



Petersburg Borough

12 South Nordic Drive
Petersburg, AK 99833

Meeting Agenda Borough Assembly Regular Meeting

Tuesday, January 03, 2023

12:00 PM

Assembly Chambers

You are invited to a Zoom webinar.
When: Jan 3, 2023 12:00 PM Alaska
Topic: January 3, 2023 Assembly Meeting

Please click the link below to join the webinar:

[https://petersburgak-
gov.zoom.us/j/85415890221?pwd=bzU1ZDhrYkc3bm5TSi9lWW1lQTZOdz09](https://petersburgak.gov.zoom.us/j/85415890221?pwd=bzU1ZDhrYkc3bm5TSi9lWW1lQTZOdz09)

Passcode: 362738

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(720) 707-2699 or (253) 215-8782

Webinar ID: 854 1589 0221

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1. **Call To Order/Roll Call**
2. **Voluntary Pledge of Allegiance**
3. **Approval of Minutes**
 - A. **December 19, 2022 Assembly Meeting Minutes**
4. **Amendment and Approval of Meeting Agenda**
5. **Public Hearings**
 - A. **Public Hearing for Ordinance #2022-16: An Ordinance Repealing Chapters 4.26, 4.29, 4.31, and 4.32 of the Former City of Petersburg Code, and Amending Chapters 4.25 and 4.40 to Account for Borough Formation**

Any public testimony regarding Ordinance #2022-16 should be given during this public hearing. A copy of Ordinance #2022-16 may be found under agenda item 14A.
6. **Bid Awards**
 - A. **Blind Slough Hydroelectric Upgrades Construction Contract Award**

Utility Director Hagerman recommends award of the Blind Slough Hydroelectric Upgrades construction project to McG/Dawson Joint Venture for a contract price not to exceed \$5,744,000.

7. Persons to be Heard Related to Agenda

Persons wishing to share their views on any item on today's agenda may do so at this time.

8. Persons to be Heard Unrelated to Agenda

Persons with views on subjects not on today's agenda may share those views at this time.

9. Boards, Commission and Committee Reports

10. Consent Agenda

11. Report of Other Officers

A. Petersburg Medical Center Update

PMC CEO Hofstetter will provide an update on activities at the Medical Center.

12. Mayor's Report

There is no written report for this meeting.

13. Manager's Report

A. January 3, 2023 Manager's Report

14. Unfinished Business

A. Ordinance #2022-16: An Ordinance Repealing Chapters 4.26, 4.29, 4.31 and 4.32 of the Former City of Petersburg Code, and Amending Chapters 4.25 and 4.40 to Account for Borough Formation - Third and Final Reading

This ordinance repeals certain chapters of the former City of Petersburg Municipal Code and moves Chapters 4.25 and 4.40 from City Code to Borough Code. The Assembly unanimously approved this ordinance in its first and second readings.

15. New Business

A. Ordinance #2023-01: An Ordinance Amending Petersburg Municipal Code Sections 14.30.030 and 14.30.040 to Increase Certain Service Rates at the Mountain View Manor Assisted Living Facility

If adopted in three readings, this ordinance will link the basic care per day assisted living service rates for self-pay residents to the amounts permitted by the federal government for Medicaid Residential Supported Living and will increase the rate for basic cable TV at the facility to account for the increased cost of the service incurred by the Borough.

B. Ordinance #2023-02: An Ordinance Amending the Official Zoning Map for Service Area 1 of the Petersburg Borough to Rezone Parcel B, Block 302, Greenbelt Subdivision, Located at 10 N. 12th Street from Open Space-Recreation (OS-R) to Commercial-1 (C-1)

The Planning Commission recommends rezone of Borough parcel #01-006-431 from Open Space-Recreation to Commercial-1. The Petersburg Indian Association has filed an application to purchase the parcel if the rezone is approved by the Assembly.

16. Communications

A. Correspondence Received Since December 15, 2022

17. Assembly Discussion Items

A. Assembly Member Comments

B. Recognitions

18. Adjourn



Petersburg Borough

12 South Nordic Drive
Petersburg, AK 99833

Meeting Minutes Borough Assembly Regular Meeting

Monday, December 19, 2022

6:00 PM

Assembly Chambers

1. Call To Order/Roll Call

Mayor Jensen called the meeting to order at 6:00 p.m.

PRESENT

Mayor Mark Jensen
Vice Mayor Bob Lynn
Assembly Member Thomas Fine-Walsh
Assembly Member David Kensinger
Assembly Member Donna Marsh
Assembly Member Jeff Meucci
Assembly Member Scott Newman

2. Voluntary Pledge of Allegiance

The Pledge was recited.

3. Approval of Minutes

A. December 5, 2022 Assembly Meeting Minutes

The December 5, 2022 meeting minutes were unanimously approved.

Motion made by Assembly Member Meucci, Seconded by Vice Mayor Lynn.

Voting Yea: Mayor Jensen, Vice Mayor Lynn, Assembly Member Fine-Walsh,
Assembly Member Kensinger, Assembly Member Marsh, Assembly Member Meucci,
Assembly Member Newman

4. Amendment and Approval of Meeting Agenda

The agenda was unanimously approved as submitted.

Motion made by Assembly Member Meucci, Seconded by Vice Mayor Lynn.

Voting Yea: Mayor Jensen, Vice Mayor Lynn, Assembly Member Fine-Walsh, Assembly
Member Kensinger, Assembly Member Marsh, Assembly Member Meucci, Assembly
Member Newman

5. Public Hearings

There were no public hearings.

6. Bid Awards

There were no bid awards.

7. Persons to be Heard Related to Agenda

Persons wishing to share their views on any item on today's agenda may do so at this time.

Glorianne Wollen spoke in favor of the shared fisheries tax resolution and the Early Childhood Education incentive program asking the Assembly to vote yes on both agenda items.

Katie Holmlund, Chelsea Tremblay and Becky Turland, all members of the ECE Task Force, spoke in support of the ECE incentive program.

8. Persons to be Heard Unrelated to Agenda

Persons with views on subjects not on today's agenda may share those views at this time.

Joshua Adams spoke of a perloined judgeship that has transferred to Ketchikan and asked the Assembly to adopt a resolution against this action.

Rebecca Himschoot, Representative Elect for House Diristrict 2, informed of locations and times she is holding "office hours" to discuss issues with Petersburg's locals and provided her contact phone number (907) 738-6744 for future use.

9. Boards, Commission and Committee Reports

No reports were given.

10. Consent Agenda

There were no consent agenda items.

11. Report of Other Officers

A. Summary of SEAPA Board Meeting - December 8, 2022

Utility Director Hagerman and Assembly Member Lynn reported on recent SEAPA activities.

12. Mayor's Report

A. December 19, 2022 Mayor's Report

Mayor Jensen read his report into the record.

13. Manager's Report

There was no written Manager's Report.

14. Unfinished Business

A. Ordinance #2022-16: An Ordinance Repealing Chapters 4.26, 4.29, 4.31, and 4.32 of the Former City of Petersburg Code, and Amending Chapters 4.25 and 4.40 to Account for Borough Formation

By unanimous roll call vote, Ordinance #2022-16 was approved in its second reading. It was brought to Clerk Thompson's attention that there was no public hearing for this ordinance on the agenda - Clerk Thompson will be sure to add a public hearing to the January 3, 2023 agenda.

15. New Business

A. Resolution #2022-23: A Resolution Adopting an Alternative Allocation Method for the FY23 Shared Fisheries Business Tax Program and Certifying that this Allocation Method Fairly Represents the Distribution of Significant Effects of Fisheries Business Activity in FMA 18: Central Southeast Area

The Assembly unanimously approved Resolution #2022-23.

Motion made by Assembly Member Meucci, Seconded by Assembly Member Newman.

Voting Yea: Mayor Jensen, Vice Mayor Lynn, Assembly Member Fine-Walsh, Assembly Member Kensinger, Assembly Member Marsh, Assembly Member Meucci, Assembly Member Newman

B. Education Incentive Program

The ECE Incentive Program was approved by a vote of 6-1.

Motion made by Assembly Member Meucci, Seconded by Assembly Member Fine-Walsh.

Voting Yea: Mayor Jensen, Vice Mayor Lynn, Assembly Member Fine-Walsh, Assembly Member Kensinger, Assembly Member Meucci, Assembly Member Newman

Voting Nay: Assembly Member Marsh

C. 2022 Borough Manager Performance Evaluation Timeline

The Assembly unanimously approved the timeline for Manager Giesbrecht's 2022 performance evaluation.

Motion made by Assembly Member Fine-Walsh, Seconded by Assembly Member Meucci.

Voting Yea: Mayor Jensen, Vice Mayor Lynn, Assembly Member Fine-Walsh, Assembly Member Kensinger, Assembly Member Marsh, Assembly Member Meucci, Assembly Member Newman

D. Selection of Assembly Member to Assist Mayor Jensen in the 2022 Borough Manager Performance Evaluation Conference

Assembly Member Fine-Walsh was chosen to assist Mayor Jensen in the Manager's 2022 performance evaluation conference by a vote of 6-1.

Motion made by Assembly Member Meucci, Seconded by Assembly Member Kensinger.

