



FAIRBANKS CITY COUNCIL
REGULAR MEETING MINUTES, FEBRUARY 27, 2012
FAIRBANKS CITY COUNCIL CHAMBERS
800 CUSHMAN STREET, FAIRBANKS, ALASKA

The City Council convened at 7:00 p.m. on the above date, to conduct a Regular Meeting of the Fairbanks City Council at the City Council Chambers, 800 Cushman Street, Fairbanks, Alaska, with Mayor Jerry Cleworth presiding and with the following Council Members in attendance:

Council Members Present: Vivian Stiver, Seat A
Chad Roberts, Seat B
Bernard Gatewood, Seat C
Jim Matherly, Seat D
Lloyd Hilling, Seat E

Absent: John Eberhart, Seat F (excused)

Also Present: Clem Clooten, Building Official
Pat Cole, Chief of Staff
Warren Cummings, Fire Chief
Ernie Misewicz, Assistant Fire Chief
Paul Ewers, City Attorney
Janey Hovenden, City Clerk
Tony C. Shumate, Director Personnel/Purchasing/RM
Laren Zager, Police Chief

INVOCATION

The Invocation was given by City Clerk Janey Hovenden.

FLAG SALUTATION

Mayor Cleworth led the Flag Salutation.

CITIZEN'S COMMENTS

Tim Sovde, 402 Bonnifield Street, Fairbanks – Mr. Sovde spoke to the Borough Zoning Code in regards to the Sandstrom Appeal. He stated that the structures on the property are clearly temporary and can easily be moved. He spoke in support of granting the Sandstrom Appeal.

Mayor Cleworth stated that the Council cannot to hear testimony or arguments for or against the appeal.

Mr. Ewers agreed with Mayor Cleworth, stating that the Council would have to disregard Mr. Sovde's comments.

Karen Lane, 101 Dunkel Street, Fairbanks Convention and Visitor's Bureau (FCVB) – Ms. Lane provided a report on the Visitor's Services and Membership Department. She thanked Mayor Cleworth for speaking at the FCVB Interior Tours and Conference. She announced that the Visitor Industry Walk for Charity would be held on May 11, 2012. She mentioned other upcoming FCVB events, such as the March Luncheon and the Annual Banquet in April. She shared that she will be leaving the organization soon to begin her new job as the General Manager of the 2014 Arctic Winter Games. She introduced Charity Gadopee as FCVB's new Director of Visitor's Services and Membership.

Mr. Gatewood asked if there is a list of non-profit organizations that benefit from the Walk for Charity on the FCVB website.

Ms. Lane replied that the list will be posted soon.

Chris Eshleman, 776 8th Avenue, Fairbanks – Mr. Eshleman thanked the Mayor and City Council for their public service. He thanked the City's Police and Fire Departments for their quick response to the recent fire that burned his cabin in downtown Fairbanks.

Frank Turney, 201 7th Avenue, Fairbanks – Mr. Turney apologized for not bringing the Council a hemp granola bar. He thanked Mr. Hilling for "getting the ball rolling" on the hemp issue. He also thanked Borough Assembly Members Natalie Howard and Michael Dukes for their support. He stated that his next goal is to get support on the hemp issue from the City of North Pole and the Municipality of Anchorage. Mr. Turney spoke against the National Defense Authorization Act (NDAA), specifically sections 1021 and 1022. He stated that he is seeking support from the Borough Assembly to introduce a resolution urging the State of Alaska to oppose the NDAA. He spoke to possible State nullification of the bill. He quoted portions of a Resolution passed by the City of Northampton, Massachusetts to oppose the NDAA and to restore due process and rights to a trial by jury.

Diane Darnall, 2024 Jack Street, Fairbanks – Ms. Darnall, President of the Alaska International Senior Games, expressed gratefulness on behalf of her organization for being a recipient of the City's Bed Tax Discretionary Fund Grant dollars. She stated that, because of the grant funding, the organization was able to promote the Senior Games internationally, thus receiving the prestigious award for Excellence in Games Promotion from the National Senior Games Association.

David Lerman, 126 2nd Avenue, #15, Fairbanks – Mr. Lerman stated his intent to run for City Council in the 2012 Municipal Election. He spoke to the number of views he's received on his *Renovation Fairbanks* website, which he referred to as the "nucleus" of his campaign. He suggested an expansion of the City Council's domain by creating and using various task forces. He requested statistics from the Police Chief Zager to support the advantages of renovation.

APPROVAL OF AGENDA AND CONSENT AGENDA

Mr. Gatewood, seconded by **Mr. Roberts**, moved to APPROVE the Agenda and Consent Agenda.

