

ALASKA LEGISLATURE COMMITTEE FILES 1905-1900 00/2

3825 SCRA LOCAL BOUNDARY COMMISSION (FILE 1) 201



Official Business

Alaska State Legislature

Senate

Committee on Community and Regional Affairs

Senator Edna DeVries, Chairman

Members:

Senator Ferguson, Vice Chairman

Senator Coghill

Senator Sturgulewski

Senator V. Fischer

Pouch V

Juneau, Alaska 99811

C&RA Joint House/Senate Meeting 2/19/85

3:30p -- Butrovich Room

Continue hearing on two proposed annexations before the
Local Boundary Commission

--- Fairbanks has petitioned to annex 117 acres to the
City...

The annexation is contested by Dennis Wise of
Wise Enterprises -- there will be teleconference hookup to
Fairbanks - Superior Court Judge Blair has issued a stay order
to the Commission decision on the Fairbanks annexation

--- the City of Togiak has petitioned the Commission to annex
183 square miles --- The Dept of C&RA originally
recommended denying the Togiak annexation; however
by memorandum dated Feb 15th C&RA supports this annexation.

The City of Togiak will be on line with teleconference
hook-up to the Committee

6:30p -- Butrovich Room

Work Session with joint committee to discuss with the Local
Boundary Commission the issue of incorporation within the
the unorganized borough

Attached are three separate issue papers on this subject that
you may find instructive

*attached

~~Regulatory or quasi judicial
absence of a provision~~

~~Constitution would have to be amended to require
confirmation~~

~~Coghill - Eliz - will call back~~

~~Fischer - told Ginger~~

~~Arlio - told Carol~~

~~Discussed w/ Bob Berry --~~

~~Kay Wallis - 2732 -- Pat Williams - both meetings~~

~~Fornace - 4894, 3875 --- N/A~~

~~Phillips - 4949 answering machine~~

~~Stuenkel - 4968 --- (Nancy)~~

~~Kepner - 4992 --- (Lisa)~~

~~Marrow - 2719 (Mark Cowart)~~

~~John War (902) 245-2553
(703) 521-4996~~

Carol Bergher - d. 668

Call To ~~Carroll~~ e m h g. 1. Thank-you

Shida

Callaghan

2/16/85

Look at Constitution

Bettes

White comm. on AF Station

Evansville - Native - Earl Emil - Deyon

Attorney for Bettes threatened Notti

Staff) m To r 4 can set over hearing
I'll have r the hearing indefinitely

Shiela - don't postpone --
called special mtg in Aug
to continue it.

Majority changed date and 2 wks
Comm came unglued --
taken out prior to mtg in Bettles
had to get rid of her before
Akiachuk - tribal government --

us.

Jo Anderson would be replaced w/ Juana Native
Charles Bettisworth - reappointed
now Comm - has

Dave Hanson 90% income from AFN
Greist on NANA Bid
Lands man for NANA

Sillan Symthe - income all contracts for
Borough

1 yr ago - Fight w/ Notti - Jeff Smith
White people could not participate in Tribal Council decisions

Dan Bockhorst

Jim Sanders got transferred - wrote 5 reports ^{went to Bettles}
Gene Kane

Shiela - Comm 7/6/8 & 9 - Loss before on Comm 10 yrs
Rec'd ltr day of hearing on Kat --
would have

Most subject

Gall -- 07 territory of annexed --
many hearings --

City Borough gov. request - compromised
amended decision to allow more land
Everybody happy -- then Gall blew up -- because
they changed their mind --

Financial disclosure required --

Scott Oviatt - Seminar on Pro-Life Issue
where to hold it?

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

BILL SHEFFIELD, GOVERNOR

REPLY TO:

1031 W 4th AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 276-3550

1st NATIONAL CENTER
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701
PHONE: (907) 452-1568

POUCH K - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

February 20, 1985

Hon. Edna DeVries
Alaska State Senate
Pouch V
Juneau, AK 99811

Re: Wise v. Local Boundary Commis-
sion (proposed annexation)

Dear Senator Devries:

After attending the February 19 meeting of the joint House and Senate Community and Regional Affairs committees on the Fairbanks annexation proposed by the Local Boundary Commission (the LBC), I felt it was important to provide you with a copy of the commission's recent motion regarding the court's stay of its decision. A stay is authorized under the Appellate Rules of Procedure to prevent enforcement of a judgment while it is being appealed. Usually, a stay is granted as a matter of course upon filing of a supersedeas bond. Appellate Rule 603(a)(2).

The position taken in the attached motion asserts that there is no judgment the enforcement of which can be stayed, until the time for legislative review passes. As you know, an annexation does not become effective until 45 days after the LBC proposes it to the legislature, and only if the two houses of the legislature do not concur in a disapproving resolution. Alaska Const. art. X, § 12; AS 44.47.583.

In requesting a stay, Mr. Hackett, counsel for Mr. Wise, did not mention the applicable constitutional or statutory provisions pertaining to the effective date of this annexation. I have filed a motion to have the court set aside its stay, because these provisions were overlooked. At the least, the stay should not be interpreted to interfere with the constitutionally-established period of legislative review. Through the teleconference network, Mr. Hackett himself testified that he was unsure what the stay meant, that it was a red herring as far as the legislature was concerned, and that the legislature should not consider the fact that an appeal has been filed in conducting its review. In the latter comments, I concur.

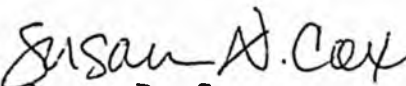
Hon. Edna DeVries
Alaska State Senate
Re: Proposed Fairbanks annexation

February 20, 1985
Page #2

I would be happy to provide your committee with any further information on the status of the Fairbanks appeal. If you would like additional copies for committee members of the enclosed motion, or the Motion to Dismiss Appeal which I provided you after the February 19 hearing, please contact me.

Sincerely yours,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By: 
Susan D. Cox
Assistant Attorney General

SDC/pjg

cc: Hon. Peter Goll
House of Representatives

James Hackett, Esq.

February 5, 1985

C. B. Bettisworth

introduced members present
Bettisworth
Smythe
Bert Greist

Gene Kane - staff - supervised by Gene Kane

Dil Smythe -

Baldwin - Wise vs Local Boundary Comm.
will file motion to dismiss the
action

Goll - all corres germane to your action
✓ - & 2 yrs to the Leg or
Legislators be communicated to the
chairs of the 2 committees

Dan Bockhorst

Dept. felt area too large - excessive
felt Togiak would not be able to
deal w/ alcohol in so large an area -
and that the City was more interested
in raw fish tax,

Earlier a recommendation that
service district be instituted - but no
action —

annexed tidelands only -- no uplands

yes - Dept reviewed their decision and now agrees
that Togiak annexation should be approved

Smythe Area covers salmon fishing area and that
is why the area is so large

Sturgulewski

Is there a chance to increase the property
tax base?

Bockhorst - would extend city's jurisdiction

Meeting on 19th

Smythe

Annexation of water areas is not nec:

Coghill - philosophy of annexation?

Smy - follow law & regs.

Coghill -- has this philos. changed?

Bettis -- We have adopted regulations - which we use as guidelines -- have been as consistent as possible in enforcing regs.

Coghill -- Want to discuss the annexation request which was denied by the LBC for Nenana

Goll -- my legislation will not ~~tie~~^{limit} the power ~~of~~ of the Comm but will require an advisory vote --

Want to have Comm of the proposed legislation


Marron

Tend to agree w/ Wise - He is being railroaded by the City of Fairbanks and the Local Boundary Commission

Fischer -- unorganized borough - illegal --
to the boundary comm. concerned about
what is happening in rural Alaska

Bettis -- have never taken active role in soliciting
↳ of boro's -- have passive role based
on the will of the people - Leg site as
Assembly for unorganized boro's

Coghil ~ Service districts -- organized around
schools - tried in '60's - Too early --
could be time for it now

Arless --  -- to this w/ Sen Fisher
and I bring in our info and some
special witnesses --

Smythe Togiak - report -- there is an error -

Fischer - Ask DCCA to update their position
in writing --

Feb 21--

Lamber-

Could easily evade taxes by anchoring around the point --

large portion of area is ~~outside~~ in the territorial sea

is within contiguous fisheries zone but that does not give them authority to patrol

Fischer - Has this been legally established

Lamber - Well on this map it has been --

Fischer Question: the attorneys on this

Coghill - Can we annex the sea

Lauder - Plant will be annexed, but dock won't be annexed - this is my problem

Coghill - move resolution denying annexation to Fairbanks —

Fischer - "NO"

Sturgulewski - "NO"

↳ } ^{you} too long S. P.
(^{me} to annex)
don't have a problem
letting this go to a vote

~~Cochit~~

Fischer - I don't object / it go to
the floor
But I am against it

~~Committee Report~~

~~Cochit~~

Will

SB 47

Ferguson submitted amendment

Hayden testified

Bill Miles have reduced funding from
2 to \$190 million

EKlutna is the No. 2 item in
the Anc Capitol improvements budget

WORK ORDER REQUEST FORM

N14 - 4709

KEYWORDS: boundaries
boards and commissions
municipalities

ASSIGNED TO Conk

REQUEST FOR: BILL RESOLUTION RESEARCH OTHER

SUBJECT Togiak boundary change

REQUESTED FOR Sen. C & PA BY Yvonne EXT. 4712

* DELIVER TO Sen. DeVries TAKEN BY Derrier

INSTRUCTIONS, EXPLANATIONS Resolution disapproving boundary change in Togiak by
Local Boundary Commission.

OBTAIN

SPECIAL DRAFTING INSTRUCTIONS ATTACHED

AUTHORIZED TO CONFER WITH _____

RETURN _____

_____ TO REQUESTER

APPROVED: BGS Director, Legal Services

REVIEWED _____

SPECIAL INSTRUCTIONS TO TYPIST/PROOFREADER

IN 02/20/85 DUE 02/22/85

TYPED - Draft _____ DATE _____

Final _____ DATE _____

PROOFED _____ DELIVERED _____

DRAFT

FINAL

WORK ORDER REQUEST FORM

N14 - 0710

KEYWORDS: boundaries
boards and commissions
municipalities

ASSIGNED TO Cook

REQUEST FOR: BILL RESOLUTION RESEARCH OTHER

SUBJECT Fairbanks boundary change

REQUESTED FOR Sen. C & R BY Yvonne EXT. 4712

* DELIVER TO Sen. DeVries Cab 427 TAKEN BY Barrier

INSTRUCTIONS, EXPLANATIONS Resolution disapproving boundary change in Fairbanks
by Local Boundary Commission.

OBTAIN

SPECIAL DRAFTING INSTRUCTIONS ATTACHED
AUTHORIZED TO CONFER WITH _____
RETURN _____
_____ TO REQUESTER
APPROVED: EGS Director, Legal Services

REVIEWED _____
IN 02/20/85 DUE 02/22/85
TYPED - Draft _____ DATE _____
Final _____ DATE _____
PROOFED _____ DELIVERED _____

SPECIAL INSTRUCTIONS TO TYPIST/PROOFREADER

DRAFT FINAL

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

FOURTH JUDICIAL DISTRICT AT FAIRBANKS

1
2 DENNIS B. WISE d/b/a WISE)
3 ENTERPRISES, INC.,)
4 Appellant,)
5 vs.)
6 STATE OF ALASKA LOCAL BOUNDARY)
7 COMMISSION,)
8 Appellee.)

No. 4FA-85-60 CIV

MOTION FOR RECONSIDERATION OF FEBRUARY 5, 1985 ORDER

9
10 Comes now appellee State of Alaska Local Boundary Com-
11 mission (the LBC), pursuant to Civil Rule 77(m), and moves this
12 court to reconsider its order of February 5, 1985 granting ap-
13 pellant's Motion to Approve Supersedeas Bond Nunc Pro Tunc.

14 Counsel for the LBC entered an appearance in this case
15 on January 24, 1985 requesting that all notices, motions, and
16 pleadings be served on her in Juneau. The Affidavit of Counsel
17 and Motion to Accept Late Filing submitted on the same date also
18 indicated that the LBC's attorney worked in the Juneau office of
19 the Department of Law, and that service of pleadings on the Fair-
20 banks office had caused a delay in response time. To date, how-
21 ever, none of the motions or orders in this case have been
22 served on counsel in Juneau. All of the documents of which the
23 LBC's counsel is aware have been sent to the Fairbanks Office of
24 the Attorney General, although no attorney in that office has
25 ever appeared herein on the LBC's behalf.

26 On January 24, 1985, the clerk of court for the Fourth
27 Judicial District approved a supersedeas bond filed by appel-
28 lant. Appellant then moved for approval of the bond by the
29 superior court, nunc pro tunc, on January 25. Appellant's memo-
30 randum of law cites the substance of and alleges compliance with
31 Appellate Rule 603(a)(2) and Civil Rule 80. Appellant's papers
32 did not specifically request a stay of enforcement of the LBC
33 decision being appealed, nor did they include a briefing on the
34 propriety, necessity, or scope of such a stay. However, the

ATTORNEY GENERAL, STATE OF ALASKA
STATE CAPITOL
POUCH K. JUNEAU, ALASKA 99811
PHONE 465-3600

1 form of order appellant provided for approval included the fol-
2 lowing statement:

3 IT IS FURTHER ORDERED that the Statement of
4 Decision of the State of Alaska Local Boundary
5 Commission dated December 1, 1984, which decision
6 was mailed on or about January 2, 1985, is stayed
7 pending appeal herein pursuant to Appellate Rule
8 603(a)(2) of the State of Alaska.

