

ALASKA LEGISLATURE
JOINT MEETING
SENATE AND HOUSE COMMUNITY & REGIONAL AFFAIRS COMMITTEES
February 7, 2002
8:12 a.m.

SENATE MEMBERS PRESENT

Senator John Torgerson, Chair
Senator Alan Austerman
Senator Randy Phillips
Senator Georgianna Lincoln
Senator Pete Kelly

HOUSE MEMBERS PRESENT

Representative Carl Morgan, Co-Chair
Representative Kevin Meyer, Co-Chair
Representative Andrew Halcro
Representative Drew Scalzi
Representative Lisa Murkowski
Representative Gretchen Guess

HOUSE MEMBERS ABSENT

Representative Beth Kerttula

COMMITTEE CALENDAR

Local Boundary Commission Annual Report
Homer Annexation
City of Homer Presentation

PREVIOUS ACTION

No previous action to record

WITNESS REGISTER

Kevin Waring
550 W. 7th Street Suite 1790
Anchorage, AK 99501

POSITION STATEMENT: Gave the Local Boundary Commission Report

Dan Bockhorst
Department of Community and Economic Development

550 W. 7th Street Suite 1790
Anchorage, AK 99501

POSITION STATEMENT: Answered questions regarding Local Boundary Commission action

Allan Tesche
550 W. 7th Street Suite 1790
Anchorage, AK 99501

POSITION STATEMENT: Answered questions regarding Local Boundary Commission action

Tamara Cook, Director
Legislative Legal and Research
Alaska State Capitol
Juneau, AK 99801-1182

POSITION STATEMENT: Answered questions regarding Local Boundary Commission action

Mayor Jack Cushing
491 E Pioneer Ave
Homer, AK 99603

POSITION STATEMENT: Testified on Homer annexation

John Fenske
Homer City Council
1832 Sterling Highway
Homer, AK 99603

POSITION STATEMENT: Testified on Homer annexation

Curt Marquardt, Mayor Pro temp
Homer City Council
1849 Highland Drive
Homer, AK 99603

POSITION STATEMENT: Testified on Homer annexation

Ray Kranich
Homer City Council
Homer, AK 99603

POSITION STATEMENT: Testified on Homer annexation

Michael Yourkowski
Homer City Council
3059 Kachemak Drive
Homer, AK 99603

POSITION STATEMENT: Testified on Homer annexation

Rick Ladd
Homer City Council

P.O. Box 3364
Homer, AK 99603

POSITION STATEMENT: Testified on Homer annexation

Gordon Tans
Attorney for Homer
Homer, AK 99603

POSITION STATEMENT: Testified on Homer annexation

ACTION NARRATIVE

TAPE 02-1, SIDE A [Senate CRA tape]

CHAIRMAN JOHN TORGERSON called the joint meeting of the Senate and House Community & Regional Affairs Committees to order at 8:12 a.m. Present were Senators Lincoln, Kelly, Austerman, Phillips and Chairman Torgerson and Representatives Halcro, Scalzi, Guess and Co-Chairs Meyer and Morgan. Representative Murkowski arrived at 8:25 a.m.

The first order of business was the Local Boundary Commission Annual Report.

KEVIN WARING, Chairman of the Local Boundary Commission, asked Commissioner Allan Tesche, appointee from the third judicial district and Dan Bockhorst, commission staff, to join him at the witness table.

He announced that there are two vacancies on the commission at present. The seats in both Northwest and Southeast Alaska are vacant.

The commission did file its annual report with the Legislature, as required by law, and it addresses three principle areas. The first chapter gives an overview of the commission and its basis under law as well as activities and functions. The second chapter summarizes the commission's activities over the last year and gives some information about pending proposals. Chapter three discusses several important public policy issues that relate to local government in Alaska.

He said his report would be briefer than usual to give more time to the discussion of the Homer annexation.

The Alaska Constitution established the Local Boundary Commission (LBC) to ensure that proposals relating to boroughs and city boundary issues will be dealt with objectively and from a statewide perspective. The state constitution and statutes give the

commission responsibility for reviewing and acting upon proposals for the following:

- Incorporation of cities and boroughs
- Annexation to cities and boroughs
- Detachment from cities and boroughs
- Reclassifications of cities
- Dissolution of cities or boroughs
- Merger and consolidation of cities and boroughs

In addition to those responsibilities, the commission has other powers and obligations that are defined in statute and include the duty to make studies and recommendations on local governmental boundary issues.

Commission members are not paid, rather they serve as volunteers and receive no compensation for their time spent on LBC business. The Department of Community and Economic Development (DCED) provides staff support to the LBC.

The LBC met 15 times in the last calendar year. To minimize costs, they would deal with several issues at each meeting and would conduct meetings via teleconference whenever practical. Collectively, the members spend hundreds of hours dealing with documents, attending hearings and doing LBC business.

In the past year, the commission acted on several proposals that were submitted. They approved petitions for the consolidation of the City of Ketchikan and Ketchikan Gateway Borough, for the consolidation of the City of Fairbanks and Fairbanks North Star Borough, for the incorporation of the City of Talkeetna as a Home Rule City and for the annexation to the City of Homer. The outcome of some of those is clear. The voters in Ketchikan and Fairbanks chose not to approve those consolidation proposals so they won't go forward. The Talkeetna voters will hold a vote in March and the LBC approved an annexation to the City of Homer that is significantly smaller than the original petition of more than 25 square miles.

In April of 2001, residents of Adak approved incorporation of a Second-Class City of Adak after the LBC approved their petition in 2000. LBC decisions have frequently been litigated, but for the fifth year in a row, there is no standing litigation against any of their decisions.

The LBC continued to review, update and revise the regulations in the Alaska Administrative Code, which are the regulations that govern their business. The last time the regulations underwent comprehensive review was ten years ago and since that time there

have been significant changes in state statute that affect the commission's activities. They suggested some housekeeping regulations to address ambiguities and to streamline some procedures for non-controversial proposals.

They also proposed a new requirement for a local public hearing on legislative review annexation proposals to be held before they are submitted to the LBC. This requirement would apply to proposals such as the one the City of Homer initiated.

They held four public work sessions on the proposed changes in their regulations in the year 2000 and this year they published notice of the regulations and invited public comment. They held two public hearings on the regulations and then approved a set of revised regulations that are now being reviewed by the Department of Law.

The following significant petitions are pending before the commission:

- A vote on the petition to consolidate the City of Haines and the Haines Borough will be held in Haines in March.
- A petition to dissolve the existing City of Skagway and concurrently incorporate a Skagway Borough.
- The City of Wasilla has submitted a local action petition for annexation of about 300 acres adjacent to the city. This type of petition will be settled by local property owners and residents and would not come to the legislature if it is approved.
- The City of Palmer has submitted an annexation petition.
- There are ongoing discussions about borough incorporations of significant annexations in Wrangell and Petersburg.