Mayor Cleworth called for objection and, hearing none, so ORDERED.

City Clerk Hovenden read the Consent Agenda into the record.

APPROVAL OF PREVIOUS MINUTES

- a) Regular Meeting Minutes of November 21, 2011.

PASSED and APPROVED on the CONSENT AGENDA.

- b) Regular Meeting Minutes of December 5, 2011.

PASSED and APPROVED on the CONSENT AGENDA.

SPECIAL ORDERS

- a) The Fairbanks City Council convened as a Board of Adjustment in the matter of the below-stated administrative decision of the Fairbanks North Star Borough Planning Commission:

A request by Wayne Sandstrom regarding a Bed and Breakfast Residence.

***NOTE:** The board did not hear arguments nor take additional testimony on the Appeal. Only the material contained in the Appeal packet was considered.

Mr. Gatewood, seconded by **Mr. Roberts**, moved to GRANT the Sandstrom Appeal.

Mr. Hilling requested a description of what the Motion to Grant the Appeal entailed.

Mr. Ewers stated that the appeal stemmed from a denial by the FNSB Planning Commission for multiple sleeping cabins to be used in a two-family residential zoning district.

Mr. Matherly stated that there is a compelling argument on both sides of the appeal. He asked how the appeal process works.

Mr. Ewers replied that all zoning issues are handled by the FNSB. However, when an appeal occurs, the matter must go before a Board of Adjustment. He explained that the Board of adjustment is the City Council when the property lies within the City limits and is the Borough Assembly when the property falls outside of the City of Fairbanks.

Mr. Matherly asked what would happen if the Board of Adjustment granted the Sandstrom Appeal.

Mayor Cleworth replied that it would not go back to the Borough for decision, but would end with the Board of Adjustment's determination.

Mr. Gatewood asked if building permits were to be considered in the appeal.

Mr. Ewers replied that the issue of building permits should not be taken into account for the appeal.

Mr. Roberts explained his reasoning supporting a grant of the appeal. He stated that the code defines a bed and breakfast as the rental and use of rooms on a daily basis. He asked Mr. Ewers about the frequency in the use of the cabins.

Mr. Ewers replied that he cannot provide additional information to the appeal packet.

Mr. Hilling stated that zoning serves the residents of a community. He asked if the Sandstrom property has been or could be a harm to its surrounding neighbors.

Mr. Roberts informed Mr. Hilling that there is a complaint from a neighbor included on page 165 of the appeal packet.

Mr. Hilling asked if the complaints involved a nuisance aspect.

Mr. Roberts replied that the complaint stated there was excessive activity at the residence.

Ms. Stiver stated that most bed and breakfasts provide long-term rentals in the off-season. She stated that her understanding of a bed and breakfast would require the secondary structures to be connected to the primary structure by a covered walkway.

Mr. Gatewood stated that he would consider the accessory buildings no different than hotel rooms. He echoed Mr. Roberts' opinion that the Sandstrom property fits under the definition of a bed and breakfast.

Mr. Hilling solicited Mr. Ewers' legal opinion on the appeal.

Mr. Ewers replied that he, as the City Attorney, should not state his opinion on the appeal.

Mr. Hilling asked if the Board of Adjustment's decision should be based on the Borough Code as written, or on whether or not the Board feels the Borough Code is fair.

Mayor Cleworth stated that the decision of the Board must be based on the finding of facts and conclusions as they are presented in the packet. He quoted a portion of the Borough Code regarding principal buildings and indicated that it would be the Council's duty as the Board of Adjustment to determine whether or not the accessory structures are principal buildings. He pointed out that, since the appellant claims that the property is used as a bed and breakfast, the issue of back and current bed tax may come into play if the appeal was granted by the Board of Adjustment.

Mr. Ewers concurred with Mayor Cleworth's statement regarding bed tax.

Ms. Stiver stated that non-nightly rentals provided to a customer for more than a 30-day period are not required to pay bed tax and are not classified as a bed and breakfast.

Mr. Matherly stated that he is torn in his decision on the appeal. He indicated that the property appears to be a long-term stay, commercial property.

Mr. Roberts stated that the Borough Code allows for a 9-room bed and breakfast in that specific zoning area. He added that he believes the accessory structures should be classified as rooms, provided the property is being used as a bed and breakfast as Mr. Sandstrom claims. He stated if the structures are used on a long-term basis, they cannot be classified as a bed and breakfast, thus violating the Borough Code and are subject to City bed tax.