Voting Yea: Vice Mayor Lynn, Assembly Member Fine-Walsh, Assembly Member Kensinger, Assembly Member Marsh, Assembly Member Meucci, Assembly Member Newman

Voting Nay: Mayor Jensen

E. Appointed Member At-Large to the Petersburg Economic Development Council

Without objection, Mayor Jensen appointed Sarah Fine-Walsh to the PEDC as the Assembly's appointed member at-large for a term that begins January 1, 2023 and ends December 31, 2025.

16. Communications

17. Assembly Discussion Items

A. Southeast Sea Otter Stakeholder Work Group Quarterly Meeting Summary

Assembly Member Meucci stated his intent of this agenda item was to share the draft minutes from the most recent Southeast Sea Otter Stakeholder Work Group quarterly meeting, held September 8, 2022.

B. Assembly Member Comments

No comments were shared.

C. Recognitions

Fire/EMS/SAR Director Hankins recognized the passing of Micheal Moyer, a long time volunteer with the Department.

Mayor Jensen recognized the PMPL crew for their fast work replacing a power pole during a recent power outage.

18. Adjourn

The meeting was adjourned at 7:01 p.m.

Motion made by Assembly Member Meucci, Seconded by Assembly Member Fine-Walsh.

Voting Yea: Mayor Jensen, Vice Mayor Lynn, Assembly Member Fine-Walsh, Assembly Member Kensinger, Assembly Member Marsh, Assembly Member Meucci, Assembly Member Newman

MEMORANDUM

TO: MAYOR JENSEN AND PETERSBURG BOROUGH ASSEMBLY

FROM: KARL HAGERMAN, UTILITY DIRECTOR *KH*

SUBJECT: **AWARD RECOMMENDATION – BLIND SLOUGH HYDROELECTRIC UPGRADES CONSTRUCTION CONTRACT**

DATE: 12/23/2022

CC: STEVE GIESBRECHT, BOROUGH MANAGER
DEBBIE THOMPSON, BOROUGH CLERK
PROJECT FILE

PMPL issued an Invitation to Bid for the Blind Slough Hydroelectric Upgrades project (construction contract) on September 20, 2022. The work generally consists of demolition/removal of powerhouse equipment, constructing a penstock bypass at the dam site, replacing and realigning the lower portions of penstock, receiving and installing of previously procured equipment (Gilkes contract) and performing startup, testing and commissioning of the new hydroelectric equipment and switchgear.

After issuance of 9 separate bid addenda, bids were opened publicly on December 12th at 4:00pm at the PMPL offices. PMPL received three (3) sealed bids. Bid modifications were properly received by one bidder prior to the bid opening and were included in the final bid tabulation.

Below is a summary of the bids. There was a base bid for the majority of the work and one optional item to undertake installation of a fiber optic cable from the dam to the powerhouse:

Bidder	Base Bid w/ modifications	Optional item bid
McG/Dawson Joint Venture	\$ 5,692,000.00	\$ 52,000.00
Knight Construction	\$ 7,769,749.00	\$195,735.00
Sturgeon Electric	\$14,631,070.14	\$281,753.46
Engineer's Estimate	\$ 5,994,600.00	\$ 75,700.00

Our engineering team for this project, led by Don Jarrett, P.E. with McMillen, assisted PMPL with an evaluation of the submitted bids and verified that bids were responsive and responsible to the requirements of the bid documents. The Engineer's bid evaluation is attached to this memo. The recommendation from McMillen is to award a contract to McG/Dawson Joint Venture as the lowest, responsive bidder and to also include the award of the optional bid item.

Therefore, it is the recommendation of PMPL that the Petersburg Borough Assembly approve the award of the Blind Slough Hydroelectric Upgrades construction contract to McG/Dawson Joint Venture for a contract price not-to-exceed of \$5,744,000.00, which includes the base bid and optional bid item.

If the award is approved by the Assembly, PMPL will execute the Contract with McG/Dawson through the Manager's office. Work will start in April/May of 2023.

Thank you for your consideration.



December 15, 2022

Mr. Karl Hagerman
Petersburg Municipal Power & Light
PO Box 329
Petersburg, AK 99833

Subject: Blind Slough Hydro Project Upgrades
Re: General Construction Contract Bid Evaluation and Recommendation

Dear Karl,

On December 12, 2022, the bid evaluation and recommendation process began for the general construction contract for the refurbishment of the Blind Slough Hydroelectric Project. This Work includes the removal of the old equipment and installation of new generating equipment, the demolition of the lower 150 feet of the original penstock, the construction of a new penstock with two new thrust blocks, construction of a hatchery flow release facility at the dam, and the construction of a new powerhouse bypass system and other related work. Three bidders submitted proposals as required by the bid documents issued by the Engineer, McMillen, Inc. (McMillen). All three bids were inspected and found to be complete (bid bond, etc.). The attached bid tabulation sheet documents show that these bids were completed and included the required information. It can also be noted that the three bidders were present at the mandatory job walk.

Table 1 summarizes the bids. The apparent low bidder is the MCG/Dawson Joint Venture (JV). Note that the MCG/Dawson JV provided a bid in its sealed envelope that was then modified by email prior to the bid opening resulting in a bid of \$5,692,000, note this does not include the optional bid item (installation of OWNER furnished armored fiber optic cable).

The Engineer provided the OWNER an opinion of probable construction cost. This cost estimate was developed based on the 100% design of the project and is consistent with a Class 2 level estimate (American Association for the Advancement of Cost Engineering). A Class 2 estimate is expected to have a range from -15% to +20%. The Engineer’s Estimate¹, which includes the OWNER procured equipment but no other OWNER costs (engineering costs, permitting fees, etc.), estimated the probable construction cost will be between \$8,071,000 and \$10,761,000 in 2022 dollars. The Engineer’s estimate of probable construction cost includes the optional bid item for the installation of the OWNER furnished armored fiber optic cable. The Engineer’s estimate for the construction contract was \$6,665,400.

¹ McMillen, LLC Technical Memorandum dated October 13, 2022: 100% Design – Opinion of Probable Construction Cost Estimate



Table 1. Summary of Bids

		MCG/DAWSON JV			KNIGHT CONSTRUCTION	STURGEON ELECTRIC
BID ITEM #	DESCRIPTION	AMOUNT	MODIFICATION	BID	AMOUNT	AMOUNT
-	TOTAL	\$18,000,000.00	\$ (12,308,000.00)	\$5,692,000.00	\$ 7,769,749.00	\$14,631,070.12
Optional Bid Adder Price Items						
1	Install OWNER furnished new fiber optic cable from dam to powerhouse.	\$1,000,000.00	\$(948,000.00)	\$52,000.00	\$195,735.00	\$281,753.46
Unit Prices						
1	Rock excavation	\$1,000.00	\$750.00	\$1,750.00	\$2,500.00	\$2,640.00
2	Common excavation	\$1,000.00	\$(978.00)	\$22.00	\$33.00	\$33.00

MCG/Dawson JV Bid Review

The McMillen team (Joe Carson, Matt Lawson, Greg Clark, and Don Jarrett) reviewed the MCG/Dawson JV (Dawson) bid. Dawson submitted its sealed envelope in accordance with the requirements of the Instructions to Bidders (Specification Section 00 23 13). Modifications to the sealed bid were submitted electronically in a timely manner; the bid was updated and modified as permitted by Addendum 6. There are the following three relevant documents:

- MCG-DCI Qualifications
- Submitted Bid Documents
- MCG-DCI Bid Modifications

Bid Evaluation

Below is a summary of the requirements for the proposal. A detailed description of the requirements are included in the Information to Bidders and the Bid Proposal.

Section A: The Instructions to Bidders requires the Bid Proposal to include the following:

1. Describe Bidders approach to (i) install a new dam valve house bypass pipe to allow the release of hatchery flows during construction, (ii) install temporary erosion and sediment controls for ground disturbing work, (iii) demolish and remove old penstocks and supports, (iv) install the new penstock pipe and powerhouse bypass system in such a manner to integrate that

equipment fully and satisfactorily complies with the Project specifications, (v) perform other repairs to the existing penstock, (vi) demolish and remove the existing powerhouse and substation equipment and foundations, (vii) modify the tailrace pipe, (viii) prepare the powerhouse foundation for the new OWNER furnished and CONTRACTOR installed equipment, (ix) perform installation and commissioning of the OWNER furnished turbine-generator and related equipment all under the oversight of the turbine-generator supplier technician, (x) perform final grading and install permanent erosion and soil control measures, and (xi) perform final site cleanup.

2. Describe the proposed construction sequence with a detailed Project construction schedule. The proposed construction sequence and schedule is a significant part of the evaluation criteria. The supply of water to the Crystal Lake Fish Hatchery, operated by Southern Southeast Regional Aquaculture Association (SSRAA), is a major requirement of the Work of the Contract. Normally water is supplied from the Project tailrace directly to the hatchery. When the Project is shut down for the Work of the Contract, the normal supply of water to the hatchery will be temporarily discontinued. Prior to that shutdown, the CONTRACTOR will construct a bypass at the dam to supply water to the hatchery using the Crystal Creek diversion reach. The OWNER would like to minimize the time that the normal supply from the tailrace is stopped. SSRAA hatchery production risk increases after August. The OWNER would like the flow to return to the hatchery from the tailrace (using the powerhouse bypass system) no later than August 1, 2023.
3. Each Bidder’s proposed approach to the Work will be evaluated based on cost, the above hatchery schedule issues, quality, and safety. Each Bidder’s proposed approach to ensure the proper, seamless, and timely resumption of hatchery flows using the powerhouse bypass system will be an evaluation factor. The timely installation of the turbine-generator equipment will similarly be evaluated based on schedule, cost, and safety. Bidder will consider the estimated delivery date of the new penstock and powerhouse bypass system materials, the turbine generator, and ancillary equipment to ensure that these components will be installed immediately upon delivery to the Project site.

