



LOCAL BOUNDARY COMMISSION

550 West 7TH Avenue, Suite 1640
Anchorage, Alaska 99501
PHONE: 907-269-4559 / 4587
FAX: 907-269-4563

STATE OF ALASKA LOCAL BOUNDARY COMMISSION

Minutes of Decisional Meeting, August 5, 2020. 2 p.m.
Meeting held via ZOOM online video conference

Call to order – Chair Larry Wood called the decisional meeting to order. Commissioners John Harrington, Lance Roberts, Kenny Gallahorn and Clayton Trotter were present. Also attending were 16 members of the public, Chief Assistant Attorney General Rebecca Polizzotto, and staff member Jedediah Smith.

Commissioner Roberts moved to approve the agenda for the decisional meeting. Commissioner Harrington seconded the motion. The motion passed without objection.

Chair Wood noted that the physical location requirement for the public hearing, per 3 AAC 110.550, was waived in light of the Governor's Disaster Declaration related to the COVID 19 pandemic. Commissioner Roberts moved that the City of Soldotna's annexation petition be denied. Commissioner Gallahorn seconded the motion.

Commissioner Harrington objected to the motion and said that typically the LBC has made motions related to annexation petitions in the affirmative so that the Commission may address all the annexation standards.

Commissioner Roberts said he planned to go through the checklist of annexation standards and, if there was agreement among the commissioners that one standard was not met, then the petition would fail. With permission of the second, Roberts withdrew his motion.

Harrington moved to approve the City of Soldotna's petition for annexation of territory by the legislative review method. Commissioner Gallahorn seconded the motion.

Chair Wood reminded commissioners that the City's petition is comprised of a single territory proposed for annexation, but made up of five different areas.

3 AAC 110.090(a) Need

Commissioner Harrington took exception that the entire territory proposed for annexation should be considered as a single unit, but rather that each of the five study areas should be considered individually.

Commissioner Roberts said he provided input on the preliminary report, but was unable to provide input on the final report, and would be presenting information based on his knowledge and experience with the City of Fairbanks, City of North Pole, and local utilities. Roberts said the LBC is supposed to consider the need of the territory, not the need of the city. Tax base may be the motivation for the city, but it is not something the LBC considers, and that residents in the territory are already paying sales tax which is used to provide city services. Building codes shouldn't matter, because the banks hire building inspectors and require certain standards be met. The Kenai Peninsula Borough has zoning already. Who can measure whether more restrictive or less restrictive

zoning is needed in the proposed territory. Roberts said the KPB has regulations regarding development along the riverfront. There isn't a need for road maintenance, as it is being provided by the Kenai Peninsula Borough; and that the water and wastewater service area approved by the RCA obligates the city to provide services to anyone in the area willing to pay for it. Roberts cited the City of North Pole as an example of expanding service outside their city without annexing the affected area and that they are not trying to annex it. Roberts said there has not been an outcry from the territory proposed for annexation for additional public safety, and that "sprawl" is a subjective term and is not something that should be considered.

Commissioner Wood said the commission may vote that the annexation factors have not been met.

Commissioner Roberts said outliers like Anchorage skew city sizes across the state and that he doesn't believe city of Soldotna is that small.

Commissioner Wood said commission should consider all of the annexation standards, then take a vote.

Commissioner Harrington said typically the commission is unanimous as to whether each annexation standard is met. If there is disagreement amongst commissioners, the conversation circles back to that particular standard.

Chair Wood said the city shouldn't necessarily wait until the public is asking for services in order to move forward with annexation, but rather the commission should look at what are the reasons for annexation.

Commissioner Roberts said the public was not expressing a need for services, and so the need must be proven by the city.

Commissioner Harrington said the city limits are not necessarily the city. The limits are what constrain the existing city. But all areas outside the city need services.

Commissioner Gallahorn said he questioned whether there was a need for City services in the territory proposed for annexation. Public safety is already provided in the territory. If the state had come forward and said it wanted to pull its public safety services out of the Soldotna area, then there would be a need. For water and sewer, if the city is going to provide the service, it should charge the customers.