The following policy issues are discussed in Chapter 3 of the annual report and were raised as normal commission responsibilities to address local governmental boundary problems or issues:

- The Unorganized Borough and its failure to meet the constitutional requirements set out in Article 10 of the Constitution and the disincentives that are now in state law that tend to discourage borough incorporation and borough annexations
- There are ambiguities in state law that affect the authority of newly incorporated municipal governments to levy property taxes during the transitional period when they are setting up to do business
- The adverse impact of the Alaska Housing Finance Corporation's

Small Communities Housing Loan Program on some boundary changes

UNORGANIZED BOROUGH

SB 48 would establish a new method for incorporation of boroughs in areas of the unorganized borough that satisfy the standards in law for borough incorporation. The LBC has been supportive of the concept embedded in the legislation.

Statutes now authorize funds for borough feasibility studies by local groups wishing to examine the pros and cons of borough incorporation, but funds have never been provided for such studies. The Prince of Wales Island region and the Delta Greeley region have both expressed interest in conducting borough feasibility studies and the LBC recommends the legislature appropriate funds in the approximate amount of \$50,000.00 annually for such studies.

There is \$600,000.00 available to newly incorporated cities and boroughs to assist in their set up costs, but there are no transition funds available for the consolidation or merger of governments. There are local groups looking at consolidation that have expressed the wish that there be some lesser amount available to them to help bridge the extra costs of consolidation.

AMBIGUITIES IN STATE LAW

At present, state statutes are unclear about municipal authority to levy property taxes during the period immediately following incorporation, boundary changes, dissolutions or reclassifications. Specifically, the pertinent sections of the statutes do not clearly authorize or prohibit municipal governments that incorporate or change boundaries after January 1, but come into being during that calendar year, to assess, levy and collect taxes. The commission believes it would be beneficial to local governments to make the ground rules clear. Those issues are fully addressed on pages 28 and 29 of the annual report and they offer some draft legislation that was developed with the state assessor and some municipal assessors that would resolve this uncertainty.

ALASKA HOUSING FINANCE CORPORATION SMALL COMMUNITIES HOUSING ASSISTANCE PROGRAM

This program sometimes affects public acceptance of municipal boundary changes because the rates are more favorable for rural residents and this stimulates resistance to annexation among property owners and home mortgage holders that would face higher loan rates if they are annexed. AHFC board of directors has adopted

regulations that have resolved this issue as it affects mergers and consolidations but there is still no solution for the situation for annexation and incorporation proposals. They continue to work with AHFC to find a solution that is financially acceptable.

CO-CHAIRMAN TORGERSON called for questions.

REPRESENTATIVE SCALZI asked what prompted the concern regarding levying property taxes after January 1.

DAN BOCKHURST said Homer provides an example. If approved, the annexation for the City of Homer, it will occur on March 9. There are some who assert that if property assessment value is fixed as of January 1 of each calendar year then that date also establishes a date by which a municipal entity has power to levy property taxes. If the area isn't in the corporate boundaries of the City of Homer on January 1 2002, then the question arises as to whether the City of Homer has the authority to levy property taxes for the period of time between March 9 and the end of the calendar or fiscal year. There is an Attorney General opinion that municipal governments have a duty to levy taxes on property that is annexed after January 1 but in time for the municipal government to place that property on the tax role. In many cases there is dispute and confusion among city and borough governments on this question and some insist that the territory must be within the jurisdiction on January 1 in order for it to be taxable for that period of time. The commission's proposal would provide a mechanism to resolve that ambiguity.

MR. WARING added it is easy to see what a fair outcome would be; that whichever government is providing services at the time should be entitled to a comparable share of the revenues. That outcome can be achieved with clarification in the statutes. The alternative is inevitably some litigation of the issue. Statutory clarification is a better resolution.

CO-CHAIRMAN TORGERSON commented he thought the commission already has broad based authority to accomplish this in their order for annexation or detachment. There may be a 45 day legislative review process but that is when the order becomes effective, not the effective date of stipulations that the commission may add to annexation. He said he's not sure they need legislation. Rather, "you just need to step out and do it."

MR. WARING said the legislation statutorily states that the commission has that discretionary authority to place conditions on boundary changes. He agreed they do have broad authority, but they are generally conservative about venturing beyond what they see in

statute and regulation. They would feel more comfortable with a statutory statement that the Legislature agrees this is something they should do.

ALLEN TESCHE, LBC representative from the Third Judicial District, said his view of state statutes governing taxation is that they are specific and clear as to the process that should be followed. He too agrees that they would prefer having clear guidance from the Legislature on that issue rather than simply taking a position and waiting to see what the courts decide. Personally, he would rather see the issue addressed as a policy matter at the legislative level.

CO-CHAIRMAN TORGERSON said he disagreed but the question is whether they have the authority to put in the order when taxes would start being collected and when they wouldn't. The LBC isn't arguing whether they have the authority, they just choose not to exercise the authority.

MR. TESCHE said they question whether they have the authority in the first place and that is where the problem starts. He's not comfortable with the proposition that they have the authority.

CO-CHAIRMAN TORGERSON asked when Nancy Golfstead resigned from the LBC.

MR. WARING thought is was in July.

CO-CHAIRMAN TORGERSON asked if there were four commission members when the report was adopted.

MR. WARING said they had four members when the report was adopted and at the time of the most recent Homer public hearing. Mayor Wasserman resigned from the LBC about a month ago.

CO-CHAIRMAN TORGERSON asked whether the request for the budget amendment of \$50,000.00 for help with borough incorporations is in the budget request to the Legislature or just a request to the committee.

MR. WARING said it isn't in any formal budget request.

REPRESENTATIVE SCALZI asked for background information and justification for the suggested regulation to require a local public hearing on legislative review annexation proposals before the petition is reviewed by the LBC.

MR. WARING said legislative review annexations are usually the

controversial annexations; the non-controversial ones are routinely handled without coming to the legislature.

The LBC put in a new requirement that a local government submitting a legislative review annexation petition to the LBC should first have a formal local public hearing before it is forwarded to the commission. This did not grow from the controversy in Homer and they did look at pros and cons. On one hand, this is an irrelevant requirement for many local governments with modest petitions for annexations. It is another layer of governmental requirement that would yield no great benefit to the petitioner or the commission. However, periodically there are petitions that would benefit from full local discussion. The LBC thought it would be worthwhile to put in this requirement to ensure when there are pros and cons they are discussed locally. They don't want the LBC to become the audience for things that should be worked out at the local level such as whether or not the petition should be filed.

REPRESENTATIVE SCALZI asked if public comments move with the petition to the LBC.