Ms. Stiver asked if the Board could consider the fact that Mr. Sandstrom has never paid bed tax.

Mayor Cleworth replied that, since that is a City issue and has not been included in the appeal packet, the matter should not be considered.

Mr. Hilling stated that in the absence of local government, communities sometimes make covenants that govern property use. He remarked that zoning is the government's way of setting those rules for property owners to abide by. He asked if Mr. Sandstrom uses the structures as long-term rentals throughout the winter, and if the Borough Code allows for a bed and breakfast to do so.

Mr. Roberts provided Mr. Hilling with the Borough's definition of a bed and breakfast: "a facility with five to nine guest rooms where lodging with or without meals is provided for compensation to transient guests on a day-to-day basis." He then quoted the Borough Code's definition of a bedroom: "a room marketed and/or designated to function primarily for sleeping by humans."

Mr. Matherly quoted the Borough Code's definition of a principal building as "a building in which is conducted the principal use of the lot on which it is located." He further cited the Code, which stated that "not more than one principal building may be located on a lot." He asked if there is a room in the primary building that is used for the bed and breakfast or if only the detached structures are used as the bed and breakfast. He argued that the eight structures are principal buildings and only one is allowed according to Code.

Mr. Roberts spoke to the definition of a principal building. He commented that Mr. Sandstrom's argument is that the accessory structures are not permanent.

Mr. Gatewood referenced the photos in the packet. He stated that the structures' classification is a matter of interpretation and that is what needs to be determined.

Mr. Hilling asked if it would be possible to postpone the appeal until more investigation can be done. He asked if the Board of adjustment was at liberty to look further into the Borough Code.

Mayor Cleworth stated that a decision could not be postponed for the purpose of gathering new information.

Mr. Ewers stated that all of the definitions, code, and information pertinent to the appeal is included in the packet. He clarified that, in preparation for the appeal, it was permissible for Mr. Hilling to have looked further into the Borough Code.

Mr. Hilling again recommended postponing the appeal for the purpose of becoming more informed and prepared to make a decision.

Mayor Cleworth commented that all pertinent information has been presented. He added that postponing would be the Council's decision.

Mr. Hilling moved to POSTPONE the Sandstrom Appeal to the Regular Meeting of March 5, 2012, under the condition that no new information be considered.

Mayor Cleworth declared the MOTION FAILED for lack of a second.

Mayor Cleworth indicated that granting the appeal could be risky, given the Borough definitions of a principal building and a bed and breakfast.

A ROLL CALL VOTE WAS TAKEN, ON THE MOTION TO GRANT THE APPEAL, AS FOLLOWS:

YEAS: Gatewood, Stiver, Roberts

NAYS: Hilling, Matherly, Cleworth

Mayor Cleworth declared the MOTION FAILED and the APPEAL DENIED.

Mr. Ewers informed the Council that there will be a draft version of the Finding of Facts and Conclusion of Law on the Sandstrom Appeal for consideration at the next Regular City Council Meeting.

- b) Vacation of Public Right-of-Way (VA 006-12 Wilbur Street) – Request by 3-Tier Alaska on Behalf of Fairbanks Montessori Association, Inc., to Vacate the Westerly 50-foot Wide Portion of Wilbur Street Adjacent to the Eastern Boundary of Lot 1, Tract H, ASLS 80-64, and Add the 0.37 Acre Vacated Area to Create One New Lot of 1.37 Acres, Within Sec 15, T1S R1W, FM (located on 30th Avenue and Wilbur Street).

Mayor Cleworth explained that by taking no action, the Council would be agreeing with the Vacation. If there was an objection to the Vacation, the City would enter a protest.

No formal action was taken.

MAYOR'S COMMENTS AND REPORT

Mayor Cleworth shared that Doug Buchanan had passed away and offered his sentiments for the loss of a great Alaskan. He spoke to the census report out of Juneau, stating that the decrease in the Fairbanks population will translate to an estimated \$81,000 loss in revenue sharing for 2012. **Mayor Cleworth** stated that he had met with General Schwartz to discuss the plan to

transfer the F-16's from Eielson Air Force Base to Elmendorf Air Force Base and the impact it would have on the Fairbanks community. He praised City Engineer, Jerry Colp, on his recent award as Engineer of the Year and his work in the conversion of City street lights to LED's. He mentioned a letter from Chris Eshleman thanking the Fairbanks Fire Department for their response to the fire at his downtown residence.

UNFINISHED BUSINESS

- a) Ordinance No. 5875 – An Ordinance Amending Chapter 86 Vehicles for Hire Chauffeur Requirements. Introduced by Mayor Cleworth. SECOND READING AND PUBLIC HEARING.