Chair Wood noted the small footprint of the city. He said it is the job of the commission is to ensure the city has adequate resources to provide for its community, and the city has taken a conservative approach. The area around the city has grown at a faster rate than the city has been able to keep up with, and that he looked at the services the city could provide that the state is currently providing, and agreed with the recommendations in the staff report.

Commissioner Roberts said he did not think water and sewer service should be used as justification because the service area compels the utility to provide service. With regard to land use planning, Roberts said that since the Kenai Peninsula Borough is already providing it, the city cannot use that as a necessary service. EMS and fire safety services are provided by the Kenai Peninsula Borough. There is no guarantee that people in the territory proposed for annexation will receive water and sewer service.

The commission recessed for a ten minute break and reconvened at approximately 3:30 pm.

Commissioner Wood referred to the petitioner's statement that utility decisions are independent of those of the city, and that the petition represents an opportunity for the city to extend trust and provide

services to the territory, such as maintenance of roads and law enforcement. The city is asking its revenue sources to be protected.

Commissioner Trotter said he does not have an opinion on the need for city services issue. He said it seems reasonable for a city to want to grow. He asked whether the governor has the authority under emergency powers to waive the physical presence provision in the statute regarding the decisional meeting.

Rebecca Polizzotto said that Title 26 of Alaska Statutes grants the governor the ability to suspend statutes and regulations.

Commissioner Trotter asked whether the motion on the floor could be deferred until such time as the commission could have a physical meeting?

LBC Staff Jedediah Smith said the regulatory requirement is for the decisional meeting to be held 90 days after the public hearing.

Commissioner Trotter asked whether the courts upheld suspensions during disaster declarations

Rebecca Polizzotto responded that the courts have been deferential and would find it reasonable that the commission held its decisional meeting remotely.

Commissioner Trotter said he sympathizes with Commissioner Roberts' position. He stated that, from what he understood, the question is what is the need for City services of the people in the area. He was open to the idea of approving annexation of this territory and did not have his mind made up. He stated that it made sense for the City to more ability to expand and grow.

Commissioner Roberts said that the territory already receives planning services through the Borough. Citybuilding inspections may have a more efficient timeline

Chair Wood discussed whether another existing city or borough could provide services more effectively and pointed to the final report and lack of a respondent brief.

Commissioner Roberts said the Kenai Peninsula Borough did weigh in by submitting the resolution opposing the City's proposed annexation unless it was accomplished by local action, and that most essential services are already being met by the Kenai Peninsula Borough.

3 AAC 110.100 Character

Commissioner Roberts said much of the territory proposed for annexation meets the character standard, but that Areas 2 and 9 do not because they are empty, and may even violate the boundary requirements.

Commissioner Harrington said the character of the whole area is Soldotna and the commission is splitting hairs if it tries to deny the fact that the whole area is not similar character throughout.

Commissioner Trotter agreed with Commissioner Harrington and trying to describe differences within the territory is not realistic.

Commissioner Roberts compared it with the Fairbanks North Star Borough and the difference between urban Fairbanks and the outlying rural parts of the borough.

Chair Wood said the petition is for 2.63 square miles all close to the center of the city, and not anything on the scale of a borough.

3 AAC 110.110 Resources

Commissioner Roberts said he does think the city will be able to afford to provide the services they would be taking over from the state and the borough.

Commissioner Harrington said Area 2 may not have an economic base, but, since it has the city's water source, the city will be able to provide services that area needs. Area 9 does not have a lot of economic activity, but also does not have a lot of need either.

Commissioner Trotter said the city has a good handle on its finances and citizens should be pleased with how little debt the city has.

Commissioner Gallahorn said he thinks the city will meet the resource standard very easily.

3 AAC 110.120 Population (2:06.37)

Commissioner Harrington said the entire territory meets the population standard.

Commissioner Gallahorn said he agreed.

Chair Wood said he agreed.

3 AAC 110.130 Boundaries

Commissioner Roberts said the territory has plenty of land and water necessary to meet this standard for annexation.

