

**ASSEMBLY STANDING COMMITTEE
COMMITTEE OF THE WHOLE
THE CITY AND BOROUGH OF JUNEAU, ALASKA
MINUTES**

February 22, 2016, 7:00 PM.
Municipal Building - Assembly Chambers

Assembly Worksession - No Public Testimony

I. ROLL CALL

Deputy Mayor Jesse Kiehl called the meeting to order at 7:00 p.m. in the Assembly Chambers.

Assemblymembers Present: Mary Becker, Jamie Bursell, Debbie White, Loren Jones, Jesse Kiehl, Jerry Nankervis, and Kate Troll.

Assemblymembers Absent: Maria Gladziszewski.

Staff present: Kim Kiefer, City Manager; Amy Mead, City Attorney, Mila Cosgrove, Deputy City Manager; Laurie Sica, Municipal Clerk

II. APPROVAL OF AGENDA

Hearing no objection, the agenda was approved as presented.

III. APPROVAL OF MINUTES

A. January 4, 2016 Committee of the Whole Meeting Minutes

Hearing no objection, the minutes of the January 4, 2016 Committee of the Whole meeting were approved.

B. February 1, 2016 Committee of the Whole Meeting Minutes

Hearing no objection, the minutes of the February 1, 2016 Committee of the Whole meeting were approved.

IV. AGENDA TOPICS

A. Juneau Hydro Sweetheart Creek and District Heating

Keith Comstock spoke about the Juneau Hydropower Inc. Sweetheart Lake Hydroelectric Facility and an associated Juneau District Heating proposal. They are waiting for a final EIS and expect to have that during July, also the 404 permit from the Corps, to be under construction of the hydro project by fall. He introduced Greg Smith, project manager for Juneau District Heating. He has been in over 100 buildings downtown to ensure there is demand for the product. Duff Mitchell is the general manager.

Mr. Mitchell provided a slide presentation to the Assembly about the project. The project will power the Kensington mine. The Juneau District Heating, with a seawater heat pump, would take most of the remaining power. He said the Sweetheart Lake Hydro project has been heavily studied. It is past the avalanche path and eight miles from the state owned Snettisham power line, and 30 miles south of Juneau. He said there are 700 district heating facilities in the United States and they are usually large campuses, airport terminals, and it is also popular in many European towns, including Bodo, Norway, which is above the Arctic Circle. He explained the efficiency of the system and the

reduction in the use of costly diesel fuel that must be brought in to the community which reduces emissions. The facility uses a heat pump to cycle heat from Gastineau Channel seawater to the downtown area facilities. He said that oil systems could be redundant systems and did not need to be removed. He anticipated the facility would be located near the Seadrome building. Their partners include Emerson Climate Technologies, Star Refrigeration, and Ever-Green Energy. He spoke about the direct and indirect jobs of such an installation. They want to hire locally.

Mr. Nankervis said this project sounded very positive. He asked about the hoops that the district heating project would need to go through. Mr. Mitchell said that it would be state and local permitting, including a DEC permit for the plant and the local permits for digging up the streets to install the system.

Mr. Jones asked if the project anticipated using any city land and Mr. Mitchell said no.

Mayor Becker asked Mr. Mitchell what he was seeking from the Assembly. He said he would like a letter of support for the project.

Ms. Bursell asked about the logistics of the installation including the tunnel. Mr. Comstock said their design had been copied by two other projects since its conception and would provide cost savings.

Ms. Troll asked about the financial viability of the project and if it was likely to happen. She asked about funding from the Federal Department of Energy. Mr. Mitchell said for support from the Dept of Energy a project has to meet four criteria, 1) built in the United States, 2) Innovative technology, 3) reduction of greenhouse gases, and 4) it must be paid back. He said they meet the qualifications and DOE likes the project as it is a new type of project in their portfolio.

Ms. Sheinberg asked if the Federal Energy Regulatory Commission (FERC) license, the record of decision on the environmental impact statement (EIS) and the Corps of Engineers permit would all be issued simultaneously in July. Mr. Mitchell said that was the timeline given by FERC. The homework has been done, and 23 environmental and construction plans have been submitted ahead of time so they will be approved with the notice of record, so they can obtain the notice to proceed more quickly. He said that was an expensive action.

MOTION, by Mayor Becker, to write a letter of support for the project.

Ms. White asked for it to be a strong letter of support.

Mr. Nankervis asked who the letter would be addressed to. Mr. Comstock said it would be good to address it to the Legislature in its review of HB143, the reauthorization of AIDEA to invest up to \$120 million in the project. It would also be good to send a copy to DOE or any other lending organization. There are no grants in this project. He could provide a list to "whom it may concern."

