

# STATE OF ALASKA

## LOCAL BOUNDARY COMMISSION

In the Matter of the )  
Petition for Annexation )  
Of 2.63 Square Miles to )  
The City of Soldotna )

### STATEMENT OF DISSENT BY COMMISSIONERS JOHN A. HARRINGTON AND LARRY D. WOOD

#### Introduction

Our dissent to the Statement of Decision<sup>1</sup> by the majority of the Local Boundary Commission<sup>2</sup> pertaining to the City of Soldotna's<sup>3</sup> annexation petition is strictly limited to the majority's improper conversion of the petition from the legislative review method to the local action or option process.

This inappropriate amendment stems from the Decision's misapplication of 3 AAC 110.610(a) and its disregard of constitutional and statutory requirements. In the absence of these errors, we find that Soldotna's petition for annexation of territory satisfies each of our annexation review standards and ought to have been approved by the Commission without imposition of this unprecedented, unlawful conversion.

In its Decisional Meeting, the Commission convened to consider if the City's proposed boundary change satisfied the standards reflected in Alaska's Constitution, statutes, and regulations for approval of annexation petition by a city relying upon the legislative review method.<sup>4</sup> During this meeting, a majority of commissioners agreed that Soldotna

---

<sup>1</sup> "Decision" or "Statement of Decision" refers to the majority's action to convert the City of Soldotna's petition to annexation by the local action process during the Commission's Decisional Meeting and/or to its Statement of Decision, as the context requires.

<sup>2</sup> Hereinafter, "LBC" or "the Commission."

<sup>3</sup> Hereinafter, "Petitioner's," "Soldotna's," or "the City's."

<sup>4</sup> The Decisional Meeting took place over the course of three Zoom sessions on August 5, October 20, and October 29, 2020. It followed the Commission's August 4, 2020, public hearing to consider the City's proposed boundary change and all information and comments that were submitted to us related to it.

had satisfied standards for annexation of the territory to be annexed<sup>5</sup> and that it had also satisfied one or more of the circumstances described in 3 AAC 110.140 for annexation of territory by the legislative review process. By virtue of its Decision, the majority later approved the City's petition relying upon the local option method for annexation of territory. This result is also reflected in the Statement of Decision.<sup>6</sup>

Unfortunately, an initial motion to approve the City's annexation petition was amended by a majority of three commissioners to convert the City's petition for annexation of territory to the local action method. Given past results of annexation petitions that were submitted to local voters, the majority's action almost certainly defeats the City's annexation proposal for the reasons we explain below, and fundamentally disregards the Commission's purpose and responsibilities along with many years of LBC precedents.

### **Statement of Dissent**

A high bar must be met to convert a petition for annexation from the legislative review method to the local action process. A reasonable basis must justify such an amendment. Regulation 3 AAC 110.610(a) states:

The commission may determine during the course of proceedings that a legislative review petition must be amended and considered as a local action or local option petition if the commission determines that the balanced best interests of the locality and the state are enhanced by local participation. Emphasis added.

When the majority was asked to delineate a reasonable basis for their amendment of the City's petition to the local action method, they failed to do so. The motion was justified simply as: "[t]he reason we need the local option is so that those people in those areas to be annexed can make a decision and make it public on whether those services are sufficient for them to submit to another governing authority and the rules and regulations and taxes that that brings. So that's why I believe why it's important to shift this from legislative review to local option."<sup>7</sup> Further, "...what's really important is that those in the areas being annexed get to make their voice, their vote is their voice, as we're going to find out next week, and they get to say whether or not they think the services are worth what they have to give up to get them..."<sup>8</sup> On the contrary, it is

---

<sup>5</sup> See 3 AAC 110.090, et seq.

<sup>6</sup> "The Commission finds that the proposed annexation meets the standards for annexation to cities as set forth in 3 AAC 110 as more fully discussed below." Page 6.

<sup>7</sup> See discussion generally: LBC Decision Meeting, October 29, 2020, 38:17 and following.

<sup>8</sup> Id.

patently unreasonable for LBC to shift its boundary change responsibilities to a small group of voters largely unfettered by considerations other than their own self-interest.