9 As the attached Affidavit of Counsel explains, the
10 LBC's attorney of record did not receive appellant's motion
11 until after the court signed the order provided by appellant.
12 (That order was mailed to the Fairbanks Attorney General's
13 Office on February 7, 1985.) Because the court was not informed
14 of the reasons why a stay is both unnecessary and premature, the
15 LBC moves for reconsideration of the February 5 order. The
16 court has overlooked constitutional and statutory provisions
17 which render the LBC's administrative decision a non-final judg-
18 ment at this time. Appellate Rule 506(a)(1) and (2). */

19 Appellate Rule 603(a)(2) provides, in pertinent part,
20 that "When an appeal is taken, the appellant may obtain a stay
21 of proceedings to enforce the judgment by filing a supersedeas
22 bond with ... the superior court...." (Emphasis added.) The
23 LBC does not contest the adequacy of appellant's supersedeas
24 bond, but contends that there is no judgment the enforcement of
25 which can be stayed. The LBC issued an administrative decision,
26 entitled Summary of Proposed Action, recommending annexation of
27 approximately 117 acres to the City of Fairbanks. The annexa-
28 tion procedure undertaken in this case, as has been explained in
29 the LBC's January 24th pleadings, requires a period of legisla-
30 tive review before the annexation can take effect. Alaska
31 Const. art. X, § 12; AS 29.68.010(a); AS 44.47.567(b)(2). As
32 required by statute and the state constitution, the LBC submi-
33 tted the proposed annexation to the legislature on the 10th day

34 */ On the same basis, the LBC contends that filing of this ap-
35 peal is premature and is filing a Motion to Dismiss Appeal here-
36 with. For factual background supporting this motion, refer to
37 the affidavits and exhibits filed by the LBC in this case.

1 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
2 FOURTH JUDICIAL DISTRICT AT FAIRBANKS

3 DENNIS B. WISE d/b/a WISE)
4 ENTERPRISES,)
5 Appellant,)
6 vs.)
7 STATE OF ALASKA LOCAL BOUNDARY)
8 COMMISSION,)
9 Appellee.)

No. 4FA-85-60 CIV

10 AFFIDAVIT OF COUNSEL

11 STATE OF ALASKA)
12 FIRST JUDICIAL DISTRICT) : ss.

13 Susan D. Cox, being first duly sworn upon oath, de-
14 poses and says:

15 1. I am the assistant attorney general representing
16 appellee State of Alaska Local Boundary Commission (the LBC) in
17 the above-captioned administrative appeal.

18 2. On January 24, 1985, I entered my appearance as
19 counsel of record for the LBC and requested therein that all
20 pleadings and orders be served on me at my Juneau address. In
21 my Affidavit of Counsel supporting a motion for acceptance of
22 late filing, also filed and served January 24, I specifically
23 mentioned that my office is in Juneau and that my tardy filing
24 of an opposition to a motion was due in part to the pleadings
25 being served on the Department of Law office in Fairbanks,
26 rather than Juneau.

27 3. I am informed that on January 25, 1985 appellant
28 filed a Motion to Approve Supersedeas Bond Nunc Pro Tunc, a sup-
29 porting memorandum of law, and a form of order. According to
30 the certificate of service, appellant mailed these papers to the
31 Fairbanks Office of the Attorney General and Gene Kane, staff-
32 person for the LBC in Anchorage that same day.

33 4. No one in the Fairbanks office of the Department
34 of Law has entered an appearance as counsel of record for the

ATTORNEY GENERAL, STATE OF ALASKA
STATE CAPITOL
POUCH K. JUNEAU, ALASKA 99811
PHONE 465-3600

ATTORNEY GENERAL, STATE OF ALASKA
STATE CAPITOL
POUCH K, JUNEAU, ALASKA 99811
PHONE 465-3600

1 LBC in this case. Despite my entry of appearance on January 24,
2 appellant has not served any of his subsequent pleadings on me.

3 5. Due to a secretary's error in the Department of
4 Law, I did not receive a copy of appellant's Motion to Approve
5 Supersedeas Bond Nunc Pro Tunc and accompanying papers until the
6 morning of February 11, 1985. I placed a call to the clerk of
7 court for the Fourth Judicial District that morning and was in-
8 formed that the court had signed appellant's form of order Feb-
9 ruary 5, 1985. In spite of my January 24 entry of appearance,
10 the clerk did not mail a copy of the February 5 order to me, but
11 sent one to the Fairbanks Attorney General's Office. It was
12 mailed February 7, 1985.

13 6. In the afternoon of February 11, I received a copy
14 of the court's February 5 order from the Fairbanks office of the
15 Department of Law.

16 7. Had I known that there was a Motion to Approve
17 Supersedeas Bond or a motion for stay before the court, I would
18 have timely filed an opposition thereto. However, I was not
19 aware of any such motion pending until nearly a week after the
20 court had ruled on it.

21 8. Because appellant did not advise the court of the
22 procedural posture of the LBC's proposed annexation under arti-
23 cle X, section 12 of the Alaska Constitution, AS 29.68.010(a),
24 AS 44.47.567(b)(2), and 44.47.583, I believe the court has over-
25 looked and failed to consider these directly controlling statu-
26 tory and constitutional provisions. This is the basis for the
27 LBC's motion for reconsideration under Civil Rule 77(m) and Ap-
28 pellate Rule 506(a)(1) and (2).

29 Further your affiant saith naught.

30 Susan D. Cox

31 SUBSCRIBED AND SWORN TO before me this 18th day of
32 February, 1985.

33 Patricia J. Higgins
34 Notary Public, State of Alaska
My commission expires: 7/21/88

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT AT FAIRBANKS

DENNIS B. WISE d/b/a/ WISE)
ENTERPRISES, INC.,)
Appellant,)
vs.)
STATE OF ALASKA LOCAL BOUNDARY)
COMMISSION,)
Appellee.)

No. 4FA-85-60 CIV

ORDER

This court having considered appellee's Motion for Reconsideration of February 5, 1985 Order and Affidavit of Counsel, and otherwise being advised of the premises,

IT IS ORDERED that the court's order of February 5, 1985, approving appellant's supersedeas bond nunc pro tunc and granting a stay of the Statement of Decision approved by the Local Boundary Commission on December 1, 1984, pending the appeal herein, is hereby set aside. The Statement of Decision, entitled "Summary of Proposed Action," is not a final decision and therefore is not a judgment the enforcement of which can be stayed.

DATED: _____

Superior Court Judge

ATTORNEY GENERAL, STATE OF ALASKA
STATE CAPITOL
POUCH K. JUNEAU, ALASKA 99611
PHONE 465-3600

(f) A second class borough may establish a service area by ordinance which may include only vacant, unappropriated and unreserved land owned by the municipality. A second class borough may establish a service area, with the concurrence of the commissioner of natural resources, which may include only vacant, unappropriated and unreserved land owned by the state and classified for disposal to individuals. A second class borough may provide those services in a service area established under this subsection necessary to develop state or municipal land as required by the planning and platting ordinances of the borough. Exercise of the powers authorized by this subsection shall be by ordinance. (§ 2 ch 118 SLA 1972; am §§ 9, 10 ch 85 SLA 1979)

NOTES TO DECISIONS

Effect of 1979 amendments. — The 1979 amendments to the service area provisions found in subsections (a) and (f) of this section do not violate constitutional rights of borough residents. Wolfgang Falke v. Fairbanks North Star Borough, Sup. Ct. Op. No. 2530 (File Nos. 5761, 5781), 648 P.2d 597 (1982).

Collateral references. — Standing of municipal corporation or other governmental body to attack zoning of land lying outside its borders, 49 ALR3d 1126.

Chapter 63. Alteration of Boundaries.

Article

- 1. Annexation and Exclusion (§§ 29.68.010 — 29.68.020)
- 2. Merger and Consolidation (§§ 29.68.030 — 29.68.110)
- 3. Unification of Local Governments (§§ 29.68.240 — 29.68.440)
- 4. Dissolution (§§ 29.68.500 — 29.68.580)

Article 1. Annexation and Exclusion.

Section

- 10. Local boundary commission
- 20. Annexation of military reservations

Sec. 29.68.010. Local boundary commission. (a) The Local Boundary Commission may consider any proposed local government boundary change. It may present proposed changes to the legislature during the first 10 days of any regular session. The change shall become effective 45 days after presentation or at the end of the session, whichever is earlier, unless disapproved by a resolution concurred in by a majority of the members of each house.

(b) In addition to the regulations governing annexation by local action adopted under AS 44.47.567, the Local Boundary Commission shall, within 90 days of September 10, 1972, establish procedures for annexation and exclusion of territory by cities and boroughs by local

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action. The procedures established under this subsection shall include

(1) a provision requiring that a proposed annexation and exclusion must be approved by a majority of the voters voting on the question residing within the area proposed to be annexed or excluded;

(2) provisions that municipally-owned property adjoining the municipality may be annexed by ordinance without voter approval; and

(3) provisions that an area adjoining the municipality may be annexed by ordinance without an election if all property owners and voters within the area petition the assembly or council.

(c) A boundary change effected under (a) of this section prevails over a boundary change initiated by local action, without regard to priority in time. (§ 2 ch 118 SLA 1972)

Cross references. — For further provisions relating to local boundary commission procedures, see AS 44.47.565 — 44.47.583. For requirements of a hearing on local boundary changes, see AS 44.47.581.

NOTES TO DECISIONS

Defining boundaries is a legislative function. — The creation of municipalities, and the defining of the extent of the boundaries thereof, involve the exercise of legislative, not judicial, power. *Town of Fairbanks v. Barrack*, 282 F. 417 (9th Cir. 1922), cert. denied, 261 U.S. 615, 43 S. Ct. 361, 67 L. Ed. 828 (1923); *In re Annexation to City of Anchorage*, 16 Alaska 519, 146 F. Supp. 98 (D. Alaska 1956), decided under former, similar law.

The local action provision of Alaska Const., art. X, § 12 has been implemented by this section and by 19 AAC § 15.010 et seq. *Port Valdez Co. v. City of Valdez*, Sup. Ct. Op. No. 1044 (File No. 1996), 522 P.2d 1147 (1974).

Expansion of municipal boundaries is matter of statewide concern. — Those who reside or own property in the area to be annexed have no vested right to insist that annexation take place only with their consent. The subject of expansion of municipal boundaries is legitimately the concern of the state as a whole, and not just that of the local community. *Fairview Pub. Util. Dist. No. 1 v. City of Anchorage*, Sup. Ct. Op. No. 61 (File Nos. 69, 71), 368 P.2d 540, appeal dismissed and cert. denied, 371 U.S. 5, 83 S. Ct. 39, 9 L. Ed. 2d 49 (1962), decided under former, similar law.

Annexation procedure may be changed. — The state may permit residents of local communities to determine annexation questions at an election. But

when this has been done, the state is not irrevocably committed to that arrangement. If the citizens of the state, in adopting a constitution, decide that it is in the public interest to establish another election procedure, there is no constitutional obstacle to that course of action. *Fairview Pub. Util. Dist. No. 1 v. City of Anchorage*, Sup. Ct. Op. No. 61 (File Nos. 69, 71), 368 P.2d 540, appeal dismissed and cert. denied, 371 U.S. 5, 83 S. Ct. 39, 9 L. Ed. 2d 49 (1962), decided under former, similar law.

One proceeding for annexing several tracts. — See *In re Town of Sitka*, 11 Alaska 201 (1946), decided under former, similar law.

Areas in public utility district may be annexed. — The fact that the areas are embraced within a public utility district constitutes no bar to annexation. *In re Annexation to City of Anchorage*, 15 Alaska 504, 129 F. Supp. 551 (D. Alaska 1955). See *Fairview Pub. Util. Dist. No. 1 v. City of Anchorage*, Sup. Ct. Op. No. 61 (File Nos. 69, 71), 368 P.2d 540, appeal dismissed and cert. denied, 371 U.S. 5, 83 S. Ct. 39, 9 L. Ed. 2d 49 (1962), decided under former, similar law.

Consent of voters in district required if annexation proceeds under this article. — The provision of AS 42.35.370 providing for dissolution of a utility district with the consent of the voters when "the whole or the integral part of a district becomes annexed to an incorporated city"



Official Business

Alaska State Legislature

Senate

Committee on Community and Regional Affairs

Senator Edna DeVries, Chairman

Members

Senator Ferguson, Vice Chairman

Senator Coghill

Senator Sturgulewski

Senator V. Fischer

Pouch V

Juneau, Alaska 99811

January 26, 1985

Pep W

TO: Representative Goll, Chairman
House Community and Regional Affairs

FROM: Senator Edna DeVries, Chair *Edna*
Senate Community and Regional Affairs

SUBJ: Joint House/Senate C&RA Meetings

I look forward to the two joint meetings we have planned:

Feb 5 - 3:30p Beltz Rm (211) Capitol

The annual report to the Legislature by the Local Boundary Commission. Annexations to the Cities of Fairbanks and Togiak to be considered.

Feb 12 - 4:30p Beltz Rm (211) Capitol

A report from John Walsh, Vice Chairman of the National Center for Missing and Exploited Children.

The Beltz Room will be set up for the House and Senate Committee Members to sit at the dais. If you have questions, please give me a call at 465-4712.



