



MUNICIPALITY OF SKAGWAY, ALASKA
REGULAR ASSEMBLY MEETING

February 2, 2023
Page 1 of 8

1. Call to Order:

Mayor Cremata called the meeting to order at 7:00 p.m.

Mayor Cremata formally acknowledged that the Assembly is gathered on the traditional land of the Tlingit people.

The pledge of allegiance was recited.

2. Roll Call:

Present: Mayor: Andrew Cremata **Assembly Members:** Jay Burnham, Deb Potter, Dan Henry, Sam Bass, Orion Hanson (via telephone)

Absent: **Assembly Members:** Reba Hylton

3. Approval of Minutes:

A. January 5, 2023

Motion/Second: Potter/Bass

To approve the January 5, 2023 Assembly Minutes.

The Motion passed by roll call vote, 5 yes, 0 no, 1 absent.

4. Approval of Agenda:

Main Motion/Second: Henry/Burnham

To approve the agenda.

Primary Amendment/Second: Burnham/Hanson

To remove item 9C from the agenda.

Primary Amendment passed by roll call vote, 5 yes, 0 no, 1 absent.

Main Motion passed as amended by roll call vote, 5 yes, 0 no, 1 absent.

5. Reports of Officials and Committees:

A. Mayor's Report:

Mayor Cremata indicated that:

- There has been correspondence expressing the frustration of the public pertaining to the way correspondence is being handled. He has had conversations with the attorney and the chair of the Civic Affairs Committee will add the item to the next agenda so that concerns can be addressed.
- He attended Mineral Roundup with the Port Director, the manager, and Assemblymember Hanson.

- Conversations with the Yukon government suggested they are looking to invest significantly in our community to ensure that there can be clean and safe shipping of ore when the new dock is built.
- They met with representative from Sumitomo, the Japanese corporation that takes the ore from Minto Mine to their smelter across the Pacific Ocean. They have been in business for over 400 years and operate in more than 100 countries. He asked them what is the most environmentally responsible way to ship bulk mining ore out of a windy community, and they responded that a containerized rotainer system is the safest. This is information the Municipality can use as an agreement is worked out with the Yukon.

B. Assembly Committee Reports:

A. Assemblymember Jay Burnham:

Motion/Second: Burnham/Henry

To approve the check run dated February 1, 2023, totaling: \$1,801,377.69

Motion passed by roll call vote, 5 yes, 0 no, 1 absent.

At its meeting of February 1, 2023, Finance Committee did the following:

- Reviewed Ordinance No. 23-02: Amending SMC 16 Public Lands to Require Ratification by Public Vote Before a Sale or Lease of the Dahl Memorial Clinic.
 - Finance recommends Assembly approval.
- Reviewed Draft Ordinance No. 23-XX Amending SMC 4.10.030 Exemption for Senior Citizens and Disabled Veterans Property Tax.
 - Finance recommends Assembly approval.
- Reviewed the Ferry Terminal Feasibility Study Proposal.
 - Finance recommends Assembly approval.
- Reviewed Petro Marine's Request for Waiver.
 - Finance recommends the Assembly table this item to the next meeting so that Petro can bring more information to the next Finance meeting.

Assemblymember Bass indicated that the Public Safety Committee would be having a meeting on February 15, 2023 to discuss Dyea public safety, overnight parking, and the busking draft code.

Assemblymember Henry indicated that as chair of Health, Education, and Welfare he attended the School Board meeting where a motion was passed to remove testing prior to extracurricular activities.

C. Reports from Boards, Commissions, and Solid Waste Advisory Committee

Assemblymember Hanson indicated that the Ports and Harbors Advisory Board will be having a meeting on Tuesday February 7, 2023 to present and review the 60% Design of the Ore Dock Redevelopment Plan. The public is encouraged to attend.