We believe that the majority's Decision has unlawfully delegated LBC's constitutional mandate to objectively consider the City's boundary change and to make a sound annexation decision based on the Commission's regulatory standards. Moreover, the decision to approve or deny Soldotna's annexation petition rests with the LBC, not with local voters who will not be bound to act by any objective evaluation criteria – and who are not charged to determine how annexation does or does not serve the state's and even the locality's best interests. The balanced best interests of the state and locality are in no way enhanced by the Decision's improper choice to pass the buck and let the voters decide.<sup>9</sup> In the past, the Commission has noted its role as a statewide decision-making body ensuring boundary changes like this one enable stable municipalities rather than place an additional burden on the state government. Here, that role has been abandoned.

Lest annexation proposals for boundary changes succumb to potential stratagems of local self-interest, the framers of Alaska's Constitution purposefully declared that local boundary decisions would be made at the state level.<sup>10</sup> Alaska's Constitution states:

A local boundary commission or board shall be established by law in the executive branch of 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

---

<sup>9</sup> The Statement of Decision reads: “[t]he Commission believes that the best interests of the state are served by allowing residents of the territory and the city to vote on annexation” (page 11) and “[t]he Commission believes that the best interests of locality and the state are enhanced by local participation in this instance.” Page 6. However, the dismal track record of local option petitions submitted to voters (see footnote 15 below) demonstrates that the best interests of the state and the locality are neither served nor enhanced by local action; only local self-interests are likely served.

<sup>10</sup> The majority was unconstrained by constitutional principles and legal precedents pertaining to proposed boundary changes. For example, “I am also impressed, I guess, that this is a case of first impression...so it is new territory that we're in, so I guess I'm inclined to allow a vote of those who are directly affected by this [proposed annexation].” See discussion generally: LBC Decision Meeting, October 29, 2020, 1:34 and following.

procedures whereby boundaries may be adjusted by local action. Section 12. Boundaries. Emphasis added.

The Alaska Constitution established a legislative review method for proposed boundary changes as LBC's primary tool. Even though the Commission was given discretion to develop a local action method to adjust boundaries, this tool is a secondary process.

LBC's constitutional context is discussed on page four of our staff's Final Report to the Local Boundary Commission Concerning the Legislative Review for the City of Soldotna's Petition to Annex 2.63 Square Miles of Territory. The report provides a concise summary of LBC's roles and responsibilities as described in the Alaska Constitution and related court decisions. Note, in particular, an expectation and priority for the legislative review process:

The Alaska Supreme Court has ruled that the intention of Article X, Section 12 of Alaska's constitution, and its implementing statute, AS 44.47.567, was to provide an objective administrative body to make state-level decisions regarding local boundary changes. The court concluded further that this was intended to avoid the chance that a small, self-interested group could stand in the way of boundary changes which were in the public interest. The Alaska Supreme Court has further held in several cases that the legislative review method of annexation stems from the conviction among those who wrote Alaska's Constitution that "local political decisions do not usually create proper boundaries and that boundaries should be established at the state level." Citations omitted.

The court has also ruled that expansion of municipal boundaries is a matter of statewide concern. 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, and not just that of the local community.<sup>11</sup> Emphasis added.

Moreover, 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. Fairview Public Utility Dist. No.1. See: footnote 6. In the words of the constitutional committee on local government, the advantage of the boundary change method proposed "lies in placing

---

<sup>11</sup> Citing: Fairview Public Utility Dist. One v. City of Anchorage, 368 P.2d 540 (Alaska 1962), and Oesau v. City of Dillingham, 439 P. 2d 180 (Alaska 1968).

the process at a level where area-wide or state-wide needs can be taken into account.”<sup>12</sup>

As noted in staff’s final report, the legislative review method was established to avoid a local self-interested group standing in the way of annexations; that local political decisions do not create proper boundaries; and that those who reside or own property in an area have no vested right to vote on an issue.

Additionally, a preference for the legislative review method for boundary changes is reflected in AS 29.06.040(d) which states: “A boundary change effected under...(b) of this section [legislative review method] prevails over a boundary change initiated by local action, without regard to priority in time.” The Decision disregards these precedents and our constitutional and legal responsibilities by improperly converting a legislative review petition to a local action petition.

Years ago, the Commission promulgated an unused regulation to provide for conversion of an annexation petition by the legislative review method to a local action petition. As noted above, the regulation states:

The commission may determine during the course of the proceedings that a legislative review petition must be amended and considered as a local action or local option petition if the commission determines that the balanced best interests of the locality and the state are enhanced by local participation. 3 AAC 110.610(a). Emphasis added.