Section B: The Bid Proposal (Specification Section 00 24 13) requires the following information:

1. Provide a general description of the Bidder's company, including date formed, types of projects performed, and overall size of the firm.
2. Provide general information on the financial condition of the Bidder, including gross income for the previous three years and confirmation by the Bidder's bonding agent that bonds can be provided as required in these bid documents.
3. Provide one financial reference from a financial institution familiar with the Bidder.
4. Submit references including names, addresses, phone numbers, and email addresses for which the Bidder provided services on similar projects or installations that indicate the Bidder’s capability to construct a project such as this one. Include construction and installation experience of similar projects. Comparable contracts should include the following:
 - a. Contract value of at least \$5 million
 - b. Major structures for water resource, pipelines, or water navigation

- c. Installation and startup of similar projects to that specified

If necessary, to cover the above criteria, up to six reference projects may be submitted.

5. Submit a detailed schedule for performing the Work and a description of the sequence of Work activities (Work Plan). Provide a detailed description of methods and procedures for major activities, particularly installation of steel pipe and turbine-generator equipment installation.
6. Submit a worker safety plan.
7. Submit documentation of the Bidder’s safety record on recent projects.
8. Submit a list of major equipment and temporary facilities that the Bidder anticipates using, such as cranes, scaffolding, etc. State whether Bidder owns or will lease equipment, and whether Subcontractors will be used for the procurement of this equipment.
9. Submit an organizational chart and resumes for Bidder’s project team. Bidder’s project team should include the following key members:
 - o Home office project manager
 - o On-site project manager
 - o Project superintendent
 - o Office engineer or assistant project manager
 - o Equipment installation superintendent or lead installer
- a. Each of the team members listed above shall have at least eight years of engineering or construction/installation experience, including at least four or more years in a position comparable to that proposed for this Project. Include names, titles, and phone numbers for two client references for each key team member. In addition to needed technical skills and experience, the OWNER desires professionals who are particularly effective communicators and collaborators. These professionals must have demonstrated the ability to work well in a construction environment where rapid decision-making, creative problem-solving, and excellent planning and scheduling skills are required. Moreover, the ability to closely coordinate with OWNER’s Project Representative and design is required. The Bidder must provide any specific credentials, training, or expertise each key project member possesses to demonstrate a collaborative, problem-solving project implementation approach for this type of project.
- b. The proposed team shall not be modified without the written authorization of the OWNER.
- c. The OWNER intends to confirm in its Agreement that the key project staff proposed by the CONTRACTOR will be obligated to perform on the project team, and that the CONTRACTOR will provide management and financial commitments to assure that the key project team members complete their project responsibilities without replacement by others, except with the consent of the OWNER.

For the Bidder’s proposed project team, submit a list of projects that demonstrate the following:

- i. Experience with the installation of large diameter pipelines
- ii. Experience with the installation and startup similar to this Project

iii. Experience with hydroelectric project work

Note that it is desirable that these projects are ones where the proposed project team has worked on together. This is not a requirement, but experience of the proposed team, as a team on other projects, is preferred. Provide names, titles, and phone numbers of references for each project listed.

10. Provide Subcontractor experience. Provide two project references for comparable work for all listed in Part 1.11 of the Bid Proposal. For each such Subcontractor, provide the name of the project, a narrative description identifying the scope of the Subcontractor’s work, dollar value, owner, owner contact name, email, and telephone number. If these portions of the Work are not subcontracted, the above references should be provided as part of the Bidder’s qualifications in addition to the references required above.

Table 2 summarizes the review of the proposal requirements. As shown in the table, all requirements have been satisfied.

Table 2. Summary of Proposal Requirements Compliance

Evaluation Criteria and Proposal Requirements To Be Verified	Verified?	Comments
Business license and contractor’s license	Yes	
Attended mandatory job walk	Yes	
Bid bond	Yes	
Instructions to Bidders	Yes	
A.1 Construction approach	Yes	
A.2 Construction sequence	Yes	
A.3 Compliance with hatchery and turbine generator install schedules	Yes	
Bid Proposal	Yes	
B.1 Description of company	Yes	
B.2 Financial condition bidder	Yes	
B.3 One financial reference	Yes	
B.4 References for similar projects, including information related to contracts with a value of at least \$5 million, water resource projects, install/startup of similar equipment	Yes	
B.5 Detailed schedule	Yes	
B.6 Worker safety plan	Yes	Example
B.7 Bidders safety record	Yes	No recordable injuries since 2014
B.8 List of major equipment	Yes	
B.9 Organization chart with home office project manager, on-site project manager, project super, office engineer or assist project manager, and	Yes	

Evaluation Criteria and Proposal Requirements To Be Verified	Verified?	Comments
equipment install super. Each team member is to have eight years' experience. Include two client references for each.		
B.10 Subcontractor experience: Provide two references, and provide project name and details.	Yes	Details provided for electrical sub and civil excavation sub

The Bidder guaranteed schedule was reviewed; see Table 3. As shown in the table, some of the guaranteed dates are a little later than the OWNER target dates, but these guaranteed dates are acceptable for the overall project schedule.

Table 3. Bidder Guaranteed Schedule

Milestone	OWNER Target Date (mo/day/yr)	Bidder Guaranteed No. of Calendar Days from Notice to Proceed (number of days)	Guaranteed Date (based on number of days guaranteed)
1. Mobilize to site and start work.	May 1, 2023	106	May 3, 2023
2. Shut down hatchery water for the Project (after hatchery flow has been spilled for 7 days at the dam).	May 31, 2023	148	June 14, 2023
3. Complete penstock and powerhouse bypass work such that the spill at the dam can be stopped and hatchery flows can be delivered through the penstock.	September 11, 2023	251	September 25, 2023
4. Work under the Agreement is complete enough, and the turbine/generator system is ready to begin startup and commissioning Work.	September 12, 2023	252	September 26, 2023
5. Work under the Agreement is substantially complete, and the powerhouse is generating electricity for the use of the OWNER.	October 26, 2023	296	November 9, 2023
6. Work under this Agreement is 100% complete (including punch-list items, demobilization, and project closeout).	December 1, 2023	332	December 15, 2023

Recommendation

Based on our review of the Dawson proposal, we find it to be fully compliant with the requirements of the bid documents. The Dawson bid is clearly the low, responsive bid. The Engineer’s estimate for the construction work, \$6,665,400, is expected to have a range of -15% to +20%, resulting in a possible range from \$5,665,590 to \$7,998,480. The Dawson base bid, at \$5,692,000 (this amount does not include the optional bid item), is within the range of expectations of the cost for this Work. We also recommend that OWNER accepts the optional bid item.

We recommend that Dawson JV be notified that they are deemed to be the low and responsive bidder and that PMP&L intends to recommend an award of a contract to them at the Borough Assembly meeting in early January.

Please let us know if you have any questions.

Sincerely,



Don Jarrett, P.E.
Project Manager

cc: File
Encl.



**Borough Manager's Report
Assembly Meeting 3 January 2023**

- ❖ SH Dredge is on holiday break from Dec 17- Jan 3. Prior to the break Western was able to take roughly a dozen barge loads out and dump in disposal area. Digging is hard, but they are making headway as they work from the outer area towards the beach. Each dump barge load is roughly 500 cubic yards when full.
- ❖ Through Christmas the Harbor crew took turns providing extra watch due to the warming temperatures and caught near catastrophic events for 4 vessels – through hull fitting failures, cracked pumps and water tank plumbing breaks. We had pumps on scene and heat guns ready to gain to open up access hatches as needed. Also made sure to clear floats of snow before the rain came so floats were left in good shape prior to taking the holiday time off.
- ❖ Reminder for boat owners to remove clutter to make way for winter snow removal. Extension cords should be tucked tight against bull rail or risk getting caught by snow removal equipment. Also, boat owners should call the Harbor Office with boat watching information as vessel owners start to travel out of town.
- ❖ We are taking an inventory of broken washers and dryers in Assisted Living. These will be replaced as needed.
- ❖ Derrick has set up a meeting with the Medicaid people to go over current and new rules.
- ❖ The Water department has received word that as part of the omnibus spending bill recently approved by the federal government did contain some funding for replacement of the Water department's clear well. Thanks to Senator Murkowski! This will enable the department to develop a project to replace the current open-top clear well, which provides filter backwash water storage. The department will need to chip in another 20% to accomplish the work, but this will be sorted out in the FY24 budget process.
- ❖ Protect those water meters! Freezing conditions will break the frost bases on the meter and stop water from entering a home. If you have a water meter that is leaking water, you can call either the public works office or the water plant to have the Borough replace the frost base.
- ❖ HDR Engineering has produced the first draft of the ADEC forms required to apply for water quality certification for our wastewater treatment plant discharge. We have issued some corrections and edits, but this effort should be wrapped up soon and in the State's hands for review.
- ❖ During the recent cold snap, all SEAPA community members had to supplement hydro power with diesel power during system peaks. Petersburg and Wrangell took two-day shifts watching the loads and adding diesel as needed. Ketchikan also had to supplement the system with diesel power. All went well and all lights stayed on during a time of incredible stress on the regional system.
- ❖ Structural and Mechanical engineers will be visiting the Community Center Jan 10th & 11th to investigate the sewer line repair project to create biddable documents. Architectural engineer conducted a site visit on

Wednesday, Dec. 21st.