Alaska State Legislature

House of Representatives

Committee on Community & Regional Affairs

Pouch V
State Capitol
Juneau, Alaska 99811
(907) 465-4833

M E M O R A N D U M

January 23, 1985

TO: Members of the House Committee on Community
and Regional Affairs

FROM: Peter Goll
Chair *Peter Goll*

SUBJECT: Report of the Local Boundary Commission

The House and Senate Committees on Community and Regional Affairs will be meeting jointly on Tuesday, February 5, at 3:30 p.m., in the Beltz Room, State Capitol Building, to review the report of the Local Boundary Commission.

The attached letter from Commissioner Emil Notti details information about this joint meeting.

ljb

attachment

STATE OF ALASKA

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

BILL SHEFFIELD, GOVERNOR

POUCH B
JUNEAU, ALASKA 99811
PHONE: (907) 465-4700

225 CORDOVA STREET - BLDG B
ANCHORAGE, ALASKA 99501
PHONE: (907) 264-2294

January 16, 1985

The Honorable Peter Goll
Chairman, Community and Regional
Affairs Committee
Alaska State House
Pouch V
Juneau, AK 99811

Dear Representative Goll:

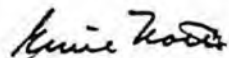
Each year the respective Community and Regional Affairs committees of the House and Senate meet with members of the Local Boundary Commission (LBC) to review the LBC report and question members of this constitutionally mandated commission on its annual activities and upcoming agenda.

It is customary for this Department to make arrangements for this meeting which is typically a joint session of the Community and Regional Affairs committees. A joint session is not required, but it generally saves time for everyone involved and is more convenient for LBC members who must take time out from their busy schedules to perform their uncompensated duties.

The LBC has identified the week of February 4-8 as a timely and convenient period to be in Juneau to address your committee and your counterpart in the other house of the Legislature. If it is at all possible to work out a mutually acceptable time to hold a joint meeting during that week that would be the preferable option. Staff from this Department may be in contact with you or your committee staff to informally expedite the arrangements. I appreciate your taking the time to arrange for this important meeting with the LBC. It is my hope that plans for a meeting during the week of February 4 can be finalized quickly so adequate notice can be given to the LBC members.

Thank you for your attention to and cooperation in this matter.

Sincerely,



Emil Notti
Commissioner

STATE OF ALASKA

BILL SHEFFIELD, GOVERNOR

DEPT. OF COMMUNITY & REGIONAL AFFAIRS

OFFICE OF THE COMMISSIONER

January 16, 1985

POUCH B
JUNEAU, ALASKA 99811
PHONE: (907) 465-4700

225 CORDOVA STREET - BLDG B
ANCHORAGE, ALASKA 99501
PHONE: (907) 264-2294

The Honorable Edna DeVries
Chair, Community and Regional
Affairs Committee
Alaska State Senate
Pouch V
Juneau, AK 99811

Dear Senator DeVries:

Each year the respective Community and Regional Affairs committees of the House and Senate meet with members of the Local Boundary Commission (LBC) to review the LBC report and question members of this constitutionally mandated commission on its annual activities and upcoming agenda.

It is customary for this Department to make arrangements for this meeting which is typically a joint session of the Community and Regional Affairs committees. A joint session is not required, but it generally saves time for everyone involved and is more convenient for LBC members who must take time out from their busy schedules to perform their uncompensated duties.

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Thank you for your attention to and cooperation in this matter.

Sincerely,

Art 10, Constitution, Sec 12

Emil Notti
Emil Notti
Commissioner

Report from LBC -

annexations - -

Leg has 60 days to overturn

if no comments - decisions stand

*Doug 4750
Griffin
Dept
DeVries*



Official Business

Alaska State Legislature

Senate

Pouch V
State Capitol
Juneau, Alaska 99811

January 23, 1985

MEMO

TO: Senator DeVries, Chairman
Community and Regional Affairs

FROM: Peggy Mulligan
Secretary of the Senate *PM*

RE: Local Boundary Commission Report

The President has referred the report of the Alaska Local Boundary Commission, containing recommendations for the annexation of territory to the Cities of Fairbanks and Togiak.

In accordance with AS 29.68.010 these recommended boundary changes will become effective forty-five days from date or at the end of the session, whichever is earlier, unless disapproved by a concurrent resolution of the Legislature.



Official Business

Alaska State Legislature

Senate

Committee on Community and Regional Affairs

Senator Edna DeVries, Chairman

Members:

Senator Ferguson, Vice Chairman

Senator Coghill

Senator Sturgulewski

Senator V. Fischer

Pouch V

Juneau, Alaska 99811

March 7, 1985

Patrick J. Travers
Alaska Regional Counsel
United States Department of Commerce
National Oceanic and Atmospheric Administration
P.O. Box 1668
Juneau, Alaska 99802

Subject: Local Boundary Commission Report approving annexation
of Togiak Bay

Dear Mr. Travers:

Please except my appreciation to for your letter of February 26, 1985
expressing the U.S. Department of Commerce view regarding the above
noted subject.

A copy of the minutes of the Senate Community and Regional Affairs
Committee meeting on February 28, 1985 dealing with this same subject is
enclosed.

I am also enclosing a copy of a memorandum from Tamara Brandt Cook,
Deputy Director, Division of Legal Services, to me dated February 28,
1985 concerning the same subject for your information.

Sincerely,

Edna DeVries
Senator

EDV:ta

Enclosures



Official Business

Alaska State Legislature

Senate

Committee on Community and Regional Affairs

Senator Edna DeVries, Chairman

Members:

Senator Ferguson, Vice Chairman

Senator Coghill

Senator Sturgulewski

Senator V. Fischer

Pouch V

Juneau, Alaska 99811

March 7, 1985

Lt. Commander T. J. Mackell
U.S. Coast Guard
District 17
P.O. Box 3-5000 (DL)
Juneau, Alaska 99802

Subject: Local Boundary Commission Report approving annexation
of Togiak Bay

Dear Commander Mackell:

Please express my appreciation to Rear Admiral Lucas for his letter of February 28, 1985 expressing the Coast Guard view regarding the above noted subject.

As per your request, a copy of the minutes of the Senate Community and Regional Affairs Committee meeting on February 28, 1985 dealing with this same subject is enclosed.

I am also enclosing a copy of a memorandum from Tamara D. andt Cook, Deputy Director, Division of Legal Services, to me dated February 28, 1985 concerning the same subject for your information.

Sincerely,

Edna DeVries
Senator

EDV:ta

Enclosures

US Department
of Transportation

United States
Coast Guard



Commander
Seventeenth Coast Guard District

P.O. Box 3-5000
Juneau, AK 99802
Staff Symbol (d1)
Phone (907)
586-7397

5800

FEB 26 1985

Senator Edna DeVries
Alaska State Senate
Committee on Community and Regional Affairs
Pouch V
Juneau, Alaska 99811
Attn: Ms. Trudie Alford

Re: Togiak Bay Annexation

Dear Senator DeVries:

I am writing at your request concerning the Coast Guard's view of the Togiak Bay annexation.

Although I am not familiar with the case referred to by the Attorney General, I am familiar with the methods of drawing baselines as they are presently drawn under international law.

There are a few preliminary points that I would like to set out.

1. The placement of baselines, from which the outer limits of the territorial sea are measured, is a matter of international law and is presently governed by Articles 3 through 11 of the 1958 Convention on the Territorial Sea and the Contiguous Zone. 1505T, 1606, TIAS 5639, 516 UNTS 205.
2. Under international law, the federal position on the location of the baseline is, by virtue of the supremacy clause of the U. S. Constitution, superior to any state or local claim. The federal position is the only position recognized as legitimate by the international community and agencies of the federal government including the Coast Guard.
3. The U. S. government has established and published the lines delineating the territorial sea and contiguous zone on the chart entitled "Alaska Peninsula and Aleutian Islands to Seguam Pass," NOAA Chart 16011, 30th Ed., April 1983, which I understand was presented to the Committee on 21 February 1985. The lines shown on that chart represent a federal interdepartmental committee's interpretation of the applicable legal principles as applied to that geographical area. The lines represent the official U. S. government position on the limits of the territorial sea.

5800

FEB 28 1985

4. The lines published on chart 16011 are in conformity with the 1958 Convention and are the boundaries presently recognized by the international community.
5. The 1958 Convention of the High Seas defines as high seas any area beyond the territorial sea. 13 OST 2312, TIAS 5200, 450 UNTS 82.

By drawing the area proposed to be annexed on Chart 16011, it can be seen that the area extends beyond the internationally recognized limit of the territorial sea. Togiak is in effect proposing to annex a portion of what is presently recognized as high seas. Such an attempt to exercise sovereignty over the high seas would be inconsistent with international and federal law.

I would therefore urge the Committee to disapprove the action of the Local Boundary Commission at least to the extent that the proposed annexation extends beyond the limits of the territorial sea as shown on Chart 16011.



R. F. LUCAS
REAR ADMIRAL U.S. COAST GUARD
COMMANDER, SEVENTEENTH COAST GUARD DISTRICT



UNITED STATES DEPARTMENT OF COMMERCE
National Oceanic and Atmospheric Administration
Office of General Counsel
P.O. Box 1668
Juneau, Alaska 99802
Telephone (907) 586-7414

February 26, 1985

Honorable Edna DeVries
Alaska State Senate
Attention: Ms. Trudie Alford
Pouch V
Juneau, Alaska 99811

Dear Senator DeVries:

Thank you for requesting, through Ms. Alford of your staff, my comments on the proposed annexation by the City of Togiak of Togiak Bay. I represent the National Oceanic and Atmospheric Administration (NOAA) of the United States Department of Commerce. NOAA includes such agencies as the National Marine Fisheries Service and the National Ocean Service which have significant interest in governmental jurisdiction over marine areas.

As Ms. Susan Cox of the Department of Law advised you in her letter of February 25, 1985, there is a difference of opinion between the State of Alaska and the United States as to the location of the seaward boundary of the State, that is, the three-mile limit. As Ms. Cox suggests, the State would probably take the position that all of Togiak Bay is within the State's seaward boundary, and that there is thus no impediment to the City's annexation of the Bay due to lack of jurisdiction. The Federal Government, on the other hand, has clearly taken the position that a large portion of the Bay is beyond the three-mile limit, and is thus outside the boundaries of the State. This position was developed by the Federal Inter-agency Baseline Committee, under the auspices of the U.S. Department of State, and is reflected in NOAA Nautical Chart No. 8802, which you and Ms. Cox have examined. Under this Federal view of the situation, the City would probably not be able to annex all of the proposed area, but only that portion of it that lies within the three-mile limit as illustrated on Chart No. 8802.

As Ms. Cox has noted, this difference of opinion between the State and Federal governments is now the subject of litigation before the United States Supreme Court. Perhaps one way in which the Legislature could take positive action on the proposed annexation while not raising this issue would be to approve the annexation of the proposed area of the Bay to the extent this area lies within the boundaries of the State. In that way, the extent of the annexation could be settled whenever the more general disagreement over the extent of the State's seaward boundaries is resolved, without the need for additional action by the Legislature or the Local Boundary Commission.



I appreciate very much the opportunity to participate in your deliberations on this matter, and hope that you will let me know if I can be of any further help as you formulate the Legislature's decision.

Respectfully yours,

A handwritten signature in cursive script that reads "Pat Travers". The signature is written in dark ink and is positioned above the printed name.

Patrick J. Travers
Alaska Regional Counsel



Official Business

Alaska State Legislature

Senate

Committee on Community and Regional Affairs

Senator Edna DeVries, Chairman
Members
Senator Ferguson, Vice Chairman
Senator Coghill
Senator Sturgulewski
Senator V Fischer

Pouch V
Juneau, Alaska 99811

February 26, 1985

United States Coast Guard
Legal Office
Federal Building, Room 871
Juneau, Alaska 99802

Attention: Lt. Commander T. J. Mackell

SUBJECT: TOGIAK BAY ANNEXATION

As per our telephone conversation this date, please find enclosed the Report of the Alaska Local Boundary Commission with regard to the above-referenced subject.

Also enclosed is a copy of the opinion (letter), same subject, from the Attorney General's Office.

You indicated you would be able to furnish the Senate Community & Regional Affairs Committee a position paper, and/or oral testimony in time for its Thursday meeting at 3:30 p.m. on February 28, 1985.

Any input the U.S. Coast Guard chooses to make will be most appreciated.

Sincerely,

Trudie Alford
Research Assistant

Enclosures



Official Business

Alaska State Legislature

Senate

Committee on Community and Regional Affairs

Senator Edna DeVries, Chairman

Members:

Senator Ferguson, Vice Chairman

Senator Coghill

Senator Sturgulewski

Senator V. Fischer

Pouch V

Juneau, Alaska 99811

February 26, 1985

National Marine Fisheries
Legal Office
Federal Building, Room 413
Juneau, Alaska 99802

Attention: Mr. Pat Travers

SUBJECT: TOGLIAK BAY ANNEXATION

As per our telephone conversation this date, please find enclosed the Report of the Alaska Local Boundary Commission with regard to the above-referenced subject.

Also enclosed is a copy of the opinion (letter), same subject, from the Attorney General's Office.

You indicated you would be able to furnish the Senate Community & Regional Affairs Committee a position paper, and/or oral testimony in time for its Thursday meeting at 3:30 p.m. on February 28, 1985.

Any input the U.S. Marine Fisheries Service chooses to make will be most appreciated.

