

**SPECIAL ASSEMBLY MEETING
THE CITY AND BOROUGH OF JUNEAU, ALASKA**

Meeting Minutes - February 26, 2018

MEETING NO. 2018-06: The Special Meeting of the City and Borough of Juneau Assembly, held in the Assembly Chambers of the Municipal Building, was called to order at 5:30 p.m. by Deputy Mayor Jerry Nankervis.

I. CALL TO ORDER / ROLL CALL

Assemblymembers present: Jerry Nankervis, Mary Becker, Maria Gladziszewski, Jesse Kiehl, Loren Jones, Rob Edwardson, Beth Weldon (telephonic), and Norton Gregory (telephonic - joining at 5:45 p.m. due to technical difficulties)

Assemblymembers absent: Mayor Ken Koelsch

Staff present: Acting City Manager Mila Cosgrove, Assistant City Attorney Robert Palmer, Acting Clerk Beth McEwen, Finance Director Bob Bartholomew

II. AGENDA TOPICS

- A. PUBLIC HEARING - Ordinance 2017-06(AF) An Ordinance Appropriating to the Manager the Sum of \$75,000 as Funding for Intervention in Docket U-17-097 with the Regulatory Commission of Alaska, Funding Provided by the General Fund's Fund Balance.

This ordinance would appropriate \$75,000 to fund the costs associated with CBJ's participation as an intervenor in the matter before the Regulatory Commission of Alaska, where Hydro One Limited is seeking authority to acquire control of Alaska Electric Light & Power Company.

AEL&P is the power utility for Juneau. On July 1, 2014, Avista Corp., based in Washington, bought out AEL&P's parent Alaska Energy and Resources Company. On July 20, 2017, Avista Corp. announced they would join forces with Hydro One.

The Assembly Finance Committee took up this matter at its meeting on January 10, 2018.

The Assembly Committee of the Whole unanimously recommended this at its meeting of February 5, 2018.

The City Manager recommends this ordinance be adopted.

Public Testimony was received as follows:

Mr. Brian Weed said he is the co-founder of Juneau's Hidden History which is the largest hiking group in Alaska on preserving the history of Juneau public lands. Mr. Weed recommended the Assembly allocate the \$75,000 towards the fight to keep AEL&P local, and while he understands it is based out of Spokane, he would like to see it retained by a United States company. He recommends this as he is concerned about the loss of historic lands in Juneau. AEL&P owns the mining rights because with the mining rights, they also get the water rights. Echo Bay, in the early 1990's, did testing on the AJ mine to find out how much gold was left in the mine and found 87 million tons of ore still left in the AJ mine. At .05 ounces of gold per ton, that comes to 4.5 million ounces of gold. As of two days ago the price of gold was at \$1300 per ounce which brings the total value of gold at \$5,000,850,000 still left in the AJ mine. He said that doesn't even count the Treadwell mine which is also owned by AEL&P through the subsidiary of AJT Mining which is slated to be sold to Hydro One. Mr. Weed said that his concern is with respect to a deal that was done in approximately 1970 whereby the city would get a percentage of the profits if it was ever mined. He would like the Assembly to get an attorney to look at that as he is concerned that deal may no longer be in effect.

Mr. Weed said it would be very foolish to lose six billion dollars in gold if the mine were ever to reopen through the Sheep Creek tunnel. He said this would also include the loss of 7,000 acres of Juneau land to Canada and most of those, approximately 5,000 acres, have no hydroelectric value. That acreage is the AJT mining properties or miscellaneous properties that AEL&P owns just through 100 years of operations.

He said that AEL&P, over the past 50 years, has permitted hikers to hike all over their properties. Previously, there were no "No Trespassing" signs posted on AEL&P property but in the last three years, since Avista has taken over, people will notice dozens of AJT properties posted with "No Trespassing" signs all over Juneau. A popular trail at the end of the N. Douglas that people frequented, is now posted "No Trespassing." He wants to know what else will happen when Hydro One takes over. Avista has hired a security guard for the S. Douglas properties to make sure no one strays off the trail. He said he was also told in a meeting with Bruce Howard of AJT Mining Properties that when Avista purchased the AEL&P properties, they didn't want the AJT properties but at the time AEL&P could not separate the properties. He suggests that if Avista still does not want them, he recommended the city push to get those AJT properties (AJ and Treadwell mines) back since they serve no hydroelectric use. Both those mines were the largest hard rock gold mines prior to 1930's and it would be foolish to lose \$6 billion on the AJ

side and an estimated \$4 billion on the Treadwell side.