Ms. Troll echoed Ms. White's request for a strong letter of support.

Hearing no objection , it was so ordered.

Mr. Mitchell said he would provide a more complete report to the Downtown Improvement Group, if there was further interest from Assemblymembers and the public.

B. Mendenhall River Reports

Emergency Programs Manager Tom Mattice provided an informational presentation on the flood report, which provided a worst case scenario based on information from the 2011 and 2014 flooding on the Mendenhall River. Staff would be meeting with residents along the river corridor.

Brett Nelson, State Conservation Engineer with the Natural Resources Conservation Service, an agency of the U.S. Department of Agriculture, administers the Emergency Watershed Protection Program. They help to restore areas to pre-storm event conditions. If there is bank damage, they can assist. His agency was requested to assist in 2014 and in March 2015 they looked at four spots of significant erosion on the Mendenhall River. Of the four, there is only one area that is likely to qualify for assistance and that is the Meander Way bend. He displayed photos. The height of the bank complicates the problem and there are 8 homes immediately threatened, that number is likely to grow. There is some old rip rap but the toe of the bank is eroded and it will eventually fail. If erosion is not stopped, it will continue to progress and it is not known how far it will go - it is best to treat it now as it will not go away on its own. There are some fish habitat issues, so some bio-engineering was considered, but considering the height of the bank, more severe measures may be needed. We recommend a sheet pile structure down low with rip rap above, which have esthetic and cost issues. There is not bed stability in this river but sheet pile can withstand stability uncertainties. To qualify for funding, there needs to be a qualifying event. We know there will be another jokhelup, so it will qualify eventually. A qualifying agency in government must sponsor this work. There are ways to pass on the responsibilities to the homeowners. The sponsor responsibilities include a 75 % federal / 25 % local cost share, ten year operations and maintenance for the installation, obtaining land rights and permits. His agency can assist with obtaining permits but can not be the sponsor. His agency does one or two of these types of projects across the state each year.

Tom Mattice said a do-nothing mentality is not recommended and is not a no cost solution. There is a need to do several homes at one time to qualify and we will be working with each homeowner individually.

Ms. Sheinberg said she was glad to see the airport area was not affected. She has questions about investing money to protect homes here vs. avalanche and mass wasting zones, and how to make those policy calls. She asked if there is a way to use an LID to recover some of the cost or pass on some of the cost. Ms. Kiefer said staff has considered this. LIDs are usually done on public property, not private property, so this would be new, and there would need to be group agreement in the whole area. Mr. Mattice said that there also needs to be follow up if the project fails and the city needs to consider that possibility.

Ms. Troll asked about the elbow in the river and if it broke through would that provide relief to Meander Way. Mr. Nelson said he did not believe so.

Mayor Becker asked for a cost estimate of such a project. Mr. Nelson said a rough estimate would be \$2.1 million. That is strictly construction costs. The cost share is only on construction costs. If there is a level of confidence that the project would go forth, the Federal government will do the engineering at its cost.

More questions were asked and answered and Ms. Kiefer said the presentation was informational only and staff was not taking a position on any action. We have held meetings on the information and we have many questions as well about the ability to get access to the property to be able to do the project.

Ms. Troll asked what the next steps might be in a proactive approach. Mr. Nelson said if there is strong interest they can refine the design in the next few months. As we refine the design, the costs get refined. There are a myriad of local issues to sort out.

Mr. Jones asked how much funding was available today, and how much was committed each year. Mr. Nelson said Congress funded the program at \$100 million nationally, which cleared the entire wait list across the country and there was still some money in the account. It was impossible to predict when more money will be deposited.

Mr. Kiehl said it makes sense to have intensive conversations with the neighbors now. He asked when the community outreach can be done and a report back on that to the Assembly. Mr. Mattice said that contact can begin soon and there is significant study to be done.

C. Direction on the CBJ Annexation Petition

Ms. Mead gave a status report on the recent history of CBJ's annexation petition, which was filed approximately 60 days after Petersburg files its petition to incorporate. The Local Boundary Commission (LBC) declined to consolidate or hear the petitions concurrently. This resulted in the LBC hearing the Petersburg petition first before CBJ's was scheduled for public hearing and when the LBC made a decision on the Petersburg Borough, for all intents and purposes it made a decision on CBJ's annexation petition. It awarded to Petersburg Borough all of the land CBJ was seeking to annex with the exception of Tracy Arm, which was left in the unorganized borough. At the time the LBC made its decision, CBJ appealed, stayed the petition while in litigation, and now that the litigation is over we need to decide what to do with the petition. At this point it is outdated, so whatever we do, short of withdrawing the petition, will need updating. The question for the Assembly is what action to take - withdraw the petition entirely, withdraw and amend to seek annexation of Tracy Arm, or withdraw and or amend to seek Tracy Arm and any other land CBJ has looked at in the past, such as the land towards Hobart Bay, or other areas. Waiting has not turned out well for CBJ in the recent past, so Mr. Chaney was present to inform the Assembly of the potential lands for annexation.