- ❖ Light visors have been purchased with State of Alaska grant funds for the overhead lights at the Ice Skate Pond, they should arrive in February.
- ❖ Parks and Recreation would like to thank PVFD for assisting with the Ice Skate Pond, having it ready for skaters is greatly appreciated by the many community members enjoying the area.
- ❖ Co-ed Youth Volleyball registration is open at Parks and Recreation! Season starts Jan. 9th. Please visit the Parks and Rec website or stop in at the Front Desk to register for 3rd – 5th and 6th – 8th grade groups.
- ❖ Parks and Rec would like to thank Mr. and Mrs. Claus, the Middle and High School volunteers, Wes Malcom, Jay and Emi Anderson, Hammer & Wikan, Trading Union, OBI, and Waterway Vet Clinic for their assistance with another wonderful Winter Wonderland!
- ❖ As the weather warmed up after the recent cold snap, lots of water leaks were discovered as frozen water lines and meters thawed out. The Streets crew has been busy responding to these issues as they are reported.
- ❖ Lots of residents stopping by Public Works to get sand for driveways and sidewalks.
- ❖ Aaron is working on resurrecting the LEPC. The first meeting will be at the Fire Hall Thursday Jan 12th at 3pm.
- ❖ Aaron has received notice that the All-Hazards Mitigation plan will expire 6/13/2023, This plan expires every 5 years and there will be some items that the assembly will have to address, and Aaron will keep Steve and the Assembly updated.
- ❖ As part of the process for renewing the AHMP, Aaron has also applied for a BRIC Grant to offset the expense of renewing the plan. This is the same grant Sandy applied for in 2018 when the AHMP was renewed last.
- ❖ As Petersburg hovers between freezing and thawing temps, please keep an eye on your plumbing and if you have them, sprinkler systems. There has been a recent string of burst pipes that led to false alarms. For those buildings that will not be occupied over the winter, public works have offered to close water supply to your buildings for free. We encourage folks to take advantage of this program.
- ❖ Our Modified FF1 program begins Jan 7th. Contact the station for details.
- ❖ For those living without an established address, PVFD encourages residents to apply/register for an address to help direct PVFD when responding. Having a precise location to respond to will help us help you faster. Com Dev is happy to assist the public with this process and the PVFD Association is happy to provide address signs for \$20.
- ❖ Our online ETT program is still ongoing, deadline to sign up is Feb 1st and the EMT-1 Bridge will be starting in January. Contact the station for details.
- ❖ Two dispatchers are currently in training and doing great.
- ❖ S'mores with the Cops had a great turnout. Pictures are available at the PD.

**PETERSBURG BOROUGH
ORDINANCE #2022-16**

**AN ORDINANCE REPEALING CHAPTERS 4.26, 4.29, 4.31, AND 4.32 OF THE FORMER
CITY OF PETERSBURG CODE, AND AMENDING CHAPTERS 4.25 AND 4.40 TO
ACCOUNT FOR BOROUGH FORMATION**

WHEREAS, on January 3, 2013 the Election Division for the State of Alaska certified the election results of the December 18, 2012 incorporation election for the Petersburg Borough; and

WHEREAS, the certified election confirmed the incorporation of the Petersburg Borough and dissolved the City of Petersburg; and

WHEREAS, Petersburg Borough Charter, Section 19.06 requires all ordinances, resolutions, regulations, orders and rules in effect for the former City of Petersburg to continue in full force and effect within the Petersburg Borough, Service Area 1, until expressly reaffirmed, revised or repealed by the Assembly; and

WHEREAS, Chapter 4.26 of the former City of Petersburg Code, addressing deferred payments for special assessments, has not been used for many years, and payment terms for assessments can be addressed under section 4.12.110 of the existing Borough Code (Local Improvement Districts, Terms for payment of assessments; assessment statements); and

WHEREAS, Chapters 4.29 (*Self-Insured Retention Trust Fund*), 4.31 (*Facilities Construction Fund*) and 4.32 (*Port Authority Replacement Reserve Fund*) of the former City of Petersburg Code address non-existent funds and are no longer required; if specific funds need to be established in the future under the terms of bonding or grants, they can be created at that time; and

WHEREAS, Chapter 4.25 (*Annual Motor Vehicle Registration Tax*) requires updating in order to move into the current municipal code, and to delete the word 'annual', in accordance with state law; and

WHEREAS, Chapter 4.40 (*Economic Fund*) requires updating in order to move its provisions into the current municipal code and to incorporate the recommendations of the Borough's financial advisor.

THEREFORE, THE PETERSBURG BOROUGH ORDAINS, Chapters 4.26, 4.29, 4.31 and 4.32 of the former City of Petersburg Code are hereby repealed in their entirety, and Chapters 4.25 and 4.40, as set out below, are hereby adopted as borough ordinances.

Section 1. Classification: This ordinance is of a general and permanent nature and shall be codified in the Petersburg Municipal Code.

Section 2. Purpose: The purpose of this ordinance is to update the language of the municipal code.

Section 3. Substantive Provisions:

A. Chapter 4.26, Deferred Payments for Special Assessments, of the former City of Petersburg Code is hereby repealed in its entirety:

~~4.26.010 – Applicability.~~

~~This chapter shall provide for a property owner, meeting certain requirements as set forth in this chapter, to defer payment of special assessments, including principal and interest, levied under Chapter 4.12, 4.13, 4.16 or 4.20 of this code or by line extension policies as provided in Chapter 14.04, 14.08 or 14.16 of this code, under the conditions set out in this chapter.~~

~~4.26.020 – Criteria for eligibility.~~

~~The property owner must:~~

~~A. Have an annual family income that would qualify under the United States Department of Housing and Urban Development designation of lower income families adjusted for Alaska and the Petersburg/Wrangell region;~~

~~B. Actually reside within the boundaries of the property assessed on which is located only his/her permanent abode which is a single family residence;~~

~~C. Own or have a life tenancy in the assessed real estate;~~

~~D. No payment may be deferred which the city determines, after notice and hearing to the parties concerned, has been conveyed to the applicant primarily for the purpose of obtaining the exemption.~~

~~4.26.030 – Availability of funds.~~

~~Deferred payments shall be funded by specific appropriation made by the city council from available city funds. To determine availability of funds, the city treasurer shall provide the city council a financial report as to the availability of funds for appropriation in accordance with criteria outlined in this section. This report will accompany the application for deferment:~~

~~A. Water, sewer and electric deferred payments shall be funded by the appropriate utility operating fund.~~

~~B. Road improvement deferred payments shall be funded from the general fund.~~

~~C. In the event that funds are not available in the appropriate utility fund, funds from the general fund may be used to cover the applicable deferred assessments.~~

~~4.26.040 – Application for deferment.~~

~~A person seeking a deferment of payment shall file an application with the city treasurer and furnish suitable proof that the applicant meets the criteria set forth~~

~~in Section 4.26.020. Based upon the availability of funds, the city council shall approve or disapprove the application at a regular council meeting. A claimant receiving the exemption must file with the city by March 15th of each subsequent year a separate application providing proof of eligibility as of January 1st in order to retain the exemption. Within the same year the city, for good cause shown, may waive the claimant's failure to make timely application and approve the application as if timely filed.~~

~~4.26.050 – Security required.~~

~~Every property owner who qualifies and obtains a deferment of payment of special assessments under this chapter shall execute a mortgage, deed of trust or other appropriate security agreement in favor of the city, together with a promissory note payable on demand, to secure the eventual payment of any payment deferred hereby.~~

~~4.26.060 – Immediate payment in case of sale or other transfer.~~

~~If any property or interest therein, given as security under Section 4.26.050 is sold, leased or otherwise transferred or conveyed, then the balance of any deferred payment for special assessment including principal and interest shall become due and payable within thirty days from the date of such sale, lease or transfer.~~

~~4.26.070 – Probate proceedings.~~

~~Upon the decease of any person whose payment of special assessment has been deferred, the deferral will remain in effect in the event that there is a surviving spouse. Otherwise, the entire balance of any assessment including principal and interest shall immediately become due and payable from the decedent's estate. The deferred assessment shall be preferred against any other lien against the assessed real estate. This preference shall exist whether or not probate or intestacy proceedings are opened.~~

~~4.26.080 - Preemption by state law.~~

~~If at some future date legislation is passed by the state to exempt persons meeting some or all of the criteria set forth in Section 4.26.020, from assessments for water, sewer and electric utilities, and the state agrees therein to reimburse municipalities for such assessments, then any mortgage or other security agreement required under Section 4.26.050 shall become null and void and of no further effect.~~

B. Chapter 4.29, Self-Insured Retention Trust Fund, of the former City of Petersburg Code is hereby repealed in its entirety:

~~4.29.010 – Authorization.~~

~~There is hereby created a city of Petersburg self-insured retention trust fund.~~

