



LOCAL BOUNDARY COMMISSION

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STATE OF ALASKA LOCAL BOUNDARY COMMISSION

Minutes of Meeting for October 29, 2020, at 10:00 am
via Zoom

ADMINISTRATIVE

1. **Call to order** – Chair Wood called the meeting to order at approximately 10:08 am.
2. **Roll call** - At the request of the Chair, Jedediah Smith called the roll of the commissioners.
Present: John Harrington, Lance Roberts, Kenny Gallahorn, and Larry Wood.
Absent: Clayton Trotter
3. **Acknowledge guests and staff present**
Staff: Robert Pearson (DCRA), Jedediah Smith (LBC), Rebecca Polizzotto (Dept. of Law)
Petitioner: John Czarnezki (City of Soldotna)
4. **Approve amended agenda**
Commissioner Harrington moved to approve the agenda as amended. Commissioner Gallahorn seconded the motion.
Commissioner Roberts asked about the date regarding a written decision. Commissioner Wood clarified that an additional meeting will be held to discuss and approve a written decision.
Motion to approve the amended agenda carried unanimously (4-0)
5. **Commissioner declaration of ex parte contact**
Commissioners were polled and asked whether they had any ex parte contact regarding any matters pending before the commission since its previous meeting of October 20, 2020. No commissioners declared any ex parte contacts.
Commissioner Roberts asked at what point commissioners may discuss the petition with anyone outside of an LBC meeting.
Commissioner Wood referred to 3 AAC 110.500(b), which explains that the rules of ex parte contact and communication apply through the last date on which the petition may be subject to action by the commission, including through any court appeal process.

OLD BUSINESS

6. **Soldotna petition to annex 2.63 square miles of territory by the legislative review method**

a. Receipt of written comments regarding motion to convert petition to local action

LBC staff Jedediah Smith provided a summary of the recent public comment period that opened on October 20, 2020. Written comments had been invited by the commission regarding a pending motion to convert the City of Soldotna's petition from the legislative review method to the local action method. Mr. Smith explained that public notice of this invitation was posted through the State of Alaska's notification system and was distributed through the LBC Listserv. Local Media (KDLL and the Peninsula Clarion) each provided coverage of the LBC actions. Thirty-seven written comments were received, and two comments came in after the deadline, but were accepted for late filing by the Chair.

Commissioner Wood asked whether a tally had been prepared regarding those who supported the motion to convert versus those who opposed it.

Mr. Smith responded that the comments expressed a range of support of and opposition to the motion. Approximately 15 of the 39 comments came from individuals that appear to reside inside the territory or city.

Commissioner Wood asked how many residents live inside the proposed territory. Mr. Smith responded that the city had previously provided information indicating that approximately 170 residents of which 140 are registered to vote inside the proposed annexation territory.

Commissioner Roberts said he didn't see any information in the City's supplemental statement that was substantially different from its original response to public comments.

Mr. Smith replied that the city's recent statement accepted by the commission spoke specifically to the proposed motion to convert the petition to local action.

Commissioner Roberts said he was trying to determine whether there was any justification for the city to submit a new statement to the commission and said that he did not do an analysis of its two statements to determine whether there were any distinct differences. He said that we want to think for the future whether we want to allow this kind of a thing, and whether it justifies the delay in the process.

Chair Wood said the city's statement highlighted two main points that were prompted by the motion to convert its petition to the local action method and suggested that the motion caught the petitioner by surprise.

Commissioner Roberts said that a lot of the comments were made by people in the annexation territories during the City's pre-submission hearing. He thought that some of these people may no longer be in the territory.

Commissioner Wood noted that some who opposed the annexation may have lived in areas that were now removed from the proposal.

Commissioner Harrington said ordinarily in an annexation petition there is a participating respondent that the LBC would hear from, but, in the absence of a respondent, the LBC needed to pay attention to the opportunity afforded to the public providing comment.

Commissioner Roberts asked whether staff had the phone number for Commissioner Trotter.

LBC staff Smith said he sent a text message and email to Commissioner Trotter and tried to leave a phone message, but the voice mail inbox was full and not accepting new messages.