There is no regulatory history that explains the rationale for this regulation nor, importantly, code definitions that were simultaneously promulgated to flesh out its ambiguous terms.

In LBC’s 60-year lifespan, a conversion like this has never been ordered nor contested; therefore, no court has weighed in to evaluate when and whether a reasonable basis can ever exist for converting a petition to local action.<sup>13</sup> There is a reason this regulation

---

<sup>12</sup> Fairview Public Utility Dist. One, Id.

<sup>13</sup> 3 AAC 110.150 explains when a local action petition may be approved. Importantly, the same standards specified in 3 AAC 110.090 – 3 AAC 110.135 apply for approval of petitions by either the legislative review method or the local action process. See also: 3 AAC 110.140. Thus, combined with the commissioners’ recognition that that one or more of the circumstances listed in 3 AAC 110.140(1) – (9) for each five study areas exists (see further discussion below), the proper remedy is to recognize that only the conversion of the annexation petition to the local action need be undone. Once corrected, the Statement of Decision ought to be timely presented to the Legislature for its review. Moreover, 3 AAC 110.570(d) stipulates that “[i]f the

has never been relied upon in this fashion: how the “balanced best interests of the locality and the state” could ever be “enhanced” by amendment of an annexation petition to local action, particularly to “let the voters decide,” defies imagination, shirks LBC’s responsibilities, and ignores constitutional expectations.<sup>14</sup>

Although this concern was raised, the majority did not stop to consider whether the Administrative Procedures Act requires that LBC first promulgate rules to better explain 3 AAC 110.610(a) before invoking its ambiguous provisions, such as “the balanced best interests of the locality and the state” that must be “enhanced by local participation.”

Individuals, including the Kenai Peninsula Borough mayor, strenuously object to Soldotna’s annexation proposal. Others support it. In granting their request for a local vote the majority essentially declared that it’s “the right thing to do and people have a right to vote on the question of annexation.”<sup>15</sup> Although this step may take the heat off

---

commission determines that a proposed change fails to meet the standards contained in the Constitution of the State of Alaska, [various statutes], or this chapter, or is not in the best interests of the state, the commission will reject the proposed change.” That determination was never made: on the contrary, the LBC determined in its deliberations and Statement of Decision that the City’s petition for annexation of territory satisfies those standards.

<sup>14</sup> In the absence of clarifying regulations, it may be speculative to suggest that involuntary conversion of a city’s petition for annexation by the local action method described in 3 AAC 110.610(a) and compelled by the Decision should only be considered when none of the circumstances stated in 3 AAC 110.140 (authorizing annexation by the legislative review process) exist. However, since one of those circumstances is whether “specific policies set out in the Constitution of the State Alaska...” or several cited statutes “...are best served through annexation of the territory by the legislative review process, and that annexation is in the best interests of the state” (3 AAC 110.140(9)), we cannot divine what situation could ever justify implementation of 3 AAC 110.610(a). Emphasis added. That is, if a proposed boundary change is not in the best interests of the state, it may not be approved by either method.

Further, preference and priority are given to the legislative review method in any event. The Commission’s long history reflects that our LBC predecessors reached the same conclusion.

<sup>15</sup> This improper conversion most likely marks the end of this boundary change request and others like it. Votes on annexations have seldom been successful. Since 1959, 264 petitions by cities for annexations have been presented to the LBC. Of those, 136 were petitions for annexation by local action. Fifty-seven of these 136 petitions were approved by LBC based on unanimous consent or were otherwise uncontested boundary changes. Of the remaining 79 petitions for annexation that went to vote only 10 were approved. That is, only 12.6% of petitions for annexation by cities by the local action process were approved by voters. These dismal statistics clearly support the framers and the Supreme Court’s concern that “local political decisions do not usually create proper boundaries and that boundaries should be established at the state level.” As if to justify involuntary conversion of Soldotna’s petition to the local option method, the Statement of Decision notes that the City “has successfully annexed territory four times since incorporation.” Page 11. Critically, it fails to make note that each of those annexations were implemented the unanimous consent method of local action. Of course, the City’s proposed annexation is not by unanimous consent.