MR. WARING said not necessarily; the local government must document that it passed a resolution authorizing the petition before it is accepted by the LBC. However, the information that is generated at the public hearing would not necessarily pass with the petition but it would be in the LBC staff file. The commission is obviously in the situation of being able to request any information it believes would help it make a decision and lacking that information they can draw their own conclusions.

There were no additional questions on the annual report.

CO-CHAIRMAN TORGERSON announced the next topic would be the Homer annexation.

MR. WARING informed committee members he would be speaking from a paper prepared 2/7/02 titled Summary of Local Boundary Commission Recommendation for Homer Annexation.

Article X, Section 1 of Alaska's Constitution defines how local government is dealt with in this state. It says the purpose of this section is:

... to provide for maximum local self-government with a minimum of local government units, and to prevent duplication of tax-levying jurisdictions.

Annexation at the city level is the means by which we get to that

result. It is the tool used to prevent proliferation of local governmental units, to minimize the number of taxing jurisdictions, to facilitate maximum local self government. It is a common tool as evidenced by the more than 40 annexations for the City of Anchorage between 1920 and 1975 when it was unified. Many Alaskan cities have had repeated annexations. It enables local governments to expand their jurisdictions and minimizes the number of tax levying jurisdictions.

The City of Homer submitted a petition to the LBC for annexation of 25.64 square miles and the LBC instead approved a petition for annexation of 4.58 square miles. He stands by the commission's decision and it is clear that the commission did not rubber stamp the petition. They took the information into account and reached a very different result than the City of Homer originally sought.

There are three elements to an annexation decision by the Local Boundary Commission:

- There is a structured process defined in regulation and law
- There are standards set out in law and regulation that the commission follows
- There is a record of the facts as documented in the official record of the proceedings

The process was carefully set out, the law was applied and documentation of the reasons is found in the 42 page document of the commission's statement of decision. The rationale on each standard is laid out so it is clear how the commission reached its decision. It is a structured and methodical process and the decision is not the result of an arbitrary or casual process.

The City of Homer annexation was a lengthy and through process with all the procedural requirements observed. Attachment A summarized the key steps in the Homer annexation proceedings.

There are fourteen standards established in law for LBC decisions on city annexations. They make certain the respondents know that those are the ground rules under which the commission makes decisions and it is best to focus arguments and information on those standards. Attachment B lists the fourteen relevant standards and their basis in statute and regulation. In the statement of decision, each of those standards is dealt with in turn.

Based on the facts in record, the commission found that their recommended annexation of 4.58 square miles satisfied all legal standards. Some key background for the recommended annexation is as

follows:

- The City of Homer was incorporated in 1964 and has had no change in its upland boundaries in all that time.
- Since 1964 the population has grown four fold. The population of the greater Homer area has grown about ten fold.
- The City of Homer now ranks 11th in population and 61st in terms of land area among Alaska's 146 city governments. After annexation, it would be ranked 7th in population and 48th in land area.
- The City of Homer already provides services used by residents of the area recommended for annexation. Fire protection, EMS, library, parks and recreation, bulk water supply, water/sewer service to select area, and transportation facilities are provided. It is difficult to determine who is a resident and who is not and find an equitable way to make sure those who benefit from or have access to the services also share the costs.
- Annexation will increase real property taxes in the annexed area by 2.75 mills and extend the city sales tax to it

The record consists of a City of Homer petition, 14 responsive briefs, written comments on the petition by 168 parties, the City of Homer's reply brief, DCED's Preliminary Report and written comments on it from 32 parties, DCED's final report and statements, testimony, and public comments made at the local public hearing.

In addition to the printed record, the LBC obtained first hand observations by touring the area by automobile and helicopter.

He said he wouldn't list all 14 standards but would respond to questions. The commission did reach a unanimous decision that the 4.58 square mile area did meet all the requirements. They viewed their decision as conservative.

Finally, the commission addressed two legal issues raised during the annexation proceedings:

- Application of HB 13 passed last year and codified as AS 29.35.450(c). This is the law that requires a local vote on the change of a service area boundary before a borough government can alter a service area boundary. The commission heard arguments and they concluded that particular statute did not nullify the commission's authority to approve the annexation or to alter the affected service area boundaries. They believe it is in agreement with four Alaska Supreme Court cases that have addressed this issue. The Department of Law

advised that provision does not impede the commission's decision to approve annexations and alter the boundaries of a service area. It is his understanding the Legislative Legal and Research Counsel also advised the Legislature that they concur. This issue has arisen in a number of other annexation petitions and they reached a similar finding.

TAPE 02-1, SIDE B

- The argument that the LBC should truncate the terms of elected local officials in the City of Homer and require a new election. The rationale was that, due to the size of the annexation, it would add approximately 18 percent to the existing population of the city. The commission elected not to truncate the terms based on the fact that:
 - o Homer Council members are elected at large and do not represent a specific district
 - o The terms of the mayor and two council members will expire in October 2002, two more council terms will expire in October 2003 and the last 2 council terms will expire in 2004

They could find no basis for the commission taking that initiative and that would be a stretch of its authority.

In summary, the commission unanimously approved the petition on the merits and the application of the standards. They believe they took a conservative approach in defining the area that was included in the annexed area. Homer has not grown as a compact tight town; it is very stretched out following terrain and developable land. The LBC decided the area that is the most immediately adjacent to the existing community and most heavily developed warranted annexation. The LBC didn't feel the city demonstrated that the larger annexation was warranted.

The sentiment of the LBC is that this annexation is long overdue. The point is to put the apparatus of a city government in place to oversee the period of development rather than to come afterwards. That hasn't happened in this case and probably some of the objection to the annexation stems from the fact that people develop a stake in the status quo and this is a change in the status quo.

CO-CHAIRMAN TORGERSON called for questions.

SENATOR PHILLIPS asked about the allegation that one commissioner had a serious conflict of interest in this particular case.

MR. WARING said the petition was filed in March 2000. The LBC operates under both the Executive Branch Ethics Act and their own bylaws that deal with ethics issues. In June of 2000, Commissioner Tesche filed notice that he and others in his firm had provided some legal services to the City of Homer. At least some of the advice that was given related to land use issues. They held a public hearing, consulted the Attorney General's office and looked at both the Executive Branch Ethics Act and the LBC bylaws before determining that the financial involvement was not substantial enough to disqualify or put any cloud on Commissioner Tesche's participation or to constitute a conflict of interest in the Homer case. The issue continued to be raised at subsequent points and the commission continued to think there was no substantial conflict of interest because there was a very modest level of previous involvement by the commissioner.

SENATOR PHILLIPS asked whether the LBC has a system whereby commissioners are able to recuse themselves from voting if they have a conflict of interest.

MR. WARING said whenever there is any possible cloud of this sort, it is disclosed to the commission and they go through the hearing process described previously.

SENATOR PHILLIPS asked whether Mr. Tesche disclosed his conflict right away.