Sincerely,

Trudie Alford
Research Assistant

Enclosures



Official Business

Alaska State Legislature

Senate

Committee on Community and Regional Affairs

Senator Edna DeVries, Chairman
Members
Senator Ferguson, Vice Chairman
Senator Coghill
Senator Sturgulewski
Senator V. Fischer

Pouch V
Juneau, Alaska 99811

MEMORANDUM

February 26, 1985

TO: Senator DeVries

FROM: Trudie Alford

SUBJECT: TOGIAC BAY ANNEXATION (Alaska Local Boundary Commission Report)

Received phone calls this date from the U.S. Coast Guard Office and the National Marine Fisheries Service Office in Juneau. Both government agencies indicated a desire to review the territorial boundary matter in connection with the annexation of Togiak Bay.

I explained to them that the Legislature had to either allow the Local Boundary Commission decision to stand or disapprove same by a concurrent resolution on or before March 8, 1985. Representatives from both offices stated they wanted to submit written and or oral testimony on the annexation.

Per your instructions, I informed them that any input they want to make should be received not later than 3:30 p.m., Thursday, February 28, 1985.

P.O. Box 3-5000 (DL)

U.S. Dept of Transportation ¹⁹⁸⁹

U.S. Coast Guard

Dist 17

Legal Office 586-7398

Lt Commander
2. J. Mackell

Mr. J. J. ...
Mr. ...
Mr. ...

ALL
-
-

Room 871

Federal Bldg.

Legal Office

U.S. Coast Guard

General Counsel

586-7414

National Marine
Fisheries Service

Pat.

Mr. Travers

Room 413

Federal Bldg



SENATOR FRED F. ZHAROFF

ALASKA STATE LEGISLATURE

P. O. BOX 405, KODIAK, ALASKA 99615 (907) 486-5259

DURING SESSION:


POUCH V, JUNEAU, ALASKA 99811 • (907) 465-3473 • 465-3474 • 465-3844 (Labor and Commerce Committee)

DISTRICT N

ALASKA PENINSULA • ALEUTIAN CHAIN • BRISTOL BAY • KODIAK ISLAND • LAKE CLARK/LAKE ILIAMNA • PRIBILOF ISLANDS • SHUMAGIN ISLANDS

MEMORANDUM

TO: Senate C&RA Committee Members
Senator DeVries, Chair
Senator Ferguson, Vice-chair
Senator Coghill
Senator Sturgulewski
Senator Vic Fischer

FROM: Senator Fred F. Zharoff 

DATE: February 25, 1985

SUBJ: Togiak Annexation

On Tuesday, February 26, the Senate Community & Regional Affairs Committee will be considering SJR 18. This resolution disapproves the Local Boundary Commission's recommendation for the City of Togiak's annexation of Togiak Bay. I urge you to not support this resolution.

As you know, the Local Boundary Commission has considered the Togiak annexation proposal and recommends approval. Further, while the DC&RA staff initially had some concerns about the annexation, Commissioner Notti, in his letter of February 15, 1985 to Senator DeVries, clearly states the Department's support for the Local Boundary Commission's action to approve the annexation of Togiak Bay.

The people of Togiak have shown overwhelming support for the annexation in public hearings conducted by the Local Boundary Commission. Although objections have been expressed by some individuals from Twin Hills, the Local Boundary Commission has addressed this issue in its report. Twin Hills is an unincorporated community. When and if Twin Hills decides to incorporate, the question of boundary adjustments should be taken up at that time. Therefore, I can see no reason why the annexation should not be approved.

Please keep these points in mind when you are considering SJR 18. Thank you.

*2/25/85 Distributed
by Sen. Zharoff to
Senate C&RA members.*



Official Business

Alaska State Legislature

Senate

Committee on Community and Regional Affairs

Senator Edna DeVries, Chairman

Members:

Senator Ferguson, Vice Chairman

Senator Coghill

Senator Sturgulewski

Senator V. Fischer

POUCH V

Juneau, Alaska 99811

February 22, 1985

To: Attorney General
Attn: Susan Cox

From: Senator Edna DeVries, Chairman *Edna*
Community and Regional Affairs Committee

Subj: Opinion re: Togiak Bay proposed annexation

I wanted to clarify the questions that I wish answered for the Committee in connection with our decision regarding the above subject.

As pertains to Togiak Bay and the proposed annexation:

- 1) Where is the boundary line for state and/or local jurisdiction?
- 2) Where is the boundary line for the Territorial Sea and Contiguous Zone?
- 3) What jurisdiction has authority over the above defined water areas for purposes of public health and safety?
- 4) Are there legal ramifications of consequence to annexing a part of a physical structure while the remaining section of the structure remains unannexed?

It is necessary that I have the Dept of Law opinion on this matter by Tuesday morning, February 26 prior to Senate Session so that I may call the Committee back together to make a final decision in time to meet the legal deadline per AS 29.68.010.

STATE OF ALASKA
THE LEGISLATURE

POUCH Y STATE CAPITOL
JUNEAU ALASKA 99811
907 465 3800

LEGISLATIVE AFFAIRS AGENCY

MEMORANDUM

February 28, 1985

SUBJECT: Annexation of Territory to Togiak

TO: Senator Edna DeVries
Chair, Community and Regional Affairs

FROM: Tamara Brandt Cook ^{TBC}
Deputy Director
Division of Legal Services

You have asked several questions concerning the proposed annexation of territory to Togiak. First, you want to know where the state boundary is in the area proposed for annexation. I do not have the expertise needed to make such a determination. That is very technical matter, and, I understand, there are several places where the boundary is in dispute. A map of the area to be annexed should probably be submitted to the appropriate federal agency with a request for a determination of whether it includes territory outside the state jurisdictional boundary.

In general, the state's jurisdictional boundary extends three miles past its coastline as provided under the Submerged Lands Act (See 43 U.S.C. 1312; Pollards Lessee v. Hagan, 44 U.S. 212, 223 (1845); U.S. v. California, 332 U.S. 19 (1947)). However, many factors influence the boundary determination at a particular point. It is my understanding that where there are islands within the three-mile limit, the state's boundary may include waters three miles past the islands and this can result in a jurisdiction that exceeds three miles from the state's coastline. Inland waters are also included within the jurisdiction of a state, but there is considerable confusion over how it is determined whether a body of water qualifies as "inland". Bays less than 25 miles wide seem generally to be classed as inland waters. The state also has jurisdiction over "historic bays" -- those over which the state has exercised continuous authority in the past and the authority has been accepted by other jurisdictions. (See U.S. v. Alaska, 422 U.S. (1975) holding that the lower Cook Inlet is not a "historic bay".)

You have also asked what jurisdiction has authority over the waters beyond the state's boundaries. It should be noted that not even the federal government claims outright ownership of the waters past the three-mile limit, although it exerts control over waters at the 200-mile limit as an economic zone. The federal government, however, does have the paramount rights in the area beyond the three-mile limit. Nevertheless, the principle of federal exclusivity does not preclude the state from regulating in situations that do not conflict with federal regulation. For example, the state may regulate certain aspects of extraterritorial fishing. (State v. Sieminski, 556 P.2d 929 (Alaska 1976); State v. Bundrant, 546 P.2d 530, rehearing denied, 547 P.2d 838 (Alaska 1976); hearing denied, 50 Led.2d 66) So, it cannot be said that the state has no jurisdiction over waters outside its boundaries, only that federal jurisdiction is supreme.

Lastly, you have asked whether an annexation that includes part of an improvement presents any legal problems. Although it might create some minor tax assessment difficulties, as a legal matter I can think of nothing that precludes the annexation of a portion of improved property.

Regardless of whether the proposed annexation of territory to Togiak becomes is approved, the boundaries of a city may not include territory that is not within the boundaries of the state. If the legislature does not disapprove the annexation by resolution, it will be valid as to territory described in the annexation that is within the state's boundaries.

TBC:ojb
J12/034

STATE OF ALASKA

DEPARTMENT OF LAW

OFFICE OF THE ATTORNEY GENERAL

BILL SHEFFIELD, GOVERNOR

REPLY TO:

1031 W 4th AVENUE
SUITE 200
ANCHORAGE, ALASKA 99501
PHONE: (907) 276-3550

1st NATIONAL CENTER
100 CUSHMAN ST.
SUITE 400
FAIRBANKS, ALASKA 99701
PHONE: (907) 452-1568

POUCH K - STATE CAPITOL
JUNEAU, ALASKA 99811
PHONE: (907) 465-3600

February 25, 1985

Hon. Edna DeVries
Alaska State Senate
Pouch V
Juneau, AK 99811

Re: Togiak Bay proposed annexation

Dear Senator DeVries:

I have reviewed your February 22 request for legal advice on the proposed annexation of Togiak Bay and have attempted, in the short time available, to respond to your questions.

It appears there is no clear answer to questions 1-3 regarding jurisdiction over Togiak Bay. I am informed that, under normal juridical principles, Togiak Bay (if bounded by Tongue Point and Rocky Point) may contain slightly less than the area usually required to qualify as a traditional bay. It is a close call and has not been worked out using exact dimensions. If Togiak Bay was considered a juridical bay, then Alaska's jurisdictional boundary would extend three miles beyond the mouth of the bay. However, that has not been unequivocally established.

Not being familiar with the legal technicalities of the Territorial Sea and the Contiguous Zone, I spoke with Tom Koester, assistant attorney general in charge of our natural resources section. I explained to him the nature of your request and showed him the nautical chart of the "Alaska Peninsula and Aleutian Islands to Segum Pass" which was presented to the Senate Community and Regional Affairs Committee on February 21. The method of determining Alaska's Territorial Sea is currently a matter of litigation between the state and the federal government in the U.S. Supreme Court. United States v. Alaska, No. 84 Original. Although Togiak Bay is not at issue in the litigation, Tom told me that the state's position in the suit would result in drawing the state's offshore boundary line south of the islands at the mouth of Togiak Bay. The water in Togiak Bay and between the bay and the islands (Hagemester Island, Walrus Islands, and Round Island) would therefore all be within Alaskan jurisdiction. Because we do not have complete background data and, of course, do not know what the outcome of the lawsuit before the U.S. Supreme Court will be, this position as it relates to Togiak Bay is

Senator Edna DeVries, Chairman
Community & Regional Affairs Committee
Alaska State Legislature

February 25, 1985
Page #2

not certain, although it is the state's position.

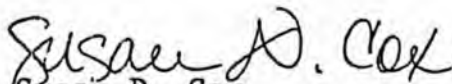
I am sorry that there is no precise answer to these questions. The definition of a bay and the offshore boundaries of the state are matters for experts and subject to great dispute. It should be noted that the Territorial Sea and Contiguous Zone are concepts that were designed for the regulation of shipping. It is not impossible, and indeed not all that uncommon, for a municipality to define its boundaries without regard to the Territorial Sea lines.

Additionally, you asked if there are legal ramifications of consequence to annexing part of a physical structure while a remaining section of the structure remains unannexed. Without having further information, this is a difficult question to answer. As I understand it, the structure in question is a fish processing operation with a dock extending into the water and a plant on the shore, above the high tide line. The portion of the dock projecting into Togiak Bay below the high tide line will be subject to the jurisdiction of the City and, in that sense, there will be legal ramifications for that operation (e.g., local taxation, ordinances, etc.). However, I do not view the annexation of part of a structure as a legal obstacle to the entire annexation.

Please contact me if you have any further questions.

Sincerely yours,

NORMAN C. GORSUCH
ATTORNEY GENERAL

By: 
Susan D. Cox
Assistant Attorney General

SDC/pjg

cc: Hon. Peter Goll
House of Representatives

Eric Meyers
Rep. Adelheid Herrmann's Office
House of Representatives

Dan Bockhorst
DCRA -- Municipal & Regional
Assistance Division



Official Business

Alaska State Legislature

Senate

Committee on Community and Regional Affairs

Senator Edna DeVries, Chairman

Members

Senator Ferguson, Vice Chairman

Senator Coghill

Senator Sturgulewski

Senator V. Fischer

Pouch V

Juneau, Alaska 99811

February 22, 1985

To: Attorney General
Attn: Susan Cox

From: Senator Edna DeVries, Chairman *Edna*
Community and Regional Affairs Committee

Subj: Opinion re: Togiak Bay proposed annexation

I wanted to clarify the questions that I wish answered for the Committee in connection with our decision regarding the above subject.

As pertains to Togiak Bay and the proposed annexation:

- 1) Where is the boundary line for state and/or local jurisdiction?
- 2) Where is the boundary line for the Territorial Sea and Contiguous Zone?
- 3) What jurisdiction has authority over the above defined water areas for purposes of public health and safety?
- 4) Are there legal ramifications of consequence to annexing a part of a physical structure while the remaining section of the structure remains unannexed?

It is necessary that I have the Dept of Law opinion on this matter by Tuesday morning, February 26 prior to Senate Session so that I may call the Committee back together to make a final decision in time to meet the legal deadline per AS 29.68.010.

Introduced: 2/22/85
Referred: Community and Regional Affairs

X-tra for public

1 IN THE SENATE

BY THE COMMUNITY AND
REGIONAL AFFAIRS COMMITTEE

2 SENATE JOINT RESOLUTION NO. 17

3 IN THE LEGISLATURE OF THE STATE OF ALASKA

4 FOURTEENTH LEGISLATURE - FIRST SESSION

5 Disapproving the recommendation of the
6 Local Boundary Commission for annexation
7 of territory to the City of Fairbanks.

8 BE IT RESOLVED BY THE LEGISLATURE OF THE STATE OF ALASKA:

9 WHEREAS, under art. X, sec. 12, Constitution of the State of Alaska,
10 the Local Boundary Commission has presented to the legislature its recom-
11 mendation number one dated January 23, 1985, entitled "Recommendation for
12 the Annexation of Territory to the City of Fairbanks"; and

13 WHEREAS a recommendation of the Local Boundary Commission presented to
14 the legislature becomes effective 45 days after presentation or at the end
15 of the session, whichever is earlier, unless disapproved by a resolution
16 concurred in by the majority of the members of each house;

17 BE IT RESOLVED by the Alaska State Legislature that recommendation
18 number one of the Local Boundary Commission dated January 23, 1985, and
19 entitled "Recommendation for the Annexation of Territory to the City of
20 Fairbanks" is disapproved.