Statement of Dissent by Commissioners Harrington and Wood

Decision Converting City’s Petition for Annexation of Territory to Local Action Method

Page 6 of 16

---

the LBC and “let the people decide,” it ignores legal precedents and unlawfully delegates the Commission’s state-level responsibility to objectively and fairly consider boundary changes. All objections and support for annexation petitions certainly must be invited and fairly considered, but succumbing to objections in this fashion is unprecedented and unlawful.<sup>16</sup>

By consigning the City’s annexation petition to local action because individuals who reside or own property in the territory claim to have a right that annexation take place only with their consent, the Decision pushes the LBC’s labors over a cliff. That is, how will the City or other cities with annexation needs ever know if and when the LBC will simply convert their petitions for annexation to local action the minute any number of residents, large or small, near or far, object to those proposals? In light of the precedent established by the Decision, how will the Commission ever turn away from similar protests when pressured to submit proposed boundary changes to local political decision-making?

In order to satisfy due process, equal protection, and other constitutional requirements, the majority must enunciate clear guidelines to guide LBC’s stakeholders as they consider and comment on proposed boundary changes. In light of this Decision, footnote 15 explains why municipalities can reasonably be expected to refrain from investing time and expense into considering and proposing annexations.

In short, the majority’s action tees up for judicial review and correction an outcome that constitutional framers sought so diligently to avoid “by placing authority in this third party, [where] arguments for and against boundary change can be reviewed.”

---

Of the 177 residents in the territory, we understand that approximately 140 are eligible to vote. If voter turnout is low when a petition for annexation is considered, say 20% of eligible voters, only 28 people or less will decide the petition’s fate. Petitioner states: “It does not make sense for the Commission to elevate the interests of a tiny group of people over those of all Alaskans and those of existing Soldotna residents, under the guise of ‘balancing’ best interests. It is not balancing to allow approximately 140 people to determine the boundaries of an entire city of more than 4,300 people.” City of Soldotna Statement on Pending Motion to Convert Annexation Petition from Legislative Review to Local Option.” August 30, 2020.

<sup>16</sup> This concern was validated by a local resident: “Local landowners, business owners, and residents who live, work, or own property in the City of Soldotna and potential annexation areas should all be represented when considering such a large-scale change to an area. The Legislative Review [method for annexation] allows for all parties to be objectively represented by our State elected [sic] officials using a more balanced approach that is less likely to be subject to local, political influence.”

The majority fails to describe any reasonable basis for its Decision nor to provide any guidance to the City or other cities – except to say that their future conversion decisions will apparently depend on the extent to which they feel torn about any particular annexation. That is, if they feel uncertain about an annexation request, apparently legislative review petitions will be converted to the local action method, and the people will decide the issue.<sup>17</sup>

Surely, the Administrative Procedures Act calls for much more appropriate, less subjective, and carefully delineated standards to be developed and adopted by LBC when the Commission changes course and impacts its public stakeholders so fundamentally.<sup>18</sup> Under Alaska’s Constitution, the Supreme Court has declared that the LBC has the duty to ensure that administrative action complies with the laws of the Alaska. Absent known standards governing the changing of local boundary lines, the court has observed that the legislature’s ability to make rational decisions as to whether to approve or disapprove proposed local boundary changes of the Commission is seriously handicapped. United States Smelting, Ref. & Mining Co. v Local Boundary Commission, 489 P.2d 140 (Alaska 1971). Thus, the court directed LBC to promulgate regulations to guide its consideration of boundary changes and to administratively delineate its standards so all stakeholders know and rely upon them.

Likewise, in the absence of definitive standards to guide the majority’s conversion of municipal petitions for annexation by legislative review to local action, how will municipalities understand why and when 3 AAC 110.610(a) will be implemented by the Commission?

The touchstone consideration for all LBC deliberations and actions is: “will this action be in the best interest of the state?” The majority’s action to convert the City’s petition to

---

<sup>17</sup> See discussion generally: LBC Decision Meeting, October 29, 2020, 1:48 and following.

