or existing borough proposes to levy or levies taxes;

(3) establishing, maintaining, and operating a system of public schools on an areawide basis as provided in [AS 14.14.065](#) ;

(4) planning, platting, and land use regulation; and

(5) other services that the commission considers reasonably necessary to meet the borough governmental needs of the residents of the area.”

In addressing essential municipal services for a city, 3 AAC 110.970 (c) states that:

3 AAC 110.970 (c) states that:

“If a provision of this chapter calls for the identification of essential municipal services for a city, the commission will determine those services to consist of those mandatory and discretionary powers and facilities that

(1) are reasonably necessary to the community;

(2) promote maximum, local self-government; and

(3) cannot be provided more efficiently and more effectively by the creation or modification of some other political subdivision of the state.

(d) The commission may determine essential municipal services for a city to include

- (1) levying taxes;
- (2) for a city in the unorganized borough, assessing the value of taxable property;
- (3) levying and collecting taxes;
- (4) for a first class or home rule city in the unorganized borough, establishing, maintaining, and operating a system of public schools within the city as provided in [AS 14.14.065](#) ;
- (5) public safety protection;
- (6) planning, platting, and land use regulation; and
- (7) other services that the commission considers reasonably necessary to meet the local governmental needs of the residents of the community.”

Commerce finds that the above factors are ones that the commission may consider, but are not mandatory. Under AS 29.35.150 – 180, a borough must exercise education, land use regulation, and assessment and collection of taxes. The city may not assume these responsibilities. The borough contends that because the city cannot assume the power to assess, educate, and perform land use regulation and platting, the city falls short of demonstrating that it could provide essential municipal services more efficiently or more effectively than the borough. (*Responsive brief* p. 16). If that was the standard, then no city could ever annex territory within an organized borough, because there would always be municipal services that it could not legally assume. But, as city annexation in an organized borough is authorized by Alaska law, Commerce finds that the city need not provide exclusively borough functions in order to annex.

The city does currently tax (subject to AS 29.35.170(b)). What is left from the above enumerated factors is public safety (although the commission may also consider other factors, including road maintenance). Public safety is what Commerce is concentrating on in this analysis (and for Fred Meyer). The parties have also heavily focused on public safety or emergency services.

Commerce finds that essential municipal services cannot be provided more efficiently and more effectively in the enclave lots by the existing borough or by the UFSA because neither the borough nor the UFSA are providing the enclave lots essential municipal services now (such as police, fire, or rescue squad). The enclave lots are not within the UFSA’s jurisdiction. Further, the borough has no police department, and so cannot provide that service. The borough does

not have a fire code. Neither the borough nor the USFA has a single dispatch system to service all the emergency provider agencies. There is no evidence that the borough maintains the enclave lots' roads.

Fred Meyer:

City: Much of the argument for this factor was articulated in 110.090(a)(4) above.

In summary, the city states that no local government can provide "essential city services" better than the city can. It states that only the city can provide the essential local governmental services because the UFSA does not provide full city services. It further states that Fred Meyer is within national standards for police and fire suppression response. It states that the city "provides satisfactory Fire/EMS/Police service to neighboring territory even farther from the City's primary Fire Headquarters." (*Reply brief* p. 9).

Borough: Much of the argument for this factor was articulated in 110.090(a)(4) above.

The borough contends that it, the UFSA, and the state are better able to provide all essential municipal services. The borough defines essential municipal services for a borough as including assessing, levying and collecting taxes, education, planning and use regulation, and other services that the commission considers reasonably necessary to meet the borough governmental needs of the areas' residents. The borough states that those services for a borough include levying and collecting taxes, public safety, planning, platting and land use and other services that the commission considers reasonably necessary to meet the local governmental needs of the community. (*Responsive brief* p. 15 - 16).

The borough avers that the city does not state that the city can "provide essential municipal services more efficiently and more effectively than the Borough and the State." Only the borough can legally assess, levy and collect taxes, educate, and regulate land use for the entire borough. "The city cannot legally provide any of these services except for levying additional taxes." (*Responsive brief* p. 16).

The borough avers that Fred Meyer receives police protection from the AST. (*Responsive brief* p. 16).

The borough asserts that the city has not shown that Fred Meyer needs city police rather than the AST. The city cannot provide better police service to Fred Meyer than can the AST. The FPD does not have adequate staffing to address chronic inebriate problems downtown. (*Responsive brief* pp. 19 – 20).

The borough points out that it provides rescue squad service to Fred Meyer. It states that both of the UFSA's fire stations are closer than those of the city. The city cannot show that it can provide more efficient and effective fire service when its stations are further away. (*Responsive brief* p. 17).

The borough avers that the FFD is overburdened and depends on mutual aid from other fire departments. The UFSA has provided mutual aid to the FFD 227 times in the past five years; whereas the FFD has provided the UFSA mutual aid 65 times in that same period. Since 2000 the FFD has made no mutual aid runs to Fred Meyer. These figures do not indicate that the city can better serve Fred Meyer than can the UFSA. Instead, the figures prove that if Fred Meyer is annexed, that the UFSA will continue to provide service to Fred Meyer without compensation. (*Responsive brief* pp. 17 - 18).

Annexing Fred Meyer will increase the burden on an already overburdened FFD. (*Responsive brief* p. 19).

Fred Meyer should not be annexed because the Borough can continue to provide more efficient and more effective essential services to Fred Meyer. (*Responsive brief* p. 21).

Comments: Please see 110.090 (a)(4) above.

Commerce Findings: The correct standard is not “city services” but “municipal services.” The standard is not whether the city must provide services more effectively and efficiently than the borough or service area, but whether the borough or service area can provide those services more effectively and efficiently than the city.

As above, Commerce finds that in order to annex, the city need not acquire those functions which only the borough by law may perform.

Regarding police, the city avers that the FPD has a higher officer/capita ratio than the local detachment of the AST. The city also states that it can better protect Fred Meyer from bank robbers. Then chief Hofmann wrote that the department was understaffed. The borough states that the city will not provide better police protection than the AST.

As above, it is a matter of whether the borough can provide more effective and efficient service than the city. Here, there is no borough police department. The AST is a state agency, not a local one. Some boroughs have police department (e.g. Municipality of Anchorage, North Slope

Borough), but Fairbanks North Star Borough does not. It is not a case of the relative merits of the FPD against the AST, but of the FPD versus a nonexistent police department of the borough. As there is no police department, even an understaffed FPD will provide more effective and efficient service than the borough.

The fire department and rescue squad is a more contentious issue. The city states that it plans to apply for grants to hire more firefighters, and that its ratio of fire department employees/citizen has exceeded the national average since 2006. Yet it also states that the on duty staff is below the national recommended level average, and below the FFD's ISO goals. The borough questions the city's ability to respond to fires when the FFD has so many simultaneous multiple emergency calls.

The city contends that Fred Meyer is within the response time within national standards. Yet it also says that it is enroute 43 percent of time, and on scene 45 percent of the time. The national standard (according to the city) is 90 percent. On the other hand, the city's response time has on average improved over the past few years from 1:36 average turnout time response time and 5:25 average response time in 2004 to 1:17 and 5:13 respectively, even with increased volume (*Petition Ex M* p. 22). The numbers improved in 2008 to 1:11 and 4:37 respectively, according to p. 20 of the Fairbanks Fire Department 2008 Annual Report. On page 14 of that report, the FFD states that the enroute and response percentages dropped to 42 percent and 44 percent respectively.

The city states that its trucks travel on flat terrain to get to Fred Meyer, and that from the main UFSA station the UFSA must travel on hills, and could be possibly blocked by trains. The borough counters that its main station and the University Avenue substations are closer. Using MapQuest, Commerce calculated the distance between Fred Meyer at 3755 Airport Way and the main UFSA station at 611 N. Chandalar Dr. to be 2.35 miles and .82 miles to the substation at 1950 University Ave S., compared with 3.15 miles to the FFD's main station at 1101 North Cushman and 3.54 miles to the FFD's other station at 1033 Aurora Dr. (The MapQuest provided mileage might not be the most direct route).

The city contends that its aerial fire trucks are better than the UFSA's ladder fire trucks because their platforms can hold more people. The borough counters that both trucks can deliver the same amount of water, which it states is the most important factor.

The mutual aid data are in dispute. The city states that the UFSA both gave and received mutual aid more often than the FFD (although some of the city's data contradict itself). The city states that it receives mutual aid less often than the UFSA as a percent of total volume. The borough counters that in the past five years it gave the FFD mutual aid 227 times, and received mutual aid from the FFD 65 times, and that therefore the city cannot show that the city can better serve Fred Meyer.

The city contends that the UFSA's better rating ISO rating is "minor."

The city contends that its paramedics are better than the UFSA EMTs because they receive more training and can provide more service. The borough states that its EMTs get 80 percent of the training required of nationally reorganized paramedics, and that they can get there faster.

Commerce finds that the UFSA can provide more effective and efficient fire fighting and rescue squad service than can the FFD because the UFSA is closer, and because it is more highly rated by the ISO.

The city contends that it has a better dispatch system because all 911 cell calls are answered by the city dispatch. It says that the land based calls for the UFSA are not answered by the city. The borough states that the land based calls from the UFSA are routed to the AST and then transferred to the UFSA.

That is the point – that calls are being transferred rather than handed centrally. Commerce find that it is more effective to have a centralized dispatch, particularly one trained in emergency medical dispatch. Transferring calls, no matter how quickly, is not as efficient as a centralized dispatch.

The fact that the centralized dispatch might have been paid for with borough funds does not equate to the borough operating it.

Regarding roads, Commerce finds that Fred Meyer is served by state maintained roads that would stay under state maintenance, even if annexation is approved.

Regarding fire code, the FFD code inspection division is understaffed, according to both the 2007 city fire report and the borough. Much of the same argument can be made as for the police. There is no borough fire code inspection, and no borough function to compare the city fire code and enforcement to. The borough or USFA cannot provide more effective and efficient building code inspection or fire code enforcement than can the city. Commerce finds that even an understaffed office is better than a nonexistent local office. Should there be any remodeling at Fred Meyer, of this office's services could be used.

Commerce finds that neither the borough nor the UFSA can provide essential municipal services more effectively or efficiently than the city because they do not provide some of the services such as police, dispatch, and building code inspection and fire code enforcement. While Commerce finds that the UFSA provides a more effective and efficient fire and EMS service that is not the only essential municipal service to consider. AAC 110.090(b) reads "essential municipal services [emphasis added], not service in the singular.

Conclusion:

The fact that the borough does not oppose annexing the enclave lots does not by itself guarantee annexation. Annexation should only be approved by the LBC if a proposed annexation meets the legal standards.

For both the enclave lots and Fred Meyer, 110.090's factors are factors which the commission may consider. These factors are not exhaustive or mandatory. It is not necessary that every factor be met. Commerce finds that the weight of the evidence is that both territories show a reasonable need for city government based on the above analysis of the enumerated factors.

3 AAC 110.100. Character

(a) The territory must be compatible in character with the annexing city. In this regard, the commission may consider relevant factors, including the

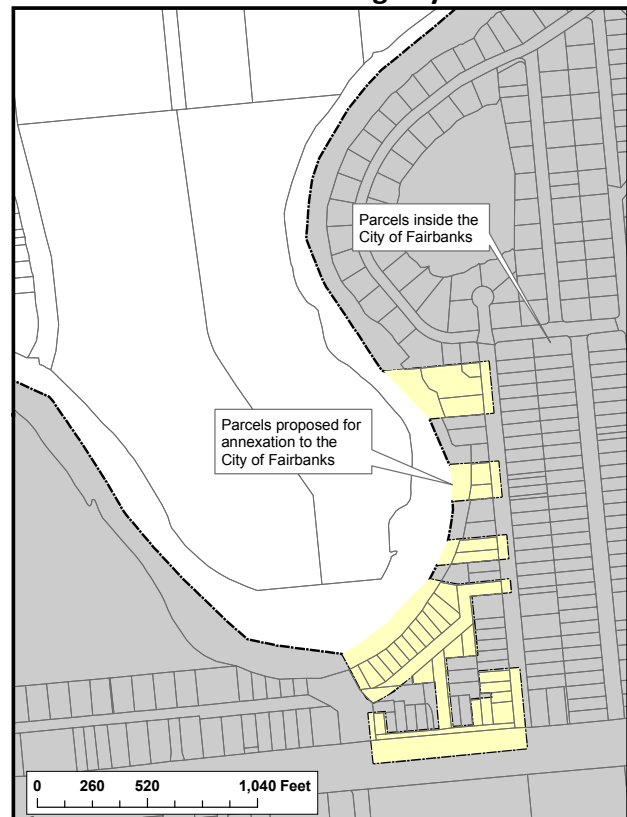
(1) *Land use, subdivision platting, and ownership patterns*

Enclave Lots:

City: The city states that "The enclave lots consist of individual platted lots on Park & Riverside Drives, Bartlett Avenue and Airport Access Road that can only be accessed by travelling through City streets or across the Chena River; the lots are effectively surrounded by the corporate limits of the City of Fairbanks." (*Petition* p. 2). "The 'mix' of land use and zones within the proposed annexation territory are the same as in the City." (*Petition Exhibit H* p. 3). The enclave lots comprise approximately 0.02 square miles of individually platted lots. (*Petition* p. 12).

Borough: The borough does not oppose the city's proposed annexation of the enclave lots.

Figure 3-5. Character of the lots proposed for annexation and surrounding city lots.



(*Responsive Brief* p. 3). “The Borough has no objection to the description of the territory proposed for annexation set forth in the City’s petition.”

(*Responsive Brief* p. 3). “The enclave lots are mostly residential with few neighborhood commercial businesses on the edge of the area.” (*Responsive Brief* p. 5).

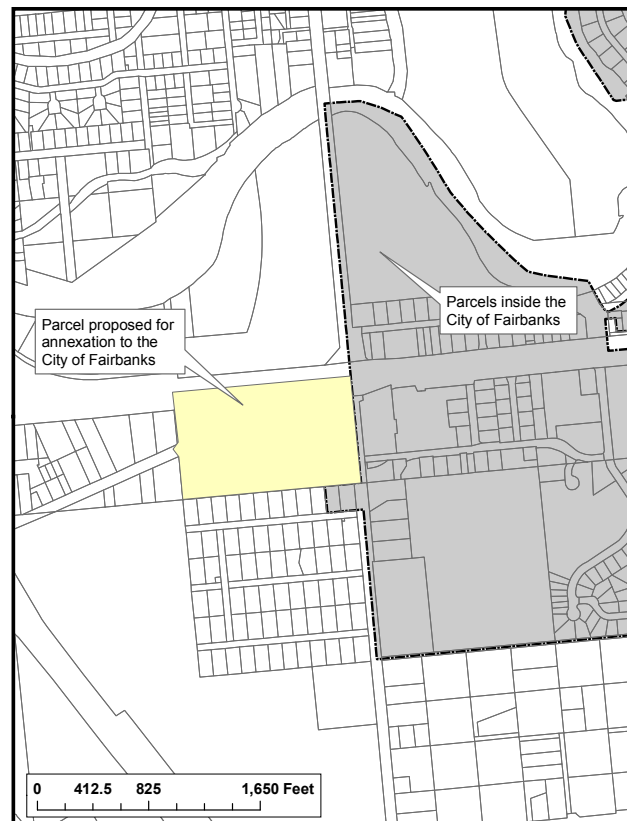
Comments: Brenda Hewitt stated, “If it looks like a city, acts like a city and smells like a city, it should be paying its fair share of the amenities and benefits it derives from being so close to the city.”

Commerce Findings: Commerce has not received any comments or evidence that shows different development or land use for the enclave lots currently within city boundaries compared to those that have been petitioned for annexation outside of existing city boundaries. The land use of the enclave lots is a mix of residential and commercial properties indistinguishable from nearby lots within existing city boundaries. This area has been highly developed and is similar to nearby lots within existing city boundaries. Commerce finds that the characteristics of the enclave lots render them compatible in character with the annexing city terms of land use, subdivision platting, and ownership patterns.

Fred Meyer:

City: The city states that “The Fred Meyer Subdivision is the site of a large Fred Meyer retail center, two other businesses and a telephone facility. This territory, the site of major commercial activity, is contiguous to the western boundaries of the City of Fairbanks, shares the urban character of the City, and is both integrated into and completely compatible with the character of the city.” (*Petition* p. 2). Fred Meyer comprises approximately 0.03 square miles of developed commercial property. (*Petition* p. 12). The city contends that “the Fred Meyer Subdivision includes the only large retail store in the Tanana Valley that is [outside an existing city].” (*Petition* p. 4).

Figure 3-6. Character of the lot proposed for annexation and surrounding city lots.



Borough: While the borough opposes annexing Fred Meyer, it did not raise any points about how Fred Meyer is not compatible in character with the annexing city. (*Responsive Brief* p. 6). As stated earlier, the borough has no objection to the description of the territory proposed for annexation. (*Responsive Brief* p. 3). The borough states that “The Fred Meyer Subdivision is entirely commercial.” (*Responsive Brief* p. 5).

Comments: Harry Davis wrote “From a logical city planning perspective it would appear as a matter of common sense that the last remaining box store and branch bank out side the city limits should be annexed.”

Commerce Findings: Across University Avenue and within the city limits is similar commercial development with a Safeway store. The commercial activity and ownership of Fred Meyer is compatible with similar nearby commercial areas within existing city boundaries. Commerce finds that Fred Meyer has been developed in a manner consistent with other commercial areas currently within the city. Commerce finds the characteristics of Fred Meyer render it compatible in character with the annexing city terms of land use, subdivision platting, or ownership patterns.

(2) *Salability of land for residential, commercial, or industrial purposes*

Enclave Lots:

City: The city avers that “Land within the territory to be annexed is equally salable to land inside the existing City.” (*Petition Exhibit H* p. 3). “The enclave lots, a residential area, are indistinguishable from the surrounding homes.” (*Petition Exhibit H* p. 3).

Borough: As earlier stated, the borough does not object to the city annexing the enclave lots. (*Responsive Brief* p. 3).

Commerce Findings: The enclave lots have been presented as indistinguishable from surrounding lots within existing city boundaries and are believed to be equally salable. There is nothing to indicate that the ownership of the property in the enclave lots is inconsistent with nearby enclave lots within existing city boundaries. After considering the information provided, Commerce finds no reason that the land within the enclave lots would not be equally salable to land inside the existing city.

Fred Meyer:

City: The city asserts “Land within the territory to be annexed is equally salable to land inside the existing City.” (*Petition Exhibit H* p. 3). “With regard to the Fred Meyer Subdivision, the territory is a large-scale retail “box store” with two smaller businesses on site, which is very similar in character to the development across University Avenue.” (*Petition Exhibit H* p. 3).

Borough: While the borough opposes the city annexing Fred Meyer, it did not comment on this relevant factor that the commission may consider. (*Responsive Brief* p. 6).

Commerce Findings: As discussed in 3 AAC 110.100(1), the commercial property of Fred Meyer is comparable to similar commercial property within the existing city boundaries. Fred Meyer appears to be as developed as the similar commercial property across University Avenue. There are no reasonable arguments for why the property in Fred Meyer would not be equally salable as comparable land within the existing city. After considering the information provided, Commerce finds no reason that the land within Fred Meyer would not be equally salable to land inside the existing city.

(3) Population density**Enclave Lots:**

City: The city states “The population density of the territory to be annexed is the same as much of the City.” (*Petition Exhibit H* p. 3). There are “approximately 35 residents living within the enclave lots.” (*Petition* p. 5). The city provided a population estimate of 31,627 for the city of Fairbanks from *Winter 2007 Fairbanks North Star Borough Community Research Quarterly*. (*Petition* p. 12).

Borough: As earlier stated, the borough does not object to the city annexing the enclave lots. (*Responsive Brief* p. 3).

Commerce Findings: The population of the enclave lots is predominately residential which is consistent with nearby lots within the existing city limits. The land in the enclave lots has been highly developed with residential and some commercial properties that share a similar population density with other areas of the city. Given the size of the city of Fairbanks is currently 32.7 square miles, and based on the 2007 population estimate of 31,627, the population density for the city of Fairbanks is approximately 967.2 persons per square mile. If the annexation request, in its entirety, was approved it would add approximately 35 residents

and 0.05 square miles. The post annexation population density would be approximately 965.71 persons per square mile. This is a decrease of approximately 0.15 percent which Commerce finds to not significantly change any population dynamics of the city of Fairbanks.

Commerce finds that the city overstated in its petition when citing above that “the population density of the territory to be annexed is the same as **much** (emphasis added) of the City.” Based on 35 residents and 0.02 square miles, the population density of the enclave lots is approximately 1750 persons per square mile, and the population density of Fred Meyer is assumed to be 0 persons per square mile. As calculated above the population density for the existing city is 967.2 persons per square mile. Neither the population density of the enclave lots nor the population density of Fred Meyer is similar to the entire existing city; however, Commerce does not believe this standard requires the territories proposed for annexing to have the same population density as the existing city. Rather the population density should not be significantly affected without reasonable explanation and the population density of the territories proposed for annexing should be compatible to similar parts of the existing city. There is nothing to indicate the population density of the enclave lots proposed for annexing differs from nearby lots within existing city boundaries. Commerce finds the population density of the enclave lots proposed for annexation compatible to the existing city because it does not systematically change any population dynamics of the city.

Fred Meyer:

City: The city asserts “The population density of the territory to be annexed is the same as much of the City.” (*Petition Exhibit H* p. 3). According to the city there are no known permanent residents of Fred Meyer. (*Petition* p. 5).

Borough: While the borough opposes the city annexing Fred Meyer, it did not comment on this relevant factor that the commission may consider. (*Responsive Brief* p. 6).

Commerce Findings: Considering that the entire area of Fred Meyer is developed commercial property, the population density is comparable to other commercial property areas within the existing city. There is no indication that the population density of Fred Meyer differs from the commercial area across University Avenue. See the analysis conducted above in the “Commerce Findings” section on the enclave lots. Commerce finds the post annexation population density to be compatible to the existing city because it does not systematically change any population dynamics of the city.

(4) Cause of recent population changes**Enclave Lots:**

City: The city avers that “The territory proposed for annexation is subject to the same social and economic forces as the existing City. While the population of the City has not changed significantly, the City has seen a substantial amount of commercial construction on its periphery, both inside and outside the City limits, which has greatly increased traffic to the recently constructed commercial businesses.” (*Petition Exhibit H* pp. 3-4). “The City of Fairbanks is the larger of two cities located inside the Fairbanks North Star Borough; approximately 32 percent of the Borough population lives inside the current City of Fairbanks boundaries. This is a reversal of the situation some 35 years ago: in 1970, nearly 60 percent of the community’s population lived inside the City limits.” (*Petition* p. 12).

Borough: As earlier stated, the borough does not object to the city annexing the enclave lots. (*Responsive Brief* p. 3).

Commerce Findings: While the population of the city in relation to the borough has changed significantly over the last 35 years, the population within city limits remains stable. Commerce concurs with the statement of a stable population based on Census population history stating the population in 1990 was estimated to be 30,843 persons and in 2000 was estimated to be 30,224 (http://www.commerce.state.ak.us/dca/commdb/CF_BLOCK.cfm). According to data provided by the city in its petition from a borough publication, the 2007 population was estimated to be 31,267. These population statistics reasonably show that the population has been stable for the period from 1990 to 2007. Recognizing that the enclave lots proposed for annexing are highly developed and are currently inhabited, Commerce believes this land will not add significantly to future development of the city. Commerce finds that there are no current or expected population changes that would render the enclave lots incompatible or unsuitable for annexing by the city.

Fred Meyer:

City: See “Enclave Lots” above.

Borough: While the borough opposes the city annexing Fred Meyer, it did not comment on this relevant factor that the commission may consider. (*Responsive Brief* p. 6).

Commerce Findings: See the above analysis “Enclave Lots” Commerce Findings. Recognizing that Fred Meyer is highly developed and uninhabited, Commerce believes this land will not add significantly to future development of the city. Commerce finds that there are no current or expected population changes that would render Fred Meyer incompatible or not suitable for annexing by the city.

(5) Suitability of the territory for reasonably anticipated community purposes

Enclave Lots:

City: The city states that “Both of the territories proposed for annexation are being used for community purposes: commercial for the Fred Meyer Subdivision and residential for the enclave lots.” (*Petition Exhibit H* p. 4).

Borough: As earlier stated, the borough does not object to the city annexing the enclave lots. (*Responsive Brief* p. 3).

Commerce Findings: Commerce has viewed the phrase ‘reasonably anticipated community purposes’ to have both a narrow and broad context. As noted in the *2002 Commerce Preliminary Report – City of Palmer Petition to Annex 921.34 Acres*, the “narrow context relates to existing and prospective roads, airports, utilities, public safety facilities, health facilities, educational facilities, parks and recreation, cemeteries, and other governmental functions.” (p. 57). The above report also states the broad context “could include properties that are suitable for private purposes in addition to those listed above (e.g., residential, recreational, commercial, and industrial).” (*2002 Commerce Preliminary Report – City of Palmer Petition to Annex 921.34 Acres* pp. 57-58).

The enclave lots do not contain any significant vacant land that could be used for government functions. The city omits that there are commercial community purposes in its statement above. Commerce finds that the enclave lots are highly developed for predominately residential purposes, but also for commercial purposes which meet the broad context of reasonably anticipated community purposes.

Commerce finds that the enclave lots proposed for annexation are small, lightly populated (35 residents), and already developed for residential and commercial land use. Commerce finds that the enclave lots proposed for annexation is suitable for reasonably anticipated community purposes.

Fred Meyer:

City: The city states that “Both of the territories proposed for annexation are being used for community purposes: commercial for the Fred Meyer Subdivision and residential for the enclave lots.” (*Petition Exhibit H* p. 4).

Borough: While the borough opposes the city annexing Fred Meyer, it did not comment on this relevant factor that the commission may consider. (*Responsive Brief* p. 6).

Commerce Findings: Fred Meyer does not contain any significant vacant land that could be used for government functions. Fred Meyer is highly developed and has been operating commercial activities that meet the broad context of reasonably anticipated community purposes. Commerce finds that Fred Meyer is suitable for reasonably anticipated community purposes and is compatible with the existing city.

(6) Existing and reasonably anticipated transportation patterns and facilities

Enclave Lots:

City: The city asserts “There are adequate transportation patterns and facilities for both territories.” (*Petition Exhibit H* p. 4). “All of these residences and businesses are connected to community facilities including streets.” (*Petition* p. 5). The city recognizes in its petition that the existing streets serving the enclave lots are “in very poor condition.” (*Petition* p. 8). The city contends that if annexation is approved it “will follow the recommendation of Michael Schmetzer, City Engineer/Public Works Director, that new catch basins and storm drain piping would be installed and a full two inches of asphalt concrete pavement will be put down over a rehabilitated base” in order to better serve the existing area and the newly annexed enclave lots. (*Petition* p. 8). “No additional full time employees will be needed to provide governmental services to the territory to be annexed.” (*Petition* p. 8). The city states the streets to be resurfaced in the enclave are Riverside Drive and Strand Avenue. (*Petition* p. 8).

Borough: As earlier stated, the borough does not object to the city annexing the enclave lots. (*Responsive Brief* p. 3).

Commerce Findings: The enclave lots are part of an established subdivision. Based on maps included with the city’s petition (*Petition Exhibit C* p. 3) Commerce finds there are sufficient city maintained roads to provide reasonable access and transportation patterns for the enclave lots. Commerce notes the city’s stated willingness to repair Riverside Drive and Strand Avenue within the enclave. Commerce finds the transportation patterns and facilities adequate for the enclave lots.

Fred Meyer:

City: As noted above, the city asserts that “There are adequate transportation patterns and facilities for both territories.” (*Petition Exhibit H* p. 4). “Although [Fred Meyer] is currently bordered by state maintained roads, there is also access by Rewak Drive, which is a City street. It is used by people seeking to either avoid a left turn or access the stores at the Safeway Shopping Center, which lies across University Avenue.” (*Reply Brief* p. 21).

Borough: While the borough opposes the city annexing Fred Meyer, it did not comment on this relevant factor that the commission may consider. (*Responsive Brief* p. 6).

Commerce Findings: Fred Meyer is an established commercial center serviced by existing state roads and city maintained roads leading to the commercial property. Based on maps included with the city’s petition (*Petition Exhibit C* p. 3), Commerce finds there are existing roads that sufficiently provide adequate transportation patterns. Commerce notes that the two major roads providing access to Fred Meyer are state maintained and there is no expected change to the service being provided whether the territory is under borough or city jurisdiction. Commerce finds that the transportation patterns and facilities adequate for Fred Meyer.

(7) Natural geographical features and environmental factors**Enclave Lots:**

City: The city states that “The natural and environmental factors for both territories are compatible with the existing City.” (*Petition Exhibit H* p. 4). “There are no natural or other barriers that impede quick and easy access to the City.” (*Petition* p. 5). When referring to fire truck access the city avers that “The City does not face the obstacles of steep terrain since the land in the City limits is virtually flat.” (*Petition Exhibit E* p. 5).

Borough: As earlier stated, the borough does not object to the city annexing the enclave lots. (*Responsive Brief* p. 3).

Commerce Findings: Commerce notes the Chena River forms part of the northern and western borders of the enclave, and serves as a barrier to the borough. As noted earlier in the discussion of 3 AAC 110.090, the borough is currently not able to provide emergency services to the enclave lots due to its isolated location. There are no bridges across the Chena River providing direct access to the enclave lots. All land within the enclave lots is accessible with existing roads connecting with roads within the existing city without any geographic barriers. Commerce finds that the city has better access to the enclave lots and does not have geographical barriers. Commerce finds that the land within the enclave lots is flat and is

already developed as residential and commercial property. After inspecting the maps and plats, Commerce finds that the natural geographic features and environmental factors of the enclave lots are compatible with the existing city.

Fred Meyer:

City: See “Enclave Lots” above.

Borough: While the borough opposes the city annexing Fred Meyer, it did not comment on this relevant factor that the commission may consider. (*Responsive Brief* p. 6).

Commerce Findings: Similar to the findings of the enclave lots, Commerce finds that the land within Fred Meyer is flat and has been highly developed as commercial property. The Chena River is located to the north of Fred Meyer but does not act as a barrier to the city or borough. After inspecting the maps and plats, Commerce finds that the natural geographic features and environmental factors of Fred Meyer are compatible with the existing city.

Conclusion

Commerce finds that after carefully considering the relevant factors discussed above, that Fred Meyer and the enclave lots proposed for annexation are compatible in character with the existing city. Both territories proposed for annexation are comparable to the existing city in terms of land use, subdivision platting, and ownership patterns. No argument has been made to show that the land within the territories proposed for annexation is not equally salable to that within the existing city. Annexing the proposed territories would not significantly change the population density of the existing city. There are no current or expected population changes that would render the territories proposed for annexation incompatible with the existing city. The territories proposed for annexation are suitable for reasonably anticipated community purposes in the broad context. There are existing transportation patterns and facilities in place to extend municipal services to the territories proposed for annexation. The geographical features and environmental factors in the territories proposed for annexation are compatible with the existing city, and do not prevent the city from providing municipal services.

There were no comments that raised arguments as to how the territories proposed for annexation did not meet the standard provided in 3 AAC 110.100. Commerce finds that the city of Fairbanks annexation proposal satisfies the standard set out in 3 AAC 110.100 for both Fred Meyer and the enclave lots.

3 AAC 110.110. Resources

(a) The economy within the proposed expanded boundaries of the city must include the human and financial resources necessary to provide essential municipal services on an efficient, cost effective level. In this regard, the commission may consider relevant factors, including the

(1) *Reasonably anticipated functions of the city in the territory being annexed*

Enclave Lots:

City: The city asserts that “annexation will provide increased police service, full time professional fire suppression, paramedic-level emergency medical services and rescue services, fire prevention and building code and fire marshal inspection services, and residential refuse collection in residential areas of the territory.” (*Petition* p. 8). Additionally the city contends that if annexation is approved it “will follow the recommendation of Michael Schmetzer, City Engineer/Public Works Director, that new catch basins and storm drain piping would be installed and a full two inches of asphalt concrete pavement will be put down over a rehabilitated base” in order to better serve the existing area and the newly annexed enclave lots. (*Petition* p. 8). Currently the city provides all the services listed above to nearby lots within the enclave area, and states it can extend these services to the enclave lots in a reasonable and cost effective manner. The city’s position on these services is extensively discussed in 110.090(a)(2).