Commissioner Wood restated the main motion on the floor is to approve the petition for annexation of territory by the legislative review method. The motion was made by Commissioner Harrington and seconded by Commissioner Gallahorn. The second motion on the floor was to amend the main motion to convert the petition from legislative review to local action. That motion was made by Commissioner Roberts and seconded by Commissioner Trotter.

Commissioner Roberts said the Constitution allows the legislative review method to be converted to the local option, and what the commission is doing by converting the petition is completely legal. Roberts said the benefits of annexation to the state are primarily reducing costs associated with law enforcement and building inspection, but that the role of each state agency isn't eliminated by the city taking on those responsibilities. Further, Commissioner Roberts stated that other services are likely being paid for through sales tax revenue, which non-residents contribute to. The commissioner acknowledged the argument that only residents of the territory would be eligible to vote, and not property or business owners. Commissioner Roberts said the voters will determine whether there is the need for city services and whether they want to submit to another governing authority and the rules, regulations and taxes it brings, and that their vote is their voice.

Commissioner Harrington said the Constitution only specifies legislative review as a mandated option and that local option is permissive. The local option method is primarily based on the commission's rules and regulations, not on what is written in the Constitution. The LBC's role is to use its best judgement, not to substitute political beliefs over the structures on which the commission operates. There is a high bar to convert a petition to local action, and in doing so, it must be in the best interest of the state and enhance the process and converting this petition does not meet those requirements. The proposed annexation has two enclaves, and enclaves are specifically mentioned as a reason for annexation of territory by the legislative review method. Generally, enclaves create an obstacle for the systematic management of a city or borough. There is an area in the City's proposed territory that holds an asset belonging to the City and the area is unpopulated. The City has a fiduciary responsibility for this asset and annexation will enhance management of the facility. The commission has historically approved annexations that bring assets into a city that owns them. Further, there are currently businesses located near one another that are benefitting from an unfair tax structure. The commission is the eyes, ears and balancing force of equity for the state of Alaska. The commission must decide what is best not for certain people locally, not for the local government, but for the state. In converting the petition to the local action method, it essentially destroys the legislative review process as a functioning alternative by setting the expectation that all petitions are open to conversion to local option.

Commissioner Gallahorn said he is in favor of the local option conversion, and that because it has never been done is not a good enough reason to vote against it. The will of the people and allowing them to vote is itself a benefit to the state of Alaska.

Chair Wood said Commissioner Harrington is correct that the Constitution mentions by reference the local action method, and that 3 AAC 110.610 allows the commission to convert the petition to the local action method if the balanced best interest of the locality and the state are enhanced by local participation. There is no regulatory history that explains what "balanced best interest of the locality" means. "Locality" must mean not just the territory, but also the city. And those interests must be enhanced or made better. This regulation has never been used in 60 years. Article 10, Section 12 of the constitution states the commission is to determine local boundary changes. The LBC's power to alter municipal government boundaries has been judicially upheld as evidenced in case law, and that as a third party, the LBC can analyze the benefits and drawbacks of annexation

objectively. It is not balancing to allow approximately 140 people to determine the boundaries of an entire city of 4300 people, including many land and business owners who would not be allowed to vote on the matter. By delegating the responsibility and authority, conceivably you could have as few as 28 people voting on this, some of whom maybe have not even provided comments.

Commissioner Trotter joined the meeting at approximately 11:07 am.

Chair Wood continued his remarks and noted that in a time of declining state revenues, the state is looking to local governments to assume more and more responsibilities for services. The commission is on the cusp of making a decision that will compel the State of Alaska and the City of Soldotna and the court system to spend tens of thousands of dollars potentially litigating this issue.

Chair Wood recessed the meeting for a ten-minute break, and upon return, requested commissioners restate or summarize their remarks for Commissioner Trotter's benefit.

The meeting reconvened at approximately 11:31.

Commissioner Roberts restated his comments.

Commissioner Harrington restated his comments.

Commissioner Gallahorn restated his comments.