MR. WARING said it is the responsibility of a commissioner to disclose to him as Chairman as well as the Attorney General any possible conflict and there are serious consequences if anyone fails to do so.

SENATOR PHILLIPS said he was interested in how it was done.

MR. TESCHE responded in accordance with the Executive Branch Ethics Act and the separate ethics standard that applies to the commission, he was ethically required to offer a letter to the Chair that set forth the pertinent facts of the previous legal work that he did for the City of Palmer that might be the subject of potential criticism. He did submit such a letter and he did request a determination from the commission as to whether he could continue to participate on the merits of the application. In open session and without his participation, the commission made appropriate rulings on both requests and determined there was not a conflict that would require him to recuse. A copy of that correspondence is available to the committee members if they so desire. He said they could then see what the disclosure was and that would probably answer questions concerning the decision made by the commission.

MR. WARING announced he had a copy of Commissioner Tesche's original letter, the commission's action, subsequent correspondence on the issue and his reply.

SENATOR PHILLIPS asked for verification that the commission reviewed the material and determined there was not a conflict of interest.

MR. WARING said they made a decision after a public hearing and notice to interested parties.

REPRESENTATIVE HALCRO asked what type of appeals process was available once the commission amended the City of Homer's petition from 25 square miles down to 4.58 square miles.

MR. WARING replied there are two stages for anyone disagreeing with the LBC decision. One is the reconsideration process, which is fairly limited in its scope. There are specific criterion that deal with a claim of misrepresentational fraud or if there were serious errors in the commission's process or their understanding of the law that warranted the commission reconsidering the decision or if there was information available in the period after the hearing that would have significant bearing on the basis of the commission's decision. Taking that into consideration, they might reopen their decision. Six or seven parties requested they do that but they chose not to do so.

There is opportunity for litigation if someone is convinced the commission improperly applied the standard, did not have a basis in the facts, or if the decision made did not follow the process properly. There is also the legislative review of the LBC decision, which provides an opportunity for the legislature to determine that they made a decision based on merit.

SENATOR HALCRO asked whether the City of Homer asked the LBC to reconsider their decision to amend their petition.

MR. WARING said no they did not.

SENATOR HALCRO found it striking that the city didn't ask for reconsideration when their petition for annexation was reduced by 83 percent.

MR. WARING suggested those questions might best be addressed to the city but they were accepting of the decision at the public hearing.

SENATOR LINCOLN asked whether the commissioner from the First

Judicial District participated through the entire process.

MR. WARING replied she participated through the hearings and the decision. Commissioner Wasserman resigned before the vote not to reconsider, but since the vote was three zero not to reconsider, the resignation made no difference in the outcome.

SENATOR LINCOLN said she assumes there was no participation from the commissioner from the Second Judicial District.

MR. WARING said that is correct.

SENATOR LINCOLN then asked if the LBC conducted a total of four meetings on the Homer annexation.

MR. WARING replied there were two commission meetings. The LBC staff attended some of the other public informational meetings to explain the pros and cons, the applicable statutes and the process by which the commission does its business. The commission did not meet on that until the final meeting is December.

SENATOR LINCOLN asked if any meetings were conducted by teleconference.

MR. WARING told her the reconsideration was teleconferenced. There was Homer participation in some of the procedural steps and there was a great deal of interest from residents regarding the suggested regulation change requiring a local public hearing. This was an idea from a Homer resident and the commission agrees.

The commission has open meeting requirements and exparte conversations are not their way of doing business. As a matter of course, the commission does not discuss cases among themselves until they are at the public hearing.

SENATOR LINCOLN referred to a map of the area and asked him to speak to why the commission added two sections more than recommended by DECD.

MR. WARING pointed out that the area outlined in red shows the staff's recommendation. At the hearing, owners from the adjacent 160 acres requested that their property be added to the annexed area. They thought it would improve their opportunity to develop their property. The second area that was added lies along the coast and is sloped land. The city requested that area be added so they could have jurisdiction to protect the scenic qualities of the area.

SENATOR LINCOLN referred to the map again and asked about a pie shaped piece that is not included in the boundary.

MR. WARING replied that the commission does the best they can, but there will always be disagreements and because of the ground conditions at Homer, it is impossible to draw a bright line between developed and not developed.

He then asked if she was referring to the area outlined in green.

SENATOR LINCOLN said she was referring to a portion of that area that looks very populated. She then pointed to another area and asked about that.

MR. WARING apologized that he was referring to a different area when he answered the question.

SENATOR LINCOLN said she was trying to follow his answer.

MR. WARING explained the area encircled by the green blue line is the existing City of Kachemak, which predates the City of Homer. The City of Homer has grown to the point it butts against the City of Kachemak and one of the reasons the LBC did not approve the area proposed by the City of Homer is that it would have completely encircled the City of Kachemak. Generally, commission regulations do not favor creating in-holdings of that sort. It is already incorporated as a city, it is not an area that the City of Homer sought and it did not ask to be included in the petition so the commission did not consider it.

REPRESENTATIVE SCALZI ensured all present that the scrutiny of the questions in no way impugns on the integrity of the work done by LBC staff but they certainly don't want there to be any appearance of a rubber stamp.

He asked about the standard that says, "the area proposed for annexation does not include entire geographical area with no population..." For clarification he said, "The area that has no population, from the top of West Hill over to Skyline, which includes the reservoir, I would assume although the city has territorial powers there granted by the borough, that area was included because of the watershed more so than any similarity between the populated area."

MR. WARING agreed that is the city's water supply and they do have some concern about the long-term adequacy of their water supply. The area doesn't include the watershed as much as the reservoir itself. There is some development going on in that area and they

thought it was simpler and sounder to give the city jurisdiction over that area.

REPRESENTATIVE SCALZI asked for confirmation that the LBC did recognize the area was largely unpopulated and that does not meet standard number five.

MR. WARING replied their reading of standard five is different and it is very natural for annexations to include unpopulated areas. That is part of the point of annexations. The standards for boroughs and cities are very different; borough standards accept the fact that there will be large unpopulated areas within borough jurisdiction. The standards for cities are different; they are meant to be places of settlement now or in the near future and the requirement is that there not be large unpopulated areas. However, they do provide for reasonable growth over a ten year period.

REPRESENTATIVE SCALZI asked if he would concur that the standards are very subjective.

MR. WARING responded there is judgment needed and they try to be consistent. He doesn't concede that the judgments are arbitrary; the judgments are informed.

MR. TESCHE said the key point is judgment. When considering the relatively small piece of property being questioned and when historic growth patterns of the more developed areas of Homer are considered, it is reasonably foreseeable that within the next five to ten years there will be additional development such that one could say that particular property is no longer rural in character. It is more a question of judgment on the particular facts rather than a truly subjective standard based on feelings or perceptions.