Fairbanks Police, Fire & EMS staff respond as a team to emergency calls for service

Borough: As earlier stated, the borough does not object to the city annexing the enclave lots. (*Responsive Brief* p. 3).

Commerce Findings: The Commerce finds the services detailed above reflect the reasonably anticipated functions of the city for the enclave lots because these functions are currently being provided to nearby lots within the existing city. Commerce finds that the list of functions does not omit any functions currently being performed in the enclave lots, and annexation would increase the number functions to be performed (e.g. fire service and residential refuse collection).

Fred Meyer:

City: As discussed thoroughly in 110.090(a)(2), the city avers that “annexation will provide increased police service, full time professional fire suppression, paramedic-level emergency medical services and rescue services, fire prevention and building code and fire marshal inspection services, and residential refuse collection in residential areas of the territory.” (*Petition* p. 8).

Borough: While the borough opposes the city annexing Fred Meyer, it did not comment on this relevant factor that the commission may consider. (*Responsive Brief* p. 6).

Commerce Findings: Commerce finds the services detailed above reflect the reasonably anticipated functions of the city for Fred Meyer because these functions are currently being provided to nearby areas within the existing city. Commerce finds that the list of functions does not omit any functions currently being performed in Fred Meyer.

(2) Reasonably anticipated new expenses of the city that would result from annexation

Enclave Lots:

City: The city projects that annexing the enclave lots will result in additional operating and capital expenses to the city. Table 3-1 (Table 1-B from *Petition* p. 17) details the projected revenues, operating expenses and capital expenditures for the next three fiscal years for the enclave lots. Based on Table 3-1, the city estimates public work expenses to be \$4,669 annually, as well as a one time capital expense of \$144,000 to complete the road work detailed earlier recommended by Michael Schmetzer, City Engineer/Public Works Director. (*Petition* p. 17). “While it is certain that there will be change, [it] will not be significant in light of the small territory in question in comparison to the size of the City Budget.” (*Petition* p. 15).

Table 3-1. Budget Projects for Enclave Lots			
Revenues	2009	2010	2011
Property Tax	\$15,268	\$15,268	\$15,268
Alcohol Tax (5%)	\$16,416	\$16,416	\$16,416
Tobacco Tax (8%)	0	0	0
Transient Room Tax (8%)*	0	0	0
City Licenses and Permits	\$300	\$300	\$300
Fines			
Other			
Total Revenue	\$31,984	\$31,984	\$31,984
Operating Expenses	2009	2010	2011
General Government	0	0	0
Police (included above)	0	0	0
Fire	0	0	0
Public Works **	\$4,669	\$4,669	\$4,669
Econ. Dev./Visitor Ind.	0	0	0
Total Operating Expenses	\$4,669	\$4,669	\$4,669
Capital Expenses	\$144,000	0	0
Expenses	\$148,669	\$4,669	\$4,669
Revenue minus Expenses	(\$116,685)	\$27,315	\$27,315
* There are currently no hotels, motels, or B&B's in the territory to be annexed.			
** The onetime cost of rebuilding the roads in the enclave lots.			

Borough: As earlier stated, the borough does not object to the city annexing the enclave lots. (*Responsive Brief* p. 3).

Commerce Findings: Commerce has already found the enclave lots to be a small (containing approximately 35 residents) and already developed territory. The streets leading to the enclave lots are city maintained and city services are already being provided to nearby lots within the existing city boundaries. Based on these factors, Commerce finds that the city's anticipated additional operating expenses to extend city government to the enclave lots to be reasonable because the area is small and the services (except for the road work) will be similar to those already being provided in the neighborhood.

Fred Meyer:

City: The city provides estimates of additional expenses that it will incur if annexation of Fred Meyer is successful. Table 3-2 (Table 1-A from Petition p. 16) details the projected revenues, operating expenses and capital expenditures for the next three fiscal years for Fred Meyer. The city contends

that Fred Meyer being a small territory that it would not require additional facilities and as a worst case scenario would require a half time police officer to extend municipal services. (*Petition* p. 8). The city estimates that the annual added expense to provide police service to Fred Meyer would be about \$37,500 based on a current workload of 250 annual calls for service, assuming \$75.00 per hour and an average call time of one hour. The city budgets the expense at \$50,000 annually to provide a safe margin. (*Petition* p. 16). “While it is certain that there will be change, [it] will not be significant in light of the small territory in question in comparison to the size of the City Budget.” (*Petition* p. 15). The city also projects additional operating expenses of \$1,000 for general government and \$1,000 for public works/engineer for the fiscal year. (*Petition* p. 16).

Table 3-2. Budget Projections for Fred Meyer Subdivision

Revenues	2009	2010	2011
Property Tax*	\$149,653	\$149,653	\$149,653
Alcohol Tax (5%)	\$151,946	\$151,946	\$151,946
Tobacco Tax (8%)	\$157,502	\$157,502	\$157,502
Transient Room Tax (8%)	0	0	0
City Licenses and Permits	\$10,000	\$10,000	\$10,000
Fines	0	0	0
Other	0	0	0
Total Revenue	\$469,101	\$469,101	\$469,101
Operating Expenses	2009	2010	2011
General Government	\$1,000	0	0
Police**	\$50,000	\$50,000	\$50,000
Fire			
Public Works/Engr.	\$1,000	0	0
Econ. Dev./Visitor Ind.	0	0	0
Total Operating Expenses	\$52,000	\$50,000	\$50,000
Capital Expenses	0	0	0
Total Expenses	\$109,544	\$107,544	\$107,544
Revenue Minus Expenses	\$417,101	\$419,121	\$419,121
<p>* The City’s assessed valuation has increased steadily over the past decade, meaning that even with a maximum base mill levy (capped by the City Charter) of 4.9 mills, property tax revenues increased as values increased. However, there is no basis for assuming values will continue to increase.</p> <p>** Worst case: Current workload is about 250 annual calls for service. Assuming \$75.00 per hour and an average call time of one hour, annual added expense would be about \$37,500.00. \$50,000 provides a safe margin.</p>			

Borough: While the borough opposes the city annexing Fred Meyer, it did not comment on this relevant factor that the commission may consider. (*Responsive Brief* p. 6).

Commerce Findings: Commerce notes that Table 3-2 contains errors. The total operating expenses and total revenue lines are presumably correct, but the total expenses line is either not correct or is incomplete. Revenue minus expenses are correct based on the total revenue minus total operating expenses. Commerce has already found Fred Meyer to be small, unpopulated, and highly developed. The streets leading to Fred Meyer within city limits are currently maintained by the city. The main roads surrounding Fred Meyer are state maintained and will not require additional city expenses. Services are already being provided to nearby commercial areas within the existing city boundaries. The city has taken into account the increase in workload for police service and has budgeted accordingly. Based on these factors, Commerce finds the city's anticipated additional operating expenses to extend city government to the Fred Meyer to be reasonable.

(3) Actual income and the reasonably anticipated ability to generate and collect local revenue and income from the territory

Enclave Lots:

City: The city projects three sources of revenue from the enclave lots to be annexed: property tax, alcohol tax, and city licenses and permits. "The total mill levy for all property in the City (combination of taxes levied by City plus areawide borough taxes) is 17.278 mills. The enclave lot owners will see a property tax increase of 4.488 mills and the Fred Meyer lot owners, a smaller increase of 2.350 mills." (*Petition* p. 14). "The Fairbanks North Star Borough presently imposes a 5% sales tax upon the retail sale of alcohol and an 8% excise tax upon the wholesale sales of tobacco products. Sales of alcohol within a city that are taxed at the same rate are not subject to a duplicate Borough alcohol tax. There is no similar exemption for sales of tobacco products." (*Petition* p. 14).

The city estimates that annexation would increase property tax revenues by \$15,268 annually. The city estimates it would increase alcohol tax revenues by \$16,416 annually. The most minor source of income would come from city licenses and permits which the city projects would raise \$300 of revenue annually. These figures are detailed in the revenue section of Table 3-1 provided by the city. (*Petition* p. 17). See page 66 for Table 3-1.

Borough: As earlier stated, the borough does not object to the city annexing the enclave lots. (*Responsive Brief* p. 3).

Commerce Findings: The city bases its revenue projections on the borough's existing mill rates and alcohol tax rates for the enclave lots. The city imposes a 5 percent sales tax on alcohol, and an 8 percent excise tax on tobacco. The city's revenue projections for alcohol, tobacco, and real property are based on the borough's 2008 estimates. The enclave lots are projected to generate revenue totaling \$31,984 annually. Commerce finds that the city's projections of additional income generated from the enclave lots to be reasonable because it bases its projections on similar borough estimates for the area.

Fred Meyer:

City: The city projects four sources of revenue from the Fred Meyer territory: property tax, alcohol tax, tobacco tax, and city licenses and permits. "The total mill levy for all property in the City (combination of taxes levied by City plus areawide borough taxes) is 17.278 mills. The enclave lot owners will see a property tax increase of 4.488 mills and the Fred Meyer lot owners, a smaller increase of 2.350 mills." (*Petition* p. 14). "The Fairbanks North Star Borough presently imposes a 5% sales tax upon the retail sale of alcohol and an 8% excise tax upon the wholesale sales of tobacco products. Sales of alcohol within a city that are taxed at the same rate are not subject to a duplicate Borough alcohol tax. There is no similar exemption for sales of tobacco products." (*Petition* p. 14).

The city estimates that annexation would increase property tax revenues by \$149,653 annually. The city projects it would increase alcohol tax revenues by \$151,946 annually. The city estimates it would increase tobacco tax revenues by \$157,502 annually. The most minor source of income would come from city licenses and permits which the city projects would raise \$10,000 of revenue annually. These figures are detailed in the revenue section of Table 3-2 provided by the city. (*Petition* p. 16). See page 67 for Table 3-2.

Borough: While the borough opposes the city annexing Fred Meyer, it did not comment on this relevant factor that the commission may consider. (*Responsive Brief* p. 6).

Commerce Findings: The city bases its revenue projections on the borough's existing mill rates and alcohol tax rates for the enclave lots. The city imposes a five percent sales tax on alcohol, and an eight percent excise tax on tobacco. The city's revenue projections for alcohol, tobacco, and real property are based on the borough's 2008 estimates. Fred Meyer is projected to generate revenue totaling \$469,101 annually. Commerce finds that the city's projections of additional income generated from Fred Meyer to be reasonable because it bases its projections on similar borough estimates for the area.

(4) Feasibility and plausibility of those aspects of the city's anticipated operating and capital budgets that would be affected by the annexation through the period extending one full fiscal year beyond the reasonably anticipated date for the completion of the transition set out in 3 AAC 110.900

Enclave Lots:

City: The city asserts that "due to economies of scale, the City is able to provide a greater level of service to the territories on a cost efficient basis. Revenue from property tax, taxable sales of alcohol and tobacco and any other tax (like the employee tax, currently stayed) which may be adopted in the annexed territory will generate revenues needed to provide services to the entire City, of which the territory to be annexed is an integral component." (*Petition* p. 10).

The city notes in its petition "that due to the difficulty of predicting the future change in revenue or expense, the three budgets assume no change over the three-year period. While it is certain that there will be change, [it] will not be significant in light of the small territory in questions in comparison to the size of City Budget." (*Petition* p. 15).

The city's affidavit states that the "tax data in section 11 of the Petition was based on consultation with James Soileau, City of Fairbanks Chief Financial Officer and communications between Brittany Retherford and the staff of the Fairbanks North Star Borough." (*Petition Ex. J* p. 1).

Borough: As earlier stated, the borough does not object to the city annexing the enclave lots. (*Responsive Brief* p. 3).

Commerce Findings: The city's projections of revenues and expenditures for the enclave lots indicate that the capital expenditure to fix the roads will take six years to repay from revenues of the enclave lots alone. Table 3-3 (Table 2 from Petition p. 19) details the budget projections for the existing city of Fairbanks without annexation. This table contends that the city will generate a revenue surplus in the amount of \$182,111 annually for the next three fiscal years. This surplus of revenue, from Table 3-3, more than accounts for the net loss in the first fiscal year of (\$116,685), from Table 3-1, the city projects for the annexed enclave lots. Based on the table after the first fiscal year, revenues will exceed all operating and capital expenditures for the enclave lots.

Table 3-3. Budget Projections for Existing City of Fairbanks Without Annexation

Revenues	2009	2010	2011
Property Tax (5.999 mills)	\$12,371,685	\$12,371,685	\$12,371,685
Alcohol Tax (5%)	\$1,400,000	\$1,400,000	\$1,400,000
Tobacco Tax (8%)	\$600,000	\$600,000	\$600,000
Transient Room Tax (8%)	\$2,660,000	\$2,660,000	\$2,660,000
City Licenses fees and Permits	\$1,435,200	\$1,435,200	\$1,435,200
Fines	\$1,161,500	\$1,161,500	\$1,161,500
From Capital Fund	\$3,113,243	\$3,113,243	\$3,113,243
Other	\$11,492,192	\$11,492,192	\$11,492,192
Total Revenue	\$34,233,820	\$34,233,820	\$34,233,820
Operating Expenses	2009	2010	2011
General Government	\$10,429,270	\$10,429,270	\$10,429,270
Police	\$7,951,770	\$7,951,770	\$7,951,770
Fire	\$5,374,403	\$5,374,403	\$5,374,403
Public Works	\$7,183,023	\$7,183,023	\$7,183,023
Total Operating Expenses	\$30,938,466	\$30,938,466	\$30,938,466
Total Capital Expenses	\$3,113,243	\$3,113,243	\$3,113,243
Total Expenses	\$34,051,709	\$34,051,709	\$34,051,709
Revenue Minus Expenses	\$182,111	\$182,111	\$182,111

Commerce considers the city's projections of revenues and expenditures for the post-annexation city of Fairbanks including the enclave lots to be credible given the city's long established nature, size and scope of its operation, and reputation of good financial reporting. Commerce notes that "The Government Finance Officers Association of the United States and Canada (GFOA) awarded a Certificate of Achievement for Excellence in Financial Reporting to the City of Fairbanks for its comprehensive annual financial report (CAFR) for the fiscal year ended December 31, 2007. The City has received this prestigious award for the past six consecutive years (2002 – 2007)." (*The Comprehensive Annual Financial Report of the City of Fairbanks, Alaska for the Fiscal Year ended December 31, 2008*).

Commerce notes the city's claim of difficulty in predicting future changes in revenues and expenses. Commerce believes the city could have provided reasonable estimates to the trend in property values and retail sales of taxable property rather than providing constant figures for all three fiscal years. Commerce also recognizes and finds that any changes to projected revenues or expenses should not significantly impact the projected budgets for the territories proposed for annexation. The borough did not dispute the budget projections with contradictory data or figures, and the city based its figures on 2008 borough information. Commerce finds further that the budget should remain feasible and plausible through the third fiscal year of operation

after annexation absent notable changes in the: (1) population of the city, (2) powers and duties of the Fairbanks city government, (3) rate of inflation, (4) local economic conditions, and (5) levels of state financial aid to local governments.

Commerce finds it is feasible and plausible that the city will be able to provide and extend the services stated in its petition to the enclave lots in an economically sustainable manner because the enclave lots provide the resources necessary to generate projected revenues that will cover the projected costs of providing and extending those services.

Fred Meyer:

City: See “Enclave Lots” above.

Borough: While the borough opposes the city annexing Fred Meyer, it did not comment on this relevant factor that the commission may consider. (*Responsive Brief* p. 6).

Commerce Findings: The city’s projections of revenues and expenditures for the Fred Meyer indicate that the city can expect a surplus of revenue in the amount of \$417,101 for the first fiscal year and \$419,121 for the second and third fiscal years following annexation, from Table 3-2. Table 3-3 above details the budget projections for the existing city of Fairbanks without annexation. Table 3-3 contends that the city will generate a surplus of revenue in the amount of \$182,111 annually for the next three fiscal years. Post-annexation of Fred Meyer Commerce calculates, by combining the projected surplus revenues of Table 3-2 and Table 3-3, the city should expect a projected surplus of revenues amounting to \$599,212 for the first fiscal year following annexation and \$601,232 for the second and third fiscal years following annexation.

Commerce considers the city’s projections of revenues and expenditures for the post-annexation city of Fairbanks including Fred Meyer to be credible. Please see earlier explanation for the enclave lots.

Commerce finds further that the budget should remain feasible and plausible through the third fiscal year of operation after annexation absent notable changes in the: (1) population of the city, (2) powers and duties of the Fairbanks city government, (3) rate of inflation, (4) local economic conditions, and (5) levels of state financial aid to local governments.

Commerce finds it is feasible and plausible that the city will be able to provide and extend the services stated in its petition to Fred Meyer in an economically sustainable manner because Fred Meyer provides the resources necessary to generate projected revenues that will cover the projected costs of providing and extending those services.

(5) *Economic base of the territory within the city after annexation*

Enclave Lots:

City: The city avers that “Although the City’s population has not grown greatly over the past ten years, there has been significant development. Approximately 555 new residential units have been constructed within the City limits since 1995. The level of business activity has increased significantly with the construction of many large retail stores. The annexation will enhance the City’s ability to provide essential services to the existing City and territory to be annexed.” (*Petition* p. 10). If both the enclave lots and Fred Meyer are annexed, the city anticipates, in Table 3-4, (Table 1-C from *Petition* p.18) a surplus of revenue amounting in \$300,416 for the first fiscal year and \$446,416 for the second and third fiscal years. (*Petition* p. 18).

Table 3-4. Budget Projections for Both Fred Meyer Subdivision and Enclave Lots			
REVENUES	2009	2010	2011
Property Tax	\$164,921	\$164,921	\$164,921
Alcohol Tax (5%)	\$168,362	\$168,362	\$168,362
Tobacco Tax (8%)	\$157,502	\$157,502	\$157,502
Transient Room Tax (8%)*	\$0	\$0	\$0
City Licenses and Permits	\$10,300	\$10,300	\$10,300
Fines	\$0	\$0	\$0
Other	\$0	\$0	\$0
Total Revenue	\$501,085	\$501,085	\$501,085
OPERATING EXPENSES	2009	2010	2011
General Government	\$1,000	\$0	\$0
Police	\$50,000	\$50,000	\$50,000
Public Works	\$5,669	\$4,669	\$4,669
Econ. Dev./Visitor Ind.	\$0	\$0	\$0
Total Operating	\$56,669	\$54,669	\$54,669
Capital Expenses	\$144,000	\$0	\$0
Total Expenses	\$200,669	\$54,669	\$54,669
Revenue Minus Expenses	\$300,416	\$446,416	\$446,416

The city states that “The City of Fairbanks is the center of commerce and employment for Interior Alaska. Most of the region’s major employers are located within the existing City.” (*Petition* p. 3). The city is also home to many of the region’s educational facilities and recreational facilities. (*Petition* p. 4). Lists of employers, educational facilities and recreational facilities can be found on pages 2 and 3 of the city’s petition.

Borough: As earlier stated, the borough does not object to the city annexing the enclave lots. (*Responsive Brief* p. 3).

Commerce Findings: The enclave lots proposed for annexing are predominately residential in character with a few commercial businesses. The most significant forms of revenue for the territory will come from taxes on property, alcohol, and city licenses and permits. As discussed in factor (4) “Enclave Lots” above, it will take approximately six years for the revenues generated from the enclave lots to repay the capital expenditure to fix the roads. Commerce also notes the city currently anticipates a surplus of revenue without annexation of \$182,111 that could cover the cost of the capital expenditure.

The above analysis assumes only the enclave lots are approved for annexation. If both the enclave lots and Fred Meyer are approved for annexing by the commission, the city will receive additional projected revenues cited in Table 3-4 amounting to \$300,416 for the first fiscal year and \$446,416 for the second and third fiscal years. Commerce notes that while annexation of both territories (the enclave lots and Fred Meyer) would add more to the economic base of the city, the enclave lots have enough resources on its own to accommodate the extension of city services to the area.

On a continuing basis the revenue generated from solely the enclave lots should be able to cover the additional operating expenses of extending city services to the area. Commerce finds that while the enclave lots do not accommodate a significant growth in the economic base of the city, annexing the territory will not diminish the existing economic base.

Fred Meyer:

City: See “Enclave Lots” above.

Borough: While the borough opposes the city annexing Fred Meyer, it did not comment on this relevant factor that the commission may consider. (*Responsive Brief* p. 6).

Commerce Findings: Fred Meyer proposed for annexing is entirely developed as commercial property. The most significant sources of revenue for the territory will come from taxes on property, alcohol, tobacco, and city licenses and permits. As discussed in factor (4) “Fred Meyer” above, the city will gain significant revenues as a result of annexation. Currently the city projects annual net revenue amounting to \$182,111 without any annexation, and would add additional annual revenue of about \$417,000. Post-annexation of solely Fred Meyer, the expanded city should expect a projected revenue surplus amounting to \$599,212 for the first fiscal year and \$601,232 for the second and third fiscal years following annexation.

Annexing Fred Meyer would add commercial property to the economic base of the city. And as noted earlier by the city, annexing Fred Meyer would “include the only large retail store in the Tanana Valley that is outside a city.” (*Petition* p. 4). On a continuing basis the revenue generated from solely Fred Meyer should be able to cover the additional operating expenses of extending city services to the area. For the reasons above, Commerce finds that Fred Meyer will add to the economic base of the city.

(6) Valuations of taxable property in the territory proposed for annexation

Enclave Lots:

City: The city projects the taxable real property in the territories to be annexed to be \$27,528,120 based from data provided by the Fairbanks North Star Borough assessing department. (*Petition* p. 13). This includes both Fred Meyer and the enclave lots. Separate projections were not provided. “There is no personal property tax assessed in the City of Fairbanks.” (*Petition* p. 13).

Table 3-5. Estimated 2008 tax revenues for the territory to be annexed		
	2008 Tax Base (assessed value)	2008 Estimated Tax Revenue
Real property (5.991 mills)	\$27,528,120	\$164,921
Alcohol Sales Tax (5%) ¹⁸		\$168,362
Tobacco Sales Tax (8%) ¹⁹		\$157,502
Room Tax (8%) (none)	0	0
Total	\$27,528,120	\$490,785

The city states that “The City does not levy a general sales tax; it levies a tax upon the retail sales of alcohol, the wholesale tax of tobacco products, and the transient rental of hotel rooms and bed & breakfasts.” (*Petition* p. 13).

Borough: As earlier stated, the borough does not object to the city annexing the enclave lots. (*Responsive Brief* p. 3).

Commerce Findings: The city bases its projections of taxable property on the borough’s existing mill rates and alcohol tax rates for the enclave lots. Commerce finds the city’s projections of taxable property in the enclave lots to be reasonably assessed given the data provided in the petition, and that the city cited borough data.

Fred Meyer:

City: See “Enclave Lots” above. The assessment information above is for both the enclave lots and Fred Meyer. Separate projections were not provided.

Borough: While the borough opposes the city annexing Fred Meyer, it did not comment on this relevant factor that the commission may consider. (*Responsive Brief* p. 6).

Commerce Findings: The city bases its projections of taxable property on the borough's existing mill rates, alcohol tax rates, and tobacco tax rates for Fred Meyer. Commerce finds the city's projections of taxable property for Fred Meyer to be reasonably assessed given the data provided in the petition, and that the city cited borough data.

(7) Land use in the territory proposed for annexation

Enclave Lots:

City: "Land use within the annexation territories covers the full spectrum of uses as in the existing City: residential, commercial, and industrial." (*Petition Ex. H* p. 5).

Borough: As earlier stated, the borough does not object to the city annexing the enclave lots. (*Responsive Brief* p. 3).

Commerce Findings: This was discussed in addressing standard 3 AAC 110.100. The enclave lots are a mix of residential and commercial land use. Commerce finds that the enclave lots have been highly developed, and have both residential and commercial land use.

Fred Meyer:

City: "Land use within the annexation territories covers the full spectrum of uses as in the existing City: residential, commercial, and industrial." (*Petition Ex. H* p. 5).

Borough: While the borough opposes the city annexing Fred Meyer, it did not comment on this relevant factor that the commission may consider. (*Responsive Brief* p. 6).

Commerce Findings: This was discussed in addressing standard 3 AAC 110.100. Fred Meyer has been developed entirely for commercial land use. Commerce finds Fred Meyer has been highly developed and has only commercial land use.

(8) Existing and reasonably anticipated industrial, commercial, and resource development in the territory proposed for annexation

Enclave Lots:

City: The city states that in the territory proposed to be annexed substantial development has occurred and can continue. (*Petition, Ex. H, p. 1*).

Borough: As earlier stated, the borough does not object to the city annexing the enclave lots. (*Responsive Brief p. 3*).

Commerce Findings: As has been discussed in 3 AAC 110.100, the enclave lots have already undergone substantial residential and some commercial development. Commerce notes that the factor states “existing” or “reasonably anticipated”. Commerce finds that both residential and commercial development has occurred in the enclave lots. Commerce finds that there is no reasonably anticipated industrial, commercial, or resource development in the territory proposed for annexation, but there is existing commercial development.

Fred Meyer:

City: The city states that in the territory proposed to be annexed substantial development has occurred and can continue. (*Petition, Ex. H, p. 1*). The city states that there are four commercial operations currently in the Fred Meyer territory (Sourdough Sam’s, Taco Bell, Mt. McKinley Bank, and Fred Meyer itself). (*Reply brief p. 7, Ex. 3*).

Borough: While the borough opposes the city annexing Fred Meyer, it did not comment on this relevant factor that the commission may consider. (*Responsive Brief p. 6*). The borough notes in its responsive brief that “The [Fred Meyer] subdivision is zoned Light Industrial.” (*Responsive Brief p. 4*). Also, “At best under Borough Code, there can only be limited expansion on the property; at present there are only 27 extra parking spaces for the square footage already built on the Subdivision.” (*Responsive Brief p. 9*).

Commerce Findings: As has been discussed in 3 AAC 110.100, Fred Meyer has been developed entirely as commercial property. As mentioned by both the city and the borough there is no vacant land to accommodate future industrial, commercial, or resource development and there is limited room in the parking lot for expansion. Commerce notes that the factor states “existing” or “reasonably anticipated.” Fred Meyer has been developed fully as commercial property. Commerce finds that there is no reasonably anticipated industrial, commercial, or resource development for Fred Meyer, but there is existing commercial development.

(9) Personal income of residents in the territory and in the city**Enclave Lots:**

City: The city provided data from the 2000 census reporting that the median family income for the Fairbanks Census Area was \$46,785. (*Petition Exhibit H* p. 5).

Borough: As earlier stated, the borough does not object to the city annexing the enclave lots. (*Responsive Brief* p. 3).

Commerce Findings: The census provides financial data for both the Fairbanks North Star Borough and the city of Fairbanks proper. The above mentioned 'Fairbanks Census Area' defines the area within the existing city. Commerce staff verified the 2000 census data regarding city median family income to be \$46,785. This information can be viewed on the Department of Labor and Workforce Development's website <http://laborstats.alaska.gov/?PAGEID=67&SUBID=135>. The 2000 census reported median household income to be \$40,577 and per capita income to be \$19,814. There are no data available specifically for the enclave. Commerce finds it is reasonable to assume that the data would not significantly differ from nearby lots that are currently within the existing city's boundaries or from the city as a whole.

Fred Meyer:

City: There are no known residents of Fred Meyer.

Borough: While the borough opposes the city annexing Fred Meyer, it did not comment on this relevant factor that the commission may consider. (*Responsive Brief* p. 6).

Commerce Findings: Commerce finds that with no permanent residents the personal income of persons residing in Fred Meyer does not exist. Commerce finds the median family income for the existing city of Fairbanks in 2000 to be \$46,785. Commerce finds the median household income to be \$40,577 and per capita income to be \$19,814 for the year 2000 based on census data.

(10) Need for and availability of employable skilled and unskilled persons to serve the city government as a result of annexation**Enclave Lots:**

City: The city asserts that "The annexation will not have any effect on the overall need for or availability of employable persons." (*Petition Ex. H* p. 5). The city states that it can extend services to the enclave lots without needing additional long term employees; however, it may need to hire some additional

temporary employees to conduct the proposed road repair for the enclave. (*Petition* p. 8). Additionally, "The population within the proposed boundaries of the City is sufficiently large and stable to support the extension of city government." (*Petition Ex. H* p. 5).

Borough: As earlier stated, the borough does not object to the city annexing the enclave lots. (*Responsive Brief* p. 3).

Commerce Findings: Annexing the enclave lots will not provide a significant population that would increase the availability of employable skilled and unskilled persons to serve the city government. Commerce notes that the city government currently provides services to nearby lots. Commerce finds that based on the development and small size of the enclave lots, the city is reasonable to assume no additional full time persons will need to be employed to serve the city government as a result of annexation, and that the current population of the city can accommodate any future need to serve the city government.

Fred Meyer:

City: The city asserts that "The annexation will not have any effect on the overall need for or availability of employable persons." (*Petition Exhibit H* p. 5). The city contends that Fred Meyer being a small territory would not require additional facilities and as a worst case scenario would require a half time police officer to extend municipal services. (*Petition* p. 8). Additionally, "The population within the proposed boundaries of the City is sufficiently large and stable to support the extension of city government." (*Petition Exhibit H* p. 5).

Borough: While the borough opposes the city annexing Fred Meyer, it did not comment on this relevant factor that the commission may consider. (*Responsive Brief* p. 6).

Commerce Findings: Annexing Fred Meyer will not provide any population that would increase the availability of employable skilled and unskilled persons to serve the city government. Commerce notes that the city government currently provides services to nearby commercial areas. Commerce finds that based on the development and small size of Fred Meyer, the city is reasonable to assume an additional half time police officer would be required to meet the increased case load as result of annexation, and that the current population of the city can accommodate this and any future need to serve the city government.

Conclusion

Commerce finds that this standard does not address whether the city can provide more or better services than any existing service provider, but rather that the proposed expanded boundaries of the city contain the necessary human and financial resources to be able to provide essential services on an efficient and cost effective level.

As has been discussed in 3 AAC 110.090, some comments state that currently the city does not provide adequate service to its own existing territory and that it will not be able to efficiently or effectively extend municipal services. Additionally, some of the city's own officials speak to the need of additional staffing. Outgoing Police Chief Dan Hoffman was quoted in the Fairbanks Daily News-Miner addressing his recommendation of increasing staffing for police "When one considers that we significantly exceed per-capita rates of victimization for all categories of serious crime-against-persons, our perpetual short staffing become even more problematic." (*Responsive Brief Ex. 12*). Also, the city's 2007 Fairbanks Fire Department Annual Report states that an area of concern for 2007 was "[t]he continued lack of adequate staffing in the Fire Prevention Division continues to impact the daily operation of the Division." (*Petition Ex. M p. 12*).

This standard addresses whether the proposed expanded boundaries of the city includes the human and financial resources necessary to provide essential city services on an efficient, cost effective level. Many of the relevant factors that the commission may consider deal with revenue and expense projections and whether there are sufficient resources that can generate the revenues necessary to cover the expenses of extending city services.

The budget information provided by the city has been carefully considered by Commerce. Commerce finds that the city's budget projections demonstrate that the city has the ability to extend services into the proposed areas. Commerce finds that there is sufficient development and property value in these areas to generate adequate tax revenues to support the providing and extending of municipal services. The city has the existing resources to cover the capital expense of repairing the mentioned roads in the enclave lots. The enclave lots will generate enough revenues to cover the additional operating expenses of extending city government and services to the enclave lots. Fred Meyer is shown to generate significant surplus revenue that will broaden the city's economic base and allow for extending municipal services.

Commerce finds that the aforementioned relevant factors of this standard demonstrate that the expanded boundaries of the city (including both the enclave lots and Fred Meyer) includes the human and financial resources necessary to provide essential municipal services on an efficient, cost effective level.

3 AAC 110.120. Population

(a) The population within the proposed expanded boundaries of the city must be sufficiently large and stable to support the extension of city government. In this regard, the commission may consider relevant factors, including

(1) *Census enumerations*

Enclave Lots:

City: The city states in its petition that “the total population of the City of Fairbanks within the current boundaries is 31,627. This annexation will add approximately only 35 residents.” (*Petition Ex. H* p. 5).