Mr. Jones asked Mr. Weed if he had a chance to see the memo in the packet relating to the seven reasons CBJ would intervene in this case. Mr. Jones said that Mr. Weed's comments about losing AEL&P to a Canadian company is not one of the reasons the Assembly was intervening in the RCA case.

Mr. Weed said he understands that and his concerns are primarily about the AJT properties that have not been part of the Assembly's discussion.

Additional discussion took place with Ms. Gladziszewski commenting about the need to be clear about the separation of issues before the RCA and other matters not involved with the RCA case.

Ms. Becker asked Mr. Weed if he knew for sure that the AJT mining properties were slated to be sold along with the AEL&P properties to Hydro One.

Mr. Weed explained to Ms. Becker that his mining numbers are accurate. He said that Echo Bay did a study in the early 1990's, they spent \$100 million on the Alaska Juneau Mine to reopen it. It didn't happen, there were some pollution problems and while he is not saying that the mine should reopen, he said we know that this amount of gold is sitting there and someday, they may want to reopen it through the Sheep Creek Tunnel. He said if we don't ask for it, we aren't going to get it so why not put it on the table that we want this. He questions why a hydroelectric utility needs these mines.

Mr. Kriss Hart noted that he has already sent two letters to the Assembly relating to this issue. He said this is a snapshot in time during which we can comment on a regulated industry that is a monopoly in our town and we get to ask for a few things right now during this negotiation process. He said it would be smart for the City to have good representation and ask some questions in trying to negotiate a better deal for the citizens. They may not all come in a regulatory framework, but they may come as part of an agreement to get through the process and the City would have a good chance to negotiate the things that are in the citizens' favor. He supports an open process where everyone gets to question it and provide comments.

Ms. Weldon asked Mr. Hart if he had a chance to read the proposed agreement that the City Manager provided in the packet.

Mr. Hart said he did read that and sent a full letter commenting on that. He said he doesn't believe that serves the purpose. He thinks CBJ would be better off going through the intervention process.

Mr. Doug Woodby noted that he had sent a letter to the Mayor and Assembly supporting the allocation of the funds for intervention instead of supporting the draft settlement agreement that the City Manager provided. He said if they compare the two documents, the petition that was written up as the intervention document spells out in good detail the kinds of issues that need to be discussed in front of the RCA. He said he doesn't believe the negotiated settlement, as in the memo from the Manager, gets to the issues that need to be addressed.

Mr. Albert Shaw provided historic information relating to Snettisham which he feels may have been lost in the discussions/negotiations. He said that the original Snettisham project was to give power to a pulp mill which we never got. He said as a side bar on that, logging on Admiralty Island that Sealaska did was the logging that would have taken place if they would have gotten a pulp mill. He said that beyond that, sometime in the early 1960's when he was on the city council and that had folded up, Bud Boddy moved and Mr. Shaw seconded that the city go after Snettisham again. They were successful in that endeavor and he remembers Senator Bartlett telling them that he had to make the long walk to 1600 Pennsylvania Ave. to get it into the budget and make sure it stayed there. Mr. Shaw said that is how they got to where we are today. Without that move, this discussion wouldn't be taking place because Snettisham would not have been built timely enough to do us any good. He said he is the last person standing who could make those statements.

Mr. Shaw said that as far as this whole thing goes, CBJ does have to make sure that we hang onto the land. He said the interests in the AJ, if his memory is correct, the city would get 60% of anything that would come out of it money-wise and on the Treadwell it would be 40%. He said the other percentages originally would have gone to the light company, but how they are going to decide how to set that up separately from the power project, ultimately is a problem the Assembly gets to solve.

Ms. Gladziszewski thanked Mr. Shaw for his historical actions and his testimony.

Mr. Randy Sutak said that he initially submitted a letter regarding this matter. He said that it is concerning to him that of the items the Assembly recommended to be discussed or negotiated, that only three of them were substantially negotiated. He noted that on the third item, Mr. Watt's memo also states "Conformance with our goal will likely be debated." Mr. Sutak said that with respect to the other three items, Mr. Watt did not choose to negotiate at all. That confused him as he thought that was what Mr. Watt was supposed to be doing. He said that he feels it is important that the city maintain a seat at the table. He said there have already been some concessions met and some conditions that were duplicated or extended to AEL&P,

i.e. the ratepayers of Juneau similar to those in Oregon, Idaho, and Washington.

That helps and is a good start but that it is only a start. He expressed concern that CBJ should have a seat at a negotiating table with an attorney of the same caliber as that of the attorney representing the power companies. In his opinion, it would be a huge mistake for the Assembly to accept the negotiations as they are right now and he urged them to go forward with this ordinance and intervention.