February 15, 1985

James M. Hackett
401 Eleventh Avenue
Fairbanks, Alaska
99701

Edna Devries
Chairman, Senate
Community and Regional Affairs
Capitol, Room 427
Pouch V, Juneau, AK 99811
(Interdepartmental Mail Stop: 3100)
465-4989

Dear Ms. Devries:

WISE AREA HAS BEEN SINGLED OUT

Dennis Wise believes that the City of Fairbanks has singled out the area containing his property for treatment different than other similarly situated areas outside present municipal boundaries.

Historically the City of Fairbanks has not aggressively sought annexation outside its established municipal boundaries without the agreement of the property owners to be annexed. For example, the City of Fairbanks has not sought direct legislative annexation of the highly developed College, Alaska area contiguous to the west of the city's boundaries. This area has developed rapidly and extensively over the last twenty years, yet the City has never sought local action or direct legislative annexation of this area, which is urban in character, and substantially more developed than the area in and around the Wise property.

The Tanana Valley Fair Grounds, the site north of College Road which hosted the State Fair this past August, requested City of Fairbanks utility services years ago. The City refused to extend service. The fair grounds have developed over the years. The City has never sought to annex this area by either local action or direct legislative action either.

ORDINANCE 4395

On February 11, 1985, the City of Fairbanks adopted City Ordinance No. 4395 as amended. This annexation ordinance involves more than eighty (80) acres immediately south of the Wise property recommended for annexation. The City has elected to annex this other property in the same area by way of local action annexation (19 AAC 10.630 through 19 AAC 10.730), which method requires a municipal election, and the affirmative vote of a majority of the registered voters in the area to be annexed before the annexation can proceed to the LBC.

There is no sound public policy reason justifying the City's proceeding in two separate and distinct annexation methods for similarly situated property. The City elected to proceed by direct legislative action (19 AAC 10.450 through 19 AAC 10.620) to annex the area encompassing the Wise property to be developed under City Ordinance No. 4351 adopted in late August 1984. This method precludes affected property owners from voting on the question of annexation.

The one example of direct legislative annexation that has been approved by the Alaska Supreme Court was in the general area surrounding Valdez following the disastrous earthquake and flood disaster that struck that city. There direct legislative annexation was warranted, and needed. See Port Valdez Co. v. City of Valdez, 522 P.2d 1147 (Alaska 1974). Given the history of the City of Fairbanks in never seeking direct legislative annexation before for more developed areas contiguous to the City, and given the fact that the City is presently seeking annexation of property in the same area by local action, it is difficult to believe that the LBC did its duty under regulation (19 AAC 10.600) and considered other alternative methods of annexation, such as by local action (19 AAC 10.630--19 AAC 10.730) or by step annexation (19 AAC 10.735--19 AAC 10.790), instead of by direct legislative annexation. A step annexation would make more sense here because of the phased-in development plans for Mr. Wise's project. The City and the LBC both are aware of Mr. Wise's phased-in development plans over a period of time for his property.

LBC'S RECORDS

By statute the LBC is required to keep minutes and records of its deliberations and decision making, so that its actions are reviewable. Under the appellate rules, the LBC is not required to furnish the court with its complete records and files until mid-March 1985, after the time the Legislature has to decide whether to go along with the LBC's decision.

If, as Mr. Wise suspects, the records and minutes of the LBC showing its deliberations and decision making are inadequate and do not comply with statute, then Mr. Wise and the other people in the area annexed by direct legislative action will have been subjected to the direct intervention of the state, when the two alternative methods of annexation--local action and step annexation--would have given these people the right to vote and participate in an event directly involving them and their properties.

In the area outside Fairbanks, residents are independent and individualistic property owners, in the tradition of so many other individual property owners in this vast state. Giving these residents and property owners a say in their own destiny by rejecting the direct legislative annexation approach is consistent with the independent views of the property owners outside Fairbanks, and is consistent with the previous

history of the City, and with the City's present actions under Ordinance 4395.

COMMENTS BY LBC STAFF

The City did not file its annexation petition until late in the fall of 1984, making the Staff's job more difficult because of the short time frame involved. In addition, James Sanders of the LBC Staff in Anchorage was replaced by Gene Kane, a gentleman handling his first annexation matter. This replacement of Staff caused further delay.

The LBC Staff received prefiled testimony shortly before the meeting of the LBC in Fairbanks on November 31, 1984. According to a comment made by a LBC Staff member in Fairbanks, the recommendation of the Staff for annexation may well have been different if the Staff had received the prefiled testimony earlier. This prefiled testimony was filed by Edward J. Eisele, William T. Shechter, and Dennis Osterdock. Because of the lateness of the City's annexation petition, there was a relatively short time for Staff to consider this prefiled testimony thoroughly.

ERRONEOUS FACTUAL DETERMINATIONS

The LBC did not take into account the will of the people in Dennis Wise's general area.

As recently as January 1985, property owners in the Davis Road area petitioned the Fairbanks North Star Borough to extend the University Fire District to their area. At a borough-conducted election on January 10, 1984, 131 votes were cast for extending the borough's fire service, and only 10 votes were cast against extending the borough fire district.

The LBC did not adequately consider the capacity of the University Fire District, or the wishes of the residents in this general area. This heavy vote in favor of borough services as recently as January 1984 is a strong indication of residents in that area wanting borough, and not City, services.

The LBC termed this area urban in nature. The area is much less urban in nature than the College, Alaska area, and the Tanana Valley Fairgrounds area, which the City has never sought to annex.

COURT-ORDERED STAY

Superior Court Judge James R. Blair has ordered the Statement of Decision of the Local Boundary Commission (LBC) stayed nunc pro tunc (or back to) the date of January 24, 1985. This means that the decision of the LBC was stayed shortly after the LBC submitted the issue to the Legislature.

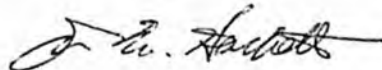
Dennis Wise believes that this stay of the underlying LBC decision may make action by the Legislature unnecessary at this time. However,

the problem is that if his belief is incorrect, then the failure of the Legislature to act in a timely fashion to deny the LBC's direct legislative annexation will permit the City of Fairbanks and the state to argue that the annexation has been approved by the Legislature's failure to have acted within the statutory 45 day period.

Mr. Wise had to request the stay from the court when he did, because the terms of Appellate Rule 603(a)(2) of the State of Alaska require a party seeking a stay of an administrative decision to do so within 30 days from receipt of the decision, or the party loses the opportunity to obtain a stay.

Mr. Wise respectfully requests the Legislature to disapprove the LBC's recommended direct legislative annexation under the circumstances.

Sincerely,



James M. Hackett
Attorney for Dennis Wise

JMH:mb

- Enclosures:
1. Ordinance No. 4351;
 2. Ordinance No. 4395, as amended
 3. Prefiled Testimony of Edward J. Eisele
 4. Prefiled Testimony of William T. Shechter
 5. Prefiled Testimony of Dennis Osterdock
 6. Order Nunc Pro Tunc
 7. Transcript of Borough residents' comments (in January 1985 before the APUC)

JAMES M. HACKETT, INC.
401 Eleventh Avenue
Fairbanks, Alaska 99701
(907) 456-3626

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FOURTH JUDICIAL DISTRICT

DENNIS B. WISE and WISE
ENTERPRISES, INC., a domestic
corporation,

Appellant,

vs.

STATE OF ALASKA LOCAL
BOUNDARY COMMISSION,

Appellee.

No. 4FA-85-60 Civil

ORDER

Being fully advised upon the premises, and upon Appellant's motion to approve Supersedeas Bond nunc pro tunc,

IT IS ORDERED that Appellant's Supersedeas Bond on Appeal is approved filed, nunc pro tunc, to January 24, 1985;

IT IS FURTHER ORDERED that the Statement of Decision of the State of Alaska Local Boundary Commission dated December 1, 1984, which decision was mailed on or about January 2, 1985, is stayed pending appeal herein pursuant to Appellate Rule 603(a)(2) of the State of Alaska.

DATED at Fairbanks, Alaska this 5 day of Feb, 1985.

James R. Blair
Honorable James R. Blair
Superior Court Judge

I certify that on 2-7-85
copies of this form were sent to
CLERK: AG

Hackett
AG

JG
1/25/85
Blair

Introduced by: City Manager
First Reading: August 6, 1984

ORDINANCE NO. 4351

AN ORDINANCE TO ANNEX PROPERTY ADJACENT TO THE CITY BORDERED BY PEGER, DAVIS AND HILL ROADS, CONTAINING 117 ACRES, MORE OR LESS; AND SETTING AN EFFECTIVE DATE.

WHEREAS, property adjacent to the city of Fairbanks and bordered by Peger Road, Hill Road and Davis Road and containing about 117 acres is becoming more developed and would benefit by the extension of city services including water and sewer utilities to this area; and

WHEREAS, the city of Fairbanks has applied to the Alaska Public Utilities Commission to extend their service area for water and sewer utilities to this area and adjacent areas; and

WHEREAS, it is in the best interest of the Fairbanks Municipal Utilities System water and sewer department to furnish water and sewer to this area; and

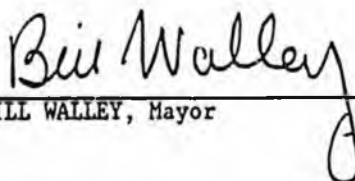
WHEREAS, some property owners in the area proposed for annexation have approached the city to request annexation; and

WHEREAS, the current and future owners of this land will benefit from such annexation.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF FAIRBANKS, ALASKA, as follows:

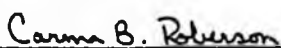
SECTION 1. That the city manager of the city of Fairbanks is hereby authorized to file a petition on behalf of the city of Fairbanks with the State of Alaska Boundary Commission to annex the property described in Exhibit A and shown on the map, Exhibit B, to the city of Fairbanks under the provision of 19 AAC 10.450 through 10.620.

SECTION 2. That the effective date of this ordinance shall be the 25th day of August, 1984.


BILL WALLEY, Mayor

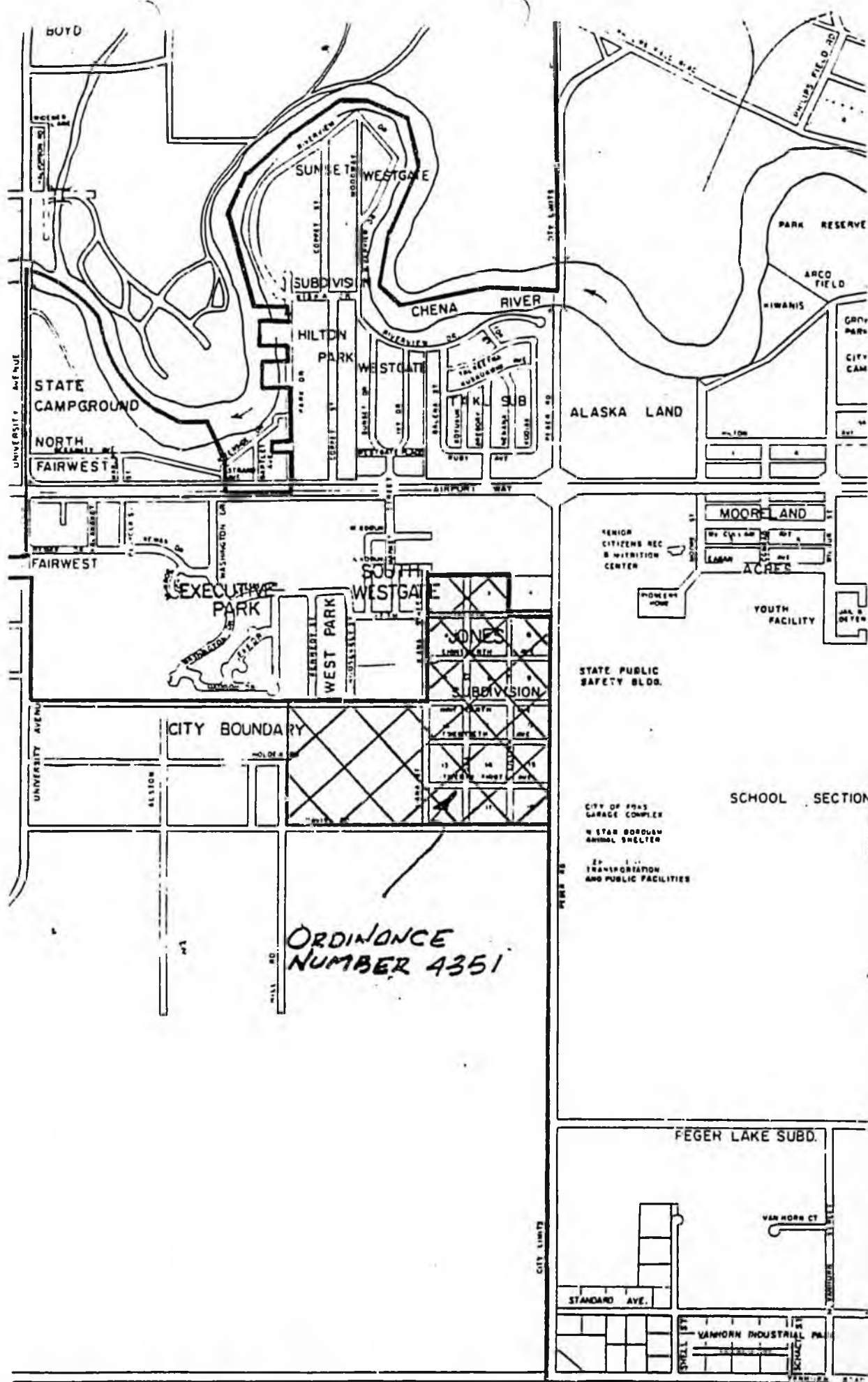
ADOPTED: August 20, 1984

ATTEST:


CARMA B. ROBERSON, City Clerk

The SW 1/4 of the NE 1/4 of Section 17, T1S, T1W, F.M. and the EM Jones Homestead Subdivision recorded in the Fairbanks District Recorders Office as Instrument Number 156.156 on May 25, 1955. The exceptions to these contiguous areas are as follows; that portion of Davis Road that lies within these areas and all of Block 3 of the same E.M. Jones Homestead Subdivision.