D. Manager's Report :

Manager Ryan indicated that much of his written report is port related, and added that:

- While upland lease negotiations continue, in the interest of moving the negotiations forward he brought the appraisals to the Assembly for approval.
- The Yukon has a real interest in our port and building a marine services platform and hopefully an agreement will be reached so the first phase of the project can begin.
- The Small Boat Harbor breakwater continues to be an issue. Samples of the broken piles were sent to a lab and results indicated that the welds done off-site are bad. He is looking into removing the end of the wall and walkway and then come up with a robust bid package and repair plan.
- The revenue bond obtainment is progressing--the Municipality will receive \$30 million plus the security of an additional \$2 million at a rate of 4.56%.

6. Communications to the Assembly:

A. Correspondence:

Correspondence was received from:

- M. Lindsey of Petro Marine Services re: RFP—Lease of Real Property for Fuel Facility
- J. Thuss re: Correspondence
 - Thuss indicates that she would like the Municipality to reconsider the current position of not making correspondence available to the public.
- J. Wrentmore, S. Kinjo-Hischer, J. Thuss, W. J. Brady, K. Healy, T. D. Cochran, E. Lavoie, J. Bricker, R. Cash, S. Cash, and C. Pomeroy re: Correspondence
 - Skagway has enjoyed the privilege of public correspondence in the packet for many years which was taken away without the opportunity for a public hearing or debate at the Assembly table.

B. Hear Citizens Present

Tim Cochran, of Petro Marine Services indicated that:

- They do not have a problem with market rent, or code; however, code does not have language requiring a 50-year replacement of tanks. Petro is held to very stringent inspection and maintenance standards.
- Petro is planning on spending a huge amount on infrastructure improvements and they would need a 35-year lease in order to amortize those improvements.
- They are running behind on the five-year extension lease on the marina tank and the manager has asked for a certified letter from the DEC.

Charity Pomeroy indicated that:

- Some citizens rely on published correspondence as a way of gauging what is happening in the community.
- She read the letter submitted to the Assembly by various community members, summarized above.

Jennifer Thuss indicated that:

- She is happy to see that the correspondence issue is going to committee for discussion.

Tom Cochran indicated that:

- When he was first elected in 1996 Bob Blasco was the attorney, and that would be 27 years serving Skagway.
- He supports the comments regarding correspondence.

Jan Wrentmore indicated that:

- The community has been prevented from accessing the east bank of the Skagway river by a chain-link fence for the last 20 years. The view from there is one of the most spectacular in the valley and the residents of Skagway should be able to access that. The Public Trust Doctrine protects public access to tidelands and river banks owned by the state or conveyed to a municipality by the state. As the Municipality moves forward with port planning, it is important to provide public easement for tide line and river bank access.
- She has been trying to think of creative solutions to the correspondence issue. A virtual dropbox on the municipal website where people can decide to post their comments would probably expose the Municipality to less liability in the long run. It would require some staff supervision, so a policy should be developed so that staff have guidance on which correspondence is appropriate and which may violate HIPAA, etc. She spoke to Senator Kiehl's office and was told that correspondence posted to the legislative affairs agency website is programmed to have a pop-up window that indicates that the document has been placed by a legislator's office and is neither controlled nor condoned by the Legislative Affairs Agency. Alternatively, citizens could be allowed to call in and read their letters during an assembly meeting, therefore avoiding the publishing issue.
- Alaska Marine Highway summer ferry schedule has been released and it looks promising that they are going to find crew for the Hubbard because that means there will be ferry service 7 days a week. For winter services, the Deputy Manager has spoken to Catherine Keith regarding supplemental ferry service, such as an Allen Marine vessel. This would provide some relief for the sparse ferry service in February.
- The electric ferry feasibility study was released and the State of Alaska was awarded a grant since the Municipality of Skagway was not allowed to apply. The work done here in Skagway surely had an impact on the study and what the grant is going to accomplish. She would like to thank the mayor, the manager, and the Marine Highway ad hoc Committee for all the work done.

7. Ordinances, Resolutions, & Proclamations:

- A. Public Hearing, Second Reading, and Adoption of Ordinance No. 23-01:** Amending 4.08.070 Sales Tax Proceeds

Motion/Second: Henry/Potter to adopt Ordinance 23-01.