There being no one else wishing to testify, Mr. Nankervis closed public testimony at 5:52 p.m.

Mr. Edwardson related a deer hunting story from his time in Oregon during which they climbed a hill and each time they felt they were almost at the end, they realized there was further to go and kept on climbing. After a number of hours, they still never reached the top of the hill. He said he feels like this project is very similar to that hill climb. Every time he goes through the paperwork they receive relating to this project, he thinks he has a handle on it and then he re-reads it and realized it is just serving to highlight the depths of his ignorance on the subject. He said he trusts our neighbors at AEL&P but he really doesn't know that they understand the lack of his knowledge on this subject. Therefore, he is in favor of voting for this ordinance to hire someone who is an expert at this who will be able to tell the Assembly the questions they should be asking. Someone who would be willing to point out the things that they should know.

Mr. Nankervis asked Ms. Cosgrove or Mr. Palmer to provide any additional information relating to the memo in the packet and/or the petition for intervention.

Ms. Cosgrove noted that at the Assembly Committee of the Whole meeting on February 5, the Assembly gave direction to staff to pursue parallel paths of action: 1) to file petition for intervention with the RCA, and 2) to attempt to negotiate directly with AEL&P/Avista/Hydro One to obtain terms that would help protect the public interest in the transfer of the utility. Both of those paths were pursued.

Ms. Cosgrove noted that in the packet, beginning on page 4, there is a copy of the intervention petition filed by Kirk Gibson on behalf of CBJ. He worked with City Attorney Amy Mead on that petition prior to it being filed. The packet, after page 42, contained the negotiated settlement terms arrived at through discussion with the utility companies that largely addressed the seven policy concerns outlined by the Assembly. The memo was written by Mr. Watt and it was City Attorney Mead, Mr. Watt, and, to some extent Ms. Cosgrove, involved in those negotiations back and forth. The basic topics covered were the ones they thought there was direction on: Ownership of Snettisham, Adherence to the 55 commitments in the Washington

filings, Open Access/Transmission, Resources Planning, Mining Utilization Agreements, Submission of a \$50 million bond and land assets and managements. The memo contains Mr. Watt's short summary of those agreements followed by the agreements themselves in the packet. She stated that it is important to note that those terms are only applicable if CBJ withdraws its intervention petition and files a letter with the RCA that states that CBJ does not oppose the transfer currently before the RCA.

Ms. Cosgrove noted that should the Assembly not meet those conditions, the settlement offer will be withdrawn and it may not be relied upon in any subsequent proceedings germane to this issue, in other words, they would take it off the table completely. She said that of particular note, there are items in the negotiated settlement agreement that as it stands now, will not be addressed in the RCA proceedings.

Shortly after the Assembly COW, the RCA issued their order #2 on February 9, which clarified what they would be addressing in the issues before them. They took off of the table any issues relating to Snettisham and they specifically stated that they will not address open access/transmission or interconnection in the proceedings. They referred to other administrative avenues available to the parties who may or may not be at an impasse, which is unclear to her at this time. She said the third point is a consumer hearing which is scheduled for February 27 at Centennial Hall beginning at 7p.m.

Ms. Cosgrove said that another thing that has happened after the February 5 COW meeting is that the State of Oregon Public Utility Commission issued a preliminary filing regarding the proposed transfer of Avista to Hydro One. In short, the preliminary finding determined that there is not enough evidence to support the Oregon standard of review which, as a practical matter, appears to be somewhat more onerous a threshold to meet than the one that exists in Alaska. She said that is a legal matter that is still under research but that it appears they would approve a transfer if such an action is in the net benefit of the ratepayers. She said there seems to be different standards using the terms: "cause no harm", "public interest", and "net benefits." She said the record does remain open in Oregon to allow Hydro One to demonstrate that the review of that standard can be met; it is not a finalized but rather a preliminary finding.

Mr. Nankervis asked Ms. Becker to repeat her earlier question relating to AJT and AEL&P. Ms. Becker said that it is her understanding that the AJT ownership that is in partnership with CBJ is not part of the Hydro One/Avista sale/agreement. She said that just because AEL&P is being sold, the AJT partnership is not a part of that sale because CBJ has not released its interest in that agreement. She said she now

doesn't know where that stands because they have heard everything under the sun that it is going to go, that it is not going to go, CBJ would always have authority over that, which is the mining rights, etc.. and she said she would like to hear a definitive answer as to where the CBJ's interest in that stands, whether we have lost it or we are going to or we are not and if we are going to have it forever unless we give it away.