Borough: As earlier stated, the borough does not object to the city annexing the enclave lots. (*Responsive Brief* p. 3).

Commerce Findings: The last completed census was conducted in 2000. The census data for 2000 lists a population estimate of 30,224 for the city. Commerce finds that the city’s estimate of population for the city in 2007 being 31,627 persons reasonable because the city cited this information from a borough newsletter and it is consistent with census data from 1990 and 2000. Commerce also finds the city’s population estimate of 35 residents in the enclave lots to be reasonable based on the number of lots and size of the area and because there is no evidence to the contrary.

Fred Meyer:

City: According to the city there are no known permanent residents of Fred Meyer. (*Petition* p. 5).

Borough: While the borough opposes the city annexing Fred Meyer, it did not comment on this relevant factor that the commission may consider. (*Responsive Brief* p. 6).

Commerce Findings: Commerce has already agreed that Fred Meyer has been developed as commercial property solely. Commerce finds the city’s contention that there are no permanent residents of Fred Meyer to be reasonable because there is no evidence to suggest there are living quarters in any of the structures of Fred Meyer.

(2) Duration of residency

Enclave Lots:

City: The city avers that “the City has a stable population with many long-term residents.” (*Petition Ex. H* p. 5).

Borough: As earlier stated, the borough does not object to the city annexing the enclave lots. (*Responsive Brief* p. 3).

Commerce Findings: The city does not provide data to demonstrate the duration of residency for the city or for the enclave lots. Commerce finds that the duration of residency in the enclave lots is stable because the enclave lots have been developed and settled for a number of years.

Fred Meyer:

City: See “Enclave Lots” above.

Borough: While the borough opposes the city annexing Fred Meyer, it did not comment on this relevant factor that the commission may consider. (*Responsive Brief* p. 6).

Commerce Findings: The city does not provide data to demonstrate the duration of residency for the city or for Fred Meyer. Fred Meyer does not contain any known residents as it has been developed entirely for commercial purposes. Commerce does find that the duration of residency is a moot point because Fred Meyer contains no known residents or living quarters.

(3) Historical population patterns

Enclave Lots:

City: The city contends that “the population of the City is stable and permanent.” (*Petition Ex. H* p. 5). “The territory proposed for annexation is subject to the same social and economic forces as the existing City. While the population of the City has not changed significantly, the City has seen a substantial amount of commercial construction on its periphery, both inside and outside the City limits, which has greatly increased traffic to the recently constructed commercial businesses.” (*Petition Exhibit H* pp. 3-4). “The City of Fairbanks is the larger of two cities located inside the Fairbanks North Star Borough; approximately 32% of the Borough population lives inside the current City of Fairbanks boundaries. This is a reversal of the situation some 35 years ago: in 1970, nearly 60% of the community’s population lived inside the City limits.” (*Petition* p. 12).

Borough: As earlier stated, the borough does not object to the city annexing the enclave lots. (*Responsive Brief* p. 3).

Commerce Findings: While the population of the city in relation to the borough has changed significantly over the last 35 years, the population within city limits remains stable. Commerce concurs with the statement that there is a stable population based on census figures stating that the 1990 population was estimated to be 30,843 persons and in 2000 was estimated to be 30,224 (http://www.commerce.state.ak.us/dca/commdb/CF_BLOCK.cfm). According to data provided by the city in its petition from a borough publication, the 2007 population was estimated to be 31,267. Commerce finds that these population statistics reasonably show that the population has been stable for the period from 1990 to 2007.

Fred Meyer:

City: See above “Enclave Lots”.

Borough: While the borough opposes the city annexing Fred Meyer, it did not comment on this relevant factor that the commission may consider. (*Responsive Brief* p. 6).

Commerce Findings: See the “Enclave Lots” Commerce Findings above. Commerce finds that the historical population patterns show that the city has maintained a stable population. Fred Meyer has no known permanent residents.

(4) Seasonal population changes

Enclave Lots:

City: The city states that “the City supports a seasonal population of workers in the construction and tourism industries. This annexation will not have any effect on seasonal industries.” (*Petition Ex. H* p. 5).

Borough: As earlier stated, the borough does not object to the city annexing the enclave lots. (*Responsive Brief* p. 3).

Commerce Findings: According to the Commerce community database, the city of Fairbanks economy is summarized as: “As the regional service and supply center for Interior Alaska, Fairbanks offers a diverse economy, including city, borough, state and federal government services, transportation, communication, manufacturing, financial, and regional medical services. Tourism and mining also comprise a significant part of the economy. Including Eielson Air Force Base and Fort Wainwright personnel, over one-third of the employment is in government services. The University of Alaska Fairbanks is also a major employer. Approximately 325,000 tourists visit Fairbanks each summer. The Fort Knox hardrock gold mine produces 1,200 ounces daily with 360 permanent year-round employees. 126 City residents

hold commercial fishing permits.” <http://www.commerce.state.ak.us/dca/commdb/CIS.cfm>. Commerce finds the existing city has a stable, year round economy. Commerce has found the enclave lots to be developed as mainly residential property with a few commercial businesses. This area has been settled for a number of years and Commerce finds that the population of the enclave is not subject to seasonal population changes. Commerce finds that there is no evidence to show the population of the city is subject to seasonal population changes that would make the enclave lots not suitable for annexing.

Fred Meyer:

City: See above “Enclave Lots”.

Borough: While the borough opposes the city annexing Fred Meyer, it did not comment on this relevant factor that the commission may consider. (*Responsive Brief* p. 6).

Commerce Findings: Fred Meyer consists of commercial businesses that have been operating for a number of years. The entire territory of Fred Meyer has been developed. The businesses located in Fred Meyer operate year round. Commerce notes that there are no known residents of Fred Meyer. Commerce finds that seasonal population changes do not affect Fred Meyer. Commerce finds that there is no evidence to show the population of the city is subject to seasonal population changes that would make Fred Meyer not suitable for annexing.

(5) Age distributions

Enclave Lots:

City: The city presents year 2000 Census data regarding age distribution information for the Fairbanks census area:

Table 3-6. Fairbanks Census Area 2000 Age Distribution		
Age Range	Number	Percent
0-19 years	9,927	32.9%
20-44 years	13,351	44.2%
45-64 years	4,960	16.4%
65-84 years	1,786	5.9%
85+ years	200	0.7%

Borough: As earlier stated, the borough does not object to the city annexing the enclave lots. (*Responsive Brief* p. 3).

Commerce Findings: According to the census data, 77.1 percent of the year 2000 population is under the age of 45 and 93.5 percent of the year 2000 population is under the age of 65. The median age for the city was 27.6 according to year 2000 census data. There is no specific data regarding the age distribution for the residents of the enclave lots. Commerce finds that annexing the enclave lots will not significantly affect on the age distribution of the existing city because annexation will only increase the population by 35 persons. Commerce finds that this data show that the city has a younger population. A younger population allows for more employable persons to serve in city government and provide a stable tax base.

Fred Meyer:

City: See “Enclave Lots” above.

Borough: While the borough opposes the city annexing Fred Meyer, it did not comment on this relevant factor that the commission may consider. (*Responsive Brief* p. 6).

Commerce Findings: Annexation of Fred Meyer will not affect the age distribution of the existing city because there are no known residents of Fred Meyer. Commerce finds that the city has a younger population based on the data presented and discussed above in “Enclave Lots” Commerce Findings.

(6) *Contemporary and historical public school enrollment data*

Enclave Lots:

City: The city did not provide data or comment on this relevant factor that the commission may consider.

Borough: As earlier stated, the borough does not object to the city annexing the enclave lots. (*Responsive Brief* p. 3).

Commerce Findings: Commerce does not find this factor relevant because the public school system is being provided by the Fairbanks North Star Borough. Both territories proposed for annexation (the enclave lots and Fred Meyer) are within the boundaries of the borough. Annexation will not affect the public school system.

Fred Meyer:

City: The city did not provide data or comment on this relevant factor that the commission may consider.

Borough: While the borough opposes the city annexing Fred Meyer, it did not comment on this relevant factor that the commission may consider. (*Responsive Brief* p. 6).

Commerce Findings: Commerce does not find this factor relevant. See above “Enclave Lots” Commerce Findings.

(7) *Nonconfidential data from the Department of Revenue regarding applications under AS 43.23 for permanent fund dividends*

Enclave Lots:

City: The city did not provide data or comment on this relevant factor that the commission may consider.

Borough: As earlier stated, the borough does not object to the city annexing the enclave lots. (*Responsive Brief* p. 3).

Commerce Findings: Commerce does not find this factor relevant. Commerce has found the population estimate of 35 residents for the enclave lots to be reasonable, and does not find having nonconfidential data from the Department of Revenue regarding applications under AS 43.23 for permanent fund dividends would aid the commission in deciding whether to approve the proposed annexation.

Fred Meyer:

City: The city did not provide data or comment on this relevant factor that the commission may consider.

Borough: While the borough opposes the city annexing Fred Meyer, it did not comment on this relevant factor that the commission may consider. (*Responsive Brief* p. 6).

Commerce Findings: Commerce does not find this factor relevant. Commerce has found the population estimate of 0 residents for Fred Meyer to be reasonable, and does not find having nonconfidential data from the Department of Revenue regarding applications under AS 43.23 for permanent fund dividends would aid the commission in deciding whether to approve the proposed annexation.

Conclusion

This standard requires that the population within the proposed expanded boundaries of the city must be sufficiently large and stable to support the extending city government.

Annexing the enclave lots will only add approximately 35 residents to the city, and annexing Fred Meyer will add no residents. Commerce must determine whether the existing population of the city is large and stable enough to support the extension of city government.

Commerce discussed the need of additional skilled and unskilled persons to serve the city government in addressing 3 AAC 110.110 factor (10). Commerce notes that the city government currently provides services to nearby lots and commercial areas. Commerce found that city government could be extended to both territories (the enclave lots and Fred Meyer) without additional permanent personnel based on the developed nature of the territories and their relatively small size to the existing city.

Commerce has found the population of the city to be stable based on the economic base of the city and population numbers, and does not foresee any factors that would cause destabilization. The city of Fairbanks is the second most populous city in Alaska. The territories proposed for annexing are highly developed, contiguous to the existing city, and the city already provides city services up to the boundaries of the territories.

Commerce finds that the population within the proposed expanded boundaries of the city will be sufficiently large and stable to support the extension of city government. This finding applies to annexing either the enclave lots or Fred Meyer separately, or annexing both territories.

3 AAC 110.130. Boundaries

(a) The proposed expanded boundaries of the city must include all land and water necessary to provide the development of essential municipal services on an efficient, cost-effective level. In this regard, the commission may consider relevant factors, including: (1) Land use and ownership patterns; (2) Population Density; (3) Existing and reasonably anticipated transportation patterns and facilities; (4) Natural geographical features and environmental factors; and (5) Extraterritorial powers of cities.

Enclave Lots:

City: The city contends that “The proposed annexation boundaries include sufficient land and water needed to provide essential City services on an efficient, cost-effective basis.” (*Petition Ex. H* p. 6). “There is a fine balance between city boundaries that are too large versus boundaries that are too small. The Petitioner recognizes that this proposal is a modest request in accordance with a philosophy of incremental growth. While reasonable people have asked why we did not increase the size of the proposed annexation territory, the request at hand is a small but significant step that will allow the City to serve the territory to be annexed and provide funding for the continuation of essential city services on a cost effective level.” (*Reply Brief* p. 12).

Borough: As earlier stated, the borough does not object to the city annexing the enclave lots. (*Responsive Brief* p. 3).

Commerce Findings: Commerce has evaluated the factors listed above, which the commission may consider, in depth in other sub chapters of this report. The enclave lots have been developed predominately as residential property with a few commercial properties. The development is consistent with nearby lots within the existing city boundaries. The population density of the enclave lots is presumably similar to that of nearby lots. The enclave lots have road access through city maintained streets, some of which are planned to be repaired if annexation is approved. The Chena River isolates the enclave lots from being contiguous with the rest of the borough. Commerce notes that the enclave lots are flat. Commerce has also found that the enclave lots benefit from extraterritorial powers of the city including rescue squad service. Based on the enclave lots being a settled and developed territory Commerce finds it is reasonable that the proposed expanded boundaries of the city include all land and water necessary to provide the development of essential municipal services on an efficient, cost effective level.

Fred Meyer:

City: See “Enclave Lots” above.

Borough: While the borough opposes the city annexing Fred Meyer, it did not comment on this relevant factor that the commission may consider. (*Responsive Brief* p. 6).

Commerce Findings: Commerce has evaluated the factors listed above, which the commission may consider, in depth in other sub chapters of this report. Fred Meyer has already been developed entirely as commercial property. The development is consistent with other commercial areas of the city including the Safeway Shopping Center across University Avenue within city boundaries. While the population density of Fred Meyer does not exist (there are no known residents of Fred Meyer), it is presumably consistent with other commercial properties within the existing city. The two main access roads (University Avenue and Airport Way) are state maintained which annexation should not affect. The city maintains roads within city boundaries leading to Fred Meyer including Rewak Drive. The territory of Fred Meyer is known to be flat with no notable geographic features or environmental factors. Commerce found that there were no significant extraterritorial powers being exercised by the annexing city in Fred Meyer.

Based on Fred Meyer being a settled and developed territory, Commerce finds that it is reasonable that the proposed expanded boundaries of the city include all land and water necessary to provide the development of essential municipal services on an efficient, cost effective level.

(b) Absent a specific and persuasive showing to the contrary, the commission will presume that territory that is not contiguous to the annexing city, or that would create enclaves in the annexing city, does not include all land and water necessary to allow for the development of essential municipal services on an efficient, cost-effective level.

Enclave Lots:

City: “The proposed annexation territory is contiguous to the existing boundaries of the City and would eliminate -- not create -- enclaves within the expanded boundaries. As noted in the preamble to this brief, enclave territory is appropriately annexed via the legislative review method.” (*Petition Ex. H* p. 6).

Borough: As earlier stated, the borough does not object to the city annexing the enclave lots. (*Responsive Brief* p. 3).

Commerce Findings: It is clear from both the city and the borough that the enclave lots are contiguous to the city and annexing the enclave lots would eliminate an enclave within the expanded boundaries of the city. Commerce notes that the enclave lots are already a developed territory. Commerce finds that because the enclave lots are contiguous to the existing city and that annexation would not create enclaves in the annexing city, this standard's requirements have been met. Therefore, Commerce need not address the land and water issue.

Fred Meyer:

City: "Both territories are contiguous; the enclave lots are effectively surrounded by the City and two sides of the Fred Meyer Subdivision are contiguous to the City's boundaries." (*Reply Brief* p. 12).

Borough: "Pursuant to 3 AAC 110.130(b), an annexation cannot create an enclave lot. The annexation of the Fred Meyer Subdivision into the City in effect creates a similar problem for the Borough that the City is trying to solve with the annexation of existing "enclave lots." As shown on the attached map, if annexation occurs, a fire truck or ambulance going from University Fire Service Area Station 2 to any of the service area's remaining lots to the north or west of Fred Meyer Subdivision would pass out of the Borough and into the City and then back into the Borough." (*Responsive Brief* pp. 21-22).

Commerce Findings: This standard seeks to ensure that the annexation will include all land and water necessary to allow for the development of essential municipal services on an efficient, cost effective level. It has been established that Fred Meyer is contiguous to the city on its entire eastern boundary. But contrary to the city's implication, Fred Meyer is only contiguous to the city on part of Fred Meyer's southern boundary. Webster's New World Dictionary (Second College Edition (1982)) defines "enclave" as "a territory surrounded or nearly surrounded by the territory of another country." Commerce finds that Fred Meyer is contiguous to the city but that annexing it would arguably create an enclave.

The regulation states that the commission will presume that territory which would create an enclave would not have sufficient land and water to allow for developing essential municipal services in an efficient, cost effective manner. Commerce has found Fred Meyer to be a small, highly developed territory which currently receives services from the borough and the UFSA. The city provides essential municipal services up to the eastern boundary of Fred Meyer. Fred Meyer already receives water and is already fully developed. Commerce finds that even if annexing Fred Meyer would create an enclave within the existing city, the expanded city would

contain all land and water necessary to allow for the development of essential municipal services on an efficient, cost effective level. Commerce finds that this renders moot the issue of whether annexing Fred Meyer would create an enclave.

(c) To promote the limitation of community, the proposed expanded boundaries of the city

(1) must be on a scale suitable for city government and may include only that territory comprising an existing local community, plus reasonably predictable growth, development, and public safety needs during the 10 years following the effective date of annexation; and

Enclave Lots:

City: “This annexation seeks to establish boundaries that should have been set previously; both of the target territories are already integral *de facto* parts of the City and most residents already believe these two territories are included in the City.” (*Petition Ex. H* p. 6).

Borough: As earlier stated, the borough does not object to the city annexing the enclave lots. (*Responsive Brief* p. 3).

Commerce Findings: Commerce has established that the enclave lots are a small territory that has been highly developed as residential and commercial property. As was addressed in 3 AAC 110.090, many public safety needs are not currently being met in the enclave lots. It has also been established that there are approximately 35 residents in the enclave lots. See 3 AAC 110.090(a)(1) for Commerce’s analysis of current and anticipated growth for the enclave lots. There is no anticipated future growth for the enclave lots or any anticipated increased need for public safety for the next ten years. Commerce finds that the enclave lots are on a scale suitable for city government, and therefore promote the limitation of community.

Fred Meyer:

City: “As noted by Economist Gregg Erickson, who has extensive experience in our state, the Fred Meyer Subdivision is “integral” to the City economy. There is no need to speculate on future growth or development of either territory because it has already happened.” (*Reply Brief* p. 13).

Borough: While the borough opposes the city annexing Fred Meyer, it did not comment on this relevant factor that the commission may consider. (*Responsive Brief* p. 6).

Commerce Findings: Fred Meyer is already developed for commercial purposes. It is a relatively small territory, comprising approximately 0.03 square miles, that is contiguous to the existing city on Fred Meyer's entire eastern border, and partly on its southern border. See 3 AAC 110.090(a)(1) for Commerce's analysis of current and anticipated growth for Fred Meyer. Fred Meyer is a part of the greater Fairbanks area economic community. There is no anticipated future growth for Fred Meyer or any anticipated increased need for public safety for the next ten years. For these reasons Commerce finds that Fred Meyer is on a scale suitable for city government, and therefore promotes the limitation of community.

(2) *May not include entire geographical regions or large unpopulated areas, except if those boundaries are justified by the application of the standards in 3 AAC 110.090 – 3 AAC 100.135 and are otherwise suitable for city government.*

Enclave Lots:

City: "The total area of the territory proposed for annexation is quite small."
(*Petition Ex. H* p. 6).

Borough: As earlier stated, the borough does not object to the city annexing the enclave lots. (*Responsive Brief* p. 3).

Commerce Findings: The enclave lots comprise approximately 0.02 square miles. There are approximately 35 known permanent residents of the enclave lots. Commerce finds that the enclave lots proposed for annexing do not include entire geographical regions or large unpopulated areas.

Fred Meyer:

City: "The total area of the territory proposed for annexation is quite small."
(*Petition Ex. H* p. 6).

Borough: While the borough opposes the city annexing Fred Meyer, it did not comment on this relevant factor that the commission may consider.
(*Responsive Brief* p. 6).

Commerce Findings: Fred Meyer is a developed commercial center on the edge of the existing city. It contains no vacant undeveloped land. While it is unpopulated, it is fully developed and is accessed on a daily basis by a number of consumers. Commerce finds that the Fred Meyer territory proposed for annexing does not include entire geographical regions or large unpopulated areas as set out in 3 AAC 110.130(c)(2).

(d) If a petition for annexation to a city describes boundaries overlapping the boundaries of an existing organized borough, the petition for annexation must also address and comply with the standards and procedures for either annexation of the enlarged city to the existing organized borough or detachment of the enlarged city from the existing organized borough. If a petition for annexation to a city describes boundaries overlapping the boundaries of another existing city, the petition for annexation must also address and comply with the standards and procedures for detachment of territory from a city, merger of cities, or consolidation of cities.

Enclave Lots:

City: The city asserts that “[t]he Petition does not describe boundaries overlapping another existing city.” (*Petition Ex. H* p. 6). “In actuality, subsection 130(d) only applies to a city annexation where the proposed new city boundaries overlap the “**boundaries**” of an existing borough - - not in cases where the proposed new city boundaries remain entirely within an existing borough.” (*Reply Brief* p. 36).

Borough: As earlier stated, the borough does not object to the city annexing the enclave lots. (*Responsive Brief* p. 3).

Commerce Findings: Commerce has viewed this standard as prohibiting the annexation of territory by a city that would overlap the boundaries of more than one borough or the corporate boundaries of another existing city without addressing and complying with the standards and procedures for either annexation of the enlarged city to the existing organized borough or detachment of the enlarged city from the existing organized borough. The borough contends that 3 AAC 110.130(d) should be interpreted to include a proposed annexation within any existing organized borough (see “Borough” under “Fred Meyer” below). If the borough’s interpretation is correct then any city annexation petition would also be required to address and meet the standards for detachment. This has never been Commerce’s understanding of this standard.

The city appropriately and correctly presents the LBC's statement of decision for the 2001 City of Homer annexation request by legislative review in which the commission ruled the petition met the above requirements when the "proposed expanded boundaries of the City of Homer are entirely within the corporate limits of the Kenai Peninsula Borough. Moreover, although the proposed expanded boundaries of the City of Homer adjoin the corporate limits of the City of Kachemak, they do not overlap the jurisdictional area of any existing city government." (*Reply Brief* p. 37).

The enclave lots are under the jurisdiction of the Fairbanks North Star Borough. The enclave lots are not under the jurisdiction of another existing city or any other borough. If annexation is approved, the enlarged jurisdictional boundaries of the city still remain entirely within the corporate limits of the Fairbanks North Star Borough. The proposed expanded boundaries of the city do not overlap the jurisdictional territory of any other existing city government. Commerce finds that this petition is not required to address the standards for detachment.

Commerce finds that the overlapping boundary standard set out in 3 AAC 110.130(d) is satisfied for the enclave lots.

Fred Meyer:

City: "The Petition does not describe boundaries overlapping another existing city." (*Petition Ex. H* p. 6).

Borough: The borough states that "[p]ursuant to 3 AAC 110.130(d), a territory proposed for annexation may not overlap the boundaries of an existing organized borough unless the petition also addresses and demonstrates satisfaction of detachment standards found in 3 AAC 110.267." (*Responsive Brief* pp. 29-30). The borough then applies the detachment standards and shows why it believes the city does not meet the detachment standards. (*Responsive Brief* pp. 30-31).

Commerce Findings: Commerce has viewed this standard as prohibiting the annexation of territory by a city that would overlap the boundaries of more than one borough or the corporate boundaries of another existing city without addressing and complying with the standards and procedures for either annexation of the enlarged city to the existing organized borough or detachment of the enlarged city from the existing organized borough. See above "Commerce Findings" under "Enclave Lots."

This standard only applies if the territory overlaps the jurisdiction of another existing borough or city. Fred Meyer is under the jurisdiction of the Fairbanks North Star Borough. Fred Meyer is not under the jurisdiction of another existing city or any other borough. If annexation is approved, the enlarged jurisdictional boundaries of the city still remain entirely within the corporate limits of the Fairbanks North Star Borough. The proposed expanded boundaries

of the city do not overlap the jurisdictional territory of any other existing city government. Commerce finds that it is not required that the petition to annex Fred Meyer address the standards for detachment.

Commerce finds that the overlapping boundary standard set out in 3 AAC 110.130(d) is satisfied for Fred Meyer.

Conclusion: Standards set out in 3 AAC 110.130 are broadly concerned with ensuring that city governments only annex territory of appropriate scale to be able to provide municipal services on an efficient, cost effective level. The territories proposed for annexing (the enclave lots and Fred Meyer) have already been developed in a manner consistent with the growth of the existing city. The city provides municipal services to the eastern boundary of Fred Meyer and some municipal services to the enclave lots within the existing city boundaries. Commerce has found nothing to suggest that the city does not contain all the land and water needed to provide municipal services to the proposed expanded boundaries (including both the enclave lots and Fred Meyer). Commerce found the enclave lots to be contiguous to the annexing city and that annexation would not create an enclave for the annexing city. Commerce also found that although annexing Fred Meyer could arguably create an enclave, the expanded city would contain all land and water necessary to allow for the development of essential municipal services on an efficient, cost effective level. Commerce finds that both the enclave lots and Fred Meyer promote the limitation of community by being on a scale suitable for city government and that neither contain entire geographical regions or large unpopulated areas. Commerce found that the overlapping boundary standards in 3 AAC 110.130(d) are not an issue and so this petition is not required to address detachment standards.

Commerce finds that the proposed expanded boundaries of the city (including both the enclave lots and Fred Meyer) meet all four standards (a-d) set out in 3 AAC 110.130.

3 AAC 110.135. Best interests of state

In determining whether annexation to a city is in the best interests of the state under AS 29.06.040 (a), the commission may consider relevant factors, including whether annexation

(1) *promotes maximum local self-government, as determined under 3 AAC 110.981 [below];*

3 AAC 110.981. Determination of maximum local self-government

In determining whether a proposed boundary change promotes maximum local self-government under art. X, sec. 1, Constitution of the State of Alaska, the commission will consider . . .

(8) *for city incorporation or annexation in an organized borough, whether the proposal would extend local government to territory or population of the organized borough where local government needs cannot be met by the borough on an areawide or nonareawide basis, by annexation to an existing city, or through an existing borough service area;*⁹

Enclave Lots

City: The city states that the petition will serve the state's best interests by promoting maximum local self government. (*Petition Ex. H.* pp. 6 – 7).

⁹ Commerce finds that literally interpreting 3 AAC 110.981 (8), rather than using plain meaning, could prevent annexations in an existing borough if local government needs cannot be met *inter alia* “by annexation to an existing city.” This interpretation makes sense if referring to annexing to another existing city in the borough, or to city incorporation. Commerce finds that annexing to another existing city does not apply here because there is no other city which could annex the territory (North Pole is too far away). Commerce finds that the regulation would not apply when there is only one existing city which wants to annex. Commerce finds that the language “by annexation to an existing city” seems to apply to city incorporation, as the language is nearly identical to that of 3 AAC 110.010 (c) which deals with city incorporation, but not city annexation.

The city avers that annexation will promote maximum local self government because the city would provide full city governmental services to the enclave lots and Fred Meyer. This would increase the city's ability to provide "the full array of essential governmental services" equitably to city residents. (*Reply brief* p. 13).

"After annexation, both the "enclave lots" and the Fred Meyer Subdivision territories will receive the full benefits of municipal services. Residents of the enclave lots and property owners in both territories will receive the benefit of full enfranchisement of their rights to participate in City government." (*Reply Brief* p. 6).

The annexation would promote local self government by providing the enclave lots (and Fred Meyer) with locally controlled police. (*Reply brief* p. 17).

Borough: The borough does not oppose the proposed annexing of the enclave lots._

Commerce Findings: AS 29.06.040 states that if the LBC determines that the proposed local boundary change meets applicable Alaska constitutional and regulatory standards and **is in the best interests of the state**, it may accept the proposed change.

To determine these best interests, the LBC may consider factors including whether the proposed annexation would promote maximum local self government. To determine if the proposed annexation would promote local self government, the commission will consider whether the annexation would extend local government to territory or population of the organized borough where local government needs cannot be met by the borough on an areawide or nonareawide basis, by annexation to an existing city, or through an existing borough service area.

Commerce finds that the proposed annexation meets the applicable Alaska constitutional and regulatory standards as addressed here and throughout this report. The proposed annexation of the enclave lots would promote maximum local self government because it would extend local government to the enclave lots where local government needs cannot be met by the borough or the UFSA. Commerce finds that the enclave lots' local government needs cannot be met by either the borough or the UFSA because neither entity now provides all of what Commerce has already determined (see 110.090) to be essential municipal services. Specifically, neither the borough nor the UFSA now provides the enclave lots with police, fire or rescue squad, dispatch, and building and fire code inspection and enforcement. Neither entity maintains the roads of the enclave lots either.

The enclave lots would also become citizens of a home rule city, in addition to remaining citizens of a second class borough. Commerce finds that the city meets the standard for this factor of promoting maximum local self government because the enclave lots would now receive services which the existing local government does not provide, and because the citizens would also become city citizens with commensurate voting rights.

Fred Meyer

City: Please see the city's position above under "Enclave Lots."

Borough: The borough states that "[a]s shown throughout this opposition brief, the Fred Meyer Subdivision's local government needs are met by the Borough and the Borough's University Fire Service Area. The annexation will not promote maximum local self-government." (*Responsive brief* p. 28).

Quoting 3 AAC 110.981 (8), the borough states that "although it is true that the State provides police protection, the Borough provides all other local government services to the [Fred Meyer] Subdivision through areawide services such as assessing, tax collection, education, and planning and zoning and on a nonareawide basis through fire, ambulance, emergency management and economic development. As discussed previously, the City has not shown that removal of this small subdivision with no residents will decrease the State Trooper's staffing or budget." (*Responsive Brief* p. 34).

Comments: Bartholomew Roberts wrote that "[t]he application should be supported on it's merits of the growth of a class 1 city and providing the highest form of government available to the people."

Commerce Findings: Under the analysis set out above in "Enclave Lots," the question is whether the proposed annexation of Fred Meyer would promote maximum local self government by extending local government to Fred Meyer where local government needs cannot be met by the borough or the UFSA. The city states that it would provide full city services to Fred Meyer. The borough counters that it (the borough) is providing services which the city can't offer (e.g. assessing, tax collection, education, planning and zoning, and others).

Commerce finds that annexation would promote maximum self government because Fred Meyer would receive the benefits of belonging to both the city and the borough. As there are no Fred Meyer residents, the owners, employees, and customers would receive both those benefits which only the borough can offer (e.g. assessing, tax collection, education, planning and zoning, and others) and also those benefits which only the city can offer (e.g. police, dispatch, building and building and fire code). Commerce finds that this factor's maximum self government standard has been met for those reasons.

(2) *promotes a minimum number of local government units, as determined under 3 AAC 110.982 and in accordance with art. X, sec. 1, Constitution of the State of Alaska; and*

3 AAC 110.982. Minimum number of local government units

Among the factors to be considered in determining whether a proposed boundary change promotes a minimum number of local government units in accordance with art. X, sec. 1, Constitution of the State of Alaska, the commission will consider . . .

(7) *for city annexation, whether the jurisdictional boundaries of an existing city are being enlarged rather than promoting the incorporation of a new city or creation of a new borough service area;*

Enclave Lots

City: “The annexation will not increase or decrease the number of local government units.” (*Reply brief* p. 14).

Borough: The borough does not oppose the proposed annexing of the enclave lots.

Commerce Findings: Commerce finds that Alaska’s constitution encourages minimum local government units, and also finds that the proposed annexation would not create new local government units. Commerce finds that this standard is met for that reason. Please see “Commerce Findings” in the “Fred Meyer” section below for further analysis.

Fred Meyer

City: The city avers that annexing would promote the best interests of the state by “[p]romoting a minimum number of local government units by incorporating the residents of the annexation territory into the existing City of Fairbanks, rather than creating a new government unit to provide essential services.” (*Petition Ex. H.* pp. 6 - 7). The annexations would not increase the number of government units. (*Reply brief* p. 17).

Borough: “[T]he annexation will not promote a minimum number of local self government units. The detachment of the Fred Meyer subdivision from the Borough and annexation into the city will not change the number of local government units. There will still be a city, a borough and a fire service

area. The annexation of the Fred Meyer Subdivision will not minimize the number of local government units. The Borough provides local government to the Subdivision through areawide services such as assessing, tax collection, education, planning and zoning, nonareawide services such as ambulance, emergency management and economic development and service area services such as fire. Thus the City's petition does not extend local government needs that the Borough is not already meeting on an Areawide or nonareawide basis and service area basis." (*Responsive brief* p. 28).

The borough states that "while the relative size of the City and Borough will increase and decrease, respectively, there is neither an increase or decrease in the number of local government units . . . [t]here will still be three local government units after the annexation: the City, the Borough, and the University Fire Service Area." (*Responsive brief* pp. 34 – 35).

Commerce Findings: Both parties agree that annexing Fred Meyer would neither increase nor decrease the number of local government units. They disagree on whether it suffices to maintain the number of local government units (the city's position) or whether the annexing must decrease the number of such units (the borough).