Chair Wood restated his comments,

Chair Wood asked for the record whether Commissioner Trotter had any ex parte contact related to the Soldotna petition since the meeting of October 20, 2020. Commissioner Trotter stated he had not.

Commissioner Trotter said he had reviewed all the written comments from the public, the petition from the City of Soldotna, and the staff report. He said voting and self-determination are a very high priority for Alaskans, and that he is impressed this is a case of first impression. It is problematic that there are only 140 people making that vote. At the same time, a five-member commission is also a small number of people to be making that decision. Given that Soldotna has held four annexations with the consent of those impacted, he is inclined to support the local action method.

Commissioner Roberts said protecting the tax base is not within the LBCs purview. He said he does not believe there are any true enclaves in the annexation, and does not believe Area 2, which has no residents, should qualify to annexation at all.

Commissioner Harrington said the constitutional committee was very clear that the people directly involved and impacted by annexation are not the best ones to make the decision. He said the areas in question are almost surrounded by current city boundaries do meet the definition of enclaves. Further, there are few if any annexations that do not deal directly with taxes, and it is appropriate for the LBC to take that into consideration. All five areas in the petition are straightforward and meet the criteria for the legislative review process.

Chair Wood said the reason this is a case of first impression is because in 60 years of history, other commissioners have not ignored their constitutional responsibility to make these decisions. Deferring to the people is easy to say. He said the commission is on the cusp of getting a lecture by the superior court in not doing its job. He questioned how certain commissioners could find the need standard was not met yet approve the petition and send it to voters.

Commissioner Roberts said he is opposed to the main motion. He tried to make several amendments to make the petition more reasonable. He said with respect to the services, the

drawbacks outweigh the benefits, but that the people should decide. If the amendment to convert the petition to local action fails, he will oppose the original motion to approve the petition.

Commissioner Wood said the people of the territory will not look at the need in the same way the commission does. They will have other reasons for voting on annexation. He questioned how the commission manages its responsibilities of appointment to the commission.

Commissioner Roberts said he predicted this election would rally a larger voter turnout.

Chair Wood asked how the commission would deal with the next petition the commission accepts. How is the commission enhancing the best and balanced interest of the state and locality. Doesn't an affirmative vote on this motion present a precedent?

Commissioner Roberts said the commission has had other precedents in turning down other petitions. He said he is not against a city annexing properties. But they must show they will provide services that justify annexation. He said he will not be bound by this decision, and that he will make each decision based on the evidence presented.

Commissioner Harrington asked someone to articulate how local option enhances the best interest for the state. The framers of the constitution stated it is up to the Local Boundary Commission to make this decision in the balanced best interest of the locality and the state, and that it is not appropriate for the local people to be the only ones to decide a matter of statewide interest.

Commissioner Roberts read from Article 1, Section 1 of the Alaska Constitution. The state is the people. They are getting to exercise their voice. That is the good.

Chair Wood said there will always be people who don't want local government. Yet, that's the statement in the law. He said he does not see how the state interest is enhanced by delegating the commission's responsibilities to a small group of voters.

Discussion having concluded, Chair Wood called for a vote on the amendment to convert the petition for annexation of territory from the legislative review to the local action method

Commissioners Roberts, Gallahorn and Trotter voted "Yes."

Commissioners Harrington and Wood voted "No."

Motion passed 3-2

Commissioner Wood asked whether annexation factors are different than when the commission looked at the petition when it was under the legislative review method? Would a vote approving the motion indicate agreement that other factors have been satisfied?

Chief Assistant Attorney General Polizzotto said the standards for annexations by cities are described in regulation, but that the commission must also determine whether the standard of best interest of the state has met under 3 AAC 110.065, which references 3 AAC 110.981 and .982 as factors to consider in making that determination.

Chair Wood said he cannot agree this conversion action is in the best interest of the state, because one of those factors is not fulfilled.

Commissioner Harrington said he will be voting against the motion as amended and plans to develop a dissenting report. He does believe the commission has met the enhancement requirement.

Commissioner Roberts said he does not think the commission should let the prediction of what will happen in the court system later affect what the commission's decision will be, and that as long as

the commission is attempting to keep with the Constitution, statute and regulations, it should not worry about whether a court will rule against the commission.