REPRESENTATIVE SCALZI referred to standards eight and nine:

- The City of Homer has provided a suitable transition plan for extension of City services.
- The boundaries approved by the commission include all areas necessary to provide essential city services on an efficient, cost-effective level.

Obviously, the commission thought those standards were met. He then had a question about the approximately \$1.6 million in increased revenue the city would get according to the final review plan. He asked whether the commission considered the mill rate adjustment that would take place in relation to the services that would be added or are currently being used. "In other words, I didn't see anywhere in the transition plan that would be a reduction rate of

the mill rate on how those things would be, the new services would be paid for."

MR. WARING said the applicable standards regarding the fiscal issues are that the LBC must find that the combined area possesses the financial, economic and human resources to fund and provide services. They don't measure whether the new revenue will exactly match up with the cost of the services to be provided; their decision is more general. They looked at Homer and determined that, by Alaskan standards, it is a sophisticated, financially sound and economically healthy community. They had no problem reaching their conclusion.

REPRESENTATIVE SCALZI said he agrees and has no problem with that either. If the services have already been provided, even though there would be some new ones, those people outside the city would be taxed, which would bring \$1.6 million in new revenue. The commission must also consider the position of those being annexed as well as that of the city. He would think there would be some scrutiny as to where those new funds are going to go, not just that they are enough to pay for the services.

MR. WARING said this is a nuance area. There is no requirement in law that there is any one-to-one parity between revenues paid and services gotten. There are also pro and con arguments. One party might argue they are just catching up and finally able to bill those people who have been using the services in years past. The counter argument is that nothing of significance is being gotten for the new taxes and therefore they are unfair. The commission decided, based on the Constitutional standard referred to originally, it makes more sense to put within one government the people that share interest in the provision of and paying for governmental services.

REPRESENTATIVE SCALZI asked if the formation of the fire service district played a big part in the LBC decision regarding what services are now being paid for that were not before.

MR. WARING replied the formation of the new fire service area was formed after the annexation petition was filed.

REPRESENTATIVE SCALZI reminded Mr. Waring the question was how much of a factor did that play because obviously it was formed and there was a mill rate of 1.75 that was going to be collected. What percentage of that played into the decision to either reduce the boundaries or alleviate the city's burden of services that were not being paid for?

MR. WARING said their decision as to where to draw the boundary lines was not affected. However, a section in Article X of the Constitution clearly specifies that service areas are not to be formed where there is an existing local government or city or service area that is capable of providing the services. The city was already providing the services. Clearly the city did have the capability, it had provided services and it was continuing to provide services.

REPRESENTATIVE SCALZI asked if they know there is argument that the city should not have provided those services without a contract outside their jurisdiction. There is a necessity of a relationship between the entities outside and those inside to have some type of contractual agreement so the fire service area was actually a benefit to the city in that sense.

MR. TESCHE wanted to revisit the question, "How much of a factor did that fire service area pose?" Speaking for himself he said, the formation of the fire service area suggested to him that there was a recognition that services were being provided outside the jurisdiction. A local decision was being made that they should be paid for it in some fashion through a service area. Without going into all the mechanics of that service area formation and all the ramifications in terms of contracts, it did provide him assurance that services were being provided that people were going to pay for through that service area as proposed.

On the other issues raised earlier about how you ensure the city will provide equal value for the taxes collected in a new area, he said he has two comments. First, the record did not suggest any history within the city of Homer of unequal treatment of local citizens in terms of delivery of services. It did not suggest the kind of history that would give him concern that if the annexation were approved; the people in the newly annexed area would be given "short shrift" in terms of the taxes they pay. The other assurance is that the 800 or 900 residents in the newly annexed area are all voters that can participate in a political process to assure they will be treated fairly.

CO-CHAIRMAN TORGERSON made the dry remark, "I'm glad you think that way."

REPRESENTATIVE SCALZI asked how well they scrutinized the figures provided by the city regarding the collection of the funds and did they feel confident that those figures were valid.

MR. WARING said they felt confident there was the financial capacity to fund city services and to raise revenues to provide the

level of service that local voters would choose. This is a decision to be made at the local political level.

REPRESENTATIVE SCALZI asked which essential services were being provided to the residents outside the city that they will have to catch up paying for.

MR. WARING said there were some services available to and paid for by residents outside the city such as library, recreation and water supply. Services that would become available would be city planning and zoning, public safety and the contract services such as fire and EMS services. An area that is steadily growing but not necessarily in an even way presents the task of deciding where the line should be drawn.

REPRESENTATIVE SCALZI said he understood he just wanted to clarify for the record. The question was about the services. He asked him if he would concede that the borough is providing the planning and zoning services. Perhaps not to the extent that the city provides, but the water and sewer are paid for through enterprise funds or the sale of water outside the city. The fire and EMS are now taken care of with the fire service area so the ones they are not paying for now are the library, parks and recreation and public safety when there is not a trooper available.

MR. TESCHE offered that he prioritized the services. Number one was police protection, second was the harbor, the library and museum services ranked third and public works was four. This included the parks and an improved method for water and sewer. Animal control was last on the list.

REPRESENTATIVE SCALZI said he would add the airport. The things that come into play in a city obviously benefit those outside and there is lots of argument in favor. However, he wanted to get to the specifics and take out the subjective.

Representation was one of his concerns. During a contentious phase such as this, the representation has to be addressed whether annexation is approved or not. He then asked whether the LBC is also aware that there is a thirty day requirement for residency before you can vote and a one year residency requirement before you can run for office. If the annexation goes through, those in the affected area will not be able run for office out of that annexed area in the upcoming general election.

MR. WARING said he was not aware of that particular requirement.

REPRESENTATIVE SCALZI asked if he would agree that the

representation issue is of concern when about 23 percent of the comparative mass of the population is going to change. The Kenai Peninsula Borough code calls for a new election any time the population changes by more than ten percent in any one given area.

MR. WARING thought that might be representation by districts and this discussion is about at large seats so different considerations might apply to districts with shifting populations. During the proceedings they heard no legal arguments or legal support that led them to believe they could truncate terms. They did have common sense arguments that there will be many new residents and it's not fair, but the commission was given no reason in law. Alternatively, they were given the analysis and advice of the Department of Law and subsequently the advice of the Legislators counsel that this was probably going beyond the commission's power.

REPRESENTATIVE SCALZI said they recognize that for the considerably larger original territory for annexation, that issue would be of greater concern, but for the smaller area, it was of concern as well. From his perspective it was a judgment call. The impact in terms of the people coming in had to be balanced against the representation of the people in the City of Homer that placed those council members and mayor in office.

TAPE 02-2, SIDE A

9:50 a.m.

MR. TESCHE said it was of concern and they made a judgment call by balancing the competing interests.

REPRESENTATIVE SCALZI said, "But you were unaware of the one year residency clause."