Article X, Section 1 of Alaska's Constitution provides for a minimum of local government units. Here, the size, but not the number of units will change. Commerce finds that the goal of Article X is met because annexation (with no new government units) will occur, rather than creating a new government unit. This is consistent with 3 AAC 110.010's standard, which prevents city incorporation within an organized borough if essential municipal services can be performed more effectively by an existing city, borough, or borough service area.

Commerce finds that Alaska's constitution encourages the minimum of local government units, and that the proposed annexation would not create new local government units. Commerce finds that this standard is met for that reason.

(3) *will relieve the state government of the responsibility of providing local services.*

Enclave Lots

City: Please see "Fred Meyer" below.

Borough: The borough does not oppose the proposed annexing of the enclave lots.

Commerce Findings: Commerce found previously in 110.090(a)(4) that the AST provided police service in the enclave lots. If the enclave lots are annexed by the city then the FPD would provide that protection. The state would then be relieved of providing police services to the enclave lots. Whatever functions the state fire marshal's office provides in the enclave lots would also be taken over by the city.

Fred Meyer

City: "Relieving the State government of responsibility for providing local services in part by requiring that the property and population in the annexed territory contribute to the cost of local government." (*Petition Ex. H.* p. 7).

The city says that annexing will relieve the state of providing fire code enforcement, police protection, and building inspection. (*Reply brief* p. 14).

The annexation would relieve the state of the responsibility of providing local police services and would enable the AST to focus on areas outside the city service areas. (*Reply brief* Ex. 7).

The city states that the AST supports the annexation. The city states that the AST provided the city with information indicating that the AST made 239 calls to Fred Meyer in 2008. "Once annexed, this burden on the AST will be relieved." (*Reply brief* pp. 31 – 32).

Borough: The borough states that even if the petition is approved, the state maintained road bordering Fred Meyer would still be state maintained. (*Responsive brief* p. 13).

"[T]he city has not shown that removal of this small subdivision with no residents will decrease the State Trooper's staffing or budget." (*Responsive Brief* p. 34).

Comments: Harry Davis referred to the use of AST to respond to crimes at Fred Meyer as a "serious misappropriation of trooper resources." He states that the AST is better used elsewhere. He further avers that AST supports the annexation.

Commerce Findings: If the FPD assumes police functions in Fred Meyer (and the enclave lots), the number of AST police would presumably remain the same. Commerce concurs with the borough that annexing Fred Meyer will not decrease the AST's staffing or budget. If Fred Meyer is annexed, the same number of troopers would then be concentrated in a slightly smaller area.

Commerce notes that AST Colonel Audie Holloway wrote that “the annexation by the City would relieve the state government of the responsibility of providing local police services. Annexation would enable the Troopers to focus more efforts on the needs outside the city service areas.” (*Reply brief* Ex. 7). Commerce finds this to be a measured factual statement, and not necessarily a statement of support for annexation, contrary to the above comment and the city’s position.

While the size of Fred Meyer is small, Fred Meyer, because of the large number of people who frequent it every day, required 239 AST service calls to Fred Meyer in 2008. The troopers could then concentrate on their duties and locations within their assigned area that would not include Fred Meyer. For that reason, and as the AST is a state agency, Commerce finds that annexing Fred Meyer would relieve the state government of the responsibility of providing local services to Fred Meyer which the city can provide instead. The state fire marshal’s office would no longer have to be responsible, even to a limited extent, for Fred Meyer. The state would be relieved of that burden as well.

Regarding the borough’s contention that the roads bordering Fred Meyer would still be state maintained even if annexation is approved, Commerce finds that assertion to be correct. Annexing Fred Meyer would not relieve the state of maintaining those roads.

Commerce finds that this factor’s requirements have been met.

The Proposed Annexations’ effect on the Borough, the UFSA, and the State of Alaska

As part of the analysis of whether annexation of the proposed territories is in the best interests of the state, Commerce considered it relevant to consider the financial impact annexation would have on the affected municipalities even though this is not by regulation. The analysis for both the enclave lots and Fred Meyer has been combined. The analysis is below:

City: The city states in its petition that “[t]he annexation will not significantly impair the function of the UFSA. The UFSA has the largest budget of the five fire service areas formed by the Fairbanks North Star Borough, with a total revenue 2008-09 budget of \$2,017,605. The UFSA 2008-09 budget included a 2.138 mill levy projected to raise \$1,988,115 in property tax revenues. If there were **no change** in the mill levy or total assessed valuation, annexation of the Fred Meyer Subdivision would reduce the 2008-09 UFSA budget by \$53,406.48, only 2.69 percent of the total tax receipts. One option would be a small increase of 0.059 mills to make up the loss of the Fred Meyer Subdivision, from 2.138 to 2.197 mills. Using the current budget, without any other changes, this would amount to an annual increase of \$14.75 for a home in the UFSA with a taxable assessed value of \$250,000.

The increased mill levy, (which assumes no change in assessed valuation or any of the other available UFSA options), is **substantially** less than the reduction approved by the LBC in the *Homer* annexation. In that case, the LBC approved a city annexation with reduced the [sic] tax base for the neighboring service area by 25 percent. In light of the *Homer* ruling, the effect upon the UFSA is truly de minimis, especially in light of the new construction that is underway in the UFSA.” (*Petition Exhibit K* p. 5)

The city asserts that “[t]here would be a financial impact to the Fairbanks North Star Borough due to annexation. Borough revenue would decline slightly when compared to the overall borough budget.” (*Petition Ex. E* p. 3).

Table 3-7. Financial Impact to the Fairbanks North Star Borough due to Annexation.	
Non-Areawide Economic Development	\$3,964
Non-Areawide EMS	\$7,047
Solid Waste Collection District	\$30,363
Transient Room Rental	\$0
Alcohol Sales Tax	\$168,362
Tobacco Sales Tax	\$0
Total	\$209,736

The table comes from Petition Ex. E p. 3

The city contends in its reply brief that “[t]he impact on the Borough overall budget is all but invisible, roughly \$400,000 dollars out of a total FY 2008 – 2009 budget of over \$120 million. This is roughly 0.3 percent of the total Borough budget. There are scores of ways to replace this revenue as new construction and economic activity continues to expand in the areas of the Borough outside the City of Fairbanks. Spending reductions are an alternative if that is the path chosen. According to a recent *Fairbanks Daily News-Miner*, article the current Borough Mayor has proposed to eliminate one current position to reduce some \$83,000 (easily over \$100,000 with benefits). That reduction alone offsets nearly 25 percent of the Borough’s assumed loss due to this annexation. Surprisingly, that same *News-Miner* article indicated that, — more than a dozen [Borough] employees are currently paid more than the \$93,000/year salary received by the Borough Mayor. Only two City employees receive a salary in excess of \$93,000. (2009 City Budget).

Turning to the impact on the UFSA, this Reply Brief has repeatedly noted that prior LBC decisions recognize that there is no city annexation standard regarding the impact on a remnant service area – and, in the *City of Homer Decision upon Remand*, even if there were a standard, the LBC found that a revenue reduction of 25 percent was *de minimis*.

The Borough **elects** to provide fire protection by five service areas. There is a tremendous potential for reducing the cost of fire protection in the area outside the City of Fairbanks by reducing the number of service areas. Not only would that reduce the duplication of costs that results from **five** Fire Chiefs, but there would be significant savings in the allocation of equipment, particularly ambulances, and fleet maintenance. There are three service areas in close proximity in the Borough west of the City – UFSA, Chena-Goldstream and Ester. The recommendation that the Borough provide “fire protection on an areawide basis” rather than the duplicating fire departments has been recognized for decades.” (*Reply Brief* pp. 38-39)

Table 3-8. Existing 2008 Mill Rates Prior to Annexation

	Areawide	Nonareawide	Special District	Service Area
General Government	4.166			
Support to Education	6.432			
EMS		0.2560		
Econ. Dev		0.1440		
Solid Waste			1.1030	
School Bonds	0.6740			
Library Bonds	0.0150			
Total Mill Levy, Enclave Lots	12.79			
Total Property Taxes paid, Enclave Lots	\$32,595			
University Fire Service Area (Fred Meyer Subdivision only)				2.138
Total Mill Levy, (Fred Meyer Subdivision only)	14.928			
Total Property Taxes paid, (Fred Meyer Subdivision only)	\$372,896			

The city provides the above Table 3-8 on page 14 of its petition. This table details the existing mill rates assessed by the borough and service areas for 2008. The city states that “[t]he total mill levy for all property in the City (combination of taxes levied by City plus areawide Borough taxes) is 17.278 mills (1.7% of net taxable assessed value). (*Petition* p. 14).

Borough: The borough avers that “[t]he impact on the Borough and the University Fire Service Area will be considerable. If the annexation is approved, the Borough will lose over \$378,000 in taxes including nonareawide Emergency Medical Services, nonareawide Economic Development, Solid Waste and Alcohol taxes. This is significant. Yet, removal of this subdivision, correspondingly, will not reduce the services provided by the Borough. Furthermore, the University Fire Service Area will lose over \$53,000, yet, as discussed previously, there will most likely not be a significant reduction in services to be rendered to the area. Because University Fire Station 2 is less than one-half mile from the subdivision, the University Fire Department will most likely continue to be asked to answer calls at the Fred Meyer Subdivision under the mutual aid agreement with the City without any compensation.” (*Responsive Brief* pp. 31-32)

Commerce Findings: In considering whether annexing the proposed territories (the enclave lots and Fred Meyer) is in the best interests of the state, Commerce will analyze the financial impact of annexation on the borough and the UFSA.

The borough does not object to the annexing of the enclave lots. Notwithstanding, currently the enclave lots are subject to areawide, nonareawide, and special district taxes assessed and collected by the borough at mill rates presented in Table 3-8 on page 104. The enclave lots are not part of the UFSA and do not currently receive fire service. If annexation is approved by the commission, the borough will no longer collect nonareawide or special district taxes for Emergency Medical Services (EMS), Economic Development (Econ. Dev.), and solid waste. The combined mill rates for EMS, Econ. Dev., and solid waste based on Table 3-8 is 1.503. The estimated loss of revenue for the borough based on the total property taxes paid by the enclave lots is approximately \$3,830 annually. Also, there will be some unspecified loss of revenue from the borough’s alcohol tax. According to the city, “[s]ales of alcohol within a city that are taxed at the same rate are not subject to a duplicate Borough alcohol sales tax.” (*Petition* p. 14.) The borough did not comment on the financial impact of the city annexing the enclave lots. Commerce finds the financial impact on the borough in terms of loss of tax revenue for the enclave lots is not significant. The UFSA does not currently receive revenue from the enclave lots, and so Commerce finds that annexing the enclave lots will not financially impact the UFSA.

The financial impact of annexing Fred Meyer is more contentious. The borough and the UFSA contend that the impact will be significant and that annexation would cause a substantial drop in revenue without a similar decrease in the need for service. (*Responsive Brief* pp. 31-32.) The borough in its responsive brief states the financial loss to the borough is an estimated \$378,000 and the financial loss to the UFSA is an estimated \$53,000.

The city in its petition cites a figure of \$53,406.48 as the financial loss to the UFSA. The city in its petition states that the financial loss to the borough amounts to \$209,736 for both the enclave lots and Fred Meyer, but in its reply brief the city states the financial loss to the borough is roughly \$400,000. The city does not explain why these figures are different. Neither party shows a breakdown of how it arrives at the roughly \$53,000 loss for the UFSA or the roughly \$400,000 loss for the borough.

Commerce finds that if Fred Meyer is annexed the UFSA will lose its collection of a 2.138 mill rate based on the property value of Fred Meyer. Table 3-8 on page 104 shows that the total property tax paid by Fred Meyer in 2008 was \$372,896 including the borough's mill rate of 12.79 and the UFSA's mill rate of 2.138. Looking at the UFSA mill rate and the amount of taxes paid, Commerce calculates the financial loss to the UFSA is approximately \$53,406.46 (a difference of two cents from the city's figure) annually.

Table 3-9. Service Areas Fire Service Area Budget Detail

Fire Service Area	Fire Service Area and Expenditures					
	Operating Expenditures	Capital Outlay	Insurance	Cont. to Capital and Multi-Year Projects	Cont. to Fund Balance	Total Appropriation
Chena Goldstream	\$634,860	\$0	\$73,271	\$0	\$185,840	\$893,971
Ester Volunteer	\$303,810	\$0	\$29,470	\$0	\$0	\$333,080
North Star	\$1,217,112	\$20,000	\$105,888	\$0	\$39,625	\$1,382,625
Steese Volunteer	\$936,486	\$0	\$86,590	\$0	\$73,921	\$1,097,000
University	\$1,589,577	\$46,000	\$3,099	\$0	\$378,929	\$2,017,605
Total Fire Service Areas	\$4,681,845	\$66,000	\$298,318	\$0	\$678,315	\$574,281

Table 3-9 Continued from Previous Page

Fire Service Area	Fire Service Area Revenues					
	Property Tax		Interest Earnings	Misc. Revenue	Cont. From Fund Balance	Total Revenues
Chena Goldstream	\$882,651		\$11,320	\$0	\$0	\$893,971
Ester Volunteer	\$322,341		\$4,000	\$0	\$6,739	\$333,080
North Star	\$1,367,655		\$14,970	\$0	\$0	\$1,382,625
Steese Volunteer	\$1,092,690		\$4,310	\$0	\$0	\$1,097,000
University	\$1,988,115		\$29,490	\$0	\$0	\$2,017,605
Total Fire Service Areas	\$5,653,452		\$64,090	\$0	\$6,739	\$5,724,281

Commerce located the above Table 3-9 on the borough's financial services website (<http://www.co.fairbanks.ak.us/financialservices/>) under Expenditure Budget for Service Areas. It details the projected budgets for all five fire service areas for the fiscal year 2008-09. Commerce finds that the UFSA has the largest budget of the five fire service areas. Total projected revenue from property tax for 2008 is \$1,988,115. This is the same figure that the city states in its petition. Commerce calculates that the revenue loss of approximately \$53,406.46 (Commerce figure) is about 2.7 percent of the total revenue that the UFSA is expected to raise through property taxes. Commerce also notes Table 3-9 shows that revenues exceed operating expenditures by roughly \$379,000. This could represent a current revenue surplus that far exceeds the roughly \$53,406.46 in revenue loss from annexation. Presumably, there are numerous methods the UFSA can use to recover the loss of 2.7 percent of revenue (e.g. raising taxes, reducing staff). Commerce finds the financial impact to the UFSA in consideration of its entire budget to be *de minimis*. This is considerably less than the 25 percent revenue loss for a service area that the LBC found to be *de minimis* in the Homer annexation.

Commerce will now analyze the financial impact of annexing Fred Meyer on the borough. The borough claims the revenue loss to be about \$378,000 but it does not provide any data to support this figure. As has been stated, if annexation is approved the borough will lose the following sources of revenue: 5 percent alcohol tax, EMS mill rate of 0.2560, Econ. Dev. mill rate of 0.144, and solid waste mill rate of 1.1030. The city estimates in its Table 1-A the revenue from a 5 percent alcohol tax for Fred Meyer will generate \$151,946. (*Petition* p. 16). If annexation is approved, the \$151,946 in alcohol tax revenue is lost to the borough because of the exemption of a duplicate borough alcohol sales tax.

Based on the mill rate of 0.2560 and the amount of total property taxes paid by Fred Meyer shown in Table 3-8 (existing 2008 mill rates above), Commerce calculates the loss of revenue from EMS to be approximately \$6,394.79 annually. Based on a mill rate of 0.144 and the

amount of total property taxes paid by Fred Meyer shown in Table 3-8 (existing 2008 mill rates above), Commerce calculates the loss of revenue from Econ. Dev. to be approximately \$3,597.07 annually. Based on a mill rate of 1.1030 and the amount of total property taxes paid by Fred Meyer shown in Table 3-8 (existing 2008 mill rates above), Commerce calculates the solid waste revenue loss to be approximately \$27,552.54 annually. Combining these four sources of loss revenue Commerce calculates total financial impact of the city annexing Fred Meyer to be a loss of approximately \$189,490.40 annually. This number is comparable to the city's stated financial loss to the borough (\$209,736) if only Fred Meyer is considered.

The borough has a budget that raises \$126,809.50 million in net revenue (*Revenue Budget* p. 51). (<http://co.fairbanks.ak.us/FinancialServices/FY09ApprovedBudget/default.htm>). Using the borough's estimate of financial loss of (\$378,000) and the estimated net revenue of \$126,809.50, this will only decrease projected net revenues by approximately 0.298 percent. Using Commerce's estimate of financial loss of (\$189,490.40), it is a lesser loss of only 0.149 percent of total projected net revenues. There are numerous methods the borough can use to recover the loss of at most 0.298 percent of total projected net revenue. Commerce finds the financial impact to the borough to be *de minimis*.

Commerce finds that annexing either the enclave lots or Fred Meyer does not cause a detrimental financial impact to either the borough or the UFSA that would cause the city's petition for annexation to be against the best interests of the state.

Conclusion:

Commerce finds that the city meets the best interests of the state standard for annexing both the enclave lots and Fred Meyer. Commerce finds that annexation would provide maximum local self government.

Commerce also finds that for both the enclave lots and Fred Meyer that annexation would promote a minimum of local government units because no more units would be added. Commerce finds that this factor's standard has been met.

Commerce finds that annexing would relieve the state of the responsibility of providing local services because the AST could be reassigned to other areas and duties rather than patrolling the enclave lots and Fred Meyer. Also, the state fire marshal's office would no longer need to service either territory. Commerce finds that this factor's standard has been met.

Commerce finds that annexing either the enclave lots or Fred Meyer does not cause a detrimental financial impact to either the borough or the UFSA that would cause the city's petition for annexation to be against the best interests of the state.

Commerce finds that annexing the enclave lots and that annexing Fred Meyer is in the best interests of the state.

3 AAC 110.140. Legislative review

Territory that meets the annexation standards specified in 3 AAC 110.090 – 3 AAC 110.135 may be annexed to a city by the legislative review process if the commission also determines that any one of the following circumstances exists:

(1) The territory is wholly or substantially surrounded by the annexing city;

Enclave Lots:

City: The city states that “[t]he enclave lots should have been annexed to the City years ago as a matter of law, as has been previously recognized and recommended by the Local Boundary Commission.” (*Petition* Ex. H p. 7). “The enclave lots are surrounded by the City of Fairbanks.” (*Reply Brief* p. 16).

Borough: As earlier stated, the borough does not object to the city annexing the enclave lots. (*Responsive Brief* p. 3).

Commerce Findings: This factor reflects the belief of eliminating enclaves within the corporate boundaries of municipalities. For local boundary concerns, Commerce considers an enclave to be territory that is surrounded or nearly surrounded by another municipality. It has been established that the enclave lots represent an enclave currently within the city. Commerce notes the Chena River forms part of the northern and western borders of the enclave, and serves as a barrier to the borough. Commerce finds based on the maps and testimony that the enclave lots are surrounded by the city and the Chena River and that the city meets this factor’s requirements.

Fred Meyer:

City: The city did not comment on this relevant factor that the commission may consider.

Borough: The borough avers that “[t]he Fred Meyer Subdivision is not surrounded by the City of Fairbanks, rather it is substantially surrounded by the Borough and the University Fire Service Area. The Subdivision only shares a boundary with the City on the Subdivision eastern and part of the southeastern boundary.” (*Responsive Brief* p. 24).

Commerce Findings: Based on the maps and testimony provided Commerce finds that the city does not wholly or substantially surround Fred Meyer. The city is contiguous to Fred Meyer sharing the eastern boundary and part of the southern, but the city’s proposed annexing of

Fred Meyer does not eliminate an enclave. This circumstance requires the city to wholly or substantially surround the territory proposed for annexing. The borough correctly points out that the existing city does not wholly or substantially surround Fred Meyer. Commerce finds that the city has not met requirements of this factor.

(2) The health, safety, or general welfare of city residents is or will be endangered by conditions existing or potentially developing in the territory, and annexation will enable the city to regulate or control the detrimental effects of those conditions;

Enclave Lots:

City: The city's position has been extensively detailed in its discussion of 3 AAC 110.090(a)(2) existing or reasonably anticipated health, safety, and general welfare conditions. The city avers that annexation will provide increased police, fire, and paramedic services. (*Petition* p. 8). Currently the enclave lots do not receive fire protection. (*Petition* p. 5). The enclave lots would now receive the above services, as well as residential trash collection, city building code inspections, and city fire marshal inspection services. (*Petition* p. 8). "The checkerboard arrangement in the enclave lots, where some buildings are protected by a fire service and built to the standards of the building code, but the house next door is not, does not promote proper development. If there are structural fires in buildings in the enclave lots, as there have been in the past, the property of neighboring City residents is placed at risk." (*Petition* p. 9).

Borough: As earlier stated, the borough does not object to the city annexing the enclave lots. (*Responsive Brief* p. 3). The borough states that "[t]he enclave lots are a patchwork of lots interspersed between lots within the city on two to three sides of each lot and the Chena River to the North." It also states that "the enclave lots share City maintained roads with their neighbors who pay for those services." "[T]he enclave lots are not within a Borough fire service area and receive no fire service." (*Responsive Brief* pp. 4 – 5).

Commerce Findings: This circumstance differs from 3 AAC 110.090(a)(2) in that this requires the health, safety, or general welfare of **city residents** to be endangered by conditions that exist or may potentially develop in the territory not that of residents in the territory. Commerce finds that the most alarming safety risk is that the enclave lots currently have no fire protection. As noted above, the enclave lots are interspersed with those of the city, and if some of the enclave lots were to catch fire it would be possible for the fire to spread to city residents' homes. Commerce finds that annexing the enclave lots would allow for the city to regulate and control the detrimental effects of possible conditions (like fire) from endangering the health, safety, or general welfare of city residents. The city meets this standard.

Fred Meyer:

City: The city contends that the existing health system and general welfare conditions will be improved if the city annexes Fred Meyer. Please see the summary of its position under 110.090(a) (4) and 110.090 (b) for a more extensive summary.

Borough: The borough states that “[t]here is no evidence that the health, safety or general welfare of City residents is or will be endangered by conditions in the tiny Fred Meyer Subdivision that the City must regulate or control.” (*Responsive Brief* p. 24).

Commerce Findings: Commerce found in analyzing 3 AAC 110.090(a)(2) that the existing or reasonably anticipated health, safety, and general welfare conditions would be improved by allowing the city to annex Fred Meyer because the city can provide more and better emergency services. Unlike the enclave lots, Commerce also found that existing services were for the majority adequate for Fred Meyer. This circumstance requires that present city resident’s health, safety, or general welfare be endangered by conditions in the territory. Commerce finds that there has been nothing presented in the petition that shows that city residents are in any potential danger if the city is not allowed to annex Fred Meyer. Commerce finds that the requirements of this circumstance have not been met for Fred Meyer.

(3) *The extension of city services or facilities into the territory is necessary to enable the city to provide adequate services to city residents, and it is impossible or impractical for the city to extend the facilities or services unless the territory is within the boundaries of the city;*

Enclave Lots:

City: The city contends that “[t]he annexation will allow the City to collect tax revenue that is needed to continue to finance City services effectively.” (*Petition* Ex. H p. 7). “Annexation will provide added funding for the unmet needs of the existing City. One example is Police Department staffing. The additional tax revenues from both of the territories to be annexed will provide the City with additional revenue that could be used for additional police staffing – or any other need judged to be necessary by the City Council.” (*Reply Brief* p. 16).

Borough: As earlier stated, the borough does not object to the city annexing the enclave lots. (*Responsive Brief* p. 3).

Commerce Findings: Commerce can understand the city's desire to annex territory that will add to the economic base and generate additional revenues that can be used to increase the level of municipal services it provides to its residents. Commerce notes that this factor requires that it must be '**impossible or impractical** for the city to extend the facilities or services unless the territory is within the boundaries of the city.' (*Emphasis added*). The city argues in its petition that it provides adequate services to its residents and would be able to extend these services to the territories proposed for annexation. Commerce views that it is not impossible or impractical for the city to provide adequate services to its residents if either the enclave lots or Fred Meyer are not annexed. There are other methods the city can use to raise the necessary revenue to increase the level of municipal services it provides to its residents. Commerce finds that the city does not meet this factor's requirements.

Fred Meyer:

City: See "Enclave Lots" above.

Borough: The borough claims that "[t]here are no residents, City or Borough, that live in the Fred Meyer Subdivision. The Subdivision is purely a commercial area. The City has not shown that an extension of City services is necessary for the City to provide adequate services to city residents." (*Responsive Brief* pp. 24-25).

Commerce Findings: See "Enclave Lots" Commerce Findings above. Commerce finds that the requirements of this factor are not met for Fred Meyer.

(4) Residents or property owners within the territory receive, or may be reasonably expected to receive, directly or indirectly, the benefit of city government with commensurate tax contributions, whether these city benefits are rendered or received inside or outside the territory, and no practical or equitable alternative method is available to offset the cost of providing these benefits;

Enclave Lots:

City: The city contends that "[t]he City currently provides services to the existing population without any recovery of revenue to pay for those services." (*Petition* Ex. H p. 8). "The enclave lots...already receive police services to the area as well as street maintenance and snow removal services that enable residents and property owners to access their property without payment of City taxes. There is no logical way to recover this cost other than annexation." (*Reply Brief* p. 17). Currently the city provides rescue squad service to the enclave lots, but without receiving compensation. (*Petition* p. 6).

Borough: As earlier stated, the borough does not object to the city annexing the enclave lots. (*Responsive Brief* p. 3).

Commerce Findings: In 3 AAC 110.090(a)(6) Commerce found that the enclave lots benefit from the services provided to their neighbors such as street maintenance and fire protection. The enclave lots are not serviced by the University Fire Service Area, and so no mutual aid agreement for rescue squad applies to any city service provided to the enclave lots. Arguably the city could simply choose to not provide that rescue squad service to the enclave lots. Commerce finds that the city does not meet this factor's requirements for the enclave lots because there is no practical or equitable method available to offset the cost of providing these benefits. While the city is not obligated to provide rescue squad service to the enclave lots, it must maintain the streets that are with the city.

Fred Meyer:

City: The city avers that "[t]he Fred Meyer Subdivision also receives the direct benefit of Fairbanks Police response to any robbery in the territory, and especially bank robberies at the two financial institutions. The City's state of the art dispatch center and the enhanced bank robbery response capability (not provided by the Alaska State Troopers), provides an essential service to the Fred Meyer Subdivision. The most logical way to pay for these services is with City taxes." (*Reply Brief* p. 17). The city avers that the Fred Meyer owners, customers, and employees benefit from city services that are provided up to Fred Meyer's eastern edge. (*Petition* p. 5). The city contends that it provides more proportionally than the borough to the FEDC and the FCVB. (*Reply Brief* p. 28).

Borough: The borough states that "[t]he City does not provide any benefits to the Fred Meyer Subdivision. Although the City, in its Petition at page 5, attempted to show that the Fred Meyer Subdivision received governmental services, this is not supported by the actual facts and evidence. The City claims that it provides fire suppression and EMS services to the mutual aid contract with the University Fire Service Area and the Borough. However, as discussed previously, the City has not in the past eight years delivered mutual aid to the Fred Meyer Subdivision." (*Responsive Brief* p. 25).

"The City also claims that it delivers emergency dispatch services to the Subdivision. However, this argument is misleading and incorrect. The City is simply a contractual, not a government provided service. The City contracts with the Borough and several emergency response agencies to provide a centralized dispatch and is compensated for those contracted services. Moreover, the City does not provide centralized dispatch for the University Fire Service Area; any land line 911 calls from the Fred Meyer Subdivision

or anywhere in the University Fire Service Area is routed to the Alaska State Troopers and transferred to University dispatch, not to the City of Fairbanks.” (*Responsive Brief* pp. 25-26).

“As to cellular phones, the Borough has a 911 call-talking contract with the City and pays the City to answer all 911 calls from cell phones within the Fairbanks North Star Borough area and then transfer those calls to the proper dispatch center if the City is not the proper center.” (*Responsive Brief* p. 26).

“Therefore, the City is already compensated for the contractual services it does to the Fred Meyer Subdivision. There are no benefits that the properties within the subdivision, which are all commercial entities, receive from the City either directly or indirectly, and to the extent they receive indirect benefits, the City is fully paid for those services either through contractual payments or the mutual aid received from the service area.” (*Responsive Brief* pp. 26-27).

Commerce Findings: As in 3 AAC 110.090(a)(6) Commerce distinguishes between the benefit of the city providing services up to the city’s eastern border and the benefit of the city providing services to Fred Meyer. Many of the services that the city claims it provides such as dispatch, occasional police and EMS the borough contends are contractual services that city is being compensated for. This circumstance also requires that there be no practical or equitable alternative method available to offset the cost of providing these services. The mutual aid agreement could be rescinded for example, or fees imposed for its use. All EMS services are provided under a mutual aid agreement with the University Fire Service Area. Regarding the benefit of FPD to handle bank robberies, Commerce found that the city has not shown that property owners within Fred Meyer receive or may be reasonably expected to receive the benefit of bank robbery protection by the city. In terms of Fred Meyer benefiting from the city’s contributions to the FEDC and FCVB, Commerce finds that these groups are not for the sole benefit of Fred Meyer nor does the city of Fairbanks contribute to the FEDC and FCVB in order to benefit Fred Meyer. Thus, the city’s contribution cannot be viewed as a benefit received by Fred Meyer solely. Commerce finds that Fred Meyer does not currently receive the benefit of city government for which there is no practical or equitable alternative method available to offset the cost of providing these benefits, and so the city does not meet the standard for Fred Meyer.

(5) *Annexation of the territory will enable the city to plan and control reasonably anticipated growth or development in the territory that otherwise may adversely impact the city;*

Enclave Lots:

City: The city contends that “[a]nnexation will allow the City of Fairbanks to ensure orderly growth and development.” (*Petition* Ex. H p. 8).

Borough: As earlier stated, the borough does not object to the city annexing the enclave lots. (*Responsive Brief* p. 3).

Commerce Findings: It has already been established that the enclave lots have been highly developed. It has predominately residential property with a few commercial establishments. The city has failed to show what adverse impact the city would face if annexing the enclave lots is not approved. Even if there will be such an impact, the borough is the only municipality which currently has the power of planning, platting and land use regulation. The borough provides these services on an areawide basis, so regardless of annexation the borough will continue to exercise this power, not the city. Commerce finds that the city has not demonstrated the need that is required of this factor for the enclave lots.

Fred Meyer:

City: See “Enclave Lots” above.

Borough: The borough avers that “[t]he City has not shown that there is any anticipated growth in the Fred Meyer Subdivision that would adversely impact the City or that annexation of the Subdivision will enable the City to plan and control that growth. In addition, the Borough is the local government agency that controls planning, platting and land use regulation on an areawide basis.” (*Responsive Brief* p. 27).

Commerce Findings: It has already been established that Fred Meyer is highly developed entirely as commercial property. The land in the territory has been fully developed leaving little, if any, room for growth. The city has not shown how any possible growth would adversely impact the city. As noted above, the borough is the only municipality currently has the power of planning, platting and land use regulation.

The borough provides these services on an areawide basis, so regardless of annexation the borough will continue to exercise this power not the city. Commerce finds that the city has not met the standard that is required of this factor for Fred Meyer.

(6) Repealed 5/19/2002;

(7) Annexation of the territory will promote maximum local self-government, as determined under 3 AAC 110.981 AND a minimum number of local government units, as determined under 3 AAC 110.982 and in accordance with art. X, sec. 1, Constitution of the State of Alaska;

Enclave Lots:

City: The city contends that “[t]he annexation will promote the ability of the existing City of Fairbanks to provide essential governmental services to its residents and will not add a new government unit.” (*Petition* Ex. H p. 8). “The City of Fairbanks is a home rule city inside the Fairbanks North Star Borough, a second class general law borough. This annexation proposal will not increase the number of governmental units. It will promote local self-government by providing locally controlled police service to both the enclave lots and the Fred Meyer Subdivision.” (*Reply Brief* p. 17).

Borough: As earlier stated, the borough does not object to the city annexing the enclave lots. (*Responsive Brief* p. 3).

Commerce Findings: This circumstance requires that annexation will promote both the principles of local self-government **and** a minimum number of local government units. These two factors were discussed and analyzed in the review of 3 ACC 110.135 best interests of the state.