Commissioners Gallahorn, Harrington and Wood all concurred

Commissioner Roberts said Areas 1 and 9 are not enclaves because they are not totally surrounded by city boundaries. He noted when the current city boundaries were formed, a deal was made to exempt these areas.

Commissioner Harrington said the areas were not surrounded, but they were close to being surrounded by city boundaries. Area 1, as a thoroughfare from one part of the city to another, should be considered an essential part of the territory. He also saw no objection to Area 9 being included in the territory

Chair Wood said the proposed expanded boundaries do not create any new enclaves.

Commissioner Harrington said that it is within the commission's powers to create enclaves, but it must have a good reason to do so.

Commissioner Roberts said Areas 2 and 9 are large, unpopulated areas and the commission needs to look at how annexation of those areas is justified.

Commissioner Harrington said Areas 1, 3 and 5 are populated, and the commission needs to justify why 2 and 9 should be included in the territory Area 9 is unpopulated, and there could be questions about its justification. The city needs Area 2 in order to exercise its authority in accessing the water source and its police presence at the high school makes sense.

Commissioner Roberts said he does not agree or see justification for including Areas 2 and 9 in the territory. Most of the land in these areas is not owned by the city, and the city has never had a

problem accessing its water infrastructure. He said he does not see the benefit to the city in annexing Area 9, and that residents of the area testified to high cost of obtaining water and sewer to the area.

The commission took a break at approximately 4:30 pm and resumed at 4:45 pm.

Chair Wood said there is reason for the annexation of these areas because of the contiguous boundaries and the city's need to traverse some of the areas to access other areas in the current city boundaries.

Commissioner Harrington said the proposed territory does not overlap another existing city. Chair Wood asked whether the petition supports maximum local self-government?

Commissioner Harrington noted the annexation allows more people to vote in the small area.

Commissioner Roberts said local government needs may be met in public safety.

Commissioner Wood asked whether the petition meets the minimum local government units standard.

Commissioner Roberts said it does. Commissioners Harrington and Gallahorn agreed.

3 AAC 110.135 Best Interest of State

Commissioner Harrington said the petition meets the maximum local self-government standard, complies with the minimum number of local government units, and alleviates the state from providing some services, and would be in the best interest of the state.

Chair Wood said the petition is in the best interest of the state. Commissioner Gallahorn agreed.

Chair Wood asked whether the territory is wholly or substantially surrounded by the annexing city.

Commissioner Harrington said that is why the areas need to be dealt with separately, rather than as a single territory. Areas 1 and 9 are substantially surrounded. Areas 2, 3 and 7 are not. Each area needs a reason to go through the process of legislative review.

Commissioner Roberts said an area surrounded on three sides shouldn't be considered "substantially surrounded" even if it is on three sides.

Commissioner Gallahorn said Areas 1 and 9 are substantially surrounded by the city.

Commissioner Trotter said he agreed with Commissioner Roberts.

Commissioner Wood asked whether the health, safety and well being would be endangered, and whether annexation could mitigate that.

Commissioner Roberts said there are river regulations, and the commission does not have expertise to determine whether the borough's regulations are insufficient.

Commissioner Trotter said he does not see anything in the petition that shows an endangerment to residents in existing conditions.

Commissioner Roberts said there is nothing annexation would do to allow the city to provide services it is not able to provide currently.

Commissioner Harrington said he agreed, except for Area 2, in which the city already has a presence in an area that it wants to annex. And the fact that there is nobody in the area to vote suggests legislative review is the most appropriate method.

Chair Wood said services such as law enforcement, planning and zoning, plan review and inspection services provided by the borough would not be extended.

Commissioner Roberts said he interpreted the regulation to mean whether annexation would stop the city from providing services it is already providing.

Commissioner Roberts said residents of the territory are getting some services, but they are also paying sales tax, which provides an equitable offset.

Commissioner Harrington said the city is identifying properties of a commercial nature that are benefitting from the city without being inside the city.

Commissioner Trotter agreed with Commissioner Roberts that the residents of the territory were already paying sales tax when they go into the city. There are 17,000 people in the surrounding area that are paying sales tax, but there are entities that are receiving benefits that are not paying sales tax and so the question is difficult to answer.