Mr. Matherly, seconded by **Mr. Hilling**, moved to ADOPT Ordinance No. 5875.

Mayor Cleworth called for Public Testimony and, hearing none, declared Public Testimony closed.

Mr. Roberts asked the reasoning behind the elimination of the defensive driving certification that had been put into place less than a year ago.

Ms. Hovenden explained that the requirement only applied to those who had already been a chauffeur for two years. She added that the defensive driving classes primarily benefit the cab companies by lowering their insurance rates and is an added expense to applicants. She indicated that the certificate requirement also causes unnecessary delays for licensing.

A ROLL CALL VOTE WAS TAKEN ON THE MOTION TO ADOPT ORDINANCE NO. 5875, AS FOLLOWS:

YEAS: Matherly, Hilling, Roberts, Stiver, Gatewood

NAYS: None

Mayor Cleworth declared the MOTION CARRIED and Ordinance No. 5875 ADOPTED.

NEW BUSINESS

- a) Resolution No. 4513 – A Resolution Amending the City Schedule of Fees and Charges for Services, Adjusting Costs to Conduct Criminal History Checks for Chauffeur Applicants. Introduced by Mayor Cleworth.

Mr. Gatewood, seconded by **Ms. Stiver**, moved to APPROVE Resolution No. 4513.

Mr. Roberts asked if the purpose of Resolution No. 4513 was only to bring the fee schedule into compliance with Ordinance No. 5875.

Mayor Cleworth confirmed that Mr. Roberts was correct. He stated that, although the fees to obtain a Chauffeur License are being increased, there will be a net savings and less hassle for

applicants. He commended the City Clerk for her work and research in simplifying the Code regarding Chauffeurs.

A ROLL CALL VOTE WAS TAKEN ON THE MOTION TO APPROVE RESOLUTION NO. 4513, AS FOLLOWS:

YEAS: Roberts, Matherly, Gatewood, Hilling, Stiver

NAYS: None

Mayor Cleworth declared the MOTION CARRIED and Resolution No. 4513 APPROVED.

- b) Resolution No. 4514 – A Resolution Urging the Alaska Legislature to Refrain from Enacting any Legislation that Would Increase the State’s Pension Liability. Introduced by Mayor Cleworth.

PASSED and APPROVED on the CONSENT AGENDA.

- c) Ordinance No. 5876 – An Ordinance to Amend Chapter 14, 46, and 78, to Repeal, Amend, and Clarify Certain Offenses. Introduced by Mayor Cleworth.

ADVANCED on the CONSENT AGENDA.

- d) Ordinance No. 5877 – An Ordinance Authorizing a Land Exchange Between the Greater Fairbanks Community Hospital Foundation and the City of Fairbanks to Facilitate Vacation of 11th Avenue and to Provide Parking Adjacent to Fire Station Headquarters. Introduced by Mayor Cleworth.

ADVANCED on the CONSENT AGENDA.

DISCUSSION ITEMS

- a) Committee Reports

Fairbanks Convention and Visitors Bureau Board of Directors – Mr. Hilling gave a brief summary of the 2011 auditor’s report for FCVB.

FMATS Policy Committee – Mr. Roberts stated that the February 15, 2012 meeting was lengthy, stretching over a span of two days. He spoke to the work being done in planning the artwork for the section of land between the Cushman Street Bridge and the Barnette Street Bridge. He stated that more funding was given to the LED street light conversion project due to some grounding issues. He spoke briefly to the proposed Bentley/Helmericks roundabout upgrades.

Mayor Cleworth spoke to the confusion of the public on the Bentley roundabout project and mentioned that it may be a good idea to have a presentation from Mike Schmetzer to clarify the construction plans for the area.

- b) Fairbanks North Star Borough Dispatch Contracts

Mr. Roberts asked if any of the modifications to the contract would affect the Borough.

Pat Cole stated that a copy of the proposed contract was sent to the Borough, but their response has not yet been received. He indicated that the item of biggest concern to the Borough was the retention length of electronic records.

Mr. Gatewood apologized for missing the discussion of the contract at the last Finance Committee Meeting. He asked if the fee structure with various entities had been settled.

Pat Cole replied that the fees have been agreed upon with the Borough.

Mayor Cleworth stated that, upon studying the cost of providing dispatch services to outside entities, most are a bigger expense than what the City is currently collecting. He added that the Borough was the exception, being the only one who's fees were in line with actual cost. **Mayor Cleworth** stated that unless the Council had changes to the proposed contract with the Borough, the City would proceed.