Commerce found that the enclave lots promoted the principal of local self government because the enclave lots would receive services which the existing local government does not provide, and because the citizens would also become city citizens with commensurate voting rights. For further analysis of 3 AAC 110.981 please see discussion beginning on page 96.

Commerce interprets 3 AAC 110.982 as promoting a minimum number of local government units. Both parties agree that annexing the enclave lots will not create another governmental units, not a ban on creating them. The contention is on whether maintaining the number of governmental units is sufficient to satisfy this factor. Commerce finds that the city enclave lots meet this standard by not creating a new governmental unit. For further analysis of 3 AAC 110.982 please see discussion beginning on page 99.

Because Commerce has found that the enclave lots meet the requirements of both 3 AAC 110.981 and 110.982 the circumstance of 3 AAC 110.140(7) exists and annexation by legislative review is appropriate.

Fred Meyer:

City: See “Enclave Lots” above.

Borough: The borough states that “[p]ursuant to 3 AAC 110.981, in determining whether a proposed city annexation in an organized borough promotes maximum local self-government, the Commission must consider ‘whether the proposal would extend local government to territory or population of the organized borough where local government needs cannot be met by the borough on an areawide or nonareawide basis or through an existing borough service area.’ As shown throughout this opposition brief, the Fred Meyer Subdivision’s local government needs are met by the Borough and the Borough’s University Fire Service Area. The annexation will not promote maximum local self-government.” (*Responsive Brief* pp. 27-28).

“Furthermore, the annexation will not promote a minimum number of local government units. The detachment of the Fred Meyer Subdivision from the Borough and annexation to the City will not change the number of local government units. The Borough provides local government to the Subdivision through areawide services such as assessing, tax collection, education, planning and zoning, nonareawide services such as ambulance, emergency management and economic development and service area services such as fire. Thus the City’s petition does not extend local government needs that the Borough is not already meeting on an Areawide or nonareawide and service area basis.” (*Responsive Brief* p. 28).

Commerce Findings: This circumstance requires that annexation will promote both the principles of local self-government **and** a minimum number of local government units. These two factors were discussed and analyzed in the review of 3 ACC 110.135 best interests of the state.

Commerce found that annexing of Fred Meyer would promote the principal of local self government because Fred Meyer would receive the benefits of belonging to both the city and the borough. If annexation is approved then Fred Meyer would receive both the benefits only the borough can offer (e.g. assessing, tax collection, education, planning and zoning, and others) and also those benefits which only the city can offer (e.g. police, dispatch, building and building and fire code). For further analysis of 3 AAC 110.981 please see discussion beginning on page 96.

Commerce interprets 3 AAC 110.982 as promoting a minimum number of local government units, not a ban on creating them. Both parties agree that annexing Fred Meyer will not create another government unit. The contention is on whether maintaining the number of

governmental units is sufficient to satisfy this factor. Commerce finds that the city meets this standard for Fred Meyer meets this standard by not creating a new governmental unit. For further analysis of 3 AAC 110.982 please see discussion beginning on page 99.

As Commerce has found that Fred Meyer meets the requirements of both 3 AAC 110.981 and 110.982, the city meets 3 AAC 110.140(7)'s requirement. Annexation by legislative review is appropriate.

(8) Annexation of the territory will enhance the extent to which the existing city meets the standards for incorporation of cities, as set out in the Constitution of the State of Alaska, AS 29.05, and 3 AAC 110.005 – 3 AAC 110.042, and is in the best interests of the state;

Enclave Lots:

City: The city states that “[i]t is contrary to the best interests of the State to allow a jagged boundary line which results in a situation where some lots are surrounded by the City. The City regrets it did not find the time to correct this irrational boundary in the past as the LBC recommended.” (*Reply Brief* p. 18).

Borough: As earlier stated, the borough does not object to the city annexing the enclave lots. (*Responsive Brief* p. 3).

Commerce Findings: Commerce finds that correcting an ‘irrational’ boundary does not enhance the extent to which the existing city meets the standards to incorporate cities. This circumstance requires that the annexing the enclave lots would enhance the extent which the existing city meets the standards to incorporate cities, and that it is in the best interests of the state.

3 AAC 110.140 (8) addresses the standards for the existing city to incorporate. Commerce finds that the factors addressed in AS 29.05 are contained within and are addressed in 3 AAC 110.005 – 3 AAC 110.042, and do not need to be addressed separately.

3 AAC 110.140 (8) states that annexation must enhance the extent to which the existing city meets the incorporation standards. The commission may therefore consider not only whether the annexation enhances the incorporation, but also how much.

Annexing the enclave lots would add about .02 square miles and about 35 residents to the city. Annexing the enclave lots would not greatly impact or change the city. The enclave lots do not add significantly to the population, community, or economic base of the existing city. Commerce finds that annexing the enclave lots would not significantly enhance the extent

to which the existing city of Fairbanks meets the incorporation standards (need, resources, population boundaries, and best interests of the state) set out in the Alaska Constitution, AS 29.05, and 3 AAC 110.005 - 042, but that it would enhance them.

Commerce found in analyzing 3 AAC 110.135 that annexing the enclave lots is in the best interests of the state. Commerce found that annexing the enclave lots promoted the principles of maximum local self government and minimum of local government units, would relieve the state of the responsibility of providing some services to the territories, and would not cause a detrimental financial impact to either the borough or the UFSA. For a more in depth analysis on best interests of the state please see Commerce's discussion of 3 AAC 110.135 beginning on page 96.

Commerce finds that annexing the enclave lots will enhance the extent to which the existing city will meet incorporation standards and is in the best interests of the state. The city meets this standard for the enclave lots.

Fred Meyer:

City: The city avers that "[i]t is contrary to the best interests of the State to have such a large retail subdivision "perched" on the City boundaries, in need of local municipal services, and receiving some of those services without contributing politically and financially to the City's future." (*Reply Brief* p. 18).

Borough: The borough contends that "[t]he City is already a home rule municipality and has met the standards of incorporation for a city. Annexation of the Fred Meyer Subdivision will not enhance the extent to which the existing city meets the standards for incorporation." (*Responsive Brief* pp. 28-29).

Commerce Findings: The city contends that Fred Meyer is advantaged over similar commercial retailers because it receives some city services but does not pay an equitable amount of taxes. The taxes include the city's 8 percent tobacco tax that is levied on all establishments within the city but which Fred Meyer does not have to pay because it is just outside the boundaries of the city. Also, Fred Meyer pays approximately 2.350 mills less than its competitors inside the city. The city has averred that it is economically inequitable to have a large retail store 'perched' on city boundaries that is subject to less taxes than competing retail stores inside the city and even just across the street.

Commerce does not make a finding as to the equity of this circumstance, but simply finds that there is an economic advantage for commercial properties selling the same goods outside of city limits compared to those inside of city limits. The fact that economic inequality exists, however, does not alone show how annexing Fred Meyer would enhance the extent to which the existing city meets the incorporation standards.

Commerce concurs with the borough's assertion that "[t]he City is already a home rule municipality and has met the standards of incorporation for a city." Fred Meyer does not add significantly to the community or economic base of the existing city, and does not add to the population. But, Commerce finds that annexing Fred Meyer would enhance the extent to which the existing city meets the incorporation standards because annexing Fred Meyer would bring additional area and revenue to the city. Due to Fred Meyers's small size and no population, Commerce finds that annexing Fred Meyer would only marginally enhance that extent.

Commerce found in analyzing 3 AAC 110.135 that annexing Fred Meyer is in the best interests of the state. Commerce found that annexing Fred Meyer promoted the principles of maximum local self government and minimum of local government units, would relieve the state of the responsibility of providing some services to the territories, and would not cause a detrimental financial impact to either the borough or the UFSA. For a more in depth analysis on best interests of the state please see Commerce's discussion of 3 AAC 110.135 beginning on page 96..

Commerce finds that the city meets this standard for Fred Meyer because it has been found that annexing the enclave lots will enhance the extent to which the existing city will meet incorporation standards and it is in the best interests of the state.

(9) The commission determines that specific policies set out in the Constitution of the State of Alaska, AS 29.04, AS 29.05, or AS 29.06 are best served through annexation of the territory by the legislative review process, and that annexation is in the best interests of the state.

Enclave Lots:

City: The city did not comment on this relevant factor that the commission may consider.

Borough: As earlier stated, the borough does not object to the city annexing the enclave lots. (*Responsive Brief* p. 3).

Commerce Findings: The city did not petition that annexing the enclave lots satisfied any specific policies set out in the Alaska constitution or statutes that are best served through annexation of the territory by the legislative review process. Article 10, section 12, details the legislative review procedure, but does not explicitly favor legislative review. AS 29.04 specifies the classification of municipalities and the process municipalities can undertake to change its classification.

AS 29.05 details the nature, requirements, and procedures for incorporating of a municipality. AS 29.06 stipulates the various methods of altering municipalities including annexation, detachment, merger, consolidation, unification, and dissolution. AS 29.06 allows for a city

annexation petition to be approved by either legislative review or local action. Both methods are allowed by law and the reasoning behind a city choosing one method over another should not have an impact on whether the petition meets the lawful standards. While it may be seen as more democratic to only allow petitions under local action, the framers of the state constitution felt that it was important to have a method available that would allow for local boundary decisions to be handled on a state level to ensure that any changes reflected what was in the best interests of the state.

While it has been found that annexing the enclave lots is in the best interests of the state, Commerce finds that there are no specific policies set out in the Constitution of the State of Alaska, AS 29.04, AS 29.05, or AS 29.06 that are best served through annexation of the enclave lots by the legislative review process. Therefore, Commerce finds that the city has requirements for this factor have not been met for the enclave lots.

Fred Meyer:

City: The city did not comment on this relevant factor that the commission may consider.

Borough: The borough states that “[i]f none of the other circumstances can be met, the Commission can determine that specific policies set out in the Constitution, or Title 29 are best served through [annexation] of the area by the legislative review process and that [annexation] is in the best interest[s] of the state. The City has failed to show that any other polic[ies] under the Constitution or Title 29 are best served by annexing the Fred Meyer Subdivision.” (*Responsive Brief* p. 29).

Comments: Jerry Cleworth states that “[he] currently serve[s] on the Fairbanks City Council and [has] served off and on for over 18 years. During that time we have conducted many successful annexations that were never controversial, with both parties deriving mutual benefit from each other. This has been our unwritten policy until recently.”

Emily Bratcher states in response to Jerry Cleworth’s comments that “[a]s a City of Fairbanks Council Member, I am not aware of any “unwritten policy” regarding legislative review annexations. As noted in the City’s petition, this annexation via the legislative review process, was approved by written City Council Resolutions Nos. 4312, 4313, and 4335. The legislative review process is authorized by the Alaska Constitution.”

Commerce Findings: Please see “Enclave Lots” above for a policy analysis.

In regards to Mr. Cleworth's comments whether or not the city of Fairbanks has an unwritten policy to not put forth annexations that were not mutually beneficially for all parties involved is not a matter for the commission. It is the job of the commission to determine if the annexation request meets all the legal standards. Annexation requests by legislative review are allowed by law. There are no specific policies set out in the constitution or in 29.04, 29.05, or 29.06 that prohibit annexation requests which are not mutually beneficial to all parties involved. Rather, the local boundary changes must meet applicable legal standards and be in the best interests of the state.

While it has been found that annexing Fred Meyer meets the applicable legal standards and is in the best interests of the state, Commerce finds that there are no specific policies set out in the Constitution of the State of Alaska, AS 29.04, AS 29.05, or AS 29.06 that are best served through annexation of Fred Meyer by the legislative review process. Therefore, Commerce finds that the city does not meet this factor's requirements for the enclave lots.

Conclusion: In order to meet the requirements of this standard only one of the nine circumstances must exist. Commerce has found that the enclave lots satisfy five of the nine circumstances ((1), (2), (4), (7), and (8)). Commerce has found that the enclave lots are wholly or substantially surrounded by the city. Commerce has found that there exist conditions in the enclave lots that endanger the health, safety, or general welfare for city residents and that annexation will enable the city to regulate or control the detrimental effects of those conditions. Commerce has found that the enclave lots receive the benefit of city government and that there is no practical or equitable alternative method available to offset the cost of providing those benefits. Commerce found that annexing the enclave lots will promote maximum local self government and a minimum number of local government units. Lastly, Commerce found that annexing the enclave lots would enhance the extent to which the existing city meets the standards for incorporation of cities and is in the best interests of the state. Having found that the enclave lots meet at least one of the nine circumstances enumerated in 3 AAC 110.140, Commerce finds that the requirements of 3 AAC 110.140 have been met for the enclave lots.

Commerce has found that annexation of Fred Meyer will promote maximum local self government and a minimum number of local government units. Commerce has also found that annexing Fred Meyer would enhance the extent to which the existing city meets the standards for incorporation of cities and is in the best interests of the state. While the annexation of Fred Meyer met only two circumstances, the requirement of 3 AAC 110.140 is that at least one of the nine circumstances must be found to exist. Since Commerce has found that circumstances number seven and eight do exist for Fred Meyer, Commerce finds that requirements of 3 AAC 110.140 have been met for the Fred Meyer territory.

3 AAC 110.900. Transition

(a) A petition for incorporation, annexation, merger, or consolidation must include a practical plan that demonstrates the capacity of the municipal government to extend essential municipal services into the boundaries proposed for change in the shortest practicable time after the effective date of the proposed change.

Enclave Lots:

City: “The City of Fairbanks will immediately extend essential City services and functions into the territory proposed for annexation on effective date.”
(*Petition Ex. E* p. 2).

Borough: As earlier stated, the borough does not object to the city annexing the enclave lots. (*Responsive Brief* p. 3).

Commerce Findings: The city includes a transition plan in its petition as Exhibit E. The city details in its transition plan and in sections 6, 14, and 15 the capacity of the city to extend essential city services into both territories proposed for annexation immediately upon the effective date if the annexation is approved. Commerce deems that requirement (a) of 3 AAC 110.900 has been satisfied because the petition includes a transition plan.

Fred Meyer:

City: See “Enclave Lots” above.

Borough: While the borough opposes the city annexing Fred Meyer, it did not comment on this relevant factor that the commission may consider.
(*Responsive Brief* p. 6).

Commerce Findings: See “Commerce Findings” under “Enclave Lots” above.

(b) A practical plan to assume all relevant and appropriate powers, duties, rights, and functions presently exercised by an existing borough, city, unorganized borough service area, or other appropriate entity located in the territory proposed for annexation. The plan must be prepared in consultation with the officials of each existing borough, city, and unorganized borough service area and must be designed to effect an orderly, efficient, and economical transfer within the shortest practical time, not to exceed two years after the effective date of the proposed change.

Enclave Lots:

City: “The City of Fairbanks will immediately extend essential City services and functions into the territory proposed for annexation on effective date. Under AS 29.35.170, the Fairbanks North Star Borough is legally obligated for real property assessment and the collection of property taxes. Assessment currently is being performed annually for real property inside the existing limits and the territory proposed for annexation. Under AS 29.45.010 and 29.45.060, cities within the Borough notify the Borough of the amount of city levy by June 15th of the first year after annexation, whether 2009 or later. The City Finance Department will update its database for sales of and transient room tax receipts to include any affected businesses and will begin collecting sales and transient room taxes after the effective date of annexation.” (*Petition Ex. E p. 2*).

“The fire code will be enforced upon annexation to protect the life and safety of people as is provided in all other areas of the City.” (*Petition Ex. E p. 2*). “On the effective date of annexation, City Public Works Department will immediately commence snow removal, street maintenance, and repair service.” (*Petition Ex. E p. 3*). The city also states that “[a]nnexation will provide increased police service, full time professional fire suppression, fire prevention and building code and fire marshal inspection services, and residential refuse collection in residential areas of the territory.” (*Petition p. 8*).

Borough: As earlier stated, the borough does not object to the city annexing the enclave lots. (*Responsive Brief p. 3*).

Commerce Findings: The city’s transition plan and other parts of the petition state that the city is prepared to extend essential city services immediately upon the effective date of an approved annexation. The city has stated that it currently provides city services up to the eastern boundary of Fred Meyer and to nearby lots in the enclave. FPD has already been responding to calls inside the Fred Meyer territory. The city asserts that it already has been providing

paramedic services to the enclave lots. Commerce finds that the city has the facilities and staff in place to be able to provide essential municipal services in an efficient manner. Commerce finds that the city's petition has included a practical plan to assume all relevant and appropriate powers, duties, rights, and functions presently exercised by a municipality or other appropriate entity.

Fred Meyer:

City: See "Enclave Lots" above.

Borough: While the borough opposes the city annexing Fred Meyer, it did not comment on this relevant factor that the commission may consider. (*Responsive Brief* p. 6).

Commerce Findings: See "Commerce Findings" under "Enclave Lots" above.

(c) A practical plan to transfer and integrate all relevant and appropriate assets and liabilities of an existing borough, city, unorganized borough service area, and other entity located within the boundaries proposed for change. The plan must be prepared in consultation with the officials of each existing borough, city, and unorganized borough service area and must be designed to effect an orderly, efficient, and economical transfer within the shortest practical time, not to exceed two years after the effective date of the proposed change. The plan must specifically address procedures that ensure that the transfer and integration occur without loss of value in assets, loss of credit reputation, or a reduced bond rating for liabilities.

Enclave Lots:

City: The city does not comment on this requirement, presumably because there are no relevant or appropriate assets and liabilities to transfer from any entity located within the boundaries proposed for change.

Borough: As earlier stated, the borough does not object to the city annexing the enclave lots. (*Responsive Brief* p. 3). The borough cites William Shechter's analysis in its responsive brief stating "[c]ontrary to the city's assessment, there is no transition plan associated with the proposed annexation of the Fred Meyer property in as much as the Borough Assembly has voted to oppose the entire transfer of assets and liabilities to the City of Fairbanks." (*Responsive Brief Ex. 7* p. 4).

Commerce Findings: Commerce finds that there are no relevant or appropriate assets and liabilities to transfer from any entity. There has been no mention by either party that any assets or liabilities exist for the territories proposed for annexing (the enclave lots and Fred Meyer). The city mentions on page 23 of its petition and Exhibit E page 1, that the transition plan would include a practical plan for transfer and integration of all relevant and appropriate assets and liabilities of the Fairbanks North Star Borough, and that this plan was prepared in consultation with the officials of the Fairbanks North Star Borough. In consideration that no assets or liabilities exist which would need to be transferred, Commerce finds that the city's petition meets this requirement. In regards to Mr. Shechter's comment, if an entity does not agree to a transition plan, Commerce finds that does not nullify the transition plan.

Fred Meyer:

City: See "Enclave Lots" above.

Borough: While the borough opposes the city annexing Fred Meyer, it did not comment on this relevant factor that the commission may consider. (*Responsive Brief* p. 6).

Commerce Findings: See "Commerce Findings" under "Enclave Lots" above.

(e) The transition plan must state the names and titles of all officials of each existing borough, city, and unorganized borough service area that the Petitioner consulted. The dates on which that consultation occurred and the subject addressed during that consultation must also be listed.

Enclave Lots:

City: "The city asserts that "[a] copy of the draft Petition was sent to the following officials, with whom there has been prior general discussion; City staff has consulted and/or discussed aspects of annexation with the following individuals:

Jim Whitaker, Fairbanks North Star Borough Mayor,

Robert Shefchik, Chief of Staff, Fairbanks North Star Borough,

Barry Jennings, Emergency Manager, Fairbanks North Star Borough,

Steve Adams, Chair University Fire Service Area Commission, and

Guy Sattley, Assembly Member, Fairbanks North Star Borough." (*Petition Ex. E* p. 8).

Borough: As earlier stated, the borough does not object to the city annexing the enclave lots. (*Responsive Brief* p. 3).

Commerce Findings: 3 AAC 110.910(d) allows the commission to take action. It does not need to be addressed to determine whether the petition meets 3 AAC 110.900's requirements. 3 AAC 110.900(e) requires that "the transition plan **must** state the names and titles of all officials of each existing borough, city, and unorganized borough service area that the Petitioner consulted. The **dates on** which consultation occurred and the **subject** addressed during that consultation **must** also be listed." (*Emphasis added.*) LBC staff did not notice and so failed during technical review of the petition to alert the city that the city had omitted the dates and subject of each consultation. Commerce feels that this is a technical error, not a substantive error. The spirit of this regulation is to ensure that municipalities and entities which might be affected by this boundary change are consulted to ensure a smoother transition if the commission approves the proposal.

It is evident to Commerce that the city had contacted with officials of the borough, and the UFSA. The city's petition notes meeting with the UFSA Commission Chair on August 20, 2008 and with Borough Mayor Whitaker on August 28, 2008. (*Petition Ex. K* p. 4). Both the borough and the UFSA have been aware of this petition throughout the entire process, and have been able to fully participate in providing public comment. The borough is presumably aware of the dates and subjects of meeting its officials attended and participated in. Commerce finds that the city's petition and transition plan have met the spirit of 3 AAC 110.900(e).

Fred Meyer:

City: See "Enclave Lots" above.

Borough: While the borough opposes the city annexing Fred Meyer, it did not comment on this relevant factor that the commission may consider. (*Responsive Brief* p. 6).

Commerce Findings: See "Commerce Findings" under "Enclave Lots" above.

Conclusion: This annexation proposal includes territories that are developed, accessible, and contiguous to the existing city. Commerce finds the prospective transition of extending essential city services into the territories proposed for annexation to be elementary and uncomplicated. The petition states that the city is willing to extend essential city services to the territories proposed for annexing immediately upon the effective date of an approved annexation petition. This proposal does not involve the transfer of assets or liabilities from one local government to another. Commerce finds that the city has included in its plan all relevant powers, duties, rights, and functions to be assumed upon the effective date of an approved annexation petition. Commerce finds that consultation has occurred before the filing of this petition with officials of the borough, and the UFSA. While the transition plan does not include

all the dates and subjects of consultations, Commerce finds that the spirit of the regulation has been met, and no irrevocable harm has been caused by its omission. Commerce finds that the transition plan provided in the city's petition meets all requirements set out in 3 AAC 110.900.

3 AAC 110.910. Statement of nondiscrimination

(a) A petition will not be approved by the commission if the effect of the proposed change denies any person the enjoyment of any civil or political right, including voting rights, because of race, color, creed, sex, or national origin.

City: The city provided information regarding any effects of the proposed annexation upon civil and political rights for the purposes of the federal Voting Rights Act of 1965 as Exhibit G of its petition. "Annexation would enfranchise members of the annexed territory who have not previously been eligible to vote in City elections, but have been affected by City decisions. The annexation does not exclude minorities while including other similarly situated persons. The annexation includes all areas and populations appropriate for annexation without regard to race. Adding 35 residents to the City's voters will have no effect on minority voting rights. The electoral system of the City of Fairbanks reflects minority-voting strength through at-large elections for all offices." (Petition Exhibit G p. 1).

Borough: As earlier stated, the borough does not object to the city annexing the enclave lots. (*Responsive Brief* p. 3). While the borough opposes the city annexing Fred Meyer, it did not comment on this relevant factor that the commission may consider. (*Responsive Brief* p. 6).

Commerce Findings: Commerce has combined the application of 3 AAC 110.910 for the enclave lots and Fred Meyer because the arguments apply more to the petition than the separate territories. The following background information on the history and interpretations of 3 AAC 110.910 and the federal Voting Rights Act of 1965 is cited from the 2002 DCED Preliminary Report – City of Palmer Petition to Annex 921.34 Acres.

“Two separate laws apply here. The first is 3 AAC 110.910, which states as follows:

3 AAC 110.910 STATEMENT OF NON-DISCRIMINATION. A petition will not be approved by the commission if the effect of the proposed change denies any person the enjoyment of any civil or political right, including voting rights, because of race, color, creed, sex, or national origin.

The second law is the Federal Voting Rights Act of 1965, codified as amended at 42 U.S.C. Section 1973. The Voting Rights Act prohibits political subdivisions from imposing or applying voting qualifications; voting prerequisites; or standards, practices, or procedures to deny or abridge the right to vote on account of race or color or because a person is a member of a language minority group. Specifically, the federal law provides as follows:

42 USC Sec. 1973. Denial or abridgement of right to vote on account of race or color through voting qualifications or prerequisites; establishment of violation.

(a) No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, as provided in subsection (b) of this section.

(b) A violation of subsection (a) of this section is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) of this section in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice. The extent to which members of a protected class have been elected to office in the State or political subdivision is one circumstance which may be considered: Provided, that nothing in this section establishes a right to have members of a protected class elected in numbers equal to their proportion in the population.

It may be helpful to review certain of the terms used in the State and Federal laws relating to the standards at issue. Specifically, Black's Law Dictionary (Revised Fourth Edition) defines “civil rights,” “political rights,” and “creed” as follows.

Civil rights are such as belong to every citizen of the state or country, or, in a wider sense, to all of its inhabitants, and are not connected with the organization or administration of government. They include the rights of property, marriage, protection by the laws, freedom of contract, trial by jury, etc. Or, as otherwise defined, civil rights are rights appertaining to a person in virtue of his citizenship in a state or community. Rights capable of being enforced or redressed in a civil action. Also a term applied to certain rights secured to citizens of the United States by the thirteenth and fourteenth amendments to the constitution, and by various acts of congress made in pursuance thereof.

Political rights consist in the power to participate, directly or indirectly, in the establishment or administration of government, such as the right of citizenship, that of suffrage, the right to hold public office, and the right to petition.

The word “creed” has been defined as “confession or articles of faith,” “formal declaration of religious belief,” “any formula or confession of religious faith,” and “a system of religious belief.”

Because the U.S. Justice Department must provide an independent review of any annexation in the context of the Voting Rights Act, it may also be helpful to provide background concerning the Federal Voting Rights Act and its application to Alaska. The Voting Rights Act was passed in 1965, at which time the U.S. Justice Department established standards to determine which jurisdictions nationwide would be required to “preclear” changes in voting rights and practices under Section 5 of the Act.

The standards provided that if the U.S. Justice Department determined that a state or political subdivision maintained a “test or device,”¹ and if the Census Bureau determined that fewer than 50% of the voting-aged residents of the jurisdiction were either registered to vote or voted in the 1964 presidential election, the state or political subdivision was covered by the Act.

At that time, Alaska had both low voter registration and turnout. The U.S. Justice Department also determined that Alaska maintained a literacy test, which was a prohibited test or device. Therefore, at the outset, Alaska was among the jurisdictions that were required to comply with the preclearance provisions of Section 5 of the Voting Rights Act.

1 “Test or device” was defined as “any requirement that a person as a prerequisite for voting (1) demonstrate the ability to read, write, understand, or interpret any matter, (2) demonstrate any educational achievement of his knowledge of any particular subject, (3) possess good moral character, or (4) rove his qualifications by the voucher of registered voters or members of any other class.

However, as expressly authorized by the Voting Rights Act, Alaska immediately filed a lawsuit asserting that the State had not applied a test or device with the prohibited discriminatory purpose or effect. The Justice Department concurred with the State's position and Alaska was allowed to withdraw from the preclearance requirements.

The Federal Voting Rights Act was amended in 1970, at which time Alaska was again made subject to the preclearance requirements. With the concurrence of the Justice Department, Alaska again withdrew from the requirement to preclearance changes affecting voting.

In 1975, the Voting Rights Act was amended again. The amendments expanded the definition of "test or device" to apply to a jurisdiction that conducted elections only in English if 5% or more of the residents were members of a single language minority. Because Alaska conducted most aspects of its elections in English and because all Alaska Natives were considered to be members of a single language minority, Alaska and all of its local governments were once again required to preclear all changes affecting voting. The 1975 amendment was retroactive to cover any changes made after November 1, 1972. Alaska and its political subdivisions have remained subject to the Section 5 Voting Rights Act requirements since 1975.

In addition to the definitions of certain terms and background on the Voting Rights Act, it is appropriate to note here that in 1962, the Alaska Supreme Court held that the legislative review process for annexation – the same one employed in this proceeding by the City of Homer – does not infringe or deprive rights protected by the Fourteenth Amendment of the U.S. Constitution. Specifically, the Court stated as follows in *Fairview Public Utility District Number One v. City of Anchorage*, 368 P.2d 540, 545 (Alaska 1962):

Appellants next contend that their constitutional rights were violated when they were not permitted to hold an election and vote as to whether annexation should take place. They rely specifically on the due process clause of the Fourteenth Amendment, and on the Fifteenth Amendment as applied in the recent case of *Gomillion v. Lightfoot*.²

Appellants do not point out, nor do we perceive, in what respect there has been a deprivation of 'liberty, or property, without due process of law.'³ The determination of what portions of a state shall be within the limits of a city involves an aspect of the broad political

2 364 U.S. 339, 81 S.Ct. 125, 5 L.Ed.2d 110 (1960).

3 U.S.Const. amend. XIV, § 1.

power of the state which has always been considered a most usual and ordinary subject of legislation.⁴ The state may permit residents of local communities to determine annexation questions at an election. But when this has been done, the state is not irrevocably committed to that arrangement. If the citizens of the state, in adopting a constitution, decide that it is in the public interest to establish another election procedure, there is no constitutional obstacle to that course of action. Those who reside or own property in the area to be annexed have no vested right to insist that annexation take place only with their consent. The subject of expansion of municipal boundaries is legitimately the concern of the state as a whole, and not just that of the local community.⁵ There has been no infringement or deprivation of rights protected by the Fourteenth Amendment.

The Fifteenth Amendment and the Supreme Court's decision in the *Gomillion*⁶ case are not pertinent. They are concerned with the denial of a citizen's right to vote because of his race or color. That factor is not involved in this case.

The Alaska Supreme Court's interpretation is consistent with a U.S. Supreme Court ruling one hundred and twenty years ago. In *Kelly v. City of Pittsburgh*, 104 U.S. 78 (1881), a taxpayer claimed that taxes assessed by a city into which his land had recently been annexed without his vote, deprived him of his property without due process of law. The court said:

What portion of a State shall be within the limits of a city and be governed by its authorities and its laws has always been considered to be a proper subject of legislation. ... Whether territory shall be governed for local purposes by a county, a city, or a township organization, is one of the most usual and ordinary subjects of State legislation." (2002 DCED Preliminary Report – City of Palmer Petition to Annex 921.34 Acres pp. 60-62).

There has been no compelling argument presented that annexation of either the enclave lots or Fred Meyer would diminish any person's civil rights. There are no known residents of Fred Meyer, so there are no citizens that could have their rights violated or enhanced. As for the residents of the enclave lots, they will gain political rights. For example if annexation is approved, any resident of the enclave lots will be able to vote in city elections and hold city office.

4 Kelly v. City of Pittsburgh, 104 U.S. 78, 81, 26 L.Ed. 658, 659 (1881); 1 Antieau, Municipal Corporation Law § 1.15 at 30 (1958).

5 Cf. Hunter v. City of Pittsburgh, 207 U.S. 161, 28 S.Ct. 40, 52 L.Ed. 151 (1907); Mount Pleasant v. Beckwith, 100 U.S. 514, 524 525, 25 L.Ed. 699, 701 (1880).

6 Gomillion v. Lightfoot, 364 U.S. 339, 81 S.Ct. 125, 5 L.Ed.2d 110 (1960).

Even if annexation is approved, all residents affected will remain residents of the borough and will be able to fully participate on areawide issues. Elections for all city officials are at large while the borough positions are by district. Annexation will not have an effect on the borough voting districts. If annexation is approved Fred Meyer would no longer be a part of the UFSA and property owners will no longer be able to take part in service area matters.

Commerce notes that if annexation is approved, residents of the enclave lots will no longer be able to vote on nonareawide borough propositions; however, residents of the enclave lots will be able to vote on city propositions, run for city office, and serve on appointed boards and commissions.

Although the Local Boundary Commission will make a determination concerning the standard at issue, the U.S. Justice Department will independently review any annexation approved for the city of Fairbanks under the terms of the federal Voting Rights Act of 1965.

Conclusion: Although annexation would clearly affect the political rights of citizens of the territories proposed for annexation, there is no evidence whatsoever that the effects are “because of race, color, creed, sex, or national origin.” There is nothing in this proceeding indicating that annexation would result in imposing or applying voting qualifications, voting prerequisites, or standards, practices, or procedures to deny or abridge the right to vote on account of race or color or because a person is a member of a language minority group. There has been nothing to suggest that the population in the enclave lots includes a language minority group.