Mr. Chaney explained a map showing the Juneau Borough, the Juneau Model Borough boundary lines, which were a guideline, and the neighboring model boroughs. The Chatham and Glacier Bay model boroughs have not been created yet, and other existing boroughs such as Haines and Petersburg would likely react to any petition for such properties.

Ms. Sheinberg advocated to amend the petition to include the Tracy Arm area. The other areas are would likely raise objections. Funter Bay is not in CBJ now but it is in the model borough. Ms. Sheinberg said there are a lot of Juneau homeowners in the outlying areas but you should get \$2.65 mil of property you bring in because you will have to pay that in increased education local requirements, but she hoped there would be a provision for inaccessible areas to pay very minor contributions.

Ms. Troll asked if staying with the previous model borough would be a better position for success. Ms. Mead said not necessarily. CBJ has a pending petition for the Tracy Arm area and if CBJ proceeds with that, the petition would need to be amended. The LBC staff and a commissioner decided to put this matter on its agenda for the last LBC meeting and she was called advising her that the expediting of Juneau's petition would be heard. At that meeting there was one commissioner that argued that since CBJ had already gone through so much process, he would be willing to expedite the petition for the Tracy Arm area. She has not heard support for that from the rest of the commissioners. . We could ask for an expedited petition for Tracy Arm, or we could pull and amend to seek additional land areas in the model borough if that is the wish of the Assembly.

Ms. Troll said it seems prudent to go ahead with the existing petition to see how that comes out and she would like to hear more from the public on any other areas.

Ms. White said she saw Mr. Albert Shaw's point about going north in the Berners area, but we will get significant push back from Horse, and Colt Islands and Funter Bay. There will be significant resources north - the mountains past there must contain minerals and she would like to go as far north as possible, but is not comfortable going west. Mr. Chaney said a ridgeline boundary adjustment would need to be discussed with Haines.

Mr. Kiehl asked if there have been any discussions regarding the Chichagof and Admiralty boundaries. Mr. Chaney said no, only that Angoon felt it should have all of Admiralty.

Mr. Jones supported only seeking Tracy Arm. So much of the model borough program has been ignored. Without more study, in terms of Admiralty and Funter Bay, he would only support Tracy arm. We may need to start some discussions.

Mr. Nankervis concurred with moving forward with the Tracy Arm section, and the rest within the model borough boundaries, provided we have more public comment on the northern Admiralty area, but was sensitive regarding the taxation of those areas. They do get limited services in those areas compared to what those on the roaded system get.

Mr. Kiehl said he did not object to the Tracy Arm section now that Petersburg annexation was settled. The area does not bring costs or benefits now but perhaps some future costs. We are perceived as swinging a big stick in the region and that did not go well with our neighbors so he would be very reluctant to annex land on Admiralty without extensive conversations with Angoon, Hoonah and the landowners in those areas.

***MOTION**, by Troll, to continue with the existing petition, to include the Tracy Arm triangle. Hearing no objection, it was so ordered.*

Ms. Mead said the LBC decision was made because they were uncomfortable moving the borough boundary north because it was an unnatural boundary. It is LBC's goal to get all land within a borough. A group of landowners can not determine to stay in the unorganized borough forever. There is no one that lives in the area now, our petition anticipated an election, but I will go back to the LBC staff and let them know of your decision and find out our options and report back.

D. Amending CBJ Code Relating to Succession of Office and the Filling of Vacancies

Ms. Mead referred to her memo to the Assembly and said the "hole" in the code regarding succession of office is the lack of clarity regarding what happens in the situation in which the deputy mayor succeeds to the office of mayor, as happened in November. She recommended that a provision should be outlined in code to clarify the deputy mayor interim succession in code. She recommends that the code be amended to provide for an interim succession process not only for those situations when the seated mayor and deputy mayor are both unable to preside at some given meeting, but in situations where the deputy mayor must succeed to the office of mayor in accordance with Charter Section 3.9. She also recommended amending code to provide a process for filling a mayoral vacancy by specifically stating what happens to the deputy mayor's seat once the deputy mayor succeeds. She said some jurisdictions require the deputy mayor to step down upon succession, while others provide that the succession is temporary until a permanent replacement is seated. She said either process would be permissible under CBJ Charter, as section 3.9 was silent as to whether the succession is permanent or temporary.