Public Hearing

The public hearing was closed with no comments.

Motion passed by roll call vote, 5 yes, 0 no, 1 absent.

B. Introduction and First Reading of Ordinance No. 23-02: Amending SMC 16 Public Lands to Require Ratification by Public Vote Before a Sale or Lease of the Dahl Memorial Clinic.

Motion/Second: Henry/Burnham to adopt Ordinance 23-02.

Mayor Cremata indicated that he asked the Borough Attorney to be on the telephone for the discussion of this Ordinance so that he can provide information on the various options the Assembly has in responding to the petition.

Assemblymember Burnham indicated that he brought the ordinance forward to satisfy the certified petition asking that a vote be held before the Dahl Memorial Clinic business or property could be leased or sold. He spoke with the petition sponsor who reviewed the ordinance and they indicated that it would fulfill exactly what the petitioners were looking for.

Borough Attorney Bob Blasco indicated the petition was properly certified and that requires the Assembly to approve an election to vote on the language in the petition. The petition language does not contain any references to amending code. There are a few cases in Alaska that relate to petition issues and all the ones that he reviewed refer to a specific section in code. This particular petition does not have that specific language which creates some options for how the Assembly might respond:

- The first option would be to move forward with the vote requested in the petition.
- The second option would be for the Assembly to amend the code to substantially adopt the measure that is in the petition; if the amended code substantially addresses the measure in the initiative, then no vote would be required.
- A third option would be for the Assembly to adopt a Resolution to ask the voters, as a general question, should the Municipality sell or lease the clinic building or the business. If the vote is yes, then the Assembly could go forward with a sale. If the vote is no, then that would be the end of that.

Assemblymember Bass indicated that he would like the borough attorney to answer the following questions:

- What does the word “ratification” indicate in the petition language? Does it mean that the voters would need to ratify a particular lease agreement, or is it the broader question of whether or not the Municipality should sell or lease the clinic?
- If the Assembly poses a general polling question about selling or leasing the clinic, would the Municipality still need to have the voters ratify a particular lease to satisfy the petition?

Borough Attorney Bob Blasco indicated that there are two definitions for “ratification”: one that applies to contracts, settlements, agreements, etc. but another that is the ratification by voters of a particular action. He read the language of the petition to be ratifying the authority to move forward with a sale or lease, and not that the public would be ratifying every term of a specific lease. However, there is a chance that someone could bring that up as a legal issue. In regards to putting a polling question before the voters, he believes if the result of that vote is yes to sell or lease the clinic, then the Municipality would be in a position to move forward with a sale or lease. Once in code, as this Ordinance proposes, the Assembly would have no choice but to go to the voters if there is going to be a sale or lease of the clinic.

Secondary Motion/Second: Henry/ to call the question.

Secondary Motion does not carry due to lack of second.

Mayor Cremata indicated that it would make more sense to find out whether the public wants to sell the clinic rather than have staff put in the countless hours to negotiate a sale or lease, only to have it go to a vote and fail.

Assemblymember Burnham indicated that if a general question about whether or not to lease the clinic was put to the voters, and the majority say 'yes' then the Municipality can move forward by putting out an RFP.

Assemblymember Bass indicated that his understanding is that if a referendum or initiative goes to a vote and is approved, then the code amendment could not be changed for two years.

Assemblymember Potter indicated that she would not be in support of this ordinance. She is in support of asking the voters, but the idea of being bound by code in a way that may prevent quick action being taken in an emergency situation makes her uncomfortable.

Assemblymember Henry read the petition language for the record:

The E.A. Jenny Rasmuson Community Health Center Building and the Dahl Memorial Clinic business shall not be leased or sold without ratification by public vote.

Assemblymember Bass indicated that he does not believe that this ordinance included into code is necessary to satisfy the petitioners. If a vote was held in April asking the citizens if they want the clinic sold or leased, then the Municipality will know how the community feels and the Assembly can move forward with a lease or not. He is fine with passing this as a first reading so that more discussions can be had, but he does not want to see the Municipality in a position of needing to go to a vote for every proposed lease of the clinic.