~~4.29.020 – Annual assessment.~~

~~The self-insured retention trust fund shall be financed by a one percent assessment annually against the July 1st appropriations levels for the following city operational funds:~~

~~General fund~~

~~Sales tax fund~~

~~Electric utility fund~~

~~Water utility fund~~

~~Wastewater utility fund~~

~~Sanitation utility fund~~

~~Small boat harbor fund~~

~~Port facility fund~~

~~Motor pool fund~~

~~Elderly housing fund~~

~~-~~

~~4.29.030 – Accumulated funds.~~

~~The self-insured retention trust fund shall accumulate funds at this rate until an adequate level of funds are available to supplement existing commercial coverage. The city council shall determine if an adequate level of funding has been reached during the annual budget process.~~

~~4.29.040 – Settlement of uninsured claims.~~

~~Appropriations from the self-insured retention fund shall be for the purpose of settling uninsured claims against the city including legal costs, and claims adjusting.~~

C. Chapter 4.31, Facilities Construction Fund, of the former City of Petersburg Code is hereby repealed in its entirety:

~~**4.31.010 – Creation of facilities construction fund.**~~

~~There is created a facilities construction fund.~~

~~4.31.020 – Purpose.~~

~~The purpose of this chapter is to create the facilities construction fund for the purpose of segregating funds for facilities construction from the general operational funds of the city.~~

~~4.31.030 – Accounting of funds.~~

~~Grant funds from the state of Alaska designated for municipal construction projects shall be accounted for in this fund.~~

D. Chapter 4.32, Port Authority Replacement Reserve Fund, of the former City of Petersburg Code is hereby repealed in its entirety:

~~4.32.010 – Authorization.~~

~~There is created a city of Petersburg port authority enterprise fund and the port authority reserve replacement fund.~~

~~4.32.020 – Purpose.~~

~~The port authority enterprise fund is created to account for revenues and expenditures within the department of harbors and ports. Harbor and port revenues and expenditures will be accounted for separately within the enterprise fund. The port authority reserve replacement fund is created for the purpose of accumulating reserve funds to finance scheduled harbor and port facility replacement needs.~~

E. Chapter 4.25 of the former City of Petersburg Code is hereby amended as follows, with the obsolete language struck through, and the new language in red, bolded and underlined:

Chapter 4.25 - **BIENNIAL**ANNUAL MOTOR VEHICLE REGISTRATION TAX

4.25.010 - **Biennial**Annual motor vehicle registration tax.

There is levied an **biennial**annual motor vehicle registration tax within the **borough**city pursuant to the provisions of AS 28.10.431 and as such statute may be hereafter amended, revised or replaced.

F. Chapter 4.40 of the former City of Petersburg Code is hereby amended as follows, with the obsolete language struck through, and the new language in red, bolded and underlined:

Chapter 4.40 - ECONOMIC FUND

4.40.010 - ~~Creation of an e~~**E**conomic fund.

The former City of Petersburg economic fund shall hereafter be designated as the Petersburg Borough economic fund. ~~There is created the city of Petersburg economic fund.~~

4.40.020 - Objective.

The intent of the economic fund is to provide a long-term source of funds to engender economic development and job creation within and surrounding the **borough**city. The economic fund shall segregate funds received from the Southeast Alaska Economic Fund established by Congress in the FY 1996 Appropriations Act from the city's general fund and ~~to~~ account separately for the receipt and expenditure of the funds. Growth and income is the investment objective of this fund. Investment transactions shall be made to insure long-term growth and future income recognizing that short-term market losses may result. All participants in the investment process shall seek to act responsibly as custodians of the public trust. Investment officials shall avoid any transaction that might impair public confidence in the **borough**city, within the investment objective of this fund.

4.40.030 - Use of funds.

The primary purpose of the economic fund is to fund projects which have economic development potential and long-term economic viability. Annually the **borough assembly**city council may determine the amount of funding to be made available from the proceeds earned from investment of the principal of the economic fund. The **borough assembly**city council may set priority funding areas to be considered each year. In the event that a funding proposal would exceed five percent of the market value of the economic fund, such expenditure shall require ratification by the **qualified voters of the borough**electorate.

4.40.040 - Permissible investments.

Proceeds of the economic fund may be invested in:

A. Investments listed in Section 4.36.040 of this code;

B. Up to sixty percent in domestic equity mutual stock funds with a minimum of a five-year track record and at least five hundred million dollars in asset value;

C. Bond mutual funds investing in high grade corporate government bonds with a minimum of a five-year track record and at least five hundred million dollars in asset value or high grade corporate debt obligations of U.S. domiciled corporations with a minimum credit rating of AA- or AA3 from Standard and Poor's or Moodys.

D. Investment Portfolio.

Asset Class Benchmark(s)	Allocation	Acceptable Range	Benchmark
Cash	1%	0%—10%	Citygroup 3-Month Treasury
Fixed Income	28% 50%	0%—30% 30%—60%	Barclays Capital Gov Bond
<u>Fixed Income</u>	<u>22%</u>	<u>0%—30%</u>	<u>Bloomberg US Agg Bond Index</u>
Large Growth	17%	12%—22%	Russell 1000 Growth
Large Value	16%	12%—22%	Russell 1000 Value
Mid-Cap	11%	5% - 17%	Russell Mid-Cap
Small-Cap	0%	0%—0%	Russell 2000
International	5%	0%—13%	MSCI EAFE
TOTAL	100%		

Section 4. Severability: If any provision of this ordinance or any application to any person or circumstance is held invalid, the remainder of this ordinance and the application to other persons or circumstances shall not be affected.

Section 5. Effective Date: This Ordinance shall become effective immediately upon final passage.

PASSED AND APPROVED by the Petersburg Borough Assembly, Petersburg, Alaska this 3rd day of January, 2023.

ATTEST:

Mark Jensen, Mayor

Debra K. Thompson, Clerk

Adopted:
Noticed:
Effective:

**PETERSBURG BOROUGH
ORDINANCE #2023-01**

**AN ORDINANCE AMENDING PETERSBURG MUNICIPAL CODE SECTIONS 14.30.030 AND
14.30.040 TO INCREASE CERTAIN SERVICE RATES AT THE MOUNTAIN VIEW MANOR
ASSISTED LIVING FACILITY**

WHEREAS, Mountain View Manor Assisted Living Facility ("the Facility") has operated at a financial loss for a number of years and has been subsidized annually by the general fund; and

WHEREAS, service rates for residents of the Facility were last adjusted in early 2020; and

WHEREAS, since that date, Medicaid has annually established increases in per day services rates for Medicaid Residential Supported Living (RSL) which have not yet been adopted by the Borough; and

WHEREAS, Medicaid RSL payments are a significant source of income for the Facility; and

WHEREAS, the service rates charged for Medicaid RSL cannot exceed those charged to self-pay residents, and thus basic care service rates for self-pay residents should be coupled with Medicaid RSL service rates in order for the Borough to regularly maximize Medicaid payments received; and

WHEREAS, with the intent to establish service charges for the facility that will allow the Borough to generate revenue, to the maximum extent possible, to pay for operational and maintenance expenses at the facility, the Petersburg Borough Assembly wishes to link the basic care per day assisted living service rates for self-pay residents to the amounts permitted by Medicaid RSL, and to increase the rate for provision of basic cable TV at the facility to account for the increased cost of that service incurred by the Borough.

THEREFORE THE PETERSBURG BOROUGH ORDAINS as follows:

Section 1. Classification: This ordinance is of a permanent nature and shall be codified in the Petersburg Borough Code.

Section 2. Purpose: The purpose of this ordinance is to increase certain assisted living service rates.

Section 3. Substantive Provisions: Sections 14.30.030(B) and 14.30.040(A) of the Petersburg Borough Municipal Code shall be amended to read as follows (the proposed new language is in red bold and underlined, and the language to be deleted is struck through):

Chapter 14.30 - MOUNTAIN VIEW MANOR ELDERLY HOUSING AND ASSISTED LIVING FACILITY

14.30.030 - Assisted living rental rates, food and service charges.

[There are no changes to paragraph A]

B. Residents of the assisted living units with care plans requiring assistance shall pay rent, food and basic service charges, per unit, as follows:

1. Rent:

(a) For the months of April-December of calendar year 2020, the sum of One thousand one hundred dollars (\$1,100) per month;

(b) For calendar year 2021, the sum of One thousand two hundred dollars (\$1,200) per month;

(c) For calendar year 2022, the sum of One thousand three hundred dollars (\$1,300) per month;

(d) For calendar year 2023 and thereafter, the sum of One thousand four hundred dollars (\$1,400) per month, or ninety percent (90%) of market rent applicable to the Section 8 subsidized elderly housing units for one and two bedroom units as approved by the Alaska Housing Finance Corporation and adjusted on an annual basis, whichever is greater.

(e) For Double Occupancy of a unit, an additional Nine Hundred dollars (\$900) per month.

2. Food: Three hundred fifty dollars (\$350.00) per month.

3. Service charges:

Self-pay units <u>(Basic Care)</u>	<u>The maximum service rate per day applicable to the facility established by the federal government for Medicaid Residential Supported Living</u> Four thousand eight hundred eighty dollars (\$ 4,880.00) per month for basic care
	Double-occupancy: An additional Nine hundred dollars (\$900.00) per month
Medicaid subsidized units	Service charges as approved and adjusted from time to time by Medicaid

[There are no changes to paragraphs C or D]

14.30.040 - Additional services.