Mr. Cleworth has commented that “the only problem I have with [the petition] is the methodology of disenfranchising [the enclave lots] by not allowing a vote of the residents which runs counter to the spirit behind HB 133 passed by the State Legislature in 2006.” This issue has been addressed by the courts. The legislative review process is lawful and does not disenfranchise anyone because of race, color, creed, sex, or national origin. Commerce finds that the city of Fairbanks is lawfully allowed to seek annexation using the legislative review

method under the constitution, statutes, and regulations. Based on the foregoing, Commerce concludes that the city of Fairbanks annexation proposal satisfies the standards set out in 3 AAC 110.910 and 42 U.S.C. Section 1973.

3 AAC 110.920. Determination of community

(a) In determining whether a settlement comprises a community, the commission may consider relevant factors, including whether (1) settlement is inhabited by at least 25 permanent residents, (2) the permanent residents live in a geographical proximity that allows for frequent personal contacts and interaction; and (3) the permanent residents at a location are a discrete and identifiable social unit, as indicated by such factors as resident public school enrollment, number of sources of employment, voter registration, precinct boundaries, permanency of dwellings, and the number of commercial or industrial establishments, community services, and service centers.

City: The city did not directly address this standard in its petition. Many of the arguments made by the city apply to the determination of community and have been discussed and analyzed in applying 3 AAC 110.130.

Borough: As earlier stated, the borough does not object to the city annexing the enclave lots. (*Responsive Brief* p. 3). While the borough opposes the city annexing Fred Meyer, it did not comment on this relevant factor that the commission may consider. (*Responsive Brief* p. 6).

Commerce Findings: Commerce has combined the analysis of 3 AAC 110.920 for the enclave lots and Fred Meyer because the arguments apply more to the petition than to the separate territories. Fairbanks is the second largest city in Alaska with a population of over 30,000. This exceeds the mandatory minimum by at least a multiple of 1,200. The geographical proximity allows frequent personal contacts and interaction through mass media, public transit, and an extensive road system. Commerce found that both territories proposed for annexing have already been developed and are a part of the greater Fairbanks community. Fred Meyer contains commercial property that is frequented on a daily basis by residents of the city and is considered to be part of the economic community of the city. The permanent residents are an identifiable and discrete social unit. Borough schools exist within the city. There are a number

of employers, voters, permanent dwelling units, and commercial or industrial establishments in the city. Commerce finds that the existing city and the proposed expanded city clearly meets 3 AAC 110.920(a).

(b) Absent a specific and persuasive showing to the contrary, the commission will presume that a population does not constitute a community if (1) public access to or the right to reside at the location of the population is restricted, (2) repealed 1/9/2008, or (3) the location of the population is provided by an employer and is occupied as a condition of employment primarily by persons who do not consider the place to be their permanent residence.

City: The city did not directly address this standard in its petition. Many of the arguments made by the city apply to the determination of community and have been discussed and analyzed in applying 3 AAC 110.130.

Borough: As earlier stated, the borough does not object to the city annexing the enclave lots. (*Responsive Brief* p. 3). While the borough opposes the city annexing Fred Meyer, it did not comment on this relevant factor that the commission may consider. (*Responsive Brief* p. 6).

Commerce Findings: The regulation states that the LBC will presume that a population does not constitute a community, unless there is a specific and persuasive contrary showing that public access to or the right to reside at the population location is restricted; or that the population location is employer provided, that living there is an employment condition, and that the employees do not consider it to be their permanent residence. Nothing has been shown to indicate that public access or the right to reside there is restricted. nor has anything been shown to indicate that the location of the population is employer provided, and is occupied as an employment condition by persons who do not consider it to be their permanent residence.. Commerce finds that the conditions specified in (1) and (3) above do not exist, and therefore the petition meets 3 AAC 110.920(b).

(c) A city that absorbs one or more municipalities through merger comprises a single community. A city that is formed through the consolidation of one or more municipalities comprises a single community.

City: The city did not directly address this standard in its petition. Many of the arguments made by the city apply to the determination of community and have been discussed and analyzed in 3 AAC 110.130.

Borough: As earlier stated, the borough does not object to the city annexing the enclave lots. (*Responsive Brief* p. 3). While the borough opposes the city annexing Fred Meyer, it did not comment on this relevant factor that the commission may consider. (*Responsive Brief* p. 6).

Commerce Findings: 3 AAC 110.920 (c) applies to merger. The petition filed by the city of Fairbanks is to annex surrounding territory, not for merger. Commerce finds that 3 AAC 110.920(c) is not relevant to this petition proposal.

3 AAC 110.970. Determination of essential municipal services

(a) If a provision of this chapter calls for the identification of essential municipal services for a borough, the commission will determine those services to consist of those mandatory and discretionary powers and facilities that...

City: The city did not directly address this standard in its petition. Many of the arguments made by the city apply to the determination of essential municipal services and have been discussed and analyzed in applying 3 AAC 110.090.

Borough: As earlier stated, the borough does not object to the city annexing the enclave lots. (*Responsive Brief* p. 3). While the borough does oppose the city annexing Fred Meyer, the borough did not directly address this standard in its responsive brief. Many of the arguments made by the borough apply to the determination of essential municipal services and have been discussed and analyzed in applying 3 AAC 110.090.

Commerce Findings: 3 AAC 110.970 is not a requirement of the petition, but rather is a guideline for the commission to use when other sub chapters require the determination of essential municipal services. Commerce has combined the analysis of 3 AAC 110.970 for the enclave lots and Fred Meyer because the arguments apply more to the petition than the separate territories. The determination of what are essential municipal services was discussed and analyzed in applying 3 AAC 110.090. Promoting maximum local self government was discussed in 3 AAC 110.135. The city's and borough's position on what constitutes essential municipal services have already been considered. The city contended in 3 AAC 110.090 that the borough and the UFSA cannot provide all the essential municipal services that it can. The borough asserted in 3 AAC 110.090 that the city fails to provide essential municipal services because the city cannot legally provide some of the services mentioned in 3 AAC 110.970 such as assessing, levying, and collecting or regulating land use.

Commerce found in 3 AAC 110.090(a) that both the enclave lots and Fred Meyer exhibit a need for city government. In 3 AAC 110.090(b) Commerce found that in order to annex, the city need not acquire those functions which only the borough may perform by law. The city does currently tax (subject to AS 29.35.170(b)). What is left from the enumerated factors of 3 AAC 110.970(d) is public safety (although the commission may also consider other factors, including road maintenance). Public safety is what Commerce has concentrated on in its analysis (for the enclave lots and Fred Meyer). The parties have also heavily focused on public safety or emergency services. In 110.090(b) Commerce found that neither the borough nor the UFSA can provide essential municipal services more effectively or efficiently than the city because they do not provide some essential municipal services such as police, dispatch, and building code inspection and fire code enforcement.

In 3 AAC 110.135 Commerce found that annexing both territories would be in the best interests of the state because it would relieve the state of some responsibilities. The territories would benefit by receiving borough areawide services which by law only the borough may provide and receiving full integrated city services including police, fire, EMS, street maintenance, etc. Commerce finds that the Petition has met the requirements of 3 AAC 110.970. Please see discussion beginning on page 48.

3 AAC 110.981. Determination of maximum local self government

In determining whether a proposed boundary change promotes maximum local self-government under art. X, sec. 1, Constitution of the State of Alaska, the commission will consider...(8) for city incorporation or annexation in an organized borough, whether the proposal would extend local government needs cannot be met by the borough on an areawide or nonareawide basis, by annexation to an existing city, or through an existing borough service area.

City: The city did not directly address this standard in its petition. Many of the arguments made by the city apply to the determination of maximum local self government and have been discussed and analyzed in applying 3 AAC 110.135.

Borough: As earlier stated, the borough does not object to the city annexing the enclave lots. (*Responsive Brief* p. 3). While the borough does oppose the city annexing Fred Meyer, the borough did not directly address this standard in its responsive brief. Many of the arguments made by the borough apply to the determination of maximum local self government and have been discussed and analyzed in applying 3 AAC 110.135.

Commerce Findings: Commerce has combined the application of 3 AAC 110.981 for the enclave lots and Fred Meyer because the arguments apply more to the petition than the separate territories. This standard was discussed and analyzed in applying factors of 3 AAC 110.135. Commerce found that if annexation is approved then residents of the enclave lots would become citizens of a home rule city, in addition to remaining citizens of a second class borough. Commerce found that the annexing the enclave lots would promote maximum local self government because the enclave lots would receive services which the existing local government does not provide, and because the citizens would also become city citizens with commensurate voting rights. Commerce found that annexing Fred Meyer would promote maximum self government because Fred Meyer would receive the benefits of belonging to both the city and the borough. Fred Meyer will continue to benefit from areawide services which only the borough can offer (e.g. assessing, tax collection, education, planning and zoning, and others) and would additionally benefit from those services which only the city can offer (e.g. police, building and fire code enforcement). Additionally both the residents and property owners in the enclave lots and Fred Meyer will be able to participate in another local government. Residents will be able to run for offices, be appointed to boards, and have further representation in local affairs that affect their property and lives. Commerce finds that the city meets 3 AAC 110.981's. Please see discussion beginning on page 96.

3 AAC 110.982. Minimum number of local government units

Among the factors to be considered in determining whether a proposed boundary change promotes a minimum number of local government units in accordance with art. X, sec. 1, Constitution of the State of Alaska, the commission will consider...(7) for city annexation, whether the jurisdictional boundaries of an existing city are being enlarged rather than promoting the incorporation of a new city or creation of a new borough service area.

City: The city did not directly address this standard in its petition. Many of the arguments made by the city apply to the promotion of minimum number of local government units and have been discussed and analyzed in applying 3 AAC 110.135.

Borough: As earlier stated, the borough does not object to the city annexing the enclave lots. (*Responsive Brief* p. 3). While the borough does oppose the city annexing Fred Meyer, the borough did not directly address this standard in its responsive brief. Many of the arguments made by the borough apply to the promotion of minimum number of governmental units and have been discussed and analyzed in applying 3 AAC 110.135.

Commerce Findings: Commerce has combined the application of 3 AAC 110.982 for the enclave lots and Fred Meyer because the arguments apply more to the petition than the separate territories. This standard was discussed and analyzed in applying factors of 3 AAC 110.135. The major point of contention between the city and the borough was whether it suffices to maintain the number of local government units or whether the annexing must decrease the number of such units. Commerce finds that Alaska's constitution promotes "maximum local self-government with a minimum of local government units." Both parties agree that annexing either the enclave lots or Fred Meyer, or both, would not increase the number of local government units. Annexation would just change the respective sizes of the borough, the UFSA, and the city of Fairbanks. Commerce finds that if no new local government units are created by an approved proposal then the annexation petition does promote the principles of a minimum number of local government units. Commerce finds that this annexation proposal will not create new local government units. For that reason, Commerce finds that the requirements of 3 AAC 110.982 have been met by the petition. Please see discussion beginning on page 99.

Chapter 4 - General Conclusion and Recommendation

Based on the findings and conclusions set forth in Section 3 of this report, Commerce concludes that all of the relevant standards and requirements for annexing both the enclave lots and Fred Meyer are satisfied by the city of Fairbanks' petition.

Commerce has found that both the enclave lots and Fred Meyer exhibit the need for city government. Both territories would benefit by receiving services from a single integrated provider. Commerce found that neither the borough nor the UFSA could provide more efficient or more cost effective collective municipal services compared to the city. Commerce found, *inter alia*, that the borough currently does not provide essential services such as police services, and building and fire code enforcement. Commerce found that the city can and will provide those services to the territories proposed for annexation. Commerce found the petition satisfied the requirements of 3 AAC 110.090 for both the enclave lots and Fred Meyer.

Commerce has found that both the enclave lots and Fred Meyer are compatible in character to the existing city. Commerce found that both territories have been highly developed (residential and commercial for the enclave lots and entirely commercial for Fred Meyer). This development is consistent with the annexing city. Commerce found that the petition satisfied the requirements of 3 AAC 110.100 for both the enclave lots and Fred Meyer.

Commerce has found the population of the proposed expanded city to be stable based on the city's economic base and population and does not foresee any factors that could cause destabilization. The city of Fairbanks is Alaska's second most populous city. The territories proposed for annexing are highly developed, contiguous to the existing city, and the city already provides city services up to the boundaries of the territories. The city provides some service to the enclave lots. Commerce found that the petition satisfied the requirements of 3 AAC 110.120 for both the enclave lots and Fred Meyer.

Commerce found the enclave lots to be contiguous to the annexing city and that annexation would not create an enclave in the annexing city. Commerce also found that although annexing Fred Meyer could arguably create an enclave, the expanded city would contain all land and water necessary to allow for the development of essential municipal services on an efficient, cost effective level. Both the enclave lots and Fred Meyer promote the limitation of community by being on a scale suitable for city government and that neither contains entire geographical regions or large unpopulated areas. Commerce found that the overlapping boundary standards in 3 AAC 110.130(d) are not an issue and so this petition is not required to address detachment standards. Commerce found that the petition satisfied the requirements of 3 AAC 110.130 for both the enclave lots and Fred Meyer.

Commerce found that annexing both the enclave lots and Fred Meyer would promote the constitutional principles of maximum local self government and minimum local government units. Commerce found that annexation would relieve the state of the responsibility of providing local services to the territories such as police, building code, and fire code enforcement. Commerce also found that this annexation proposal would not cause a detrimental financial impact to either the borough or the UFSA. Commerce **found that the petition satisfied the best interests of the state requirements of 3 AAC 110.135 for both the enclave lots and Fred Meyer.**

Commerce has found that the enclave lots and Fred Meyer proposed for annexation meet the standards specified in 3 AAC 110.090 – 3 AAC 110.135, fulfilling part of 3 AAC 110.140's requirements. Commerce found that five of the nine circumstances enumerated in 3 AAC 110.140 exist for the enclave lots. Commerce found that two of the nine circumstances exist for Fred Meyer. The requirement is that one of the nine circumstances exist for annexation to be appropriate by legislative review. Commerce found that the petition satisfied the requirements of 3 AAC 110.140 for both the enclave lots and Fred Meyer.

Commerce found that the transition plan is adequate based on the requirements of 3 AAC 110.900. Commerce would like to point out that while the transition plan does not include the dates and subjects of consultations, Commerce found that the spirit of the regulation had been met, and no irrevocable harm had been caused by its omission. Commerce found the prospective transition of extending essential city services into the territories proposed for annexation to be elementary and uncomplicated. Commerce found that the petition satisfied the requirements of 3 AAC 110.900 for both the enclave lots and Fred Meyer.

Commerce has found no evidence that any effects on the political rights of citizens of the territories proposed for annexation are denied because of race, color, creed, sex, or national origin. Commerce found that the petition satisfied the requirements of 3 AAC 110.910 for both the enclave lots and Fred Meyer.

Commerce finds that the proposed annexation of the enclave lots and Fred Meyer will greatly enhance municipal services provided to the territories, and that doing so promotes maximum local self government. The territories will still receive services which by law only the borough may provide (e.g. assessing, planning, and land use regulation), and will enjoy the integrated emergency services provided by the city (e.g. police force, fire, paramedics, dispatch, building code and fire code enforcement). Citizens of the enclave lots will receive more political rights, gaining a more local level of representation and having the opportunity to run and hold elected office for the city of Fairbanks, while retaining their rights as borough citizens.

Commerce recommends that the Local Boundary Commission approve the December 8, 2008, petition of the City of Fairbanks to annex approximately 0.05 square miles (described as the enclave lots and Fred Meyer). Commerce recommends to the Commission that it approve the petition request to annex both the enclave lots and Fred Meyer.

Appendix A

Timely Comments Received

Page 1 of 1

Commission, Boundary (CED sponsored)

From: Paul and Neva Renschen [paulneva@acsalaska.net] **Sent:** Thu 2/5/2009 11:41 AM
To: Commission, Boundary (CED sponsored)
Cc:
Subject: Fred Meyers Subdivision
Attachments:

I really makes no sense to allow the City of Fairbanks to annex the "Fred Meyers Subdivision." It is robbing Peter to pay Paul. It does make sense to allow the City to annex the "Enclaves."

Paul S. Renschen
3193 Edby Rd.
Fairbanks AK 99709

Starkey, Jennie B (CED)

From: Robert Grove [robertakgrove@gmail.com]
Sent: Sunday, February 08, 2009 5:16 PM
To: Starkey, Jennie B (CED); Taylor, Melissa V (CED)
Subject: Fred Meyer Annexaton West Petition

Dear Local Boundary Commission Members:

According to the 2008 Summary Petition that proposes that the City of Fairbanks annex the Fred Meyer Subdivision, the City of Fairbanks claims it can provided essential services more efficiently and more effectively than any other organized entity. Nothing could be further from the truth!

Currently the Fred Meyer Subdivision where Fred Meyer's West is located is covered by the FNSB University Fire Service Area. UAFD Station #2 is located 0.2 miles away or 3 minutes response time, from the Fred Meyer West store. The City's main fire station is a little less than 4 miles from Fred's west and even farther from their Aurora Station. The current City Fire Department contract does not provide enough Aurora station staffing for a timely, if any, response, within current city boundaries. Last year the Fairbanks Fire Department requested mutual aid from the surrounding fire departments approximately 300 times due to man power and equipment shortages.

At least 18 front page articles were written in the Fairbanks Daily News Miner this year about how the City Police and Fire Departments were seriously understaffed. Given this reality, I do not see how it is possible for the City of Fairbanks to provide fire, EMS, police, or even snow removal service to the annexed area more efficiently. The City of Fairbanks can barely keep the streets plowed within it's existing boundaries after a minor snow fall. The City negotiated with the box stores on the East side of town that snow removal is their responsibility. Needless to say there is no snow removal and the roads in and out of Wall Mart, Lowe's, Fred and Fred Meyer East are dangerous. When one complains to the City their response is that this is the responsibility of the box stores. Is this an example of how the city of Fairbanks is going to provide better essential services?

Everyone knows that the City is in deep financial trouble and is looking for new sources of revenue. If this annexation is approved; the FNSB will lose \$400,000 of alcohol and tobacco tax. What part of the Borough budget is going to get cut to make up for this loss? I know I am going to get fleeced by the US government in order to bail out Wall St. and the banks but why should those of us who live in the FNSB have to bail out Fairbanks?

Please do not approve the annexation of the Fred Meyer West Subdivision. This is a bad proposal and will do way more harm than good to the FNSB as a whole.

Sincerely,

Robert A. Grove
PO Box 150
Ester, Alaska 99725

Starkey, Jennie B (CED)

From: John Havard [jhavard@gci.net]
Sent: Tuesday, February 10, 2009 4:10 PM
To: Starkey, Jennie B (CED)
Subject: city of fairbanks annexation

Hello-Both my wife and I am opposed to the annexation that the city of Fairbanks is trying to do right now because we don't think they can handle it with their emergency services,there have been articles in the newsminer that they are understaffed and over burden with emergency calls.Just last year the city was faced with a major budget crisis.
JOHN & JUDY HAVARD , jhavard@gci.net

2/11/2009

Starkey, Jennie B (CED)

From: Bartholomew Roberts [bartroberts@hotmail.com]
Sent: Thursday, February 19, 2009 10:28 AM
To: Starkey, Jennie B (CED)
Subject: RE: Fairbanks Annexation

Ma'am-

I send this e-mail in support of the annexation proposal by the City of Fairbanks. I believe this annexation is in the best interest of Fairbanks and it's residents. This annexation is about a Class 1 cities right to grow and establish a stable tax base which best provides quality services to all it's residents. The Cities proposal should be supported by the LBC as a Class 1 city is a higher form of government and can provide more services then a Class II Borough- which only utilizes service area's. Service areas were intended to be a temporary means of providing services, never as a permanent solution.

The City of Fairbanks provides many services the FNSB does not; Building codes for all structures, Police protection (vs State Trooper coverage), Fire protection with the addition of codes and code enforcement, Paramedic level ambulance, Public Works, and all with the necessary administrative support. One of the biggest values of a Class 1 city is the power and ability to actually enforce local codes and ordinances established for the good of the community. The FNSB has NO enforcement powers of local ordinances.

The unfortunate tactic taken by those whom oppose this annexation was to pit the City of Fairbanks Fire Department vs. The University Fire Department. This comparison is of little true consequence and an unfortunate distraction. The application should be supported on it's merits of the growth of a class 1 city and providing the highest form of government available to the people. The residents of the FNSB routinely utilize city services and pay nothing in city taxes. This proposal is a step towards remedying that.

On those complaints raised of the fire department coverage the bottom line is this; the city currently adequately protects properties less then 100' from the proposed areas to be annexed. The City provides Paramedic level ambulance, which is a higher level of service then EMT's both by statute, education and abilities.

Thanks for considering these comments.

B. Roberts
Fairbanks

Date: Tue, 17 Feb 2009 07:48:43 -0900
From: jennie.starkey@alaska.gov

2/19/2009

Subject: RE: Fairbanks Annexation
To: bartroberts@hotmail.com

Yes, you can send your comments directly to me via email. They will then be posted as public comment.

From: Bartholomew Roberts [mailto:bartroberts@hotmail.com]
Sent: Monday, February 16, 2009 11:20 AM
To: Starkey, Jennie B (CED)
Subject: Fairbanks Annexation

Ma'am-

Your address was posted online as a point of contact for the LBC and comments on the annexation attempt by the City of Fairbanks. I support the attempt to annex these properties and would like to formally comment, should I forward my comments to you?

Thank you.

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2/19/2009

Commission, Boundary (CED sponsored)

From: kmurray1@gci.net on behalf of Micheline
To: Commission, Boundary (CED sponsored)
Cc: eebratcher@ci.fairbanks.ak.us
Subject: Annexation To City Of Fairbanks - Comments.
Attachments:

Sent: Fri 2/27/2009 2:35 PM

To whom it may concern,

The property to be annexed contains Special Flood Hazard Areas and I was wondering how the city plans to educate people on building flood proofed homes?

In reviewing the Fairbanks code of ordinances it says to "refer to Title 15" of the Fairbanks North star Borough code of ordinances. I would like to see the city put forth the effort to insure that new homes built in Special Flood Hazard Zones are built in accordance with the National Flood Insurance Program requirements. "Referring to title 15" is not enough information for owner builders.

Homes that are built with basements in Special Flood Hazard Areas have higher flood insurance premiums (about \$3000 annually) and have a larger amount a damaged property. Homes that are built on pier and posts or by bringing in fill, have lower flood insurance premiums(about \$800 annually) and may experience minimal flood damage.

By building smart the first time insures the home can be resold over and over, if the home is built out of code then a buyer may steer clear due to the excessive flood insurance premiums.

Thank you for your time,

Micheline Patterson

Kenneth Murray Insurance

Personal Lines Agent

300 Barnette St, FBKS, AK 99701

P O Box 71007, FBKS, AK 99707

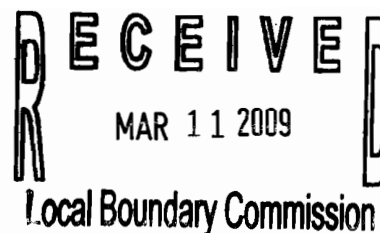
Phone 907-456-6646

<https://webmail.alaska.gov/Exchange/lbc/Inbox/Annexation%20To%20City%20Of%20Fair...> 3/2/2009

Toll Free 877-956-6646

Fax 907-452-5445

Local Boundary Commission
Division of Community and Regional Affairs
550 West 7th Ave. Suite 1770
Anchorage, Ak 99501-3510



Regarding the City of Fairbanks Annexation Petition

Thank you for the opportunity to remit written testimony. I currently serve on the Fairbanks City Council and have served off and on for over 18 years. I have a real love for our community and have enjoyed my years working on the Council. During that time we have conducted many successful annexations that were never controversial, with both parties deriving mutual benefit from each other. This has been our unwritten policy until recently.

The current petition before you should actually be two separate annexation requests. The so-called Enclave Lots on Park and Riverside Drive do not receive services from either the City or a Service Area. The City can legitimately offer to them services that could be beneficial. The only problem I have with this is the methodology of disenfranchising them by not allowing a vote of the residents which runs counter to the spirit behind HB 133 passed by the State Legislature in 2006. The City can use a technicality to avoid the vote, but that leaves a real issue of fairness to be resolved.

The bundling of the Enclave Lots petition with the desire to annex the Fred Meyer Subdivision (FMS) is by design, with the City hoping the merits of one will overshadow the very questionable motivation of the other. The City has adjacent areas that should be considered for annexation, and actually sells fire services to businesses in those areas without forcing them to be annexed. These possible annexations should actively be pursued, but instead, the City has set it's sites on the more lucrative Fred Mayer Subdivision. Critics have pointed out the City's hypocritical stance of selling services at a rate lower than the current mill levy to businesses in areas not covered by a Service Area, and then trying to forcibly annex areas within a strong Service Area that already have a high level of service.

The City states in the petition that the reason the Enclave Lots should be annexed is because of their need for service and because the City surrounds them on three sides creating an undesirable enclave. It is awkward having some houses on one street inside the City limits and some outside with no real consistency. Eliminating "enclaves" has been one of the primary justifications for the annexation request. The irony of this is that by trying to annex the Fred Meyer area, the city creates an enclave inside a well developed Service Area contradicting our rationalization for annexing the Enclave Lots.

The City originally prepared an annexation petition that contracted with the University Fire Service Area (UFSA) to continue offering services to the Fred Meyer Subdivision after annexation would take place, stating that UFSA "...provides the FMS with enhanced fire protection..." and offers much faster response. This is critical in life safety and fire protection. After rejection by the Service Area commissioners, the city had to rewrite the original petition and try to disprove what was stated in the original petition. The City faces an uphill battle trying to prove that we can offer better response even though our Fire and Police Stations are over three miles away.

I sponsored City Resolution No. 4344 in November 2008 that went before the City Council for their deliberation. I was hopeful that we could put an end to the conflict we have created between ourselves and the Fairbanks North Star Borough, and the animosity we have created with our mutual aid partner UFSA. Unfortunately, I failed in that request. A copy of the Resolution along with supporting documents is attached- hopefully, you will find them useful.

The petition states that the City can provide public safety services to the FMS without adding any additional personnel. This absolutely contradicts reports we receive from our department heads with concerns of staffing, especially in the fire department where they focus on simultaneous ambulance calls, a growing problem. Consequently, we rely more and more on mutual aid from UFSA.

The three main business entities in this area are now taking a position that this is a fight between the City and the Borough and desire to remain quiet. There has been much intimidation that they have had to endure. Yet, with some digging, one can see that there has been no support from any of them for this annexation to happen. Fred Meyer stated in a letter to the city mayor "It is with the greatest respect for the efforts of the City Council that we, unfortunately, will be unlikely to support the current annexation proposal. Our initial review, including discussions with our operations and logistics people, raise concerns for us about the level of services we might receive in exchange for what is likely to be a large sum of additional money." A copy of this letter is attached. Mt. McKinley Bank has also in the past submitted written and oral testimony opposing the annexation and their comments are included in a Fairbanks Daily News-Miner article which is also attached.

The LBC will be bombarded with information on both sides of the issue, but I hope you will focus on two simple factors. Who can provide the best services for the FMS? The city can not offer public works services because all adjacent roads are maintained by the State of Alaska yet FMS properties will be charged for this anyway through their increased property tax. We can offer public safety from a Fire station that is miles away, while the UFSA can offer services immediately from a newly constructed substation. Even their main station is closer than we are. All of the arguing about emergency responder's training levels is very much secondary to who can respond fastest in the critical first minute, and transport to the hospital. When considering fire protection, there simply is no substitute for quick response, and the City of Fairbanks can not respond anywhere near as fast as the UFSA stations. UFSA is known for excellent service and they enjoy a higher ISO rating than the City.

Secondly, how does anyone benefit from the city creating an enclave in a highly developed Service Area? The UFSA has a superb reputation and serves many businesses and residences. They rely on the tax base from those businesses and residences just as the City does on properties within our boundaries. With the City taking away that base, they will start to see a problematic reduction in expected revenues for their operations. They also have legitimate fears that the City will continue to try and surgically aim annexation proposals at businesses that stretch down the Airport Road corridor, carefully avoiding any residences which have a right to vote, and essentially bisecting the UFSA in half. This has been looked at in detail by our former Mayor.

We have a very good system of mutual aid with the city relying on assistance from Ft Wainwright and the UFSA. This maximizes all of the equipment available to protect citizens no matter where they live in these areas. This "turf" fight that is in front of you is motivated by one factor: revenue. Hopefully the LBC will see this when considering all of the information. Annexations should be about offering services and public safety, not about money.

May you have the wisdom of Solomon.

Sincerely,



Jerry Cleworth
Fairbanks City Council Seat F

(907) 452-6461
(907) 452-5551

Residence: 907 Park Drive, Fairbanks Ak. 99709

Introduced By: Council Member Cleworth
Date: November 24, 2008

RESOLUTION NO. 4344

A RESOLUTION TO SET ASIDE PRIOR ANNEXATION RESOLUTION NOS. 4312, 4313 AND 4335; TO INVESTIGATE A NEW PETITION THAT INCLUDES NON-CITY PROPERTIES RECEIVING SERVICES BY CONTRACT AND ANY OTHER APPROPRIATE PROPERTIES IN THIS GEOGRAPHICAL AREA, AND BY SEPARATE PETITION THE "ENCLAVE" LOTS ON PARK AND RIVERSIDE DRIVE; AND, TO REQUIRE THAT AFFECTED BUSINESS PROPERTIES AGREE BY MUTUAL CONSENT OF THE MAJORITY AND RESIDENTIAL PROPERTIES BY MAJORITY VOTE.

WHEREAS, City Resolution No. 4312 states that, "...in recognition of the potentially negative effect that annexation would have on the funding of the University Fire Service Area, annexation must be conditioned upon reaching a suitable inter-governmental agreement with the Fairbanks North Star Borough which addresses the effects on the University Fire Service Area"; and

WHEREAS, no agreement has been reached as evidenced by the UFSA Resolution No. 081408-1 and FNSB Resolution No. 2008-35 which both strongly object to the City's annexation plan; and

WHEREAS, in the original petition's Exhibit "E" the City stated, "...the UFSA has a sub-station located only approximately 0.3 miles from the Fred Meyer Subdivision, which normally provides for a quicker fire and EMS response than the City can provide" and that by having UFSA continue to provide service "...provides the Fred Meyer Subdivision with enhanced fire protection..."; and

WHEREAS, the closest City fire/ambulance station is three miles away which greatly increases response time, seriously compromising the City's ability to provide immediate medical and fire suppression services; and

WHEREAS, business properties effected by this annexation have not expressed support, but rather a list of concerns or outright opposition; and

WHEREAS, City Resolution No. 4335 of August 2008 re-affirms City Resolution Nos. 4312 and 4313 but the supporting revised annexation document contradicts provisions of Resolution No. 4312 by eliminating the necessary UFSA agreement and proceeds to change course by only using City of Fairbanks services in the Fred Meyer Subdivision creating an enclave in the UFSA, raising taxes and fees on effected businesses, increasing taxes on the

remaining UFSA property owners, decreasing revenues to the FNSB, and providing a reduced level of service than is currently provided; and

WHEREAS, there are serious errors in the City's newest petition, including, but not limited to, statements that:

- (1) "The residents and property owners within the territory receive the benefit of services and facilities provided inside the annexing City" which at best is only partially factual for residential properties in the enclave lots, but is not at all accurate for business properties in the FM Subdivision; and
- (2) "Mayor Whitaker confirmed his position that the Borough administration would not oppose the annexation with or without the FM Subdivision remaining inside the UFSA after annexation" which is not correct; and

WHEREAS, the City of Fairbanks and the UFSA have enjoyed the benefits of mutual aid that provide City and Borough residents with all resources available and that this petition jeopardizes this important relationship and has created animosity where little existed before; and

WHEREAS, the City is forcing the properties cited by this petition to become a part of the City of Fairbanks without mutual consent or vote, but at the same time offers City services for a fee to businesses in other areas outside the City limits without mandatory annexation creating a double standard and inconsistent policy; and

WHEREAS, the City objects to enclaves partially surrounded by the City on Park and Riverside Drive yet creates an equally problematic enclave with the FM Subdivision in the UFSA; and

WHEREAS, the City has for over a quarter century conducted all annexations by mutual consent and wishes to continue the good working relationship between the City and the FNSB and UFSA.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAIRBANKS, ALASKA, that the City Council hereby repeals Resolution Nos. 4312, 4313 and 4335 and desires to investigate new resolutions focused on properties receiving City services for a fee and other properties in the same geographic area by mutual consent, and residential properties in the Park and Riverside Drive area by majority vote.