MR. BOCKHORST explained the DCED was aware of the residency clause and did address it in its reports and recommendations to the LBC. They conferred with the City of Homer on the issue and reported to the LBC that they both had the same interpretation; the one year residency requirement takes affect in terms of when the person became a resident of the area. They don't have to be annexed and included within the city boundaries for one year. As long as they lived in that annexed area for one year prior to the election they would qualify as a candidate for that office.

CO-CHAIRMAN TORGERSON asked if the commission put that in their report to the legislature.

MR. BOCKHORST replied it was their report to the LBC and does not appear in the decisional statement.

CO-CHAIRMAN TORGERSON asked if they agreed they had the authority to truncate terms.

MR. WARING admitted they discussed that in their decisional session but did not find the facts compelling enough for the commission to take an unprecedented action of that sort.

CO-CHAIRMAN TORGERSON repeated the question, "Do you believe you have the authority to truncate terms?"

MR. WARING admitted he didn't know.

REPRESENTATIVE MEYER said his comment relates to HB 13. The bill pertains to voter approval of formation, alternation or abolishment of certain service areas. In the commission opinion, this bill does not apply to this annexation but it does apply in other annexations. He asked why it doesn't apply in the Homer annexation.

MR. WARING said the LBC does not think it applies to annexations at all but it does condition the authority of a borough to alter service area boundaries that are established within the borough. A borough may not alter those service areas without a local vote.

They were aware of HB 13 from last session and the DCED might have taken a position on the bill but the LBC did not because, as they interpreted the bill, it did not intersect with their responsibilities. It was about a requirement that local governments would have to meet in order to alter service area boundaries within their jurisdictions. It is in the part of Title 29 that deals with local governmental powers and is not in the part of Title 29 that deals with the commission or its responsibilities.

REPRESENTATIVE MEYER said he must have misheard. He thought Mr. Waring said it does apply to some annexations, which led to his confusion.

REPRESENTATIVE MURKOWSKI referred to the conclusion of the Balanced Best Interests portion of the Statement of Decision.

The commission concludes that the balanced best interest standard is satisfied in the most favorable manner *at this time* by limiting the expansion of the City of Homer's boundaries to the 4.58 square miles approved for annexation by the commission.

She asked why "at this time" is italicized.

MR. WARING replied it is simply an acknowledgement of a dynamic situation.

REPRESENTATIVE MURKOWSKI didn't want to make the assumption they would change their decision next year. She was curious about the factors the commission would next consider that might cause them to revisit the issue and start over.

MR. WARING stated it was not meant to say there might be circumstances under which they would undo their decision. He reminded members there is a regulation that says a petitioner may not submit a similar petition to the commission for two years.

REPRESENTATIVE HALCRO asked what the public process notification is for those people in the reduced area because their potential tax burden is changed with the amended petition.

MR. WARING replied it is the process they went through. All the parties that were in the original petition area were noticed and this was a decision made within the boundaries of an area already noticed.

REPRESENTATIVE HALCRO pointed out there was no answer to his question. When the annexed area was changed from 25 square miles to 4.58 square miles, the property taxes of those inside the reduced area were obviously affected. There is a formula of personal tax liability that will have changed since there is a change in total area. Did the people inside the area of the amended petition receive notice about how this would affect their tax liability?

MR. WARING said they had the opportunity throughout the entire proceeding to know they were candidates for annexation and he's not sure the commission ordinarily notices a second time if the annexed area changes.

MR. TESCHE informed members the preliminary staff report had the original recommendation to reduce the scope of the annexation and contained the rationale.

REPRESENTATIVE HALCRO asked Mr. Bockhorst to explain how the public had the opportunity to know of and comment on the proposed reduction of the area and its affect on taxes.

MR. BOCKHORST explained that in the course of filing the original petition, the city sent out estimates of the revenues it would receive and expenditures it would incur as a result of annexation of the entire 25.64 square mile area with about 2200 people. LBC staff took into consideration the financial consequences of the

smaller annexation and included detailed information about the effects the smaller area would have on revenues and expenditures of the city. They did this in both their preliminary and final reports. The property tax rates used in their calculations were the same rates that were in effect in the City of Homer. In particular they recognized their recommendation was conservative and focused on the more populated and fully developed areas of the territory proposed for annexation.

REPRESENTATIVE HALCRO asked how the revised information is made available to the public.

MR. BOCKHORST replied they are required by law to prepare a preliminary report and make it available for public review at least four weeks before the hearing. The information in the final report must be public at least three weeks prior to the LBC hearing. The reports were widely circulated at the public library, city hall, on the Internet and to interested parties.

REPRESENTATIVE SCALZI said the city took public comments on the 25 mile annexation during the initial phase and there were four or five alternative plans for reducing the boundaries. There were suggestions of differential tax mill rates and discussions of phase ins. Mr. Bockhorst let the community know what was available to the City of Homer but they maintained the 25 square miles for the two years of the review. There was a very short time to analyze the smaller area yet there was no incentive during the process for the City of Homer to reduce those boundaries. The argument against resubmitting the petition with the reduced area is that it would take another year or so before the petition would be considered.

Viewed on a statewide basis, the Legislature has to view what will happen next time this same thing happens and in doing so they want to send the correct message. Does this encourage cities to go out for land grabs that are larger than they think is palatable to their area when they know the end result will be left up to the LBC? This process creates hostility in the community affected.

MR. WARING agreed the city did have an opportunity to amend its petition. Because the commission does not pass judgment on the petition, whatever the city initiates or maintains is the petition that comes to the LBC at the public hearing. The LBC decision reflects their judgment that the city failed to substantiate a good part of their petition. The lesson to be learned is that there is no gain from submitting a petition that is not well grounded, argued and justified. The LBC is mandated to accept a petition as submitted and has no latitude to alter it until the end stage. He said he thinks they need to speak by its actions rather than making

pronouncements about how local governments should handle these issues that are essentially political.

MR. TESCHE added there is a concern that local governments could engage in a bargaining process and ask for a lot in hopes of getting something more reasonable. As a means of moderating that type of activity, he is pleased with the addition of the regulation requiring a public hearing in the area.

CO-CHAIRMAN TORGERSON referred to the following new regulation and proposed changes:

In accordance with AS 29.05.021, a community may not incorporate as a city if essential city services can be provided more efficiently and effectively by annexation to an existing city or can be provided more effectively or efficiently by existing organized borough **on an area wide basis, a non area wide basis, or through an existing borough service area.**

His stated his interpretation of the addition to the new regulation is contrary to their decision on HB 13 application in the Homer area and asked for an explanation.

MR. WARING respectfully disagreed. In that case, there was a service area created after the petition was filed and legislative counsel volunteered the opinion that may be unconstitutional because it is in conflict with a provision in the constitution that defines when and under what circumstances service areas are preferred. He shares the view that it may be an unconstitutional service area.