This description encompasses an area of 117 acres.



ORDINANCE
NUMBER 4351

EXHIBIT "B"

Introduced by: City Manager
First Reading: January 21, 1985

ORDINANCE NO. 4395, As Amended

AN ORDINANCE TO ANNEX PROPERTY SOUTH OF DAVIS ROAD
AND WEST OF PEGER ROAD CONTAINING 83 ACRES, MORE
OR LESS; AND SETTING AN EFFECTIVE DATE.

WHEREAS, individuals who own property in the following area have written a letter to the city requesting the city annex the following described property:

The north $\frac{1}{2}$ of the SE $\frac{1}{4}$ of Section 17, T1S, R1W, F.M., and all the remaining right-of-way of Davis Road within the south $\frac{1}{2}$ of the NE $\frac{1}{4}$ of Section 17, T1S, R1W, F.M., containing 83 acres, more or less.

and WHEREAS, under the provisions of 19 AAC 10.630 through 10.730, there are provisions authorizing the holding of an election by residents of an area to be annexed to determine whether the area should be annexed into the city; and

WHEREAS, 19 AAC 10.470(a)(1) permits the governing body of a municipality whose boundaries are to be changed to initiate such a petition.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF FAIRBANKS, ALASKA, as follows:

SECTION 1. That the city of Fairbanks agrees to an ordinance annexing property south of Davis Road and west of Peger Road, more particularly described as

The north $\frac{1}{2}$ of the SE $\frac{1}{4}$ of Section 17, T1S, R1W, F.M., and all the remaining right-of-way of Davis Road within the south $\frac{1}{2}$ of the NE $\frac{1}{4}$ of Section 17, T1S, R1W, F.M., containing 83 acres, more or less.

This area is contiguous to the city of Fairbanks. Annexation will be on the following terms and conditions.

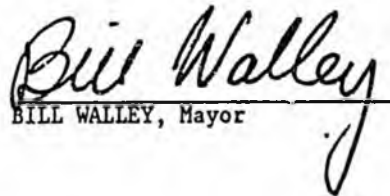
- a. The areas shall share equally on all current obligations of the city.
- b. The city will provide general services such as are provided in other sections of the city.
- c. That no taxes for municipal services should be levied by the city in the area to be annexed in the calendar year 1985. Property annexed shall continue to be liable for taxes levied by the Fairbanks North Star Borough during 1985. The property annexed shall be liable for normal city taxes beginning January 1, 1986.

SECTION 2. The city council of the city of Fairbanks hereby petitions that the above area be annexed. Upon approval of this ordinance, the city clerk shall forward a copy of it to the Alaska Department of Community and Regional Affairs, and a petition and other documents required by 19 AAC 10.630 through 10.730.

Upon approval by the Department of Community and Regional Affairs, the city will conduct an election of all registered voters in the area to be annexed.

Within ten days after the election, the city council shall meet and canvas votes cast. If the majority of the votes are for annexation, the city council may issue a certification of such election which shall be filed with the city clerk and a copy forwarded to the Department of Regional and Community Affairs. The annexation shall be effective upon the filing of this certificate.

SECTION 3. That the effective date of this ordinance shall be the 16th day of February, 1985.


BILL WALLEY, Mayor

ADOPTED: February 11, 1985

ATTEST:


CARMA B. ROBERSON, City Clerk

BEFORE THE STATE OF ALASKA
DEPARTMENT OF COMMUNITY AND REGIONAL AFFAIRS

IN THE MATTER OF the)
Annexation by the City of)
Fairbanks, Alaska, of 111)
acres bounded by Peger Road,)
Davis Road and Hill Road.)
_____)

PRE-FILED TESTIMONY OF EDWARD J. EISELE

- Q. What is your name and address?
- A. My name is Edward J. Eisele. I reside at 4034 Birch Lane, Fairbanks, Alaska.
- Q. Are you involved with the University Fire District, a fire service area within the Fairbanks North Star Borough.
- A. Yes. I am chairman of the University Fire District.
- Q. How did the University Fire District come to serve the Holden Road area, and the area in which Wise Enterprises, Inc. is constructing multi-residential housing?
- A. Many residents living in the Davis Road area petitioned the Borough (FNSB) to have their area (which includes the Wise Enterprises, Inc. area) annexed into the University Fire District.
- Q. What percentage of land owners and residents in that area petitioned?
- A. Landowners and residents, representing well in excess of fifty percent (50%) of the property owners in the area, petitioned FNSB to be annexed to our University Fire District. Copies of seventy-nine (79) pages of landowners' petitions to FNSB are attached as Exhibit A.
- Q. Was an FNSB-conducted election held on the question of annexation?
- A. Yes, a special borough-conducted election was held on January

10, 1984. A copy of the official ballot is attached as Exhibit

B. The question to be voted on was the following:

"Shall the University Fire Service
Area be expanded to exercise fire
protection powers within the indicated
area?"

Q. How many borough residents voted on January 10, 1984?

A. One hundred forty-three (143) borough residents voted on
the question.

Q. What were the results?

A. The results were one-hundred thirty-one (131) votes for the
annexation, ten (10) votes against, and two (2) questioned
votes. A copy of the FNSB "Certificate of Election Return"
form is attached as Exhibit C. The voters overwhelmingly
voted for annexation.

DATED at Fairbanks, Alaska this _____ day of November, 1984.

Edward J. Eisele

RECEIVED



JUN 11 1984

UNIVERSITY OF ALASKA, FAIRBANKS
Fairbanks, Alaska 99701

Office of Dennis Wise
Wise Enterprises

May 25, 1984

F.N.S.B.
P.O. Box 1267
Fairbanks, Alaska 99707

Ref: Development Review - 19th & Davis

Attn: James Lee, Senior Planner

I have reviewed this development with George Gordon, President of College Utilities Corp., with regards to distribution of fire hydrants, and with Lee Davis, Deputy State Fire Marshal.

I am pleased with the initial development plans. I will be working with the Fire Marshal's Office to insure strict compliance with official building and life safety codes.

Fire hydrant distribution seems adequate for the complex.

I intend to insure adequate access for the fire department completely around each building - especially with regards to rescue potential and not having obstructions.

Please keep me advised during the progression of this development as we are responsible for fire protection.

Sincerely,

A handwritten signature in cursive script, appearing to read "William Shechter".

William Shechter, Fire Chief, UAF

cc: Ed Eisele, Chairman, Univ. Fire Service District

UNIVERSITY OF ALASKA

MAY 25 10:32

RECEIVED

Fold Ballot To This Line

No.

SPECIAL ELECTION
PROPOSED ANNEXATION TO UNIVERSITY FIRE SERVICE AREA
FAIRBANKS NORTH STAR BOROUGH ALASKA
JANUARY 10, 1984

OFFICIAL BALLOT

FAIRBANKS NORTH STAR BOROUGH
ALASKA

Mark only with cross marks, "X" marks, check or plus signs.
Marks must be inside the square.

If you spoil your ballot, you may return it to the election judge
and receive another ballot. Your spoiled ballot will be
immediately voided.

Erasures and corrections shall invalidate only that part of the
ballot in which they appear.

A mark in the square opposite the word "Yes" shall be recorded as
a vote for the proposition and a mark in the square opposite the
word "No" shall be recorded as a vote against the proposition.

PROPOSITION

"Shall the University Fire Service Area be expanded to
exercise fire protection powers within the indicated
area?"

YES

NO

Exhibit B

sample

Pursuant to FNSB 14.04.021, we the undersigned real property owners, being in excess of 50% of the real property owners whose properties lie within the boundaries of the proposed service area, hereby petition the Fairbanks North Star Borough Assembly for the annexation to the University Fire Service Area perform the following governmental services: fire protection. The area to be included in the service area is (see attached map).

PRINTED NAME	SIGNATURE	ADDRESS
✓ Kate Levit	Kate Levit	54750 3rd St.
^{Buyers} ✓ Scott L Alexander	Scott L Alexander	4th & Water
^{N. & W. 1/4} ✓ Vera McCabe	Vera McCabe	1 Mile Dale Road
✓ Donald McCabe	Donald McCabe	1 Mi Dale Rd.
✓ Madeline Sheepp	Madeline Sheepp	4712 2nd St.
✓ ROBERT REICHMANN	Robert Reichmann	4711 3RD
✓ Richard W Fields	Richard W Fields	4711 3RD
✓ Toni Fields	Toni Fields	4711 3rd St
✓ Mary Williams	Mary Williams	4735 5th St.
✓ Bill C Williams	Bill C Williams	4735 5th St.
✓ Mary E. Binkley	Mary E. Binkley	PO Box 8061 Fairbanks 99706
✓ MARY F. PIKE	Mary F. Pike	PO Box 60412-762
✓ LLOYD H. PIKE	Lloyd H. Pike	PO Box 60412
✓ Gene B Davis	Gene B Davis	5850 Airport Way
✓ JIM B DAVIS	Jim B Davis	5880 AIRPORT WAY
✓ PIKE'S LANDING	Pike's Landing	Box 1235 Fairbanks
✓ PIKE'S LANDING	Pike's Landing	4.5 mile AIRPORT
✓ DELIA I. PRUNS	Delia I. Pruns	Box 1735 Fairbanks 4.5 mi Airport Road
✓ Truman Jackson	Truman Jackson	1443 Moore St
✓ Carolyn Jackson	Carolyn Jackson	1443 Moore St
✓ Sam Jink Binkley	Sam Jink Binkley	Box 80610 Fairbanks 99706
✓ College Utilities Corp	College Utilities Corp	PO Box 80907 Fairbanks 99708
FAIRBANKS UTILITIES	FAIRBANKS UTILITIES	PO Box 60412
✓ Rita R Carlson	Rita R Carlson	5894 Airport Rd
✓ DALE C. CARLSON	Dale C. Carlson	5894 AIRPORT RD
- KORNFIELD TRAINING CENTER	Kornfield Training Center	P.O. BOX 60134 Fairbanks 99706
✓ SUSAN M NEFF	Susan M Neff	355 HUDSON RD

3/83

CERTIFICATE OF ELECTION RETURNS
Fairbanks North Star Borough
Special Election - January 10, 1984

Annexation to University Fire Service Area

We, the undersigned, hereby certify that the following is a true and correct return of all votes cast at the Special Election in Annexation to University Fire Service Area, of Fairbanks North Star Borough on the 10 day of January, 1984 and the total number of persons voting thereat was One hundred forty three (words) 143 (figures) of which the following votes were tallied:

Proposition 1

Yes 131

No 10

Questioned Ballots 2

Dated this 13th day of January, 1984

Barbara J. Tisdale Chairman

Joseph E. ... Judge

Therese Wash ... Judge

Bette L. Rowlett Judge

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BEFORE THE STATE OF ALASKA
DEPARTMENT OF COMMUNITY AND REGIONAL AFFAIRS

IN THE MATTER OF the)
Annexation by the City of)
Fairbanks, Alaska, of 111)
acres bounded by Peger Road,)
Davis Road and Hill Road.)

PRE-FILED TESTIMONY OF WILLIAM T. SHECHTER

- Q. What is your name and address?
- A. My name is William T. Shechter. I reside at 4910 Palo Verde Drive, Fairbanks, Alaska.
- Q. What is your occupation?
- A. I am the Fire Chief for the University of Alaska Fire Department at Fairbanks, Alaska.
- Q. Are you involved with the University Fire District?
- A. Yes, our department is involved with this fire service area. The University Fire District is a fire service area within the Fairbanks North Star Borough (FNSB). The area of the University Fire District covers an approximate five (5) mile radius from the University of Fairbanks campus, a total area of approximately twenty (20) square miles.
- Q. Does the University Fire District presently serve the area in which Wise Enterprises, Inc. is constructing two multi-unit buildings consisting of 71 units each, and the Davis Road area?
- A. Yes, the University Fire District presently serves that area.
- Q. What is the ISO?
- A. ISO, or the Insurance Services Office, is an advisory body of insurance company member organizations which establish

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FAIRBANKS, ALASKA 99708
(907) 478-3762 CH 478-3222



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fire rate classifications in the area. The fire classes established by the ISO are a valuable evaluation tool for determining fire rates, but competition and any non-member insurance company can cause these classes not to be followed. For example, State Farm Insurance is not a member of ISO. The ISO has established fire classes 4, 5, and 6 near the University. State Farm Insurance combines all these areas into a class 4 fire area because of the confidence that State Farm has in the capabilities of the University Fire District.