A. Residents may purchase additional services provided by the facility by paying service charges as follows:

Basic cable TV	\$18.00 \$25.00 per month, plus any additional charges for channels above basic service
Laundry	\$10.00 per month
Covered parking	\$10.00 per month

[There are no changes to paragraph B]

Section 4. Severability: If any provision of this ordinance or any application to any person or circumstance is held invalid, the remainder of this ordinance and the application of other persons or circumstances shall not be affected.

Section 5. Effective Date: This Ordinance shall be effective immediately upon adoption.

Passed and approved by the Petersburg Borough Assembly, Petersburg, Alaska this 6th day of February, 2023.

Mark Jensen, Mayor

Attest:

Debra K. Thompson, Borough Clerk

Adopted:
Published:
Effective:

**PETERSBURG BOROUGH
ORDINANCE #2023-02**

**AN ORDINANCE AMENDING THE OFFICIAL ZONING MAP FOR SERVICE
AREA 1 OF THE PETERSBURG BOROUGH TO REZONE PARCEL B, BLOCK
302, GREENBELT SUBDIVISION, LOCATED AT 10 N 12th STREET FROM OPEN
SPACE- RECREATION (OS-R) TO COMMERCIAL-1 (C-1)**

WHEREAS, the Borough owns a parcel of land, described as follows:

Parcel B, Block 302, Greenbelt Subdivision, Plat #2016-4,
Petersburg Recording District, First Judicial District, State of
Alaska

; and

WHEREAS, the parcel is currently zoned Open Space – Recreation (OS-R); and

WHEREAS, the Planning Commission initiated a zoning change of the subject parcel, under PMC 19.84 .020(B), in response to an application to purchase borough property if the parcel was rezoned to Commercial-1 (C-1); and

WHEREAS, Chapter 19.84 of the Petersburg Municipal Code (Service Area 1) provides for zoning amendments whenever the public necessity, convenience or general welfare requires; and

WHEREAS, the Planning Commission conducted a public hearing on the potential rezoning on November 8, 2022, after the notice required by the Municipal Code was provided, and considered and reviewed applicant materials, public comments and testimony, and staff report; and

WHEREAS, by unanimous roll call vote, the Planning Commission recommended to approve the rezoning based upon the findings of fact; and

WHEREAS, Borough Charter Section 3.01(K) and Section 1.12.010(G) of the Municipal Code require amendments to the official zoning map be enacted by ordinance.

THEREFORE, THE PETERSBURG BOROUGH ORDAINS as follows:

Section 1. Classification. This Ordinance is of a general and permanent nature but will not be codified in the Municipal Code.

Section 2. Purpose. The purpose of this Ordinance is to amend the Official Zoning Map for Service Area 1 of the Petersburg Borough.

Section 3. Substantive Provisions. The Official Zoning Map for Service Area 1 of the Petersburg Borough, codified and referenced in Section 19.08.020 in the Municipal Code, is hereby amended for the following described property from Open Space-Recreation (OS-R) to Commercial-1 (C-1):

Parcel B, Block 302, Greenbelt Subdivision, Plat #2016-4, Petersburg
Recording District, First Judicial District, State of Alaska.

Section 4. Where Record to be Maintained. This non-Code ordinance, and the enactment of the zoning amendment referenced under Section 3 of this ordinance, shall be maintained with the zoning records of the Borough.

Section 5. Effective Date. This Ordinance will take effect immediately upon adoption.

PASSED and APPROVED by the Assembly of the Petersburg Borough, Alaska this 6th day of February 2023.

Mark Jensen, Mayor

ATTEST:

Debra K. Thompson, Borough Clerk

Adopted:
Published:
Effective:

Planning Commission Staff Report

Meeting date: January 3, 2023

TO: Borough Assembly
FROM: Planning Commission
Subject: Rezone of Parcel B, Block 302, Greenbelt Subdivision
 Parcel 01-006-431
 Petersburg Borough

The Petersburg Planning & Zoning Commission makes the following findings of fact:

1. The Petersburg Indian Association (applicant) submitted an application in September 2022 to purchase borough property and requesting a rezone of the parcel from Open Space to Commercial-1.
2. A motion to rezone was initiated by the Petersburg Planning & Zoning Commission at their meeting on October 11, 2022.
3. Subject parcel is .31 acres and undeveloped except for the school district informational sign. There is a 10' wide utility easement along Haugen Drive to protect an existing water main.
4. The zoning district for the area is primarily commercial. Parcels to the North, South, East and West are zoned commercial-1 and have been developed consistent with commercial zoning. There are also public-use facilities in the area, namely the Post Office and Fire Hall.
5. The subject parcel has road access (Haugen Drive and N 12th Street) and utilities are located nearby.
6. The Petersburg Indian Association has expressed interest in acquiring this parcel for future development.
7. The proposed rezone is consistent with the current Petersburg Comprehensive Plan (2001), specifically: "4.14 – Objective: Encourage a mixture of land uses and increase density in planned areas. Work with private/public interests to identify areas for cost-effective, practical development...".
8. The Planning Commission considered rezoning this parcel to commercial-1 in 2015 at the same time Parcel A was rezoned to commercial-1. The Commission chose to keep Parcel B zoned Open Space and noted future development of the small lot "should be considered separately if and when there is interest.". The Commission's report from 2015 is included in this packet.
9. Hearing notices were mailed to property owners within 600 feet of the subject parcel on October 20, 2022.
10. On November 8, 2022, a duly noticed public hearing was held by the Petersburg Planning Commission.

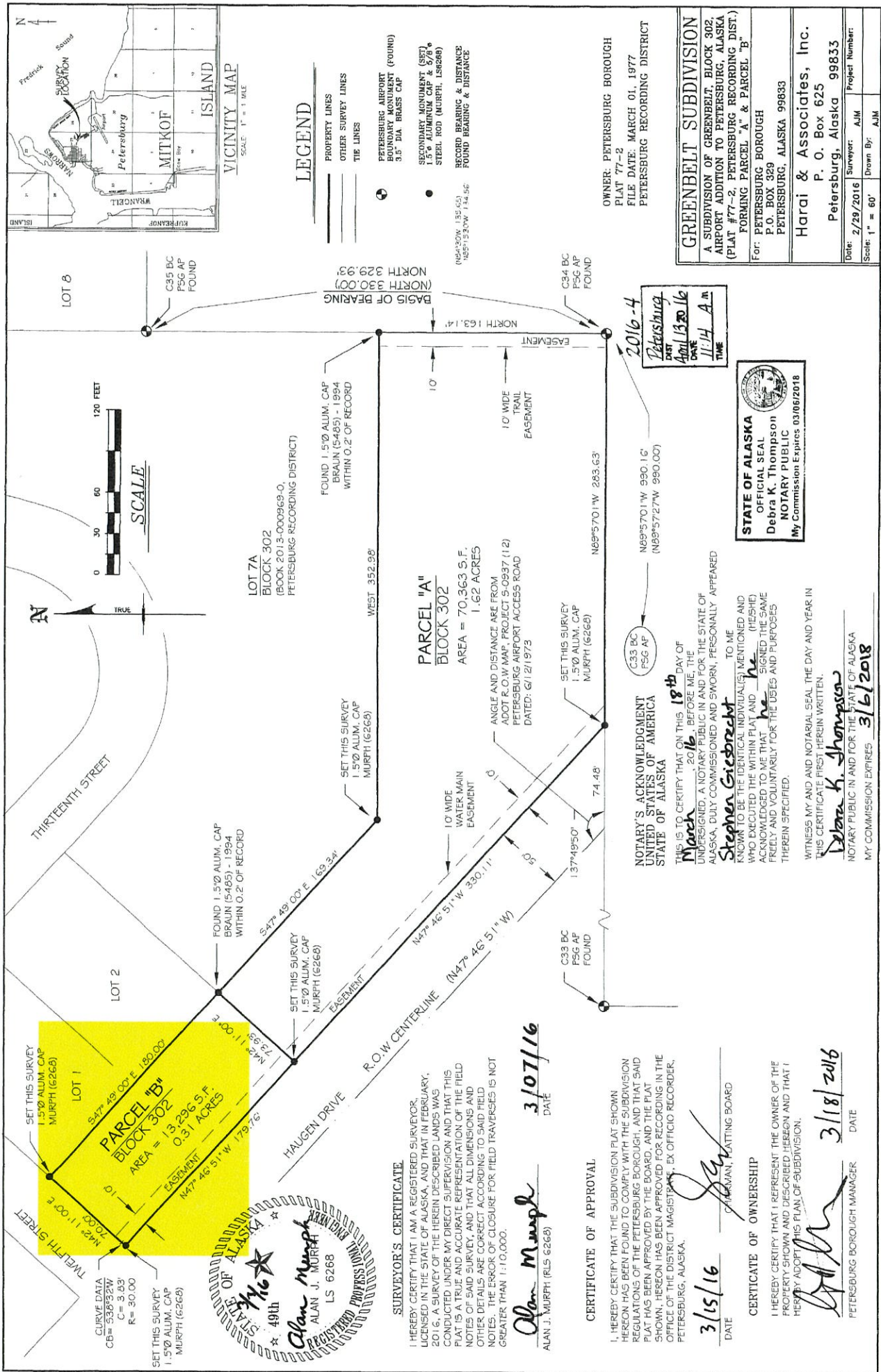
Planning Commission Staff Report

Meeting date: January 3, 2023

11. At the public hearing, the Planning Commission considered and reviewed applicant materials, public comments and testimony, and staff comments.