<sup>18</sup> Four of five LBC commissioners are relatively new appointees. This is their first consideration of any boundary change proposal. Three of those commissioners form the majority in this Decision. Comments suggested that their conversion action is a case “of first impression.” That is, that this amendment to the City’s annexation petition should apparently be viewed as establishing a completely original issue of law for decision by the court -- rather than a completely unnecessary and costly disregard of our constitutional obligation to consider and to act on any proposed local government boundary change that satisfies LBC standards. As unpaid volunteers acting in our official capacity, we likely have no personal or financial stake in this incorrect decision. The majority’s disregard of LBC responsibilities and precedents most certainly commits the state, the City, and the court system to expend many thousands of dollars to rectify its improper conversion action at a time when state and local revenues can least afford it, and when diminishing public resources are best committed to greater needs -- such as Alaska’s escalating costs associated with a deadly, world-wide pandemic affecting thousands of ill and unemployed Alaskans.



annexation by local action is NOT in the best interest of the state, nor most probably, its locality. Indeed, as noted above, the Decision is detrimental to and impedes the Commission's consideration of future legislative review petitions.

The annexation petition includes an area of 2.63 square miles. The City proposes to annex this area as one territory. However, the City's annexation request described several study areas that avoided considerable expense and duplication of effort. Of course, the LBC must consider each of the five study areas separately to determine if each meets the standards for annexation and standards for annexation by the legislative review process. Importantly, the majority's conversion of Soldotna's petition to annex by the local action method also requires that the Commission consider if each study area meets the standards for annexation that also apply to consideration of petitions for annexation by the legislative review method. Thus, it is essential to individually review each of the five separate areas.

The five annexation study areas are described in Soldotna's annexation petition and in the preliminary and final reports prepared and presented to the Commission by its staff. See: Appendix for maps of *Proposed Annexation Areas* and the *2015 Soldotna Annexation Study*. The maps depict the areas and provide population numbers.

The areas are:

- Area 1: (Funny River West) is an enclave nestled in the southern part of Soldotna. It has a population of about 82 residents and abuts the west end of the Soldotna Municipal Airport.
- Area 2: (Skyview) is a large tract; it has no residents. It includes the municipal water plant and a high school.
- Area 3: (K-Beach South) has a population of about 40 residents. The area can expect substantial future business growth.
- Area 7: (Kenai Spur) has a population of about 53 residents. It includes commercial development.
- Area 9: (Funny River West) is located at the southeast corner of Soldotna. It is a five-sided enclave with a population of about three residents. It abuts the east end of Soldotna Municipal Airport

As noted above, the legislative review process is the primary tool established by Alaska's Constitution for LBC action. Any proposed boundary change must be in the state's best interest. However, specific standards for legislative review method must also be satisfied. That is, 3 AAC 110.140 provides in part:

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:

\* \* \*

(4) residents or property owners within the territory receive or may be reasonably expected to receive, directly or indirectly, the benefit[s] of city government without commensurate tax contributions, whether these city benefits are rendered or received inside or outside the territory is within the boundaries of the city, and no practical or equitable alternative method is available to offset the cost of providing these benefits;

During their Decisional Meeting, the commissioners agreed that the circumstance described in 3 AAC 110.140(4) exists. That is, all five study areas are adjacent to the Soldotna's city limits. All residents or property owners within the territory directly or indirectly benefit from the City's services. It was noted by one commissioner that all residents of the locality pay some City sales tax at least occasionally. Nonetheless, they all benefit in many ways due to their close proximity to city boundaries.

3 AAC 110.140(1) provides:

Territory that meets the annexation standards in 3 AAC 110.090 - 3 AAC 110.135 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;

Note that areas within the territory that meet this standard are referred to as "enclaves" in this discussion, even though they may not be completely enclosed. Further, LBC regulations prohibit the Commission from creating enclaves without substantial cause. Enclaves generally are an obstacle to efficient and effective management of an area by a city or borough.

The only similar action related to eliminating an enclave that the LBC has considered recently involved an area within the Fairbanks North Star Borough which was surrounded by the City of Fairbanks. The Commission unanimously approved this annexation request to eliminate an enclave.

Similarly, Area 1 comprises an enclave with a population of about 82 people. The Soldotna Municipal Airport is just to the east of this enclave.

Statement of Dissent by Commissioners Harrington and Wood

Decision Converting City's Petition for Annexation of Territory to Local Action Method  
Page 10 of 16

---

Area 9 is also an enclave with a population of about three people. It is adjacent to the City airport.