Chair Wood said he disagreed with Commissioner Roberts, and that all decisions should be guided by the law, and that this will be the wrong decision and he will be voting “no” on the amended motion.

Commissioner Roberts said the commission shouldn’t try to predict the court’s opinion on things like this that are first impressions where there is no opinion. The court may come up with a different opinion.

Chair Wood said the commission must have a reasonable basis for deviating from what the law requires.

Commissioner Trotter said the commission sits as a quasi-judicial body and he believes the commission’s decisions have been made based on a rational and reasonable consideration of the facts and the record.

Chief Assistant Attorney General Polizzotto said the commission, when sitting in this capacity, serves as a quasi-legislative body, not quasi-judicial body, and that the court will review its actions as a quasi-legislative capacity. The standard of review will be whether it has a reasonable basis for the decision. The court will defer to the commission’s interpretation of its regulations provided there is a reasonable basis. With regard to factual findings, the court will use a substantial evidence standard of review.

Commissioner Trotter asked how that differs from a quasi-judicial decision and what the standard would be.

AAG Polizzotto gave the analogy of a medical board issuing regulations governing the practice of medicine is in a quasi-legislative role. If a medical practitioner has had their license revoked, and they are appealing that revocation, that puts the board into a quasi-judicial capacity. Due process as opposed to the quasi-legislative function.

Commissioner Trotter said he disagreed and that this is a case before the commission.

AAG Polizzotto said the courts have already ruled when the commission sits in this capacity to review petitions for annexation of territory they are operating in a quasi-legislative function.

Discussion having concluded, Chair Wood called for a vote on the motion to approve the petition for annexation of territory as previously amended to require annexation by the local action method

Commissioners Roberts, Gallahorn, and Trotter voted “Yes.”

Commissioners Harrington and Wood voted “No.”

Motion passed 3-2.

LBC staff member Smith outlined the process of issuing a written decision. According to the commission’s bylaws, staff will send the first draft to commissioners by approximately November 13. Review of the draft will take place in executive session and a vote on the written decision should occur by November 25.

Commissioner Wood asked whether any of the members voting in favor of the decision wished to write the first draft. Commissioners expressed their wish to have staff draft the written decision.

Commissioner Harrington said the dissent opinions are historically not prepared with the assistance of staff.

LBC staff Smith said the bylaws prohibit the same staff member that drafts the written decision from drafting the dissent, but that Robert Pearson, with the Division of Community and Regional Affairs, would be available to assist with the dissent.

Commissioner Wood said that he and Commissioner Harrington would likely draft a dissenting opinion tomorrow, but was concerned about violating the regulation prohibiting ex parte contact and communication.

AAG Polizzotto said she would advise the commission as to whether the prohibition against ex parte contact and communication would apply to drafting the statement of dissent.

The meeting to discuss the draft written decision was scheduled for November 25, 2020.

Commissioner Trotter asked whether commissioners could discuss among themselves the draft written decision.

AAG Polizzotto said she would advise whether commissioners could work among themselves regarding the draft written decision.

Chair Wood asked for final comments from commissioners.

Commissioner Gallahorn said everyone was very professional during the meeting.

Commissioner Roberts said the process went well, and that it is good to have disagreement, and he hopes the public record will reflect that. He also expressed interest in holding a meeting to discuss regulation changes.

Commissioner Harrington reminded the commission that the petitioner requested all commissioner notes be retained, and he would send them to staff.

Commissioner Trotter said even though we are in a COVID shutdown and this is a time of enormous turmoil, he is impressed that things work as well as they do since everyone cannot be in the same room together.

Commissioner Wood expressed his appreciation to the public and the petitioner for participating.

Commissioner Harrington moved to adjourn. Commissioner Gallahorn seconded the motion. The motion passed unanimously.

Meeting ADJOURNED (approximately 12:52 p.m.)

APPROVED: _____

LOCAL BOUNDARY COMMISSION

LARRY WOOD, CHAIR

ATTEST:

JEDEDIAH SMITH, STAFF