Section 2. Based on the preceding findings of fact, the Planning Commission makes the following recommendation to the Borough Assembly:

Amend the official zoning map of the Petersburg Borough to rezone Parcel B, Block 302, Greenbelt Subdivision from Open Space to Commercial-1.





PETERSBURG INDIAN ASSOCIATION

**PO Box 1418
15 N. 12th Street
Petersburg, Alaska 99833
Phone: 907-772-3636
Fax: 907-772-3637**

September 2, 2022

Petersburg Borough
PO Box 329
Petersburg, Alaska 99833

To Whom It May Concern,

Petersburg Indian Association (PIA) submitted a Land Use Application for the property whose legal description is Parcel B, Greenbelt Subdivision, Plat 2016-4. That property is currently zoned Open Space – Recreational. PIA is only interested in purchasing that property if it were to be rezoned to Commercial-1 to match the adjacent lots. I appreciate your consideration in this matter.

As noted in the application, this parcel is the site of the school's informational sign. PIA is willing to grant the school an easement for the sign.

Please contact me with questions or if further information is required.

Sincerely,

Chad Wright
Tribal Administrator



Petersburg Borough, Alaska

Land Disposal Application

($\$500.00$ non-refundable filing fee required)
Form must be completed in its entirety to be considered

Office Use:
Rec'd. by:
Fee: \$
Date Rec'd:

Date: SEPTEMBER 1, 2022

This is a request for land disposal via (circle one):
Lease Purchase Exchange Other

Parcel ID #(s) of Subject Property:
01-006-431

Proposed term of lease: _____
(total years)

Legal Description of Property:
PARCEL B, GREENBELT SUBDIVISION, PLAT 206-4

Current Zoning of Property:
CRUSDK-RENTAL

Applicant Name: PETERSBURG TRIBAL ASSOCIATION

Applicant Mailing Address: PO BOX 1418
PETERSBURG, AK 99833

Applicant Contact Info: CHAD WRIGHT 907-772-3636
(phone and/or email) tribaladams@tribal.org

1. Size of Area requested (identify the minimum area necessary in square feet): 13,216 sq ft
2. Attach a map showing the location of the land requested. Map must show surrounding area with the land requested clearly marked with bolded borders or highlighted color.

3. Narrative on use of property: Explain proposed use of land and when use is expected to begin and end. Include any planned new construction or renovation, including time-frame when construction or renovation will be completed and type of materials to be used. Provide the estimated dollar value of proposed improvements. Explain the value of the proposal to the economy of the borough and any other information you feel should be considered. (attached additional sheet if necessary)

CURRENTLY THERE ARE NO PLANS FOR THIS PROPERTY. DEA OWNS THE ADJACENT LOT AND REALIZES THE POTENTIAL BENEFIT TO CULTIVATING THIS LOT WHEN A DECISION IS MADE TO DEVELOP. DEA WOULD BE WILLING TO GRANT THE SCHOOL AN EASEMENT FOR THE INFORMATIONAL SIDE. WE WILL ASK FOR THIS TO BE RETURNED TO COMMERCIAL-1 TO MATCH THE ADJACENT LOTS.

4. Name and address of all adjacent land owners or lessees, including upland owner(s) if applicable: (attach additional sheet if necessary)

PETERBERG-DUSTAN ASSOCIATES
HANKER & WILSON

5. Are there any existing permits or leases covering any part of the land applied for?

___ Yes No If yes, please check one: (___ Lease ___ Permit)

Describe the type of permit or lease, if applicable, and the name and last known address of the permittee or lessee:

6. What local, state or federal permits are required for the proposed use? (list all)

NONE

7. If applicant is a corporation, provide the following information: N/A

A. Name, address and place of incorporation:

B. Is the corporation qualified to do business in Alaska?: ___ Yes ___ No

Name and address of resident agent:

8. Why should the Planning Commission recommend Assembly approval of this request?

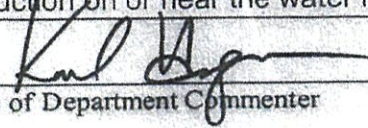
THIS LOT DOES NOT HAVE MUCH UTILITY ON ITS OWN, BUT IT HAS
MORE POTENTIAL TO BE COMBINED WITH THE ADJACENT LOT, WHICH
IS OWNED BY PETERSBURG TOWN ASSOCIATION.

9. How is this request consistent with the Borough's comprehensive plan?

THIS PURCHASE REQUEST IS CONSISTENT WITH THE BOROUGH'S
COMPREHENSIVE PLAN IN THAT IT ENCOURAGES DEVELOPMENT
WITHIN OUR EXISTING INFRASTRUCTURE.

10. Prior to submitting this application, please verify with pertinent Borough Departments that the land requested for lease, purchase or exchange is not needed for a public purpose by speaking with the appropriate personnel in the Electric, Water, Wastewater, Community Development, Harbor or Public Works Departments and obtain their comments and signatures below. (attach additional sheet if necessary):

Department Comments: The water, wastewater and electric departments of the Borough
have no need for retention of this parcel for utility purposes. However, there is an existing
easement for a 14" water main, that is installed on the property line common to Haugen
Drive, that should remain in place and prohibit construction on or near the water main.



Signature of Department Commenter

Department Comments: _____

Signature of Department Commenter

Department Comments: _____

Signature of Department Commenter

Department Comments: _____

Signature of Department Commenter

8. Why should the Planning Commission recommend Assembly approval of this request?
 9. How is this request consistent with the Borough's comprehensive plan?

10. Prior to submitting this application, please verify with pertinent Borough Departments that the land requested for lease, purchase or exchange is not needed for a public purpose by speaking with the appropriate personnel in the Electric, Water, Wastewater, Community Development, Harbor or Public Works Departments and obtain their comments and signatures below. (attach additional sheet if necessary).

Department Comments The water, wastewater and electric departments of the Borough have no need for retention of this parcel for utility purposes. However, there is an existing easement for a 14" water main, that is installed on the property line common to Haugen Drive, that should remain in place and prohibit construction on or near the water main.



Signature of Department Commenter

Department Comments Community development has no need for the parcel to be retained in borough ownership.



Signature of Department Commenter

Department Comments Public Works has no need for this parcel for public purposes, other than access to the water main as described above.



Signature of Department Commenter

Department Comments

Signature of Department Commenter

NOTICE TO APPLICANT(s):

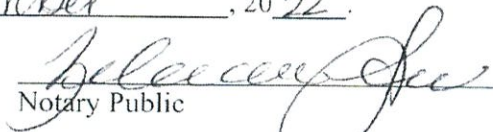
Applicant will be required to pay a non-refundable filing fee with the Borough of \$500 to cover estimated costs of: a title report, survey, legal fees, postage, recording fees, public noticing and advertising and other costs incidental to the processing of this application.

I hereby certify that I have received and reviewed a copy of Petersburg Municipal Code Chapters 16.12 and 16.16 (as they may pertain to my particular application) and understand the Code requirements. I further certify I am authorized to sign this application on behalf of the applicant.

Please sign application in the presence of a Notary Public.


Applicant/Applicant's Representative

Subscribed and sworn to by Chad Wright, who personally appeared
before me this 7th day of September, 2022.


Notary Public

Notary Public in and for the State of Alaska. My Commission Expires: July 5, 2026

Planning Commission Report

October 20, 2015

TO: Borough Assembly
FROM: Planning Commission
Subject: Rezone – Parcel 01-006-442 - 1200 Haugen Drive

Recommendation:

Approve rezoning of greenbelt lot at 1200 Haugen Drive from Open Space to Commercial-1 with condition the parcel is subdivided as noted in attachment a.

The Petersburg Planning & Zoning Commission makes the following findings of fact:

1. An application for rezone was initiated by the Petersburg Planning & Zoning Commission (applicant) on August 11, 2015.
2. Applicant is requesting a rezone of a parcel from Open Space to Commercial.
3. Subject parcel is 2.21 acres and undeveloped. The surrounding area is a developed commercial district.
4. The zoning district for the area is primarily commercial. Parcels to the North, South, East and West are zoned commercial. There are also public-use facilities in the area, namely the Post Office and Fire Hall.
5. The parcel has road access (Haugen Drive) and utilities are located nearby.
6. Private sector has expressed interest in acquiring this parcel for future commercial development.
7. The rezone is consistent with the current Petersburg Comprehensive Plan (2001), specifically: “4.14 – Objective: Encourage a mixture of land uses and increase density in planned areas. Work with private/public interests to identify areas for cost-effective, practical development...”.
8. Hearing notices were mailed to property owners within 600 feet of the subject parcel on September 29, 2015.
9. On October 13, 2015, a duly noticed public hearing was held by the Petersburg Planning & Zoning Commission.
10. At the public hearing, the Planning Commission considered and reviewed applicant materials, public comments and testimony, and staff comments. There were no public comments submitted on the proposed action.