Mr. Palmer said he thinks Ms. Becker's assessment is fair and if the Assembly wants a detailed analysis, they would need to do some additional research and come back with a more in depth answer. Ms. Becker said she feels it is important to find out the answers to those questions.

Ms. Gladziszewski asked for clarification from Mr. Palmer about what he means by Ms. Becker's assessment is fair.

Mr. Palmer said he was referring to Ms. Becker's assessment of the different mining interests and our mining royalty benefits. He said that he knows that Mr. Watt has worked extensively on the mining unitization agreement but it is not something that Mr. Palmer has specifically looked at to the extent that he could answer those questions at this meeting.

Mr. Jones said with respect to Ms. Becker's question, in the Manager's memo, under item number 5, the Manager speaks about the unitization agreement. Mr. Jones said he agrees that the document is over 30 years old, however when AVISTA purchased AEL&P, that unitization agreement was updated and changed the names to reflect that Avista is now a partner to that. The names in that agreement are not 30 years old and Avista did get control of AJT properties. He said that it may be assumed that would also change in this upcoming sale. He said he didn't know if that would change to Hydro One or stay with Avista. He said what did bother him was that the manager didn't find appropriate or possible any negotiated changes and it also stated that the agreement could be terminated by either party. He said it has been awhile since he read the agreement so he doesn't recall what the terms of the agreement are with respect to the grounds for termination, whether it is a 90-day, 60-day, or 6-month notice period.

Mr. Jones said he understands that is potentially not an issue before the RCA but it is an important issue to keep aware of and he is in agreement with Ms. Becker that we need a definitive answer but he doesn't think a definitive answer will realistically happen, especially if either party can terminate the agreement at any time. He said he doesn't necessarily think this is an issue that is part of the matter currently before the Assembly. He agrees with Mr. Edwardson that CBJ needs a seat at the table in this whole process. He said that in terms of Snettisham, that is outside the current RCA

process and he sees it as being something resolved at a legislative level or through ADAs Board in terms of getting authorization to change the agreement that currently exists.

MOTION by Mr. Jones to adopt Ordinance 2017-06(AF). He said he won't ask for unanimous consent as he feels this matter will garner quite a bit of additional discussion.

Mr. Kiehl asked Mr. Palmer if the proposed negotiated settlement had been reviewed by Mr. Gibson who has been engaged under some sort of retainer. Ms. Cosgrove said that she believes that Mr. Gibson has looked at it. She said that he has had conversations with Mr. Watt and Ms. Mead directly about it but Ms. Cosgrove said she cannot tell them the substantive pieces of those conversations. She said that her understanding is that Mr. Gibson believed CBJ could have gotten more than what was articulated. In her discussion with Ms. Mead, she had an understanding that some of the things he articulated were not really on the table as policy considerations from the Assembly.

Mr. Kiehl said that he is particularly concerned with regard to a number of the items referred to in the list of 55 commitments that were out there. He said he did not see ring fencing, did not see limitations on upward distribution of dividends to the parent company, he did not see restrictions on pledge of assets against debts of the parent company. Some of the things that the Assembly has received a lot of public comment on were not included in the potential settlement documents. He said that many of the items he was tracking were not included and he wondered if that was on Mr. Gibson's advice or if Mr. Gibson had weighed in on it at all.

Ms. Cosgrove and Mr. Palmer both stated that they did not have knowledge of what, if any, advice Mr. Gibson had on those points.

Mr. Kiehl said that leads him to speak in favor of the motion. As one of the people testifying mentioned, most of the items that the Assembly sent to the City Manager, he is not seeing in the negotiated settlement. He said what is here is significantly out of step with what the utility attorney would have put in his motion to intervene initially so he is inclined to proceed with the intervention.

Ms. Gladziszewski spoke in favor of the motion because the topic is very complicated and the Assemblymembers are not utility attorneys. She said that while this memo is a start, it doesn't address enough of the things that have been asked for. She said that she does have some concern that there have been some unrealistic expectations of some commenters regarding what this intervention can achieve. The RCA has said that Snettisham is not on the table, open access/transmission is not on

the table. She said those are two of the biggest things that she and the public is concerned about so she wants people to understand the extend of what is available for them to do. She said that if the state statutes are inadequate for the what the RCA can review or what CBJ can comment on, that issue should be taken up with the Legislature. She said it is becoming clear that the statutes regarding this are not as strong as the statutes in Oregon and Washington. She wanted to make clear that we may not be able to achieve, through intervening, all the things that people wish we could achieve.