Three commissioners agreed during their decisional discussions that both enclaves satisfy the circumstance described in 3 AAC 110.140(1) and should fall within Soldotna's boundaries. The annexation of these enclaves will provide Soldotna a more efficient and effective delivery of its services to the community.

3 AAC 110.140(3) and (5) provide in part:

Territory that meets the annexation standards in 3 AAC 110.090 - 3 AAC 110.135 if the commission also determines that any one of the following circumstances exists:

\* \* \*

(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;

\* \* \*

(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....

Area 2 is a large area with no population. It includes the City's water plant, as well as Soldotna's high school. The annexation of land that includes a municipality's utility asset is not a unique request. For example, the City of Gustavus's petition to annex a large narrow area in order to include their municipal hydroelectric plant and its transportation corridor was approved by LBC. The above regulation is not an exact fit, but is sufficient, and the Commission has used this as a logical reason to justify the annexation in Gustavus. The logic of having a municipal asset inside the city limits and under a city's administrative management certainly fits what is in the best interest of the State of Alaska.

Area 3 has a bright future and can expect growth. It is also located adjacent to the City and has development potential. It satisfies 3 AAC.110.140(5) above and it is important

that this area be a part of Soldotna's planning for the community's commercial development.

As noted above, 3 AAC 110.140 provides in part:

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:

\* \* \*

(4) residents or property owners within the territory receive or may be reasonably expected to receive, directly or indirectly, the benefit[s] of city government without commensurate tax contributions, whether these city benefits are rendered or received inside or outside the territory is within the boundaries of the city, and no practical or equitable alternative method is available to offset the cost of providing these benefits;

This regulation also applies to study Area 7. It is a business area. In some instances, the business sections of the annexation territory are adjacent to the business areas inside the City's limits. It is not in the State's best interest to condone or facilitate a differential in tax structures in two businesses next to each other or quite close.

Our recognition that this area meets the standard authorizing use of the legislative review method avoids a situation where a "small, self-interested group" would otherwise be able to thwart and deny appropriate inclusion inside the City -- and thus perpetuate a tax inequity between comparable businesses by converting the petition from legislative review to local action.

Note that the conversion decision also violates court directives particularly for Area 2 and Area 9. Those areas are simply not eligible for annexation by local action.

In Native Village of Ekuk v. LBC, City of Dillingham, 3DI-12-22CI, 3<sup>rd</sup> Jud. Dist. (March 27, 2014), the superior court stated in its Order on Appeal:

In fact, if the Commission had looked at 3 AAC 110.140(9) it would have found strong justification for proceeding by legislative review in Dillingham's case. 3 AAC 110.140(9) allows territory to be annexed by legislative review when "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.” [Citation omitted]. Here, the petition violated the statute governing local action elections – set forth in AS 29.06.040 – because no voters (or people at all) reside in the territory to be annexed. Thus, the “specific policies set out in ... AS 29.06” would unquestionably be served by proceeding by legislative review. Emphasis added.

Indeed, in this case the violation of AS 29.06.040 required the Commission to convert the petition to legislative review:

Because the petition could not satisfy the dual election provisions of AS 20.06.040, the city’s choice to proceed by local action was improper, and the Commission abused its discretion in not requiring the petition to proceed by legislative review....  
Id. Emphasis added.

The superior court was clear: an area with little or no voters is NOT eligible for annexation by the local action process. By converting annexation of Areas 2 and 9 to the local action method, the majority has disregarded this ruling and exceeded LBC’s authority. These areas may be considered for annexation only by the legislative review method.

## **Conclusion**

The five study areas comprising the City’s annexation territory are exceptionally appropriate for annexation by the legislative review method. None of the study areas require a more exhaustive review. During their rigorous deliberations, the majority of commissioners agreed with this conclusion. The LBC acted on the City’s petition and approved its designated territory for annexation. These conclusions align with LBC’s past actions.

Additionally, all five of the areas in the territory meet the circumstances that authorize annexation by the legislative review process. By virtue of their approval of the City’s petition for annexation by the local action method the majority necessarily came to the same conclusions: LBC’s review standards have been satisfied. The same conclusions are expressed in the Statement of Decision.