Ms. Becker said it seemed wrong to require the deputy mayor to step into the mayor seat, but have to step down and not be able to go back to the elected Assembly seat. She thought there should be an expectation that the person would return to their elected seat. Ms. Mead said that in the codes that she reviewed in which there was a provision for a deputy mayor, or mayor pro temp, it was a temporary succession. In the places where it provided that upon the vacancy in the office of mayor, should an assemblymember succeed to the office, they resigned their seat. The decision is made at the time of succession whether to resign from office, and the assemblymember would need to affirmatively make that choice - that was the missing piece in the CBJ code. CBJ has an election process for the deputy mayor.

Mr. Nankervis said he feels that the deputy mayor stepping in to the mayor's role is a temporary assignment, and there should be a fall back to their seat when there is a mayor. They step in the office because they have been the deputy mayor and at such point there is a special election or the next regular election and they go back into their seat.

Ms. White asked if there was any distinction between the communities and their procedures based on whether or not they have a strong city manager form of government. Ms. Mead said she did screen the communities as examples that did not provide for a mayoral succession or that were not applicable to the CBJ situation.

Ms. Troll concurred with Mayor Becker and Mr. Nankervis, that if the deputy mayor steps up they should not have to relinquish their own seat. It seemed unfair otherwise. The deputy is doing an extra set of duties under unusual circumstances and the person should not be penalized. She liked the consistency of calling for an election or not - it seems that 6 months before a regular election was the common time frame if there was a vacancy.

Mr. Kiehl asked if there was any disagreement that the deputy mayor that succeeds to the office of mayor does this in a temporary manner.

Ms. Bursell said if it was not temporary, there would be valuable knowledge lost in the transition.

Mr. Jones agreed and said he saw no purpose in the person stepping up into the mayor role losing the seat on the Assembly. Not having to vacate the assembly seat is important. He said there is some discussion needed on the succession to deputy mayor and that may be a separate decision.

Mayor Becker said by calling the person who succeeds to the mayor seat temporary / acting or interim, the position is diluted. The role has all of the responsibilities and duties, and it confuses the public to use those temporary type of words. She said that once the mayor role was filled in any manner, the issue of an election of a deputy mayor would be back before the assembly.

Without objection, Mr. Kiehl said there was consensus that when a deputy mayor assumes the position of mayor that does not shorten their elected term on the assembly.

Ms. Mead said that other jurisdictions provide that the deputy mayor succeeds on an interim basis or pro-temp basis to the office of mayor. It sets by code when a special election can be called and it does that so it doesn't become a politicized process, because otherwise you have an assembly making a decision about whether to call a special election based on who they appoint, and that is what the code is trying to avoid. If the deputy mayor succeeds on an interim basis, then the interim succession for deputy mayor that is currently in the code works. That provision says that if the elected deputy mayor is unable to serve as deputy mayor and there is not a mayor at a particular meeting, then the person with the most seniority steps in on an interim basis. Putting it all together, if we had a code section in place that had the deputy mayor succeeding on an interim basis to the mayoral seat, what would have happened in November would be that the deputy mayor would have succeeded to the office of mayor, the most senior person would have succeeded to the office of deputy mayor on an interim basis, and if the code had provided for a special election if the vacancy occurred more than six months out then a special election would have been called and then we would have proceeded. If it had happened in August, the same succession would have happened and we would have had the election in October.

Mr. Jones said that needed to be clearer if there was to be an ordinance. He liked the model code and state statute in the other municipalities that put in a six month dividing line for the special election requirement.

Mayor Becker said she did not agree. The Assembly should not be forced to spend money for a special election if it places a requirement to have a special election with a greater than six month timeline.

Ms. Troll said she understood that if it was greater than six months out from the regular election, she thought it would be an option to hold a special election, not a requirement. Ms. Mead said the codes in other jurisdictions required the special election, but they do so in order for it not to be a political decision.

Mr. Nankervis said if there was not a hard line, then there is a mess like we have now, where we choose or don't choose. He did not favor the six months. It would not ever be more than 11 months and he preferred to wait to the next regular election as he was not a fan of special elections. If the vacancy hits at six months, and there is a minimum of two months to hold the election, there is only four months left until the regular election anyway. He would prefer to say that the position would be replaced at the next election cycle and it is rolled into the general election.