CO-CHAIRMAN TORGERSON said that's not his point; it's that the LBC is changing their own regulations to say you now must consider existing borough service area boundaries with respect to essential services that are being applied to the area. "That is 180 degrees out of your decision as it applies to HB 13, except for the vote part."

MR. WARING responded that is about incorporations not annexations and it is a limitation on incorporating a new city government in an area where there is already a mechanism in place.

CO-CHAIRMAN TORGERSON remarked the same standards should apply. He called for additional questions and advised he would like to hear from the legislative legal counsel as soon as he put forth his own opinion on the matter. (Representative Scalzi agreed with him.)

He said both the City of Homer and the LBC have acted legally but he isn't so sure with regard to the moral standard. He continued:

Your decisions have sent a chill through people that reside close to a city about how the application of this decision as it reflects from the process that, in this case, could have been done a lot better. This pitted neighbor against neighbor, community against community, which a lot of times annexations do but this was even more so.

The application of HB 13 may be not direct on point because we didn't amend the right part of the statutes, which may be our fault but clearly there was an expectation among people that HB 13 would have an effect on when people have gotten together and formed their own service areas on what the power would be and you're part of government. I understand it's the part of government that's in our constitution so maybe you have a little higher burden than a regular government but you also have that burden for people in annexed areas and I believe you missed that in this case.

Truncation of terms, I can't believe we're not asking for that to happen. Eighteen months before anybody is eligible for running for council, now we've heard maybe the city will be okay with doing that but its not part of the record. And then they say that here's a little bit but that's not part of your record, it wasn't part of your deliberations. You basically said you'll have a chance to influence the next election by throwing money at it or however you want to influence the election but you are not part of that. You can vote people in or out but you're not part, you can't run to represent your own area. Your legal opinion was wrong in that case.

More so, what we don't have is a direct link of services to dollars. This now gives the message the money grab is on. It could happen anywhere in the state. As I said earlier, you sent a chill through the people of Alaska because of not handling some of these decisions that now I think will be handled legislatively. If you give more credence to my constitutional amendment that I have in, then I'm probably going to broaden it a little bit. I hate to do that but if that's what it takes then maybe we can get the bill and get enough votes to get it passed. It's not an easy job but I think you missed the mark on some of this as it applies to this annexation.

CO-CHAIRMAN TORGERSON called Tam Cook forward to place her legal comments on the record. He advised members he wrote her a letter on January 2, 2002 and asked clarification on the following four issues:

1. Does the newly adopted language in HB 13 (passed in 2001) apply to this "detachment"?
2. When will the city be required to hold elections to provide representation for the newly annexed population?
3. Is the LBC able to make a determination that will result in a city's receiving more tax funds than it will expend for services in the new area?
4. Who is responsible for ensuring that the City of Homer complies with the service expansions and funding they have proposed to the LBC?

TAM COOK, Director of Legislative Legal Services, stated she would agree with the Department of Law and with the conclusion of the LBC; HB 13 doesn't apply in the case of annexations. She expressed surprise that anyone would think it would apply. The Constitution is clear that the LBC has the right to present any proposed local boundary change and to consider any local boundary change. The statute with respect to service areas can't restrict that constitutional authority of the LBC.

CO-CHAIRMAN TORGERSON asked if she would say it was within the authority of the LBC to hold an election if they deemed it necessary.

TAM COOK replied she didn't know the answer to that and clarified he was referring to truncation of terms and allowing a new election for those who would be in office longest after the annexation. She thought the LBC might have discovered it had some sympathy if that had been its decision in court. The court could have said this is an implied LBC power in order to carry out its responsibility to handle changes to local boundaries. If they felt this was necessary, perhaps the court would have given the LBC deference. She also agrees the LBC didn't have to do that to accomplish the change as a matter of law. She knows of no law that says there was an obligation to truncate terms. She's in sympathy that the LBC feels it doesn't choose to go beyond what is necessary to accomplish its prime purpose of adjusting boundaries.

REPRESENTATIVE HALCRO raised the question of the existing service area that was created after the petition was filed and asked about the statutory prohibition against that sort of action. He asked if she is familiar with this.

TAM COOK replied there is something in the Constitution that says you can't create a service area if the service can be provided by an existing city. This is limitation on the creation of service areas.

RREPRESENTATIVE HALCRO asked for a practical application to HB 13 in addition to Ms. Cook's legal opinion. He recalled reading one argument against HB 13 was there was a particular service area created after the petition was filed and therefore the decision was made that the service area was made to avoid being encompassed in the city.

MR. WARING said he is familiar with that case and whether the service area had preexisted or was created after the petition was filed wouldn't matter for the reasons Ms. Cook mentioned.

REPRESENTATIVE SCALZI asked Ms. Cook to give an example so everyone is very clear on what would happen if a vote was required on a borough wide service area, and how it would affect an annexation and why that should not apply.

TAM COOK replied the problem with any kind of statutory structure that attempts to impose a vote of the people on a service area basis or other basis, that would have the effect of preventing a boundary change is not allowed in the Constitution because it allows the LBC to present any proposed boundary change. It vests that power in the LBC and it also vests the power of the legislature to disapprove any proposal it chooses to disapprove even if that proposal is overwhelmingly approved by a vote of the people.

REPRESENTATIVE SCALZI asked if in layman's terms this means the Constitution trumps statutory authority.

TAM COOK said, "In this case." There's only a limited degree to which the Legislature can, by statute, curtail the constitutional right of the LBC in the area of local boundary adjustments.

CO-CHAIRMAN TORGERSON asked if the legislative action is subject to judicial review if they turn down the annexation.

TAM COOK replied, if the Legislature were to adopt a resolution disapproving a proposal, she can't conceive of a set of facts that would get that heard before a court in an effective way. That is not to say that suit couldn't be brought. However, assuming the resolution is properly passed it's hard for her to believe the legal action on that point would be successful.

REPRESENTATIVE HALCRO referred to her January 9, 2002, response to the Chairman discussing when the next elections could happen and when the new people embraced by the city limits could expect to vote. Mr. Brockhorst indicated residents in the new annexed area would be eligible to run for office in October 2002 but Ms. Cook didn't address that in her opinion.

TAM COOK replied she never considered a durational residency requirement. That is different than the right to vote issue but the statute does allow municipalities to establish a reasonably short durational residency requirement in order to run for municipal office. Such a requirement cannot be imposed on the right to vote; that is established as a matter on Constitutional law and is a much shorter duration.

CO-CHAIRMAN TORGERSON announced the City of Homer would give a presentation.

10:26 a.m.

MAYOR JACK CUSHING stated Homer has traditionally been a very generous service provider to the greater area but with declining revenue sharing it is becoming more difficult to be generous to the greater community.

He is in his fifth term as mayor and favors the petition as do the majority of council members. Voters have been electing people who support the petition, which makes their views clear.