PASSED AND APPROVED this 24th day of November, 2008.

NOT ADOPTED

Terry Strle, Mayor

Introduced By: Council Member Roberts
Mayor Strle

Introduced: February 11, 2008

RESOLUTION NO. 4312

**A RESOLUTION AUTHORIZING THE MAYOR TO SUBMIT A PETITION
TO THE LOCAL BOUNDARY COMMISSION FOR ANNEXATION OF
THE FRED MEYER SUBDIVISION – LOCATION OF THE FRED MEYER
WEST STORE AND OTHER BUSINESSES – USING THE LEGISLATIVE
REVIEW PROCESS, AND PROVIDING AN EFFECTIVE DATE.**

WHEREAS, Fred Meyer Subdivision, a parcel of land immediately adjacent to the western boundaries of the City of Fairbanks, shares the urban character of the City and is both integrated into and completely compatible with the character of the City; and

WHEREAS, it is inequitable to City taxpayers that this parcel, which already benefits from City services, is not paying a fair share of taxes, and

WHEREAS, the City can readily and efficiently provide essential city services, including higher level police protection, paramedic level emergency medical services, and increased public safety by the extension of building and fire safety codes, and

WHEREAS, annexation of this parcel will promote local self-government, enhance the City's ability to provide quality essential governmental services and partially offset the cost of governmental benefits that the parcel indirectly receives; and

WHEREAS, annexation via the legislative review process, as authorized by the Alaska Constitution, requires approval of an annexation petition by the Local Boundary Commission and non-objection by the legislature, and

WHEREAS, in recognition of the potentially negative effect that annexation would have on the funding of the University Fire Service Area, annexation must be conditioned upon reaching a suitable inter-governmental agreement with the Fairbanks North Star Borough which addresses the effects on the University Fire Service Area,

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF
THE CITY OF FAIRBANKS, ALASKA** as follows:

Section 1. The City Council authorizes the City Mayor to prepare and submit a Petition for Annexation, via the legislative review process, for Fred Meyer Subdivision, Fairbanks Recording District. The Petition shall

note that annexation would be conditioned upon reaching an agreement with the Fairbanks North Star Borough that addresses the impact upon the University Fire Service Area.

Section 2. That the effective date of this Resolution shall be the 11th day of February, 2008.

AYES: Thompson, Brown, Roberts, Strle
NAYS: Stiver, Eberhart, Hilling
ABSTAIN:
ABSENT:
ADOPTED: February 11, 2008

Terry Strle,
City Mayor

ATTEST:

APPROVED AS TO FORM:

Janey Hovenden, City Clerk

Herbert P. Kuss, City Attorney

Introduced By: Mayor Strle
Introduced: February 11, 2008

RESOLUTION NO. 4313

**A RESOLUTION AUTHORIZING THE MAYOR TO SUBMIT A PETITION
TO THE LOCAL BOUNDARY COMMISSION FOR ANNEXATION OF
THE "ENCLAVE" LOTS ON PARK & RIVERSIDE DRIVES, BARTLETT
AVENUE, AND AIRPORT ACCESS ROAD USING THE LEGISLATIVE
REVIEW PROCESS, AND PROVIDING AN EFFECTIVE DATE.**

WHEREAS, there are a group of individual platted lots on Park & Riverside Drives, Bartlett Avenue and Airport Access Road that are completely surrounded by the corporate limits of the City of Fairbanks; these lots, shown on Attachment "A," share the urban character of the City, and

WHEREAS, the owners of these "enclave lots," as well as persons living in structures on the lots, receive the benefits of City construction, snow removal and maintenance of the roads that serve the lots, police protection that is provided to the neighborhood, and the City's general services, and

WHEREAS, it is inequitable to City taxpayers that parcels of land completely surrounded by City territory, sharing the urban character of City land, be excluded from paying a fair share of taxes for City services which benefit the parcel, and

WHEREAS, the City can readily provide police protection, paramedic level emergency medical services and increased public safety by extension of building and fire safety codes to these parcels, and

WHEREAS, annexation of these parcels will promote local self-government, enhance the City's ability to provide quality essential governmental services and partially offset the cost of governmental benefits that the parcels indirectly receive; and

WHEREAS, the legislative review process, authorized by the Alaska Constitution, requires approval by the Local Boundary Commission and non-objection by the legislature; and

WHEREAS, the Alaska Administrative Code, at 3 AAC 110.140, expressly identifies that enclave territory is appropriately annexed via the legislative review process,

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF
THE CITY OF FAIRBANKS, ALASKA** as follows:

Section 1. The City Council authorizes the City Mayor to prepare and submit a Petition for Annexation, via the legislative review process, of the lots shown on Attachment "A."

Section 2. That the effective date of this Resolution shall be the 25th day of February, 2008.

Terry Strle,
City Mayor

AYES: Eberhart, Roberts, Thompson, Brown
NAYS: Hilling, Stiver
ABSTAIN:
ABSENT:
ADOPTED: February 25, 2008

ATTEST:

APPROVED AS TO FORM:

Janey Hovenden, City Clerk

Herbert P. Kuss, City Attorney

Introduced By: Mayor Strle
Council Member Roberts
Introduced: August 25, 2008

RESOLUTION NO. 4335

**A RESOLUTION APPROVING THE SUBMISSION OF A PETITION TO
THE LOCAL BOUNDARY COMMISSION FOR ANNEXATION OF THE
FRED MEYER SUBDIVISION AND THE "ENCLAVE" LOTS ON PARK &
RIVERSIDE DRIVES, BARTLETT AVENUE, AND AIRPORT ACCESS
ROAD USING THE LEGISLATIVE REVIEW PROCESS, AND
PROVIDING AN EFFECTIVE DATE.**

WHEREAS, the City Council passed Resolutions 4312 and 4313 earlier this year to authorize the preparation of a Petition to the Local Boundary Commission regarding the annexation of territory to the City of Fairbanks, and

WHEREAS, City staff have prepared a Petition to pursue that goal and the Council has adequate time to review the Petition, and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF FAIRBANKS, ALASKA as follows:

Section 1. The City Council re-affirms its support for annexation as previously stated in Resolutions 4312 and 4313 and further approves the filing of the attached Petition.

Section 2. That the effective date of this Resolution shall be the 8th day of September, 2008.

Terry Strle,
City Mayor

AYES: Roberts, Gatewood, Brown, Strle
NAYS: Hilling, Stiver
ABSTAIN:
ABSENT: Eberhart
ADOPTED: September 08, 2005

ATTEST:

APPROVED AS TO FORM:

Janey Hovenden, City Clerk

Herbert P. Kuss, City Attorney

What's on your list today? You'll find it at
Fred Meyer

Fred Meyer Stores • P.O. Box 42121 • Portland, OR 97242-0121 • 3800 SE 22nd Ave. • Portland, OR 97202-2999 • 503 232-8844 • www.fredmeyer.com

February 11, 2008

Mayor Terry M. Strle and Fairbanks City Council Members
City of Fairbanks
800 Cushman Street
Fairbanks, AK 99701

Via facsimile: (907) 459-6787 and e-mail

Dear Mayor Strle and Fairbanks City Council Members:

Thank you for forwarding us the information regarding the "Fred Meyer Subdivision."

Fred Meyer Stores has enjoyed a good relationship with the City of Fairbanks since our original Fairbanks store opened in 1978. In 2005 we opened our current east Fairbanks store, where we employ more than 300 people, providing family wages, health and welfare benefits, pension benefits and vacation and sick time. In 2007, we paid more than \$51,000 in property taxes to the City of Fairbanks.

It is with the greatest respect for the efforts of the City Council that we, unfortunately, will be unlikely to support the current annexation proposal. Our initial review, including discussions with our operations and logistics people, raise concerns for us about the level of services we might receive in exchange for what is likely to be a large sum of additional money.

However, we feel that we have not received enough information to have a full understanding of the benefits, costs and impacts of the proposed annexation. We hope to have further discussions about all of these items.

We have the greatest respect and appreciation for the assistance our east Fairbanks store receives from the City, particularly the police and fire response. However, it is simply a function of proximity that results in even more rapid police and fire response to our west Fairbanks store. This is one of our top concerns with the current annexation proposal.

We look forward to learning more about the benefits and costs to Fred Meyer of the annexation proposal.

Best regards,

Melinda Merrill
Director, Public Affairs

"Always strive to offer Customers the service, selection, quality and price that satisfies them best." Fred G. Meyer, Founder, 1886-1978

Commission, Boundary (CED sponsored)

From: bill zorb [oldspokes@earthlink.net] **Sent:** Mon 3/16/2009 10:32 PM
To: Commission, Boundary (CED sponsored)
Cc:
Subject: public comment, Fairbanks petition to annex Fred Meyers West
Attachments:

Dear Local Boundary Commission,

I am writing to voice my extreme opposition to the city of Fairbanks petition to annex the Fred Meyers West subdivision. This is nothing more than a money and power grab by the city.

Currently fire and EMT service is provided by the University Fire Department, located only 2 blocks away from Fred Meyers West. The city's closest station is 3.08 miles from Fred Meyers West. The University Fire Department is 0.47 miles away.

If the city wants to expand its service area, perhaps it should consider annexing areas in South Fairbanks where Fire Service is not being provided currently. The city has contracted to provide fire protection to several properties that wanted it in these areas, a practice that I believe is at least dishonest and maybe illegal.

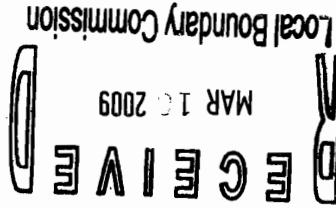
The real problem here is that the area being annexed should want to be annexed and it should have something to be gained from annexation. But this is not the case, these people already have fire service, EMT service, and police protection. The city has nothing to offer but higher taxes.

This city annexation plan seeks money, but no better service. This plan is flawed and should not pass.

Sincerely
Bill Zorb, Fairbanks

<https://webmail.alaska.gov/Exchange/lbc/Inbox/public%20comment,%20Fairbanks%20pet...> 3/17/2009

Local Boundary Commission
RE: Fairbanks Petition for annexation



March 4, 2009

From a logical city planning perspective it would appear as a matter of common sense that the last remaining box store and branch bank outside the city limits should be annexed. However since my expertise isn't in city planning I'll restrict my comments to why public safety concerns warrant annexation of Fred Meyer's subdivision on Airport Way.

I presently serve on Fairbanks Public Safety Commission. I was asked to join the commission by Mayor Thompson to provide advice based upon experience gained from being Fairbanks's District Attorney for 27 years. The first priority identified by the commission was to upgrade the city's mobile intensive care units to be highly trained and experienced paramedics. Even though this came at a substantial cost to the city we believed it would be a major lifesaver based upon the experiences in such cities as Seattle. Presently the city is staffed with 14 paramedics with an average of 8 years experience serving under the supervision of a physician. The Borough doesn't provide paramedic services. Presently Fred Meyer West is serviced by the University Fire department that is staffed by University students, some who have EMT3 certifications. Representations that there is little difference between paramedic and EMT3 services are fallacious. A paramedic certification requires 1500 hours of training while an EMT3 is certified with 120 hours of training. Unlike an EMT3, a paramedic is trained to perform life saving procedures such as a nasal intubation or a cricothyrotomy. Furthermore, EMT3 can't administer 10 medications that paramedics can timely administer which in some situations such as with a cardiac arrest can mean the difference between life and death. The fact that the University Fire Department may be able to get an EMT3 to arrive few minutes sooner won't do you much good if he can't perform the procedures or administer the medications necessary to save your life. This difference between skill levels is the reason why I can't buy the argument that the University Fire Department, which is primarily staffed with university students training to become firemen, can provide better service than a professional fire department. The irony of this is that if you suffer a heart attack or other life threatening affliction while shopping at Safeway, you are far more likely to survive than if you had walked across the street to Fred Meyer's. This is not a remote possibility since according to the University of Alaska's Fire Department at least 55 people were in need of mobile intensive care in the Fred Meyers subdivision last year. Even the assertion that the University has a faster response time due to proximity is suspect. When I asked the dispatch center to compare response times between the city and university to the common intersection of university and airport it showed they both arrived about the same time. The reason being that the university station in closer proximity is often under staffed and the on campus station has to respond. After all the students have to go to class sometime.

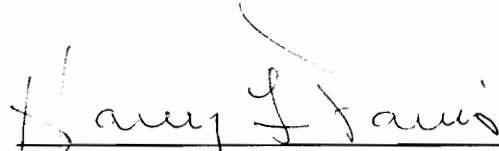
Besides not providing paramedic services the Borough can't provide police services since it lacks police powers. This means that Fred Meyers West and the Mt. McKinley branch must rely upon what is referred to as free police services from I Detachment of the State Troopers. This is a classic example of robbing Peter to pay Paul. The use of limited trooper resources to respond to numerous urban crimes such as shopliftings at one of this areas most populated shopping centers is a serious misappropriation of trooper resources. Recently the Public Safety Commission requested AST to join with FPD in forming a burglary suppression unit, while acknowledging the need for such a unit the troopers declined due to be so understaffed that they couldn't even meet their minimal staffing responsibilities. Using troopers for shoplifting arrests diverts them from providing more important police services to Borough residents and the rest of the interior of Alaska that they are required to patrol. This misallocation of police resources is the primary reason AST has joined the Public Safety Commission in supporting the city's annexation petition.

Furthermore the city taxpayer is already paying for police services to the Mt. McKinley branch in the Fred Meyers subdivision even though it outside the city limits. While I am not at liberty to discuss police tactics in

responding to bank robberies in this area I can reveal that if a bank robbery occurs at the Mt. McKinley branch FPD will be the primary responder with the troopers providing perimeter support. If FPD did not respond there would be little chance the robber would be apprehended. While the status quo is in the financial interest of Mt. McKinley Bank, it certainly isn't in the interest of the city taxpayer. Annexation should not be decided based upon the best interest of the Fred Meyer's and Mt. McKinley corporations but should be focused on the best interest of the thousands of customers who patronize these establishments. If annexation is denied the Borough will continue not to spend a penny of tax revenues generated from this area for police protection and coverage from the troopers can be expected to diminish. On the other hand with annexation the city will be able to allocate tax revenues generated from the annexation to increase police services as needed.

Finally this arrangement between the Borough and the University for the University to provide fire protection and EMT services to the Borough has dubious legality. The university isn't a home rule city. It is an entity of enumerated powers which must be granted by the state. The only public safety powers granted by the legislature to the University of Alaska is found in A.S. 14.40.043 which specifically restricts its jurisdiction to the university's campus. Nowhere in the general powers granted to the university in A.S. 14.40.040 or any other legislation does the legislature empower the university to create a fire department much less provide fire and EMT services off campus. Even if under some implied powers argument the University is found to have the power to create a fire department it is dubious that this necessity rational would extend to providing fire services off campus. This Board should request an Attorney General's opinion through your Commissioner regarding the legality of this contract between the University and the Borough.

Even if providing fire services to the borough by the university isn't found to be an ultra vires act it still constitutes an improper allocation of state funding. Nowhere else does the university provide fire services to other communities in the state. Annexation is in the state's best interest. Unless the state is willing to provide free police services and fire protection to all its citizens it should not be in competition with municipalities that are willing to provide those services.



Harry L. Davis

Starkey, Jennie B (CED)

From: Williams, Brent (CED)
Sent: Friday, April 03, 2009 7:37 PM
To: Starkey, Jennie B (CED)
Subject: FW: No to the Annex

-----Original Message-----

From: Craig Compeau [mailto:craig@compeaus.com]
Sent: Tuesday, March 31, 2009 2:42 PM
To: Williams, Brent (CED)
Subject: No to the Annex

This letter is to advise you of our strong opposition to annexation of the West Fairbanks Fred Meyer area that is being proposed. We see no value to it for our 64 year old Fairbanks family owned business.

Thank you

Craig Compeau
VP
Compeau's Inc
4122 Boat St
Fairbanks, Ak. 99709

To the Local Boundary Commission

RE: Fairbanks City request to annex properties just west of University including Fred Meyer.

From: Carter Crawford 107 Maple Fairbanks 99709 ccrawford@gci.net

I protest this proposal for every possible consideration.

First and foremost it is taxation without representation of the Borough residents, both those immediately impacted, and those in the future, when surely the city will request further expansion. It is no secret they want all the land going to the airport boundaries.

The reason for annexation is to provide unmet public safety needs first and foremost. None exists. The University Fire Department provides excellent service and is less than ½ mile away. In addition to University, the Chena Ridge station is less than 7 minutes away as is the City for back-up. The last major fire I recall was the one at the University many months ago, and 6 Fire Dept's showed up!

The State Troopers provide police service, and while there are delays, from what I hear, they are no worse and sometimes faster than the City. In fact City residents have been told repeatedly city police are too busy to come out, and quoted in the paper as saying it was several hours before they could get to domestic disturbances during the late nights as all police were busy with other crimes.

In addition to providing faster service, University Fire Dept has a higher rating than the City, which can mean lower insurance costs for some property owners.

As for EMT service, yes there are a few rarely used services the volunteers at university can not perform, but they are rare and the City can easily back up.

The City has made it clear in public testimony repeatedly that the reason they are requesting expansion of their borders is because having Fred Meyers outside the City "is not fair." To again quote Councilman Chad Roberts "we need the money." Annexation is not about helping one entity balance its budget, or in this case also fulfill campaign promises to grow City police and fire staffing.

And finally this is no more than a rob the borough to pay the City. The Borough stands to lose over \$300,000 in property and liquor sales taxes if this annexation is approved. That does not benefit the community as a whole and it specifically hurts Borough Residents who have chosen to live outside the City.

And while your responsibilities are to judge the request on the merits of the need, I also look at the Mission of the City. Growth based on unmet public safety needs is

appropriate. Growth based on robbing another municipal entity of revenue where no unmet need exists is NOT,

I STRONGLY OPPOSE ANNEXATION BEYOND UNIVERISTY AVENUE.

- 1. THIS IS TAXATION WITHOUT REPRESENTATION AS RESIDENTS IN THAT AREA ARE NOT ALLOWED TO VOTE. MOST HAVE INDICATED THEY OPPOSE IT**
- 2. MR. ROBERTS HAS STATED WE NEED THE MONEY, NOT HAVING FRED MEYERS IS NOT FAIR AND THE CITY NEEDS TO GROW. THE CITY MISSION IS NOT TO GROW, IT IS TO PROVIDE BASIC SERVICES LIKE FIRE AND POLICE PROTECTION. MR ROBERTS HAS NOT DEMONSTRATED HOW NEW REVENUES FROM ANNEXATION ARE GOING TO SUPPORT THAT MISSION.**
- 3. IN POINT OF FACT, THE AREA SURROUNDING FRED MEYERS IS ALREADY WELL COVERED FOR FIRE BY BOTH UNIVERISTY, CHENA RIDGE AND ESTER . AND WHENEVER THIS IS A MAJOR FIRE THE ABOVE ARE JOINED BY GOLDSTREAM AND THE CITY. IT IS ALSO IMPORTANT THAT SERVICE BY UNIVERSITY HAS A HIGHER RATING THAN THE CITY, SO CLEARLY QUALITY IS NOT AN ISSUE. BUT INSURANCE COSTS TO THOSE IN THE BOROUGH ARE.**
- 4. MR. ROBERTS HAS ALSO STATED FAIRBANKS IS THE 2ND LARGEST CITY IN ALaska AND IT IS HIGH TIME WE STARTED ACTING LIKE. How that is important to annexation is not clear. THIS IS EMBARRASSING AND INFLAMMATORY, IMPLYING THAT ALL THE HARD EFFORTS BY ORGANIZATIONS LIKE FEDCO, FCVB, THE CHAMBER, ARCTIC ALLIANCE, UNIONS AND THE UNIVERSITY HAVE BEEN USELESS. SHAME ON YOU.**
- 5. 2 OTHER COUNCIL MEMBERS POINED MR. ROBERTS IN SAYING THE CITY NEEDS TO EXPAND AND GROW. HOWEVER YOU HAVE REPEATEDLY HEARD FROM CITIZENS/RESIDENTS/VOTERS THAT IS NOT WHAT THEY WANT. THEY WANT LESS GOVERNMENT AND LOWER PROERTY TAXES.**
- 6. IT MAKES NO SENSE TO EXPAND THE CITY AND REQUIRE MORE POLICE AND POSSIBLY HIGHER FIRE COSTS WHEN THERE ARE UNMET NEEDS IN THE CITY. TWO EXPAMPLES:**

BRADDOCK STREET IS IN THE CITY YET THE CITY PROVIDES NO CITY ROAD SERVICES UNLESS THE PROPERTY OWNERS CALL AND COMPLAIN.

THECITY CUT CITY LIGHT SERVICE TO ONE OF THE HIGHEST CRIME AREAS IN THE CITY. THE MISSION IS #1 SAFETY AND NO ANNEXATION DOLLARS ARE GOING TO BE APPLIED TO CITY PROBLEMS. COUNCIL KNOWS THAT AND I KNOW THAT.

7. AND FINALLY DESPITE ALL THE GLOSSY WORDS THIS IS NO MORE THAN A MONEY GRAB AND AT BEST A ROB FROM THE BOROUGH TO PAY THE CITY. THE BOROUGH VOTED UNANOMOUSLY AGAINST IT FOR THIS REASON. AND WE THE RESIDENTS OUTSIDE THE CITY WHO LIVE THERE AND NOT IN THE CITY KNOW FULL WELL THIS IS ONLY STEP ONE. NEXT IT WILL BE PIKES AND THE ASPEN AND THEN WELLS FARGO AND RIVERS EDGE. IT WILL NEVER END AND IT WILL NEVER BE APPROVED BY ITS RESIDENTS.

8. if the city wants to grow and expand it should first look within in its current boundries AND MORE DELEGATION TO THE PRIVATE SECTOR, THE ORGANIZATIONS LISTED ABOVE LIKE THE FCVB AND FEDCO. THESE ARE YOUR ENGINES FOR GROWTH. THE CITY'S ROLE IS TO PROVIDE A POSITIVE ENVIRONEMNT WITH LOW TAXES, BUSINESS INCENTIVES AND SAFE STREETS. AND I WILL ADD TO THAT A SALES TAX DOES NOT ADD TO THAT FRIENDLY ENVIRONMENT

Starkey, Jennie B (CED)

From: Williams, Brent (CED)
Sent: Friday, April 03, 2009 3:50 PM
To: Starkey, Jennie B (CED)
Subject: FW: Attachment Report

Attachments: ATT1153401.txt; Ann08Analysis.doc



ATT1153401.txt
(66 B)



Ann08Analysis.doc
(2 KB)

Thanks for taking care of this.

-----Original Message-----

From: wshechter@gci.net [mailto:wshechter@gci.net]
Sent: Thursday, April 02, 2009 4:28 PM
To: Williams, Brent (CED)
Subject: Attachment Report

Hi Brent:

As I previously mentioned, the attachment is my analysis on the City of Fairbanks proposed annexation of the Fred Meyer West property.

Although the report was solely mine, all members of the University Fire Service Area Commission fully endorsed my report and a signature page was added.

Because of the signature page, today I mailed the report to you via Certified Mail.

So this attachment has the unsigned signature page.

Please be sure all LBC members receive a copy of the mailed original - or this unsigned version, should the U.S.P.S. lose my report.

Your assistance is appreciated.....

William Shechter, Secretary
University Fire Service Area Commission
Fairbanks, Alaska

Analysis of petition report issued by the City of Fairbanks supporting the annexation of Fred Meyer West property

Prepared by William Shechter

4910 Palo Verde Ave.

Fairbanks, AK 99709

>Former Fire Chief, University of Alaska Fairbanks

>Former Fire Chief, City of Fairbanks

>Former Fairbanks North Star Borough Emergency Manager

>Current secretary, University Fire Service Area Commission

Date: March 15, 2009

Abbreviations used in this analysis:

UFD = University Fire Department

UFSA = University Fire Service Area

FFD = Fairbanks Fire Department

FPD = Fairbanks Police Department

PW = Public Works

AST = Alaska State Troopers

ADOT = Alaska Department of Transportation

LBC = Local Boundary Commission

EMS = Emergency Medical Services

FNSB = Fairbanks North Star Borough

Introduction

Review by the staff of the LBC of the proposed annexation by the City of Fairbanks of the Fred Meyer West property is based on a report issued by the City of Fairbanks that includes inaccurate, incomplete, and nonfactual information. The poor quality of this report was brought to the attention of the city council at their November 24, 2008 hearing; however, the city council chose to disregard these warnings because of the financial issues associated with the annexation effort. One of the most grievous mistakes by the city was to start comparing FFD with UFD. Much of this analysis was included in testimony on November 24th and is presented here to clarify many statements made by the city and to assist the LBC and its staff in their review of the annexation proposal.

Over the years the LBC has denied annexation petitions where the sole purpose is financial gains rather than an improvement in levels of service. This analysis clearly demonstrates, as has been testified to the city council members on November 24, 2008, the primary reason for the proposed annexation of the Fred Meyer property is **financial gain**.

In much of their petition, the City of Fairbanks failed to clarify issues and did nothing to avoid gross confusion when discussing the Fred Meyer West property and the "enclave" properties - both covered in the same petition.

As noted in this analysis, the FNSB Assembly and Mayor Jim Whitaker have both indicated their opposition this annexation petition.

This analysis is based on the September 8, 2008 petition report.

Page 5 (3rd parag.): The city's petition starts out with the most obvious incorrect statement because customers and business owners in the Fred Meyer West property do NOT currently enjoy any city services. This is clearly a false statement.

Page 5 (last parag.): As a practical matter, as noted later in the analysis, EMT-III personnel have proven to be more than sufficient for the EMS needs of emergencies at the Fred Meyer property.

Page 6 (Emerg. Dispatch Services): The city's petition is inaccurate and incomplete when discussing this issue. The city's dispatch center answers Enhanced 911 calls (land line) originating from inside the city and for all cell phone calls originating anywhere in the Borough (even outside the Borough in some cases). Land line 911 calls originating in the Borough (outside the city) are answered by the AST dispatcher. Of importance, but not discussed in the city's petition, is knowing that, no matter who calls into the Enhanced 911 System, all calls can be electronically transferred between the Public Safety Answering Points (PSAP). This means that calls initially handled by the city dispatch center, when needed, are instantaneously transferred to the UFD dispatch center or to AST dispatch center, along with all caller information (phone number and location).

In summary - this means that dispatchers at FFD/FPD, UFD, AST, and the Airport can all receive the same electronic information.

Page 7: Both the City of Fairbanks fire and police chiefs for years have requested additional personnel to handle the ever growing number of calls for service associated with growth of businesses and population. However, their requests have continually been denied by the city council. Only as a result of a federal grant, has the city council, early in 2009, authorized one additional firefighter per shift. Even this authorization vote was far from unanimous because of concern for long term employment after the grant expires in a few years. This decision to hire 3 additional firefighters did not increase the minimum number of on-duty personnel per shift.

Staffing and response problems within the FFD are identified not only in Exhibit M of their annexation petition but also in the January 25, 2009 Fairbanks Daily News Miner article.

It is totally inaccurate to assert that the Fred Meyer property currently enjoys or benefits from any city service - this is simply not true. This assertion is noted throughout the city's petition.

Page 8 (last parag.): The ability of the FFD to adequately service the Fred Meyer property is seriously in question when considering the number of multiple EMS responses handled by the FFD resulting in a high number of times agencies outside the city are requested to respond into the city. The high number of multiple EMS calls (some requiring fire apparatus response) within the city also results in a reduction of available FFD personnel to man the fire apparatus and be ready to respond accordingly. A few years ago a loss of life at a motel fire in the heart of the city was attributed (by FFD personnel) in part to the lack of on-duty personnel while handling multiple EMS calls.

Page 10 (1st parag.): The city does not allocate any highway construction funds directly impacting the Fred Meyer property in as much as all roads servicing these businesses are under the jurisdiction of ADOT (e.g. Airport Rd. and University Ave.).

Page 10 (last parag.): This clearly demonstrates, as was identified on numerous occasions during the November 24th hearing, that the City of Fairbanks is only interested in the financial gains associated with the proposed annexation.

Page 13 (chart): The identified 2008 estimated alcohol and tobacco tax revenues (\$325,864) is part of the financial gain so evident in the city's petition. It also becomes a significant loss to the FNSB which is one of the reasons the FNSB Assembly voted to formally oppose the annexation petition.

Page 20 (last parag.): According to the approved city's budget the FFD will not be adding 3 more paramedic/firefighters in 2009.

Page 23 (chart): The city failed to identify the level of EMT services that EMS personnel at the UFD provide. The State of Alaska is the only state in the nation that utilizes EMT-I, -II and -III levels. All other states have only EMT-Basic and Advance levels. The EMT-III level (operated by the UFD) incorporates approx. 80% of the training required to be a nationally recognized paramedic. EMT-III trained personnel focus their expertise on cardiac emergencies. In addition, records will show that in 15 years of responding to Fred Meyer West for EMS calls, there has never been an incident requiring a paramedic.

Page 24 (Sect. 18, A.): As stated by the Fred Meyer West store director, David Atlee, there really is NO NEED for his store to have any city services. He is more than satisfied with responses provided by UFD and AST. The city has truly fabricated this assertion.

Page 25 (parag. B.): As stated elsewhere, there are no city services needed by Fred Meyer West so efficiency and effectiveness are non-issues. The

effectiveness of a much closer fire and EMS response from the UFD have never been questioned. The store director's primary concern is the loss of effectiveness by having the FFD responding from such a distance.

(parag. E.): There is no permanent population within the Fred Meyer West property. Transient population (shoppers, delivery people, and employees) is, obviously, not the issue here.

Exhibit E, pg. 1, C: Contrary to the city's assessment, there is no transition plan associated with the proposed annexation of the Fred Meyer property in as much as the Borough Assembly has voted to oppose the entire transfer of assets and liabilities to the City of Fairbanks.

Exhibit E, pg. 4: One of the major concerns of the UFSA Commission in objecting to the annexation deals with the city not honoring past commitments - as a precedent to any agreement regarding the proposed annexation. The city's initial agreement to reimburse the UFSA Commission for the loss of revenue was withdrawn. The city council, after signing its own labor contracts, has, in previous years, refused to fund components of the labor agreement they originally agreed upon. Prior action by the city council leaves a lot to be desired when "trusting" them to do what they say vs. what they really do even within the parameters of a contract.

Exhibit E, pg. 5-6-7: This is the section of the city's petition that received considerable testimony at the Nov. 24th hearing.

The FFD experiences the highest volume of multiple emergency responses of any fire/EMS agency in the Interior of Alaska. These multiple EMS calls require fire apparatus personnel to respond either with their fire vehicles (for serious life-threatening medical emergencies) or to cross-staff the ambulances leaving the fire apparatus with only a driver and, hopefully, an officer. During these times, fire suppression capabilities within the city are drastically reduced, at least until mutual aid can be called or off-duty FFD personnel can respond to the station.

Taking on additional responsibility would only make the situation worse, especially since the city council has refused to hire more personnel.

For this reason the UFD or other area civilian or military fire departments are often requested to respond inside the city.

It is important to understand that as the City of Fairbanks has grown and demands on the FFD have grown, total uniformed personnel has not kept up to the increases when compared to employees working there in the early 1990's.

On the other hand, however, the UFSA Commission has funded additional UFD personnel to handle their increased workload.

The city's petition addresses the UFD Station #2 being empty. The petition implies that the FFD main station is, likewise, not empty. Multiple responses dictates otherwise. The petition also implies that FFD personnel must never be out of their station for training purposes, which is really unreasonable.

The UFD has developed a training complex directly behind the UFSA Station #2 - all in an effort towards keeping emergency personnel available in their assigned response area.