Ms. White said it happens infrequently, but it did happen in 1995. If there is a set procedure, then there would be less strife.

Ms. Mead said the same options were provided to the Assembly in 1995 and they had the same options that were before the Assembly. In the jurisdictions that provide for the temporary/interim deputy mayor, that person sits as mayor not until the election, whether a special or regular, but literally very temporarily, and the assembly still appoints someone to the mayoral seat, be it until the election or the special election. In those jurisdictions, the assemblymember assuming the mayoral seat resigns from their seat. If that is not where the Assembly wants to go, which is most like Yakutat, then what the assembly is considering is something akin to what we have with Mayor Becker, and codifying something like the ordinance we past recently to allow her to return to her seat. If the deputy mayor succeeds to the mayoral seat until the regular or special election, there is still the issue of a vacancy on the Assembly and there is still an issue of what happens if the deputy mayor's term doesn't end upon the special or regular election.

Ms. Sheinberg liked de-politicizing and the state statute provided six months and she felt that the cost was not a significant factor so she supported the six months.

Mr. Jones said there needs to be a certainty - not a choice, but he did not have an opinion on a time frame.

Ms. Troll supported an special election to be held if there was more than six months until the next regular election and a clear process.

Mr. Kiehl liked a set process, and removing discretion can be helpful. The time remaining in the mayor's term might be a better call regarding the appropriate trigger for a special election. Perhaps 15 or 18 months remaining in a term, for example.

There was some discussion about Mr. Anderson and Mr. Doll's resignation, who resigned in the summer, the year their term was ending.

Ms. Mead spoke about an Anchorage ordinance which allowed a seat to remain vacant if there was 90 days or less in the term.

Mr. Jones suggested it would be helpful if the Law Department could draft an ordinance for the Assembly to review and edit, that would provide options, given the time remaining in the meeting.

Mayor Becker said the Assembly could take its time on this issue.

Mr. Nankervis said the Assembly was trying to accomplish a solution to what happens to the mayor's position when the deputy mayor steps into the mayor's position and the newly vacated assembly position. Ms. Mead said there was only a newly open vacancy on the Assembly if the deputy mayor is succeeding permanently to the office of mayor, until the next regular election or a special election. The language for the filling of an assembly seat in code now is sufficient.

Mr. Kiehl said that hearing no objection to Mr. Jones' request for "something concrete," this issue will appear before a future Committee of the Whole meeting at an earlier time in the evening. Ms. Mead said by her providing an ordinance, she would be the one choosing the parameters, and the Assembly could amend it at a future meeting.

Ms. Becker acknowledged the Assembly was not providing direct direction.

MOTION, by Jones, to request the attorney to draft an ordinance on the succession of the mayor to a vacant mayor position, to bring back to a committee of the whole at an appropriate time, that allows for the succession of the deputy mayor to the mayor, on an interim basis, so that the Assembly does not have to fill that person's seat, that allows that temporary mayor to go back to

their district seat, and that the attorney state that the election for the remaining term of the mayor be set for the next election, as a start of the draft, for amendments.

Ms. Sheinberg said that anything that depoliticizes the process would be good.

Ms. Troll said the six month dividing line was a good place to start.

Mr. Nankervis said he was fine with the motion calling for a "talking points" ordinance.

Hearing no objection, it was so ordered.

E. Lands Management Plan

Ms. Kiefer asked if the issue should be forwarded to a future meeting or addressed tonight.

Mr. Kiehl asked Mr. Chaney to answer the questions that had been asked. Mr. Chaney said he drafted a memo for inclusion in the packet - but it was not included in the packet. He summarized the comments. Mr. Kiehl asked that the comments be sent to the Assembly and included in a future meeting packet.

V. COMMITTEE MEMBER / LIAISON COMMENTS AND QUESTIONS

Mr. Nankervis welcomed Ms. Bursell to the Assembly.

Mr. Jones asked how to address the concerns presented by the citizens who spoke to the issue of marijuana commercial operations in residential zones. He said he would like to discuss the matter at a Committee of the Whole meeting. He would like to have a noticed meeting to discuss the concerns brought to the assembly.

Mr. Kiehl said he will work with staff to get the matter before the committee at a future meeting.

Ms. Sheinberg said she has received conflicting information from staff and others regarding the initial recommendation from staff on the Table of Permissible Uses and sections 14.245 and 19.240 - she would like the history and rationale. Ms. Mead said she could provide that for all.

VI. ADJOURNMENT

There being no further business to come before the committee, the meeting adjourned at 9:48 p.m.

Submitted by Laurie Sica, Municipal Clerk