Motion passed by roll call vote, 5 yes, 0 no, 1 absent.

8. Unfinished Business:

9. New Business:

A. Award of RV Park Management Contract

Motion/Second: Henry/Burnham to award the RV Park Management Contract to Heger Construction for \$125,000.

Motion passed by roll call vote, 5 yes, 0 no, 1 absent.

B. Approval of Ferry Terminal Feasibility Study Proposal

Motion/Second: Burnham/Hanson to approve the Ferry Terminal Feasibility Study Proposal.

Manager Ryan indicated that this is the Municipality's portion of a shared cost agreement with the State to reach the 10% design.

Motion passed by roll call vote, 5 yes, 0 no, 1 absent.

~~C. Approval of Wave Barrier Repair Proposal~~

D. Consideration of Petro Request for Waiver – Marine Fuel Storage Facility Lease

Manager Ryan indicated that in his memo he does not recommend the Assembly provide a waiver. The Municipality should be careful about knowing the condition of the land they intend to lease. Petro Marine indicated at the Finance Meeting that they have not yet requested a letter from DEC, but that they would do so. It would be appropriate for the Assembly to table this item to the next meeting.

Motion/Second: Burnham/Potter to table the Consideration of Petro Request for Waiver.

Motion passed by roll call vote, 5 yes, 0 no, 1 absent.

10. Executive Session:

11. Mayor and Assembly Discussion Items:

Assemblymember Hanson indicated that:

- Mineral Roundup was productive. He appreciated the discussions with the Yukon Government regarding their plans for the marine services platform to encourage continued mining export out of Skagway in a safe manner. The meeting with Sumitomo was also enlightening as they are the financiers of Minto Mines and have been in business for over 400 years. He was encouraged with the meeting with the AIDEA executive, Randy Ruaro, who will be a resource financially, as well as remaining engaged with Skagway as a port community to see if this branch of the State of Alaska can be of assistance to our Municipality. There were also very direct conversations had with Minto regarding what to expect with the termination of the lease coming up. Overall, he enjoyed his time at Mineral Roundup and believes they will bring a lot of the information learned and relationships made back to Skagway as we look to taking over the port in less than 50 days.

Assemblymember Henry indicated that:

- Civic affairs will be meeting to discuss citizen correspondence and in preparation for those discussions he requested that Bob Blasco speak to the legal aspect of that issue.

Borough Attorney Bob Blasco indicated that:

- He is encouraged to see that there will be discussions about how to resolve the correspondence issue.
- When correspondence is submitted by a citizen and the Municipality automatically puts the correspondence on the website, the Municipality then becomes the publisher of that correspondence and that raises potential legal issues.

- A related legal issue would be that when a citizen submits correspondence to the mayor or Assembly, that does not necessarily mean that the citizen is authorizing the Municipality to make that correspondence public.

Assemblymember Bass indicated that:

- He is looking forward to seeing the attenuator fences installed and to see the 60% design for the ore dock redevelopment plan.

Assemblymember Potter indicated that:

- She would like to extend her gratitude to the mayor, municipal staff, and the Marine Highway ad hoc Committee for the years of work that has resulted in the ferry electrification grant what was recently announced.

Mayor Cremata indicated that:

- During the budget process some of the public had concerns about the growing administrative budget of the Assembly. The Municipality is sending more elected officials to important conferences and meetings such as Mineral Roundup, Seatrade, and Southeast Conference. Our elected officials need to attend these events if they are going to effectively run the 18th most visited cruise port in the world. He is putting together a policy on travel so that the Municipality can maximize the efficiency by sending people based on their position and/or committee role.

12. **Adjournment:**

With no more business on the agenda, Mayor Cremata adjourned the regular Assembly meeting of February 2, 2023 at 9:06 p.m.

Andrew Cremata, Mayor

ATTEST:

Steve Burnham Jr., Borough Clerk

(SEAL)