Commissioner Roberts said property owners that may live outside of the state would not necessarily receive any benefits from the city.

Commissioner Harrington said the commission had already decided that each one of the standards has been met by all areas except Area 2.

Commissioner Roberts said he could not see how the growth or development in the territory would adversely impact the city. The residents would only do more shopping in the city and give the city more money.

Commissioner Harrington said that the city needs to annex Area 2 to be able to control access to its water treatment plant.

Chief Assistant Attorney General Polizzotto said the legislative review regulation references 3 AAC 110.981 and .982 to describe a circumstance that will determine whether the petition meets the standard for annexation by the legislative review process.

Commissioner Harrington said there is a tension between maximum local self-government and minimal number of local government units and commissioners need to be rational in considering this standard.

Commissioner Trotter said the annexation does increase local self-government and does not increase the number of local government units.

3 AAC 110.900 Transition

Commissioner Roberts read from the petition and questioned whether the city worked with the borough, or whether it intends to work with the borough.

Chair Wood noted the city provided a list of officials with which it consulted in preparing its petition, and asked the other commissioners whether they thought it met the standard. Each commissioner agreed.

The commission took a break and reconvened at 6 p.m.

3 AAC 110.910 Statement of Non-Discrimination

Chair Wood said the statement on non-discrimination is covered in the final report and in the petition.

3 AAC 110.970(c) Determination of Essential Municipal Services

Commissioner Roberts said that if another entity is already providing a service, the LBC has no way of knowing the relative effectiveness of that service. He said the petitioner does not get to choose the list of essential services, and that the only one the petition mentions, that is listed under 3 AAC 110.970 is public safety, and that he does not believe any of the other services the petitioner listed are essential.

Commissioner Trotter said the question is more appropriate for setting up a new local government.

Chair Wood said it would be appropriate to mention these comments during the closing discussion after the commission has voted on the petition.

Chair Wood then stated that there was a motion on the floor, made by Commissioner Harrington, and seconded by Commissioner Gallahorn, to approve the City's petition for annexation of territory by the legislative review method.

Commissioner Roberts moved to amend the petition to remove Area 9 from the territory proposed for annexation. The motion died for lack of a second.

Commissioner Roberts then moved to remove Area 2 from the territory. The motion died for lack of a second.

Commissioner Roberts then moved to remove Area 1 from the territory. The motion died for lack of a second.

Commissioner Roberts then moved to remove Area 3 from the territory. The motion died for lack of a second.

Commissioner Roberts then moved to remove Area 7 from the territory. The motion died for lack of a second.

Commissioner Roberts then moved to amend the motion to approve the petition by converting the petition from annexation by the legislative review method to the local action method. Clayton Trotter seconded this motion.

Commissioner Roberts said the majority of the residents that testified on the petition had not expressed a need for city services, and expressed a desire to vote on the petition.

Clayton Trotter asked whether the commission has the authority to make this change.

Chair Wood read from 3 AAC 110.610(a) which states that the commission may amend a legislative review petition to a local action petition if the commission determines that the balanced best interests of the locality and the state are enhanced by local participation.

Commissioner Trotter said the arguments in favor of the petition are excellent, but he supported the amendment to allow the people the right to vote. He asked whether the entire city would be allowed to vote, or just those in the territory.

Chair Wood said both the residents of the city and the residents of the territory would vote.

Chief Assistant Attorney Polizzotto said the commission has never converted a petition from legislative review to local action method at this stage in the proceedings, and that if the commission wanted to explore converting the petition, it would require significant legal analysis she could not provide without more research.

Commissioner Gallahorn moved that the commission meet in executive session for the purpose of receiving legal advice. Commissioner Harrington seconded the motion. The motion passed without objection.

The commission convened in executive session at approximately [REDACTED] p.m. At approximately 7:40 p.m., the commission reconvened.

Commissioner Roberts moved to recess the meeting to the call of the chair. Commissioner Harrington seconded the motion. It passed without objection.

APPROVED _____, _____:

LOCAL BOUNDARY COMMISSION

LARRY WOOD, CHAIR

ATTEST:

JEDEDIAH SMITH, STAFF