However, by converting Soldotna’s petition for annexation to the local action method, the Decision and the conversion motion that preceded it run afoul of LBC’s constitutional, statutory, and regulatory responsibilities. Judicial precedents were also disregarded. The Decision erroneously empowers a group of self-interested residents

Statement of Dissent by Commissioners Harrington and Wood

Decision Converting City’s Petition for Annexation of Territory to Local Action Method

Page 13 of 16

---

(who may or may not even be entitled to vote) to politically influence and likely stop a logical and rational annexation that is patently in the best interests of the state and the locality.<sup>19</sup> This is exactly the scenario that Alaska's constitutional framers sought to avoid by instituting and empowering a third party with state-wide representation to objectively consider boundary changes.

The majority's conversion decision is clearly NOT in the best interests of the State and the locality. Indeed, this action is extremely detrimental to all future municipal petitions for annexation by the legislative review process. It essentially destroys the legislative review process as a functioning annexation alternative. The Decision establishes an expectation that even the most cut and dried appropriate annexations are open to conversation to local option.

The Commission has previously noted its role as a statewide decision-making body ensuring boundary changes like this one enable stable municipalities and avoid placing additional burdens on the state government. When it comes to proposed boundary changes, the Commission comprises the eyes, the ears, and the balancing force of equity for the State of Alaska. We must choose not what is best for certain local people, nor the annexing government, but what is best in our judgment for our state as a whole and for the locality. Unfortunately, these roles have been abandoned in this case.

As noted in footnote 13, the same standards specified in 3 AAC 110.090 – 3 AAC 110.135 apply for approval of petitions by either the legislative review method or the local action process. See: 3 AAC 110.140 and 150. Combined with the commissioners' recognition in their deliberations and in the Statement of Decision that one or more of the circumstances listed in 3 AAC 1140(1) – (9) for each five study areas exists, we believe that the proper remedy is to recognize that only the Decision's conversion of the annexation petition to the local action need be undone. Thus, once the Statement of Decision has been corrected, it ought to be expeditiously presented to the Legislature as approving the City's annexation petition by the legislative review method.

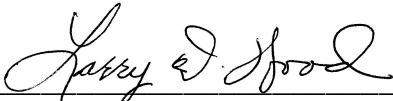
---

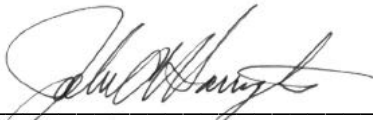
<sup>19</sup>The Statement of Decision states: "Therefore, while the petitioner meets all required standards for annexation by a city, the Commission believes the petition should be converted from legislative review to local action because the expanding of the municipal boundary is of the most concern to the local residents, who are in the best position to determine whether they need the services provided by the City of Soldotna." Page 11. To the contrary, the small number of local residents entitled to vote in the territory can reasonably be expected to largely act on their own self-interests. Unlike LBC's commissioners, local voters are not called upon to fairly evaluate this proposed boundary change and to act on it in the best interests of the State of Alaska and the locality.

If this ill-advised Decision is not corrected, it essentially destroys legislative review petitions as a functioning process. It sets an expectation that even the most appropriate annexation requests will be submitted to local voters whenever any number of self-interested residents, now enfranchised to do so, protest and claim a right to vote. In those cases, voters can reasonably be expected to act on political and personal considerations, and not be guided by the Commission's objective standards and thoughtful precedents developed over 60 years of LBC boundary change proceedings. The Decision hamstrings the functions of this Commission.

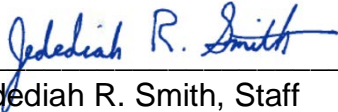
The Decision's disregard of LBC responsibilities and past precedents most certainly commits the state, the City, and the court system to expend many thousands of dollars to rectify its improper conversion action at a time when state and local revenues can least afford it, and when diminishing public resources are best committed to greater needs -- such as Alaska's escalating costs associated with a deadly, world-wide pandemic affecting thousands of ill and unemployed Alaskans.

Approved this 29 day of December, 2020.

By:   
\_\_\_\_\_  
Larry D. Wood, Commissioner  
Member at Large, Chair

By:   
\_\_\_\_\_  
John A. Harrington, Commissioner  
First Judicial District

Attested to by:

  
\_\_\_\_\_  
Jedediah R. Smith, Staff  
Local Boundary Commission

## APPENDIX

### \* Proposed Annexation Areas \* 2105 Soldotna Annexation Study