The ISO does not regulate an insurance company's rates. The State of Alaska Commissioner of Insurance does that. Companies have to file their rates with the State of Alaska Division of Insurance.

Q. What is the present ISO fire classification for that area of the University Fire District where there are no hydrants located?

A. That classification is an ISO Class 8. This includes the Wise Enterprises, Inc. area presently which has no water service into the area yet. This classification is the classification without water no matter which fire department services the area.

Class 8 is indicative of a good fire department in an area which can produce 200 gallons of water for an interrupted period of 20 minutes, or a total of 4000 gallons of water. This classification is predominantly for residential purposes, and does not generally include industrial and commercial areas.

Q. Does the ISO classification rating within the University Fire District change when water service is provided and hydrants are installed?

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P.O. BOX 2248
COLLEGE STATION
FAIRBANKS, ALASKA 99708
(907) 479-2100 OR 479-2528



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A. Yes, the classification changes from an ISO class 8 to an ISO class 5 classification. In those areas where hydrants are installed within the University Fire District, the ISO rating is a class 5. The area where Wise Enterprises, Inc. is building its multi-residential structures will be reclassified as an ISO class 5 as soon as a water system is provided to the area.

Q. Has there been a recent ISO inspection within the University Fire District area?

A. Yes. The fire service area was evaluated last August by ISO, and I am hopeful that the fire district will be reclassified to a class 4 as a result of that inspection.

Q. Do you see any practical significant difference between an ISO class 2 rating which the City of Fairbanks has, and an ISO class 5 (or 4) rating which the Wise Enterprises, Inc. property will have following the installation of hydrants?

A. No.

Q. Why not?

A. First, the University Fire District itself has good personnel and equipment. Our fire team can respond to the west end of Davis Road quicker than the City's fire personnel. In terms of distance, our personnel and equipment are just as close, if not closer, than the City's fire personnel to the Wise Enterprises, Inc. property and the Davis road area.

Secondly, our fire service area has an agreement with the State of Alaska Fairbanks International Airport Fire Department, which has the largest tanker in the area, having a capacity of 5000 gallons. The University Fire station is in instantaneous radio contact with the Fairbanks International Airport Fire Department, each of us tuning in to the mutual

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FAIRBANKS ALASKA 99708
TELE 479 2100 OR 479 2223



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aid radio frequency and having bay-station to bay-station communication equipment. The airport fire department can respond promptly to the Davis Road area with their 5000 gallon tanker, in addition to our personnel and capacities.

Thirdly, the maximum fire flow requirement in terms of gallons of flow minute required by the ISO in that area, is 3500 gallon a minute. College Utilities Corporation (CUC), a water and sewer utility in the area, presently has a capacity of approximately 2000 gallons a minute. My understanding is that CUC has plans to hook-up to a line going to the International Airport distribution grid, thereby providing CUC with another 1500 gallon per minute capacity. There will be a water fire flow source from CUC, then, to meet the ISO maximum requirement of 3500 gallons per minute of fire flow. My further understanding is that a fire flow capacity can exceed what the existing hydrant system can handle. My understanding also is that CUC's planned hydrant installation will be able to handle CUC's planned 3500 fire flow gallons per minute.

Q. Are existing medical services provided by the University Fire District to that area?

A. Yes. When our station receives a call, we automatically dispatch our EM IIs to the site. These are persons authorized to administer intervenous (IV) fluids, and certain drugs.

I have been involved in fire services at the University of Alaska for 15 years. During the last 10 years approximately, the City of Fairbanks Fire Department and our fire department have had a working agreement, whereby the City dispatches a paramedic to our area whenever a code 5 ambulance call is received. Code 5 calls are the extremely serious life threatening situations, such as a heart attack, poisoning,

etc.

COLLEGE UTILITIES CORP.
P.O. BOX 82888
COLLEGE STATION
FAIRBANKS, ALASKA 99701
1227/478 2122 OR 478 2228



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As previously indicated, the whole fire district encompasses a 5 mile radius from the campus, a total area of approximately twenty (20) square miles. We respond annually to approximately 800 calls, which include fire and ambulance calls. Out of these calls, about 20 times a year we requested a paramedic from the city when an initial call came in; and in about 60-70% of those times when we called a paramedic, a paramedic did in fact assist.

In my opinion, there is no reason why this working arrangement between the City of Fairbanks and our fire department, which has developed over the last 10 years, can not continue. In the vast majority of the cases, our department's EM II personnel are sufficient to administer the necessary emergency care. In any event, the Fairbanks Memorial Hospital, with its emergency room facilities, is within minutes of the area by ambulance time and is in constant radio communications with medical personnel at the scene.

- Q. Are there law enforcement facilities in the area?
- A. Yes. The Alaska State Troopers' dispatch headquarters is quite close to this area, appreciably closer than the City of Fairbanks police. The Troopers' headquarters is located just across Peger Road. The Alaska State Troopers presently service the developer's area.

DATED at Fairbanks, Alaska this 19 day of November, 1984.


William T. Shechter

COLLEGE UTILITIES CORP.
PO BOX 8349
COLLEGE STATION
FAIRBANKS ALASKA 99703
(907) 479-3112 OR 479-2628



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STATE OF ALASKA
DEPARTMENT OF COMMUNITY AND REGIONAL AFFAIRS

IN THE MATTER OF the)
Annexation by the City of)
Fairbanks, Alaska, of 111)
acres bounded by Peger Road,)
Davis Road and Hill Road)

PRE-FILED TESTIMONY OF DENNIS OSTERDOCK

- Q. What is your name?
- A. My name is Dennis Osterdock.
- Q. What is your present employment?
- A. I am presently employed as the Operations Manager for Wise Enterprises, Inc., an Alaska corporation involved in real estate and construction in Fairbanks, Alaska. My business address is 3801 Cushman, Fairbanks, Alaska 99701.
- Q. Is Wise Enterprises, Inc. presently constructing multi-residential units on property where the Fairbanks Municipal Utilities System (FMUS) and College Utilities Corporation (CUC) both seek to provide water and sewer service?
- A. Yes.
- Q. Does Wise Enterprises, Inc. support either FMUS' applications, or CUC's applications, pending before the Alaska Public Utilities Commission (APUC) to provide water and sewer service to this area?
- A. Yes. Wise Enterprises, Inc. supports the applications of CUC pending before the Commission.
- Q. Why?
- A. There are several reasons why Wise Enterprises, Inc. supports CUC's applications over those of FMUS. First Wise Enterprises, Inc. is confident that CUC can provide us with

COLLEGE UTILITIES CORP.
P.O. BOX 88529
COLLEGE STATION
FAIRBANKS, ALASKA 99708
(907) 479-2700 OR 479-2628



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good water and sewer service in a business-like manner, unaffected by political considerations. CUC has provided us with definite construction figures, based upon CUC's past construction history and upon the terms of its water and sewer tariffs approved by the APUC, outlining the costs of construction associated with CUC's providing water and sewer service to our multi-unit property. In comparison, FMUS has provided us with no precise construction costs if FMUS does the work. FMUS has advised that any water and sewer systems that are constructed on our property must be done in conformity with FMUS' (and the City's) standards, before any such systems will be approved by FMUS. FMUS has failed to give any such information upon which to make an intelligent, business-like decision, given the fact that because of the rising water table in the Fairbanks area each year, sometime in June normally, that construction of any sewer and water extension systems to our property must be completed during the month of May before the water table rises.

Secondly, we believe that FMUS's utility policies and rates are subject to political considerations and existing revenue funds received by the City, and are therefore more unpredictable than CUC's tariffed rates. We understand that CUC is economically regulated by the APUC. As such, we feel more comfortable being served by CUC, because we believe APUC regulation ensures that CUC's rates will have to be shown to be just and reasonable. Additionally, we believe that APUC regulation will cause CUC's rates to be more stable and predictable than those of FMUS, whose could be subject to political considerations.

Thirdly, we believe that allowing extension of FMUS' utility services to our property will subject us to further

COLLEGE UTILITIES CORP.
P.O. BOX 82928
COLLEGE STATION
FAIRBANKS, ALASKA 99708
1977 479-2750 OR 479-2658



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unwarranted City requirements and interference, which will in turn affect the economic profitability and effectiveness of our business operations.

Fourthly, we do not believe that FMUS enjoys a reputation for running cost-effective utility operations, which opinion we believe is justified. Because of the fact that FMUS has been operating both its existing water and sewer operations at a loss (and at a substantial loss in the case of its sewer operations), we are concerned that FMUS would seek to increase its rates dramatically sometime in the future if the political climate warranted it.

Fifthly, Wise Enterprises, Inc. is part of the private sector, and we are sympathetic with CUC, as another private sector corporation (recognizing of course, that CUC is regulated by the APUC and in that sense is a public corporation). Our understanding is that CUC came into being because FMUS would not provide water and sewer services outside the City's boundaries, in the areas which CUC elected to serve, and which CUC is capable of serving. We believe CUC is capable of providing our property with good water and sewer service and wholeheartedly support CUC's applications before the APUC.

Q. Are you aware of any differences between ISO classes relating fire flow rates between the area within the City of Fairbanks and the University Fire District area?

A. Yes. My understanding is that the City of Fairbanks has an ISO class 2 rating, and that the University Fire District area, which includes the area of our present development, is an ISO class 8. My further understanding is that the University Fire District will be reclassified to an ISO class 5 in our development area, as soon as a fire hydrant water

COLLEGE UTILITIES CORP.
P.O. BOX 80228
COLLEGE STATION
FAIRBANKS, ALASKA 99708
(907) 479-2700 OR 479-2568



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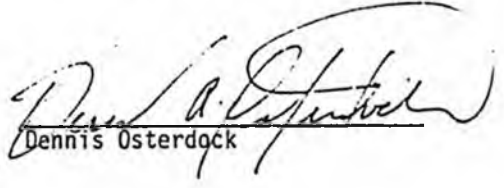
system is installed.

Q. Is there any significant difference to Wise Enterprises, Inc., as far as its fire insurance premium rates are concerned, between an ISO class 2 and an ISO class 5 rating?

A. No. Because of the volume of fire insurance coverage Wise Enterprises, Inc. requires, our company is able to negotiate favorable fire insurance premium rates from fire insurance carriers, regardless of whether our present multiple residential structures are located in an ISO class 2 or an ISO class 5 area.

As a matter of good business practice, Wise Enterprises, Inc. seeks and obtains the most extensive fire insurance coverage available for its projects most economically premium level.

DATED at Fairbanks, Alaska this 19th day of November, 1984.


Dennis Osterdock

COLLEGE UTILITIES CORP.
P.O. BOX 80228
COLLEGE STATION
FAIRBANKS, ALASKA 99708
(907) 479-2760 OR 479-2624



AUG 31 1984

Introduced by: City Manager
First Reading: August 6, 1984

ORDINANCE NO. 4351

AN ORDINANCE TO ANNEX PROPERTY ADJACENT TO THE CITY BORDERED BY PEGER, DAVIS AND HILL ROADS, CONTAINING 117 ACRES, MORE OR LESS; AND SETTING AN EFFECTIVE DATE.

WHEREAS, property adjacent to the city of Fairbanks and bordered by Peger Road, Hill Road and Davis Road and containing about 117 acres is becoming more developed and would benefit by the extension of city services including water and sewer utilities to this area; and

WHEREAS, the city of Fairbanks has applied to the Alaska Public Utilities Commission to extend their service area for water and sewer utilities to this area and adjacent areas; and

WHEREAS, it is in the best interest of the Fairbanks Municipal Utilities System water and sewer department to furnish water and sewer to this area; and

WHEREAS, some property owners in the area proposed for annexation have approached the city to request annexation; and

WHEREAS, the current and future owners of this land will benefit from such annexation.

NOW, THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF FAIRBANKS, ALASKA, as follows:

SECTION 1. That the city manager of the city of Fairbanks is hereby authorized to file a petition on behalf of the city of Fairbanks with the State of Alaska Boundary Commission to annex the property described in Exhibit A and shown on the map, Exhibit B, to the city of Fairbanks under the provision of 19 AAC 10.450 through 10.620.

SECTION 2. That the effective date of this ordinance shall be the 25th day of August, 1984.

BILL WALLEY, Mayor

ADOPTED:

ATTEST:

CARMA B. ROBERSON, City Clerk

1 MR. JACKSON: Thank you. I suspect that hearing from
2 the parties would probably last two or three days, and for
3 that reason, you probably don't want to sit through all of
4 that. You might want to listen to today's testimony and
5 then come back this evening at 7:00, if you want to come
6 back tomorrow morning when we start, which will be probably
7 be earlier than ten, you can certainly come and testify
8 then, also. I will endeavor to gain as much public testi-
9 mony as we can, because we think it's important what you
10 want. And I will do my best to work in the testimony of
11 yourself, or any other witness who shows up. That will
12 have to be done so it fits in with the other witnesses, and
13 does not disrupt the hearing too much. But, if you'd like
14 to wait, we will try to work you in at a later time.

15 TOM LINCOLN

16 testified as follows:

17 (Oath administered.)