The city originally asked the LBC about the process in the mid 1990's and they started the public process at the local level. The original area was even greater than 25 square miles.

He asked members to read the four page letter he submitted.

JOHN FENSKE, Homer City Council member, testified in support of the annexation.

KURT MARQUARDT, Homer Mayor Pro-Temp, is a second term council member and is in favor of the annexation.

RAY KRANICH, Homer City Council member, testified in favor of the annexation.

MICHAEL YOURKOWSKI, Homer City Council member, testified in favor of the annexation.

TAPE 02-2, SIDE B

10:37 a.m.

RICK LADD, Homer City Council member, testified in favor of the annexation. He stated he would stand down this fall if annexation is approved allowing voters the opportunity to reelect him or a new council member.

GORDON TANS, attorney for the City of Homer, declared the Constitution of the State of Alaska was written with the principle of statesmanship in mind. The LBC was conceived to relieve some of the controversy generated by local boundary changes. He encouraged members to make their decision in the spirit of statesmanship that the Constitution framers had in mind when they entrusted this decision to Legislators.

MAYOR CUSHING explained they decided not to adjust their original boundary size petition, preferring to hear what the LBC determined.

CO-CHAIRMAN TORGERSON called for committee questions.

REPRESENTATIVE MEYER asked why the City of Homer chose to annex by going directly to the LBC rather than with a vote of the people. He noted this is much the same as the Hillside police issue and that it seems as though this route was chosen because there are people receiving services who are not paying for them. For example, 25 percent of the water use is not paid for. He then asked if these services couldn't simply be terminated.

MAYOR CUSHING pointed out this is not an unusual choice. They chose to annex using a direct petition to the LBC just as 95 percent of the incorporated areas in Alaska have done in the past. In response to the second question, he said they have never maintained the folks receiving water haven't paid for that service. The contention is this has allowed those properties outside the boundaries to unfairly compete with in-town properties.

REPRESENTATIVE MURKOWSKI commended Council Member Ladd for offering to resign his seat to deal with the truncation issue. She referenced Mr. Tans' legal opinion of 1/31/02 that a voluntary resignation would not work because a vacancy would be filled by an appointment rather than triggering an election. A new election would only be possible if everyone on the council resigned at the same time. She then asked what would happen if Mayor Cushing gave up his seat.

MR. TANS explained that a different situation is being presented than he had in mind when he wrote the letter. It is his

understanding that Councilman Ladd intends to resign effective as of October when the next election occurs and his replacement is sworn in. The effective date of his resignation is not now but rather then, which would allow an election to occur.

CO-CHAIRMAN TORGERSON asked Mr. Ladd how much longer he has on his term.

MR. LADD said he has one year beyond this coming October and, after his resignation, he would submit his name as a candidate in that new election.

CO-CHAIRMAN TORGERSON asked Mr. Tans when someone would be appointed and when would there be a new election.

MR. TANS said someone would be appointed only until the next election. Because Mr. Ladd's resignation is effective on the date of the next election, there is no opportunity or a need to appoint someone in the interim.

CO-CHAIRMAN TORGERSON asked what would happen if he changes his mind about resigning and the ballots have been printed.

MR. TANS said once the council accepted his resignation it would be too late to change his mind.

CO-CHAIRMAN TORGERSON agreed with Representative Murkowski that a decision to resign is commendable adding it is an issue in this case and it's also an issue that no one in the annexed area can run. He then asked the mayor for confirmation that he is working on an ordinance to change that. The residency requirements would be changed so individuals in the affected area may run for the October election.

MAYOR CUSHING agreed and added they are trying to be proactive by ordinance so it is not up to interpretation of existing ordinance.

MR. TANS expressed surprise at that interpretation saying the proper interpretation of the current code is probably the following:

If you are a resident of a particular piece of land for a year and that land now becomes part of the city, you have effectively satisfied the residency requirement of living within the boundaries of the city for a year.

He said he's never heard it suggested that individuals living in the annexed area could not run for elective office in October. The

ordinance that is being introduced has already been prepared and is intended to clarify and remove any doubt.

CO-CHAIRMAN TORGERSON said he appreciates the ordinance because the issue has been raised.

REPRESENTATIVE HALCRO asked why the Kenai Peninsula Borough opposed the annexation petition and how the city's relationship is with them.

MR. TANS said:

The borough assembly did not take a position against the annexation. The mayor and some of the assembly members did vote for a resolution opposing the annexation but it did not pass. We don't understand quite why the mayor reversed position so late in the game, indeed after the Boundary Commission made its recommendation, but nevertheless he did. I don't think it's going to affect the relationship that the city and the borough must work out to transfer the responsibilities of the service area. It's not going to be that difficult.

REPRESENTATIVE HALCRO asked why they opposed the annexation at the eleventh hour.

MR. TANS replied he wouldn't dare to speak for Mayor Bagley but he did write a short letter of memorandum to his assembly and one of his points was that he was disappointed that the procedure didn't allow a vote of the residents in the area.

REPRESENTATIVE SCALZI agreed with Mayor Cushing's statement that the City of Homer has been very generous in providing services and he understands the need to receive revenue for services provided. However, the process has been a point of contention. He asked the mayor why they didn't reduce the boundaries.

MAYOR CUSHING explained he broke the 25 square mile boundary into 14 separate units and examined the tax base and revenues that would be generated from the units. The units were broken into areas of similar geography and character so the council and the public could identify the areas. His impression was that the majority of the council wanted to keep the boundaries large. Each of the council members had their own reasons and much of that was from the public input they were receiving. Also, they didn't change their petition because they didn't want to start the process over and lose a year.

REPRESENTATIVE SCALZI then directed the question to Mr. Yourkowski, asking why he didn't support reducing the boundaries.

MR. YOURKOWSKE replied his concerns were land use and planning. Individuals outside the city wanted issues such as the asphalt batch plant that is outside the limits addressed. The input he received was that the entire 25 square mile annexation was justified.

REPRESENTATIVE SCALZI then asked Mr. Ladd why he didn't favor shrinking the boundaries of the annexation petition.

MR. LADD replied he wasn't on the council at that time.

REPRESENTATIVE SCALZI asked which council members planned to resign if the annexation is approved.

Mayor Cushing and Council Members Ladd, Kranich and Yourkowski stated their intentions to resign their seats then become candidates for the October election. Mr. Tans said he is up for election this fall and looks forward to the election.

REPRESENTATIVE SCALZI asked whether the other two council members wanted to comment on the resignation issue.

MR. MARQUARDT said he is up for election this fall.

CO-CHAIRMAN TORGERSON announced the next meeting would be 2/09/02 at 9:00 a.m. Those opposing annexation would give a 15-minute overview followed by public testimony that would be limited to three minutes.

There being no further business, the joint meeting of the House and Senate Community and Regional Affairs Committees was adjourned at 10:50 a.m.