The city's petition boasts about FFD's 2 aerial platforms. Throughout the U.S. fire service there has been much discussion regarding the effectiveness of aerial platforms vs. aerial ladders. This community is blessed by having both - 2 platforms in the city and 2 aerial ladders in the UFD. Aerial ladders require less room to operate and can reach just as high. High-level rescue in the Fred Meyer property is not an issue regarding the use of aerial devices. The most important attribute is the ability to deliver large quantities of water - a feature of both types of aerial devices equally. Of interest - the UFSA has recently ordered a new aerial ladder truck for the UFD.

The city's petition touts the use of grant funding for personnel. This may prove to be a problem when the grants expire and the city council, as previously mentioned, involves a federal grant of limited duration for increasing one additional firefighter per shift. An opposite philosophy is used by the UFSA Commission. The commission funds additional UFD employees through **sustainable** residential property tax revenues, a process that allows for appropriate long range master planning.

The city's petition erroneously states that UFD EMT training is only a "fraction" of what is required to become a paramedic. This is simply not true. As mentioned previously in this analysis, EMT-III's receive medical training nearly to the extend of a nationally recognized paramedic. This statement is supported by the hiring of previous UFD firefighters in the Lower 48 and their paramedic training.

The benefits expounded in this section about the FFD is, somewhat, contrary to the city's own statistics on response times, as elaborated in Section M, page 16 of their annexation petition.

The city's petition also discusses police response to the Fred Meyer property. This is done as a mutual aid response to assist AST. As discussed previously, the police chief has requested additional personnel to maintain an acceptable ratio of population and calls for service with officers on patrol. This has not been approved by the city council. The Fred Meyer store director is pleased with the response of AST to problems in his store. The streets around Fred Meyer are already patrolled by AST, FPD, as well as the Airport Police Department. For serious law enforcement emergencies, as with fire agencies, multiple police agencies have responded to the Fred Meyer property. This includes bank alarms, robberies, release of toxic materials inside Fred Meyers, etc. The incident

involving the release of a toxic substance was coordinated by the UFD and involved multiple fire, EMS, and police agencies.

Exhibit E, pg. 7: Here the city's petition again demonstrates its total lack of understanding of real-life conditions regarding emergency communications.

Contrary to the petition, the UFD does, in fact, have full capabilities to utilize ALMR - the newest digital trunking radio system. All radios (portable, mobile, and base) have this new technology. However, since it has been shown that ALMR radios do not work well inside large buildings, UFD officers only use ALMR when responding with other Borough fire agencies or during large disasters when communications with state officials are required. The report never mentions that FFD also does not use ALMR when fighting fires inside large buildings in the city.

The petition also fails to mention that the FNSB has identified the University Dispatch Center as the back-up Emergency Operations Center (EOC) to the entire Borough. The primary EOC is the City of Fairbanks Dispatch Center; however, as backup, the University Dispatch Center has all of the capabilities necessary.

This is another example of the city using distorted facts to promote its agenda of ignoring service levels and concentrate on financial gains associated with the proposed Fred Meyer annexation.

Exhibit H, pg. 1: Contrary to the real situation, there is no additional economic development possible within the Fred Meyer West property. In fact both Fred Meyer's store director, the board of directors for Mt. McKinley Bank, and the owner of Taco Bell have all expressed their desire not to be annexed and that they see no need to extend city services to their businesses. Recent public testimony by Craig Ingram and Jerry Cleworth, representing bank directors, opposed the city proposed annexation.

Exhibit H, pg. 3 (2nd parag.): Contrary to statements by the city, the current service area does provide all necessary and wanted services - namely fire suppression and EMS. As with all private property owners, there is no need for Public Works and there is total satisfaction with the attention provided by AST. The efficiency and effectiveness of the UFD is equal or better to that provided by FFD mainly because of the significant difference in response distance/time. Tactically, both fire departments hold joint training exercises, work together on many mutual aid responses inside the city, and both have the latest designed equipment and apparatus.

Exhibit H, pg. 4 (parag. (3) in lower ½ of page): This emphasizes the real and only purpose that the city of Fairbanks is proposing to annex the Fred Meyer property- *"to generate and collect local revenue and income from the territory."*

Exhibit H, pg. 6 (3rd major discussion point): Contrary to statements by the city, there has never been any confusion regarding whether the Fred Meyer West property is in or out of the City of Fairbanks. This has been very clear and well understood by everyone since Fred Meyer West was built nearly 18 years ago.

Exhibit H, pg. 7 & 8 (1): There has never been a determination by the LBC for the need to annex Fred Meyer property to the city. This is a very misleading and inaccurate statement.

(2): There is no danger to city residents by keeping the Fred Meyer property out of the city. As a matter of fact there is considerably more hazard to city residents because of spreading the fire and police departments even thinner that they already are. The areas South of Van Horn Road have commercial and industrial businesses and some are without fire protection coverage. The city refuses to give attention to these unprotected areas in order to protect its residents from hazardous materials influences.

(3): Regarding the Fred Meyer property, there is absolutely no need nor is there any request to extend city services.

(4): Currently the city does NOT provide any services to the Fred Meyer West property - another example of twisting the facts.

(5): There is no possibility for any additional economic growth within the Fred Meyer West property - contrary to what is stated in the petition.

(7): With no residents in the Fred Meyer property, there is no concern for "local self-government."

Exhibit I, pg. 1 (Resolution 4312): This resolution approved by the city council in early 2008 should be considered voided since the sixth "Whereas" has never been completed - namely how to deal with the loss of funding by the UFSA Commission. This was brought to the attention of the city council on Nov. 24th but did not receive any acknowledgement.

Exhibit I, pg. 5 (Resolution 4335): Likewise this resolution should have been voided by the city council because it refers to Resolution 4312 that (as noted above) has not been fully accommodated.

Exhibit J, pg. 1 (Affidavit): As noted above, any reference to Resolution 4312, needs to be made null and void since Resolution 4312 has never been completed. This is a serious issue which has been ignored by the city council and the city administration.

Exhibit K, pg. 3 (2nd parag.): Statement regarding essential city services is not an issue in this proposed annexation. As private property, there is no street maintenance and no trash pick up at the Fred Meyer property businesses. Fire

service and EMS is provided more than adequately and effectively by the UFD, and the property owner's store director is more than pleased with the level of service provided by AST.

Exhibit K, pg. 4 (1st parag.): There are some serious errors that appear on this page.

Item #1: At the end of the 2nd paragraph, contrary to what is printed here, Borough Mayor Jim Whitaker and the FNSB Assembly are opposed to the proposed annexation of the Fred Meyer property. Mayor Whitaker clarified his position during the Nov. 24th hearing but it made no difference to the city council members and no effort was made to correct the petition before submitting the document.

Item #2: After 3 meetings between Fairbanks Chief of Staff Pat Cole, UFSA Commission Chair Steve Adams, Borough officials, FFD Chief Warren Cummings, and UFD Chief Edie Curry the city broke off all future discussions refusing to meet further to try and find a solution to the concerns of the UFSA Commission.

Item #3: The city does not seem to care that the loss of revenue by the UFSA Commission would have to be made up by all service area taxpayers - a process that would require an election within the entire UFSA to confirm raising property taxes.

Exhibit M, pg. 9 (parag. 1 & 2): Both these narratives, based on the FFD 2007 annual report, identify problems within the FFD which will only be made worse if the proposed annexation is allowed to occur. The number of simultaneous multiple emergency EMS calls places a real drain on the ability of FFD to respond to fire emergencies. Likewise the work load placed on one city fire prevention/inspection/ fire cause & origin officer will also get worse by annexing the Fred Meyer property. Internal staffing problems continued in 2008 as addressed in the January 25, 2009 Fairbanks Daily News Miner article that identified serious response deficiencies.

The level of service realized by the 3 businesses located in the proposed annexation area would be drastically reduced.

Exhibit M, pg. 12 (last section of "concern"): As noted earlier in this report, total FFD personnel were reduced in the late 1980's and have never been brought back to levels commensurate to the growth of emergency responses, increase in population, and large increase in new businesses within the city.

Exhibit M, pg. 14: The deficiencies in "turnout time" and "response time" when compared to the national standard mentioned in this petition, will be made worse with the additional response burden once the proposed annexation is finalized.

Why should all of the city's residents be adversely impacted because the city council has failed to provide the needed growth of the FFD?

Conclusion:

It is vitally important to the safety of thousands of shoppers that do business on a daily basis in Fred Meyer West, Taco Bell, and Mt. McKinley Bank that the staff of the Local Boundary Commission and members of the Commission fully understand the inaccurate, incomplete, and misleading nature of the City of Fairbanks' petition when reviewing all aspects of the proposed petition - prior to making their final recommendation.

Craig Ingram and Jerry Cleworth, representing the board of directors of Mt. McKinley Bank, have provided public testimony strongly opposing the proposed annexation. Likewise, Dale Martens, President of Denali Foods, Inc, operator of Taco Bell, has also strongly opposed the proposed annexation.

The city's petition is seriously flawed. This analysis is an attempt to clarify these issues and provide a factual document for LBC review.

When considering all relevant issues, the one that stands out and is most vital involves the response time differences between the UFD (located less than ½ mile away) and the FFD (located in excess of 3 miles away) and the impact this will have on the safety afforded store customers and employees alike.

I hope the Local Boundary Commission agrees that ability to render quick emergency care (i.e. fire suppression and/or emergency medical treatment) is paramount and will therefore deny the city's annexation petition for the Fred Meyer West property.

William Shechter
4910 Palo Verde Avenue
Fairbanks, AK 99709

tel: 907-479-2001
email: wshechter@gci.net

Fairbanks North Star Borough, University Fire Service Area Commission
Endorsement:

This analysis was prepared by William Shechter, University Fire Service Area Commission Secretary, and is endorsed, in full, by all five members of the Commission.

Steve Adams, Chairman

date

John Patterson

date

Bruce Foote


date

Rolin Dow

date

William Shechter, Secretary

date

 You replied on 4/8/2009 8:18 AM.

Commission, Boundary (CED sponsored)

From: bill zorb [oldspokes@earthlink.net] **Sent:** Tue 4/7/2009 10:22 PM
To: Commission, Boundary (CED sponsored)
Cc:
Subject: Fred Meyers West annexation
Attachments:

Dear Local Boundary Commission,

I am writing to voice my extreme opposition to the city of Fairbanks petition to annex the Fred Meyers West subdivision. This is nothing more than a money and power grab by the city.

Currently fire and EMT service is provided by the University Fire Department, located only 2 blocks away from Fred Meyers West. The city's closest station is 3.08 miles from Fred Meyers West. The University Fire Department is 0.47 miles away.

If the city wants to expand its service area, perhaps it should consider annexing areas in South Fairbanks where Fire Service is not being provided currently. The city has contracted to provide fire protection to several properties that wanted it in these areas, a practice that I believe is at least dishonest and maybe illegal.

The real problem here is that the area being annexed should want to be annexed and it should have something to be gained from annexation. But this is not the case, these people already have fire service, EMT service, and police protection. The city has nothing to offer but higher taxes.

This city annexation plan seeks money, but no better service. This plan is flawed and should not pass.

Sincerely
Bill Zorb, Fairbanks

Commission, Boundary (CED sponsored)


From: Kathy Zorb [kzorb@earthlink.net] **Sent:** Tue 4/7/2009 12:27 PM
To: Commission, Boundary (CED sponsored)
Cc:
Subject: Fred Meyers West annexation
Attachments:

Dear Local Boundary Comission:

I am writing in opposition to the City of Fairbanks annexation of the Fred Meyers West area. This area already has police protection from the state troopers, road service from a Borough road service area, and excellent Fire and Ambulance Service from the University Fire Station, only 2 blocks away. The nearest city fire station is 3 miles away.

This annexation is a flawed plan that should be stopped. The area to be annexed has nothing to gain and much to lose if the annexation goes thru. I urge you to turn down this annexation.

Sincerely,
Kathy Zorb
Fairbanks

 You replied on 4/10/2009 7:33 AM.

Commission, Boundary (CED sponsored)

From: Brenda Hewitt [brenda@hewitt.net] **Sent:** Fri 4/10/2009 2:56 AM
To: Commission, Boundary (CED sponsored)
Cc:
Subject: Fairbanks annexation
Attachments:

Local Boundary Commission Staff

550 West Seventh Avenue, Suite 1770

Anchorage, AK 99501-3510

Email: LBC@alaska.gov

April 9, 2009

Dear Tara Jollie and Commission:

I am in support of the annexation of land on the west side of Fairbanks to the City of Fairbanks.

I own a parcel of land on Peger Road formerly known as Norlite Campground. It was about 10 acres but we've sold most of it now. I still retain about 1.5 acres and a small apartment building there but have closed down the campground that operated there for 30 years. You might say the city grew up around us and the highest and best use of the land was no longer a campground.

When I was a young girl still in high school, Peger Road was the city limits. It was a two-lane road. Wonderful city water and sewer services were on the East side of the road; we lived on the West. Our well water was very hard, filled with tons of minerals and it just didn't help business very much so my family annexed ourselves to the City of Fairbanks. I believe that was in 1971.

It cost us a lot of money. It was an investment. Yes, the taxes were higher and it put our campground rates at a higher rate, but we had good water and enjoyed the integrated services we received from the city.

Even though the State Troopers office was literally across the street, we needed to call upon the city police for situations. They always responded quickly and efficiently.

I believe that as our area of town has grown, it should be annexed into the city. If it looks like a city, acts like a city and smells like a city, it should be paying its fair share of the amenities and benefits it derives from being so close to the city.

Of course there will be the people that want all the benefits but not have to pay for them. That is human but it is just wrong. They are already using city streets, enjoy the fact that their neighbors homes are inspected for fire and building codes and enjoying the added safety of professional fire and police departments. If they annex, they will also be able to vote in city elections and the policies that affect them now but without their participation.

There is a cost to civilization. I see it as your job to recognize that these areas being annexed are in fact no different than their neighbors except that their taxes are lower. They expect their neighbors to pay for their amenities.

Thank you for taking my testimony. If you have any questions, don't hesitate to contact me.

Warmly

Brenda Hewitt
brenda@hewitt.net

Commission, Boundary (CED sponsored)


From: Shawnee Dunham [shawneedunham@hotmail.com]**Sent:** Tue 4/14/2009 9:46 PM**To:** Commission, Boundary (CED sponsored)**Cc:****Subject:** Fairbanks Annexation**Attachments:**

to whom it may concert, I think the annexation should be passes. adding Fred Meyer's to the city will surly help the city income and it just make sense.

thanks

Shawnee Dunham
2950 Airport Way
Fairbanks, Alaska 99709

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 You replied on 4/15/2009 7:49 AM.

Commission, Boundary (CED sponsored)

From: biondi [biondi@iglide.net]

Sent: Tue 4/14/2009 3:17 PM

To: Commission, Boundary (CED sponsored)

Cc:

Subject: Fairbanks Annexation

Attachments:


TO: The Local Boundary Commission

I am writing in support of the City of Fairbanks annexation of the Fred Meyer Subdivision and the lots on Park/Riverside which are totally surrounded by the City.

These areas are clearly part of the City of Fairbanks and the residents and owners of property in these areas obviously receive benefits of city services that warrant their inclusion in the city's boundaries. Your approval of this annexation will provide an equitable resolution to the City as well as the residents, property owners, and users of services in these areas.

Thank you for your time and consideration.

Vicky Biondi Ferree
230 Slater Drive
Fairbanks, AK 99701

 You replied on 4/15/2009 7:53 AM.

Commission, Boundary (CED sponsored)

From: Steve Ferree [sferree@usibelli.com]
To: Commission, Boundary (CED sponsored)
Cc:
Subject: Support Annexation
Attachments:

Sent: Tue 4/14/2009 2:46 PM

I am a resident of the city of Fairbanks and am writing to support the Fred Meyers Annexation.

Thank You
Steve Ferree

Starkey, Jennie B (CED)

From: SEAN WHITE [swhite@gci.net]
Sent: Tuesday, April 14, 2009 12:44 PM
To: Starkey, Jennie B (CED)
Subject: Fairbanks Annexation

Local Boundary Commission
April 14, 2009
Dear Sir or Madam:

This letter is regarding the proposed annexation by the City of Fairbanks of enclave lots and the Fred Meyer West subdivision. The letters previously submitted focused on fire and police services my focus is on basic constitutional issues and the financial impacts of annexation. Currently the Fred Meyers West subdivision has a differing tax structure than the adjacent Safeway subdivision with regard to sin taxes and property taxes. Annexation would level the economic playing field so to speak between these adjacent properties. Annexation also has the effect of bringing all of the large retail facilities inside the City of Fairbanks. This is the basic justification emphasis of article 10 and the supporting statutes codified currently under state law.

Regarding the service area affected the LCB has already addressed a similar situations citing the Fairview case and the city of Homers annexation of a borough service area. The impact on the UFSA is immaterial to the issue of annexation. The City of Fairbanks will provide a higher level and more services period.

I see this annexation as nothing more than the natural growth of a city. Denying this annexation would be in direct conflict to what I believe the intents of our constitution and its supporting statutes are.
Sincerely,
Sean P. White

Commission, Boundary (CED sponsored)

From: sjthomp@ptialaska.net [sjthomp@ptialaska.net] **Sent:** Wed 4/15/2009 10:11 AM
To: Commission, Boundary (CED sponsored)
Cc:
Subject: Fairbanks Annexation
Attachments:

Dear Local Boundary Commission:

I was Mayor of the City of Fairbanks from 2001 - 2007. During that time, our staff spent considerable time looking at annexation of a large area to the south and west of the present boundaries. While we ultimately decided not to pursue the large annexation, I had a chance learn quite a bit about the annexation process. I support and applaud the City's current Annexation Petition to annex the Fred Meyer Subdivision and the lots along the river that should have been annexed many years ago.

Both the areas in question are integral parts of our City which would receive the benefits of full time paramedic level Emergency Medical Service, a highly experienced police and fire staff, building and fire code enforcement as well as much needed road construction and maintenance to the lots along the river.

Annexation of the land where the Fred Meyer's West store is located will enhance the City's ability to provide essential public service.

Thank you,

Steve Thompson
PO Box 70843
Fairbanks, Alaska 99707

Charles Bettisworth, AIA

Architect

Residence 204 Front Street
Work phone 907 456 5780Mailing Address PO Box 73209 Fairbanks, Alaska 99707
home phone 452 6643 e-mail cbettisworth@bettisworth.com

Local Boundary Commission
Division of Community and Regional Affairs
Department of Commerce, Community and Economic Development
State of Alaska

Commissioners,

As a former Chairman and Commissioner of the Local Boundary Commission, a resident of the City of Fairbanks, and the Fairbanks North Star Borough, I write this letter in strong support of the City of Fairbanks Petition for Legislative Review Annexation of Approximately .05 square miles to the City of Fairbanks.

I have been a resident of Fairbanks for most of my life, and am president of Bettisworth North, an Architectural practice offering services statewide from offices in Fairbanks and Anchorage.

I support this petition for the following reasons:

1. The petition requests the annexation of a group of enclave lots located along Airport Way and the Chena River. A review of the map identifying this annexation, makes it clear that the City Boundaries have extremely gerrymandered to exclude these properties.
2. It is also clear that these properties enjoy the benefits of some of the City of Fairbanks services provided to adjacent lots; particularly street maintenance and repair, and City police protection services.
3. With respect to the Fred Meyer Subdivision, this subdivision is clearly an urbanized area, and fully capable of supporting the services it currently receives and will receive upon annexation.
4. The Legislative review process is specifically designed for situations such as this, where land owners object to additional taxation while enjoying the services a municipality provides to adjacent properties.

For these reasons I encourage the Commission to accept this Petition, and forward it to the Legislature for Consideration.

Sincerely,



Charles B. Bettisworth, AIA

3370 David Road
Fairbanks, AK 99709-
5303

April 11, 2009

Dear Brent,

A while back I had an informative phone conversation with you about the proposed annexation of Fred Meyer, Mr & Mrs Kinley Bank and Taco Bell by the city of Fairbanks.

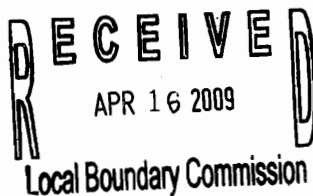
The signatures enclosed represent the feelings of those of us who live in close proximity or very near by. We are not concerned with the other disconnected area being sought.

We do not need or want city services or taxes. Also, the three businesses do not want to be annexed. We are all happy the way we are.

The city hasn't even managed to keep their city streets cleared safely the full width. Should they be given more? We also fear this annexation would just be the start of wanting more, which we also don't want to happen.

Sincerely,

Mrs. Janette L. Hanneman



**We the following Borough residents and land owners, are
opposed to annexation of Fred Meyer West and Mt McKinley
Bank into the city of Fairbanks, 11/11/08**

Name(print)	Address	Signature
Sylvia King	3714 Mitchell Ave.	Sylvia King
Frederick B. Jann	3742 Mitchell Ave	Frederick B. Jann
Rangelynn Robinson	3744 Mitchell	Rangelynn Robinson
Jodi Tiro	3754 Mitchell Ave	Jodi Tiro
Mark C. Kline	3754 Mitchell Ave	Mark C. Kline
Bela J. Bicskei Jr	3758 Mitchell Ave.	Bela J. Bicskei Jr
Jo Ann Bicskei	3758 Mitchell Ave	Jo Ann Bicskei
Sunny Timchak	3760 Mitchell Ave	Sunny Timchak
Curtis Franklin	3766 Mitchell Ave	Curtis Franklin
Cecilia Franklin	" "	Cecilia Franklin
Alex Timchak	" "	Alex Timchak
Emily Timchak	" "	Emily Timchak
Kathy Martin	3809 Mitchell	Kathy Martin
Samuel L. Morten	3809 Mitchell	Samuel L. Morten
Mariah C. Sexton	1706A Roberts Rd	Mariah C. Sexton
Kevin V. Grant	1706 Roberts Rd	Kevin V. Grant
Zeh Wadaman	1804 Robert Rd	Zeh Wadaman
Brian Cooper	1819 Roberts Rd	Brian Cooper
Chris Sacher	3510 Erickson	Chris Sacher
Heather Lambert	3778 Erickson	Heather Lambert
Michael Marvin	3771 Erickson	Michael Marvin
Jay Marvin	3771 Erickson	Jay Marvin
Dennis Stacy	3751 Erickson	Dennis Stacy
Denise R. Edgerton	3723 Mitchell Ave	Denise R. Edgerton
ROGER EDGERTON	3723 Mitchell Ave	ROGER EDGERTON
Jim House	3709 Mitchell	Jim House
Marla House	3709 Mitchell	Marla House
Rhonda Fluharty	3704 Erickson Ave	Rhonda Fluharty
Laura M Mursch	3711 Swenson Ave.	Laura M Mursch

We, the following Borough residents and landowners, are opposed to annexation of Fred Meyer West and Mt. McKinley Bank into the city of Fairbanks. 11/11/08

Name (print)	Address	Signature
Janette L. Hanneman	3370 Davis Road	Janette L. Hanneman
Clyde R. Monzingo	3709 Mitchell Ave.	Clyde R. Monzingo
Darwin C. Monzingo	3709 Mitchell Ave	Darwin C. Monzingo
William Spear	3703 Mitchell Ave	W. Spear
E. THOMAS ROBINSON	3744 Mitchell Ave.	E. Thomas Robinson
Stephanie Collins	3716 Erickson Ave	Stephanie Collins
Frank C. Fluharty	3704 Erickson Ave	Frank C. Fluharty
JACK L ALLEN	3722 ERICKSON AVE	Jack L Allen
Lewis H Allen	3732 ERICKSON Ave	Lewis H Allen
Dean and Vivian Biddle	1702 ROBERTS Road	Dean Biddle

11/11/08

A-50

April 12, 2009

Local Boundary Commission
Department of Community, Commerce, and Economic Development
State of Alaska

RE: City of Fairbanks Annexation

Commissioners,

As President of the Fairbanks Fire Fighters Association I submit this letter, on behalf of our 40 members, in support of the annexation petition by the City of Fairbanks. We believe this annexation is in the best interest of Fairbanks and all its residents. This annexation is about a Class 1 cities right to grow, ensuring quality services to all of its residents and visitors. Therefore, we support the annexation of the Fred Meyers West Subdivision and the lots on Riverside Drive into the City of Fairbanks.

Unfortunately this issue has been predominantly portrayed as a Fire Department issue by those who oppose the annexation. Comparing the two different fire departments is of no relevance to the overall issue and detracts from the true merits of the Cities petition. However, we feel there are a few statements that went a little to far and we will clarify some of our beliefs on our departments strengths.

The fact is that the City of Fairbanks Fire Fighters can protect this property as well as we protect any other property in the City of Fairbanks. The City of Fairbanks Fire Department currently protects properties less then 150' from the proposed areas to be annexed. Most of the opposition to annexation has relied on the argument that the University Fire Department is closer to the Fred Meyers property than the City Fire Department. I believe that both departments can and do provide sufficient coverage for the proposed properties.

The City of Fairbanks Fire Department has an advantage in that it provides paramedic level care on its ambulances. Per the current Fire Fighter contract at least two paramedics are on duty everyday. There is no comparison in level of training and experience between an EMT III and a Paramedic. As a paramedic myself, I know all to well the number of hours spent in the classroom, in clinical settings, and studying that it takes to become a paramedic. Currently it takes in excess of 1,200 hours to become a licensed paramedic in Alaska and only about 240 hours to become a certified EMT III.

Paramedics in the City of Fairbanks have the ability to administer several more medications than an EMT III and perform several potentially life saving procedures that EMT III's cannot. The City of Fairbanks Fire Department carries at least four or five medications that the University Fire Department does not carry. Additionally, simply comparing numbers of medications and whether they were used on a sampling of emergency calls is an inadequate method of determining if paramedic care would have been beneficial to a patient (as stated in other letters). Often, the Paramedics assessment skills are their best treatment tool.


I could refute many of the comments one for one that has been sent to you regarding which department provides the better service. In reality, both departments can handle the call volume of the Fred Meyer West Subdivision and both can respond in accordance with nationally recognized time standards. In the case of any large-scale emergency, both departments would rely on one another for assistance.

As stated before, this should not be a Fire Department issue. This is about a Class 1 City that should be allowed to grow. There are very few residents in the Fairbanks area that actually know the Fred Meyers property falls outside the City of Fairbanks. Fairbanks is a growing and changing community (as evidenced by new construction), and these changes necessitate the City being allowed to grow as to accommodate these changes.

It is reasonable for the first step in that growth to be the annexation of the only large retail store that falls outside the City limits. Bringing in this property is not a "money grab" for the cities tax base; it is to put every local store on a level playing field. City residents will have the ability to decide how they want to proceed after that.

I ask that the Commission rules in favor of the proposed annexation and gives the City of Fairbanks its opportunity to grow.

Dominic Lozano
President, Fairbanks Fire Fighters Association
IAFF Local 1324

 You replied on 4/17/2009 10:54 AM.

Attachments can contain viruses that may harm your computer. Attachments may not display correctly.

Commission, Boundary (CED sponsored)

From: Emily E. Bratcher [eebratcher@ci.fairbanks.ak.us]

Sent: Fri 4/17/2009 10:17 AM

To: Commission, Boundary (CED sponsored)

Cc: Mayor

Subject: City of Fairbanks Annexation

Attachments:  [Annexation.Support.pdf\(426KB\)](#)

Local Boundary Commission:

Please see my attached letter regarding the City of Fairbanks Annexation Petition, a hard copy is to follow to you in the mail.

I have also given the City of Fairbanks a copy of this letter.

Thank you for your time,

Emily Bratcher

April 17, 2009

Local Boundary Commission
Division of Community and Regional Affairs
550 West 7th Ave., Suite 1770
Anchorage, AK 99507-3510

Re: City of Fairbanks Annexation Petition

Dear Commissioners:

I would like to make comment on the letter submitted to your agency by my fellow Council Member, Jerry Cleworth.

1. City Policy on Legislative Review Annexations.

As a City of Fairbanks Council Member, I am not aware of any “unwritten policy” regarding legislative review annexations. As noted in the City’s Petition, this annexation, via the legislative review process, was approved by written City Council Resolutions Nos.4312, 4313, and 4335. The legislative review process is authorized by the Alaska Constitution. In 2007, the Commission approved use of legislative review annexation by the Ketchikan Gateway Borough to annex 4,701 square miles.

2. Two Areas Proposed for Annexation.

My understanding is that there is nothing unusual about combining two different areas in a single annexation proceeding, as done in this Petition. The Commission approved the annexation of two different areas totaling 4.58 square miles by the City of Homer in 2001, also by the legislative review process.

Regarding the “enclave lots” near Park and Riverside Drives, the Commission has previously noted the lack of logic in the City’s boundaries in that territory and suggested the City pursue annexation. The owners and residents of these lots have benefited from City services for decades, to include street maintenance and police protection.

3. Extraterritorial Extension of Fire Suppression Service.


Currently, the City provides fire service to four properties owned by two companies on Van Horn Road, south of the City, just outside the City pursuant to an agreement whereby the property owners pay one-third of the City mill levy¹. This area of our community continues to grow and the City has had several requests from new business owners for City services. Extension of fire service on contract is a natural progression toward annexation; about five years ago, the City studied annexation on the south side of Van Horn but decided not to pursue it as the estimated costs of providing service exceeded projected revenues. That may have changed in light of recent development and the issue should be revisited.

4. Alleged Intergovernmental Animosity.

Of the eight people that testified in front of the City Council during its consideration of the annexation Resolutions, only one City resident opposed the annexation; the other seven persons speaking in opposition were not City residents. The population of the Fairbanks North Star Borough is roughly 96,888; 31,639 of those are City residents. Between the FNSB testimony and City testimony regarding

¹ The City also provides extraterritorial Emergency Medical Services to this a larger area that encompasses these lots , pursuant to a contract with the Fairbanks North Star Borough, which exercises nonareawide EMS service.

Case No.	Case Name	Case Type	Case Status	Case Date	Case Time	Case Location	Case Description	Case Details	Case Notes
1	Case 1	Case Type 1	Case Status 1	Case Date 1	Case Time 1	Case Location 1	Case Description 1	Case Details 1	Case Notes 1
2	Case 2	Case Type 2	Case Status 2	Case Date 2	Case Time 2	Case Location 2	Case Description 2	Case Details 2	Case Notes 2
3	Case 3	Case Type 3	Case Status 3	Case Date 3	Case Time 3	Case Location 3	Case Description 3	Case Details 3	Case Notes 3
4	Case 4	Case Type 4	Case Status 4	Case Date 4	Case Time 4	Case Location 4	Case Description 4	Case Details 4	Case Notes 4
5	Case 5	Case Type 5	Case Status 5	Case Date 5	Case Time 5	Case Location 5	Case Description 5	Case Details 5	Case Notes 5
6	Case 6	Case Type 6	Case Status 6	Case Date 6	Case Time 6	Case Location 6	Case Description 6	Case Details 6	Case Notes 6
7	Case 7	Case Type 7	Case Status 7	Case Date 7	Case Time 7	Case Location 7	Case Description 7	Case Details 7	Case Notes 7
8	Case 8	Case Type 8	Case Status 8	Case Date 8	Case Time 8	Case Location 8	Case Description 8	Case Details 8	Case Notes 8
9	Case 9	Case Type 9	Case Status 9	Case Date 9	Case Time 9	Case Location 9	Case Description 9	Case Details 9	Case Notes 9
10	Case 10	Case Type 10	Case Status 10	Case Date 10	Case Time 10	Case Location 10	Case Description 10	Case Details 10	Case Notes 10

 You replied on 4/17/2009 10:52 AM.

Commission, Boundary (CED sponsored)

From: Gary Wilken [garywilken@me.com] **Sent:** Fri 4/17/2009 10:31 AM
To: Commission, Boundary (CED sponsored)
Cc: Peterson, Sheila (LAA); Terry Strle
Subject: "Fred Meyer" annexation support
Attachments:

Hello LBC members,

I am pleased to endorse the annexation of the southwest properties bordering the boundaries of the current City of Fairbanks (commonly referenced as the "Fred Meyer" annexation). This annexation is a small but significant step to allow the City of Fairbanks to provide efficient, dependable, and proven delivery of city services to all common retail areas of the greater metropolitan area of Fairbanks.

Thank you for providing a forum for this support.

Gary Wilken

Gary Wilken
garywilken@me.com

Appendix B - Fairbanks North Star Borough Fire Service Areas