Mr. Jones noted that through the intervention, CBJ could come in as a partner with AEL&P/Hydro One, they could go into this as an adversary, or they could go in as a third party arguing for things. He asked if it was possible, as an intervenor, to argue with the RCA that they should have included the two big items noted by Ms. Gladziszewski as part of the discussion of the sale. He asked if that was part of the role of an intervenor or we can only intervene and argue on those points the RCA has already taken off the table.

Mr. Palmer said we could definitely object to what the RCA has done. Whether they change their position on what issues are relevant to their review, there is not much we can do about that. As to Mr. Jones' question if CBJ can continue to advocate that those things should be included, yes, we could. Would they find it relevant? Right now, probably not. Mr. Palmer said we could definitely object and whether that preserves rights in the future, may or may not be of a benefit.

Ms. Weldon said that her comments would be to remind the public about what Ms. Gladziszewski was referring to and that is to reiterate that the RCA hearing is limited to whether Hydro One is fit, willing, and able, to take over Avista/AEL&P. She said that in looking at some of the comments that the Assembly received via email, they are off that topic. She said CBJ is not going to be able to block the sale from happening. She said she thinks that may not be understood by the public. She also noted that Snettisham and the interconnection are also off the table and not something CBJ can address in the RCA proceedings. Ms. Weldon said she had a question for Mr. Palmer as Ms. Mead had alluded to the possibility that CBJ didn't even qualify to intervene and she asked Mr. Palmer if he knew anything about that and if that was still a problem or does CBJ qualify to intervene.

Mr. Palmer said that as of right now, we submitted a petition to intervene. The RCA has not decided that petition to his knowledge and from his understanding in looking at the case law in the regulation, there are ways to intervene by right. He said he doesn't believe we have fallen within any of those provisions such that our intervention is permissive. The RCA has substantial discretion whether or not to grant our intervention. It will be based on what is in the petition that the outside

counsel has drafted. So ultimately, we have asked to intervene but it is not a done deal.

Ms. Weldon said that unfortunately Mr. Watt isn't present so they can only go on what he mentions in his memo. In the memo, it states that either we can withdraw our petition or even withdraw from the procedure later on in the process of this. She asked if we make the appropriation tonight, can we still continue negotiations and later withdraw?

Ms. Cosgrove answered that her understanding is that the choice is one or the other this evening. It does not mean CBJ couldn't approach AEL&P/Avista/Hydro One again but it is unclear to her whether or not the settlement terms will remain on the table.

Mr. Gregory said in looking at the memo from Mr. Watt, it talks about Snettisham and that AEL&P would just let it go in 2034 whenever it comes time to address that matter. He said it doesn't conceptually meet the intent of the Assembly's goal and he doesn't feel that it does. He said that he thinks CBJ should continue to intervene and to have appropriate legal staff reviewing this material as they move forward. There is a lot of information to digest and they've heard from the public that is what they would like to happen so he will be voting to support the ordinance.

Ms. Becker said that she feels the questions and the concerns, CBJ is not going to get the answers in the same way and be able to provide the answers to the community if they are not at the table.

Mr. Nankervis asked for the Clerk to restate the motion.

MOTION by Mr. Jones to adopt Ordinance 2017-06(AF). Mr. Jones added that at this time, he would also ask for unanimous consent. *Hearing no objection, the motion passed by unanimous consent.*

III. PUBLIC PARTICIPATION ON NON-AGENDA ITEMS

None.

IV. EXECUTIVE SESSION

A. Appeal Deliberation - 7th Day Adventist Church School v. CBJ Assessor

MOTION by Mr. Kiehl that the Assembly recess into Executive Session to discuss a matter which by law may be kept confidential, specifically, sitting in their quasi-judicial capacity to deliberate in the appeal of the Seventh Day Adventist Church

School vs. CBJ Assessor.

Hearing no objection from the public, Mr. Nankervis called for a 10 minute break prior to convening Executive Session.

Executive Session began at 6:30 p.m. and reconvened at 6:37 p.m.

After the meeting was reconvened, Mr. Kiehl noted that during Executive Session, the Assembly met in its quasi-judicial capacity and gave direction to its counsel to prepare documents for the next regular Assembly meeting.

V. ADJOURNMENT

There being no further business to come before the Assembly, the meeting was adjourned at 6:38 p.m.

Signed: _____
Elizabeth J. McEwen, Acting Clerk

Signed: _____
Jerry Nankervis, Deputy Mayor