18 COURT REPORTER: State your name.

19 MR. LINCOLN: My name is Tom Lincoln, I live at 2509
20 Alston Road. I live on the south side of Davis Road and I
21 have a total of eighteen acres. On my own behalf, in my
22 own view, I don't want either one, truthfully, but if I
23 have to take one, I'd rather have College Utilities
24 because, the way I look at it, along with the City is going
25 to come annexation. They come along, for years they say

1 they can't give you no services unless you're annexed into
2 the City. Now, all of a sudden, somebody else is
3 interested in servicing the area and they find it in their
4 power to come across and say, "Oh, well, we can service
5 you." I don't really understand how that works out, you
6 know, when they couldn't do it before. They're going to
7 add more sewers and stuff on the line, the City is, and
8 their sewer system that goes along Davis Road now is always
9 having pumps and everything changed in it. It smells
10 terrible, and they've had a good five years, at least, to
11 fix it and they don't seem to be able to come out and fix
12 it. So, on my own part, I really have no use for either
13 one at the present time. I can see where there, I don't
14 see where it'll benefit them to take us in, other than for
15 a tax base, and to keep the other one--the other system
16 out--and that's mainly.....

17 MR. JACKSON: Fine. Mr. Hackett, do you have any
18 questions?

19 BY MR. HACKETT:

20 Q No. Just a clarification. The tax base -- you mean
21 as far as the City is concerned?

22 A Yeah. I can see where, if they do take us in, on my
23 side of the street, there's not that many people liv-
24 ing anyway. South Alston -- North Alston's a little
25 different. You've got more families--that area's

1 built up more, but like on my side, I can't see where
2 it would benefit me, and they were never interested in
3 the area before. College Utilities showed any interest
4 it might -- I hear College Utilities costs more out
5 there, well maybe they do, but unless you've got two
6 people competing, there's no incentive for the other
7 one to be less anyway, that I can see. If one out-
8 fit's got the complete monopoly on it, and that's what
9 it's going to turn into.

10 Q Mr. Lincoln, you said the City has shown no interest
11 for five years, and there's been a problem with the
12 one sewer.....

13 A Your lift stations. There on Davis, the one on Van
14 Horn, it seems like they're always in there pulling
15 the pumps out. You go by there, you swear somebody
16 done something inside your car. I mean it stinks--
17 bad. So if they do take it in and they start using
18 them sewers and stuff, are they going to fix them lift
19 stations, and then who gets stuck with the repair of
20 the lift stations that takes care of the whole city.

21 Q To your knowledge, have either you or your neighbors
22 complained about that situation to the city?

23 A I imagine. I haven't. I imagine the ones on the
24 corner there, that live there, I don't know how --
25 they've got strong stomachs if they can live with that

1 in the house. I don't know.....

2 Q All right. But are you saying this problem has been
3 there for substantially.....

4 A For a substantial period of time. I imagine the City
5 could tell you when they put that station in, but
6 those -- I also believe that one over there on by
7 Sunset Strip, but I know they have, that Davis Road
8 has been in and out quite a bit, and Van Horn has been
9 in and out quite a bit.

10 Q Thanks.

11 MR: JACKSON: Mr. Smith?

12 MR. SMITH: No questions.

13 BY MR. JACKSON:

14 Q Let me just ask you briefly. Do you know, and perhaps
15 you could show me on the map exactly where you live,
16 or do you know if the area which your plot, that you
17 live in, has been applied for by both of the Util-
18 ities?

19 A That I don't really know.

20 Q Okay, good.

21 A I live on the south side of Davis.....

22 Q Yes, yes, I know where Mr. Lincoln lived.....

23 A Both utilities. For both water and sewer.

24 Qwould you be able to point that out on a map?

25 Q Maybe this map on the left might be the better

1 one.....

2 A This one?

3 Q No, over to the left, it's a larger scale, and the
4 Hill Road's sort of down there, Hill Road and Davis is
5 down at the bottom.

6 UNIDENTIFIED VOICE: You don't have any objection if
7 he marks it up, unless the Hearing Officer does.

8 Q Yeah, you can put a little mark there.

9 A (Indiscernible - too far from microphone)

10 Q What were your intentions regarding your property?

11 A I've been there twenty-eight years, and plan on living
12 just like I am. I don't really want to break it up,
13 you know I've heard --- I've never complained about
14 anybody else breaking out their land, or doing any-
15 thing with their land, you know, that's completely up
16 to them. I like it the way it is, and I plan to stay
17 there, but if they're going to keep, I can see now
18 where if I'm going to get assessments for sewer and
19 water and stuff like that there, that it's going to do
20 be absolutely no good. I'm going to eventually, and
21 if they take me into the City, it's going to kick my
22 taxes up more, I won't be able to just live like that
23 much longer, I'll have to develop it. And every time
24 there's development, the rest of the neighbors really
25 aren't for it, you know. I don't want to, I just

1 don't want the hassle of -- I enjoy where I'm at, I
2 enjoy the way it is and I plan on leaving it that way
3 as long as I can. As long as it keeps growing and
4 there's more and more added to it, it may not be a
5 reality too long.

6 Q Thank you, Mr. Lincoln.

7 BY MR. HACKETT:

8 Q I just have one other question. Mr. Lincoln, are you
9 aware of the fact that, for example, if College Util-
10 ities got the authorization that does not require you
11 to hook up.....

12 A To hook up, that's right.

13 Qand so, I mean, from what you're saying, if
14 College Utilities gets the authorization in the area
15 where you live, you're not required to take water and
16 sewer from College Utilities.

17 A I think I could live better with College Utilities
18 than I could with the City. College Utilities, to me,
19 if a private enterprise and they can't tell you you
20 have to hook up, you have to do this, where if the
21 City takes me in an annexes me, takes me in, first of
22 all they're liable, the annexation I know is coming
23 right behind it. But even if that doesn't, they're
24 going to have more clout, they're going to say you
25 have to hook up, you have to do this. I, really, for

1 my own personal preference, I just wouldn't -- maybe
2 College Utilities may cost more, but I think I could
3 control, have a little more input, into College
4 Utilities than I would ever have into the City.

5 Q Are you aware of the fact under the City code, that to
6 get water from the City you have to agree to annexa-
7 tion before they'll allow you to hook up.

8 A Well, that's the way it used to be. Now, on this last
9 deal, on this last annexation, they come along, they
10 says, well they've changed that.

11 Q Well, who told you they've changed that?

12 A I believe that fellow right at the end of the -- the
13 table there. And that's what I can't understand. How
14 come they can come along now, when somebody else is
15 interested in it, and say we've changed the rules.

16 Q Well, have you seen any code or ordinance or anything
17 to prove they've changed the rules?

18 A No -- no.

19 Q All right. Your understanding is, at least in the
20 past, you had to agree to annexation before you get
21 water from the city?

22 A That's right.

23 Q And, when did the gentleman at the end, I think that's
24 Mr. Smith's baby.....

25 A It's been what? About two weeks ago, at the other

1 hearing?

2 MR SMITH: I think that was in the end of November.

3 A Yeah.

4 MR. SMITH: You appeared at the annexation hearings of
5 the Dennis Wise Jones Subdivision.

6 A Yeah.

7 BY MR. HACKETT:

8 Q He assured you that you don't have to agree to annexa-
9 tion to get water service?

10 A Yeah, that's, you know, that's what I can't stand, how
11 come when somebody else is interested in the area all
12 of a sudden the rules have changed. I have a hard
13 time.....

14 Q Did he tell you what you'd have to agree to if you got
15 city.....

16 A No.

17 Q Did he give you any costs or anything?

18 A No.

19 A Thank you. I have no more questions.

20 BY MR. SMITH:

21 Q Excuse me. Just one second, Mr. Lincoln. I -- just
22 to make it clear. I did discuss the concepts of a
23 special assessment district, which would have to be
24 approved by the majority of the owners in the area
25 before the city would extend the water service.

1 A I didn't get that part of it.

2 Q Didn't I send you a letter (indiscernible - manner of
3 speech).

4 A Oh. Yeah, yeah, that's the letter I got, yeah. But I
5 mean, at that hearing I didn't.....

6 Q Sure. Also at the hearing, did you bring up the fact
7 that you had been opposed to having your property
8 included in the annex by the Borough for the fire
9 service district?

10 A That's right. And there's a.....

11 Q Why is that?

12 A There's another deal that had went two or three times
13 and I went to all the hearings and stuff and always
14 got voted down. All of a sudden some guy's sitting in
15 my yard taking pictures of the house. You know --
16 what's going on here? Says, "Well, you're in the fire
17 district now." You know, I had to, I have to work so
18 I'm out of town and in slipped by, and that's the
19 thing that really kind of bothers me how this stuff
20 kind of gets slipped by and kept pushin', pushin',
21 till finally it just falls through the cracks. I
22 don't, I'm not too interested in being pushed through
23 a crack.

24 BY MR. HACKETT:

25 Q Not to prolong this, Mr. Lincoln, but for this special

- 1 assessment district that the City's talking about, for
2 example, a group of people can get together and agree
3 to do it and get some assessment costs, and you know
4 what those costs will be. *
- 5 A I want to know what the costs are going to be, though,
6 before I get.....
- 7 Q So does College Utilities want to know the cost.
8 That's one of the issues of this hearing. But, do you
9 agree with the concept -- like yourself, you don't
10 want to take utilities. How about your neighbor? If
11 he has the choice of taking it, he can hook up to CUC
12 if he wanted to?
- 13 A That's right. I have no problem with that. I just
14 hate to see happen what happened on South Cushman
15 when, years ago when the assessments were ungodly on
16 the property out there, ungodly. A lot of people lost
17 it and I don't think that should happen to anybody.
- 18 Q You're talking about one of the assessment districts
19 the City maintained?
- 20 A Yeah, a long time ago out there on that South Cushman.
- 21 Q In whatever documentation you've gotten from the City,
22 have you gotten any cost information whatsoever?
- 23 A No. Not -- it's all.....
- 24 Q All promises but no costs?
- 25 A There's nothing in black and white what it's going to

1 cost me. They show me where College Utilities is more
2 on day-to-day operation, but they don't show me what
3 it's going to cost me. They don't also put in there
4 now if you take the College Utilities, I mean if you
5 taken them and their assessments, and if they come
6 along and annex you in and your tax is raised, just
7 how much is that gonna cost you? You know, I want to
8 know the whole scope of, before I.....

9 Q For example, are you aware that the City fire district
10 annually gives some \$750,000 to the water utility.
11 That's a cost that comes out of taxes, or were you
12 aware of that?

13 A No.

14 Q And you want to see that cost. I take it, as well, is
15 that correct?

16 A I've never owed anything in my life and its because I
17 know what I'm getting into before I get into it, or
18 have a halfways idea.....

19 Q Okay, thank you.

20 MR. JACKSON: Just a second, Mr. Smith. One last
21 question, Mr. Lincoln. As I understood the question you
22 testified regarding, at the annexation hearings regarding
23 the annexing of the Wise area?

24 A Mm-hmm.

25 Q Was your property within the area to be annexed?

1 A Well, I was across the street from it, and the only
2 reason I even knew about was my wife's minority, so
3 they have to contact the minority, so -- and I, it
4 wasn't really, I didn't think there was enough repre-
5 sentation of people that lived in the area at the time
6 even, to.....

7 Q But you weren't within the annexation area?

8 A No. But they also said at the same meeting that
9 people who had businesses on the other side of the
10 road had.....

11 Qrequested.....

12 A Requested annexation, but they couldn't say who they
13 were.

14 Q Thank you. Let's go off the record for a second.

15 (OFF THE RECORD)

16 (ON THE RECORD)

17 MR. JACKSON: Mary Emmett?

18 MS. EMMETT: I would prefer testifying at another
19 time.

20 MR. JACKSON: Okay, thank you. Patricia Wern? Werner?
21 Okay. I think is Louis, I'm not sure, Plum? I'm not sure
22 of the last name.

23 MR. PERME: Perme?

24 MR. JACKSON: Yes sir. Would you like to testify?

25 Perme.

LOUIS PERME

1 testified as follows:
2

3 (Oath administered.)

4 MR. PERME: My name is Louis Perme, I live on the
5 corner of Davis and Alston Roads. I've been there I
6 believe more than anybody in this room has been. I know
7 we're going to get called into this utilities one way or
8 the other. That I don't care, but what is it going to
9 cost? That's the only question I got: the cost.

10 BY MR. JACKSON:

11 Q So I take it you came here to ask more than to testi-
12 fy.

13 A Right.

14 Q Well we can't give you, I don't think any of us here
15 can give you a complete answer to that. Hopefully,
16 possibly some of the counsel could provide you with
17 some information which would give you an idea of what
18 it would cost you. In terms of the monthly rates, I'm
19 sure they both could give you a pretty good idea, but
20 the large element of the cost is not so much the
21 monthly cost as what it costs to become hooked up,
22 however that's financed, and I don't know which cost
23 it is that your most interested in.

24 A Well, either one. It doesn't make any difference how
25 it will come out. If the hook up's there, well

1 naturally, that'd go how far you're off from where
2 your line'll be.

3 Q Mm-hmm. Could counsel for both parties get Mr.
4 Perme's address and supply him with some information
5 that would indicate, to the extent possible, how much
6 it would cost?

7 MR. HACKETT: We'll be happy to, Your Honor.

8 MR. SMITH: Sure.

9 BY MR. HACKETT:

10 Q What's, what is your tax parcel? What's your address,
11 sir?

12 A My address is 1386 box number.

13 Q And how to you spell your last name?

14 A Perme.

15 Q And the zip code is?

16 A 99707.

17 MR. JACKSON: Mr. Perme, as I understand what your
18 saying is, although it might change your mind once you
19 found out what the cost figures at this time you do not
20 favor either one of the utilities over the other.

21 A Well, right now, I don't know which way to go.
22 Whether it be the -- cause I don't know which one way
23 either one of them would work. How, which one of them
24 is high pressure, what's the other one going to be?
25 They both gonna be high pressure systems or what? I