No changes or objections were requested.

COMMUNICATIONS TO COUNCIL

- a) Permanent Fund Review Board Meeting Minutes of November 2, 2011.

ACCEPTED on the CONSENT AGENDA.

- b) Chena Riverfront Commission Meeting Minutes of December 5, 2011.

ACCEPTED on the CONSENT AGENDA.

- c) Chena Riverfront Commission Meeting Minutes of December 15, 2011.

ACCEPTED on the CONSENT AGENDA.

- d) Public Safety Commission Meeting Minutes of January 10, 2012.

ACCEPTED on the CONSENT AGENDA.

- e) Reappointment to the Permanent Fund Review Board.

APPROVED on the CONSENT AGENDA.

COUNCIL MEMBERS' COMMENTS

Ms. Stiver thanked Chris Eshleman for publicly recognizing the Fairbanks Fire and Police Departments for their service. She stated that she will be heading back to Juneau before the next

meeting and will attend Council Meetings telephonically until her return to Fairbanks in mid-April.

Mr. Roberts asked what could be done to put infrastructure in place for the possibility of getting gas in Fairbanks. He stated that with the long, cold winter and the high cost of heating oil, Fairbanks residents need relief.

Mayor Cleworth stated that the Borough had funding to do a study on the estimated costs of getting a distribution system in Fairbanks and that he could provide Mr. Roberts with a copy of the preliminary report. He commented that without a distribution network, gas wouldn't do much good in Fairbanks. He announced that a resolution was sent to Juneau by the Chamber of Commerce to fund the preliminary work for a distribution system. He spoke to the large amount of groundwork, such as environmental impact and right-of-way issues, that would have to be dealt with in order for the project to begin.

Mr. Gatewood expressed appreciation for the opportunity to represent the City in Juneau by meeting with the Interior Delegation in reference to the City's 2012 legislative priorities. He stated that he was well-received by the legislators and is hopeful that the City will be successful. He spoke to his attendance as the City Representative at the last Borough Assembly meeting and the highlighted the key topics that were discussed.

Mayor Cleworth thanked Mr. Gatewood for his representation in Juneau on the City's behalf.

Mr. Matherly also thanked Mr. Gatewood for his attendance at the Interior Delegation in Juneau. He spoke to the upcoming tourist season and expressed hope that numbers would increase. He commented on the high cost of heating oil and how it could negatively affect the Fairbanks population and spoke in support of getting gas to Fairbanks. He spoke to the recent Alaska Air Carriers event honoring prominent individuals in the history of aviation.

Mr. Hilling spoke to his appreciation of public testimony. He commented on the discussion surrounding the Sandstrom Appeal and justified his vote to deny the appeal. He stated that he had looked at Mr. Lerman's website, *Renovation Fairbanks*, and acknowledged Mr. Lerman's persistence on various issues. He stated that he would try to read the City's mission statement at the next Regular Meeting. **Mr. Hilling** indicated that he will be able to attend Borough Assembly meetings on behalf of the City during the summer months.

Mayor Cleworth asked Mr. Ewers if the Council was free to discuss the decision on the Sandstrom Appeal.

Mr. Ewers replied affirmatively.

Mayor Cleworth discussed the reasoning behind the denial of the appeal. He explained that, during construction of the cabins, the appellant was issued several Stop-work Orders by the City of Fairbanks and all were disregarded. He stated that the City code requires all dwellings to be hooked up to utilities and those requirements were flagrantly ignored by the property owner. He stated that it was difficult to separate the City's issues from the Borough's, that he respects each Council Member's vote on the appeal.

Mr. Matherly, seconded by **Mr. Gatewood**, moved to go into Executive Session for the purpose of discussing IBEW and Firefighter Labor Contract Negotiations.

Mayor Cleworth called for objection and, hearing none, so ORDERED.

Mayor Cleworth called for a five minute recess.

EXECUTIVE SESSION

Labor Contract Negotiations – IBEW and FFA

The City Council met in Executive Session to discuss IBEW and FFA Labor Contract Negotiations. Direction was given to staff and no action was taken.

ADJOURNMENT

Mr. Roberts, seconded by **Mr. Matherly**, moved to ADJOURN the meeting.

Mayor Cleworth called for objection and, hearing none, so ORDERED.

Mayor Cleworth declared the Meeting adjourned at 10:05 P.M.



JERRY CLEWORTH, MAYOR

ATTEST:

for 

JANEY HOVENDEN, CMC, CITY CLERK

Transcribed by: DS