Section 2. Based on the preceding findings of fact, the Petersburg Planning & Zoning Commission makes the following recommendation:

The Planning Commission recommends rezoning of greenbelt lot at 1200 Haugen Drive from Open Space to Commercial-1 with the condition that the parcel be subdivided as shown in attachment a.

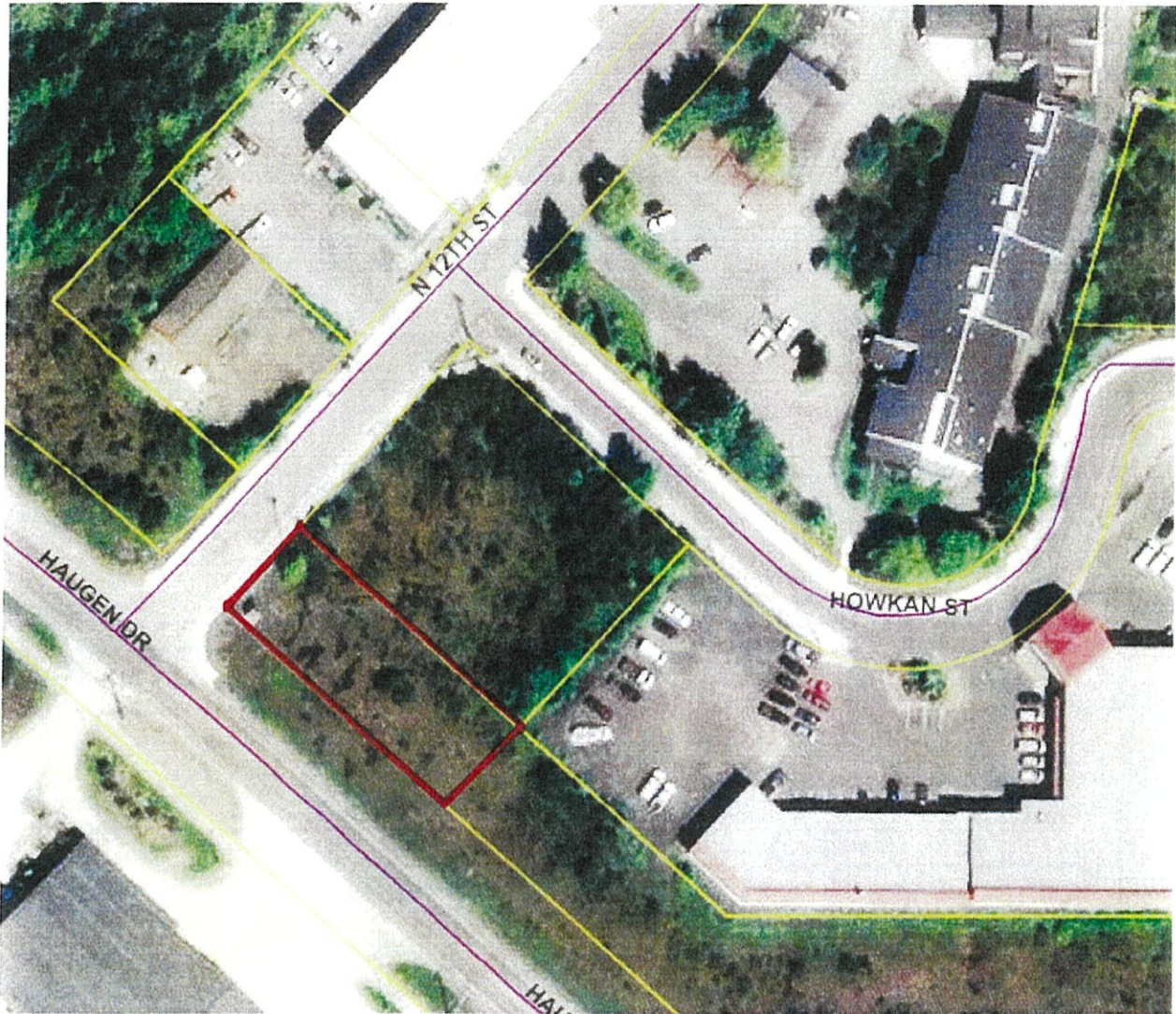
The commission further recommends the small lot (“B” on Attachment A map) created at the corner of Haugen Drive and 12th Street remain Open Space as it provides for good line of site for

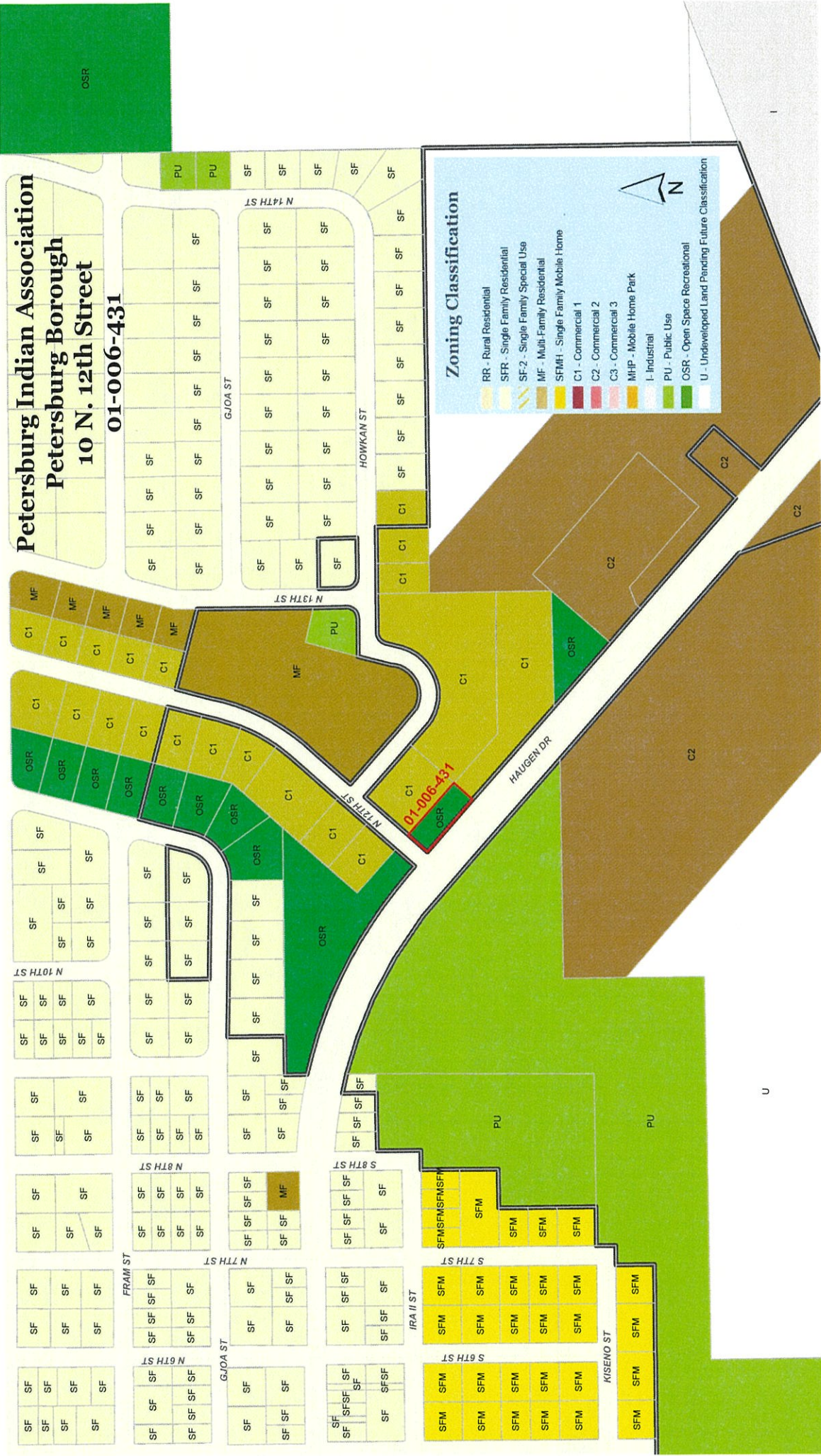
Planning Commission Report

October 20, 2015

traffic entering/exiting 12th Street. Any future development of this smaller lot should be considered separately if and when there is interest.

The commission also notes that future development in this area should protect existing water lines located along the Haugen Drive R.O.W. and pedestrian access to the trail connecting the Hammer & Wikan grocery store and the US Post Office by establishing easements in those areas.





Debra Thompson

From: Sharlay Mamoe <sharlaym@pccen.org>
Sent: Thursday, December 15, 2022 7:06 PM
To: Assembly
Subject: Testimony for Early Childhood Education Incentive Program

Hello,

My name is Sharlay Mamoe. I am the Executive Director of the Petersburg Children's Center; we are facility that cares for infants as young as six weeks to school age children who are typically 10 to 11 years old. We provide a preschool curriculum to 3 to 5 year olds and are open for most of the school and calendar year only closing for very specific holidays or in service type closures.

This education incentive program is an exciting endeavor for me as an administrative provider for this profession. We have quite a few caregivers/teachers who are currently working on getting their Child Development Associate Credential (CDA) to improve their commitment to the children and families they work with. The CDA is a commitment made by the individual and not a requirement for the facility we work at.

My staff, although they perform a very important duty every weekday they come to work, make very little in comparison to what others in different fields of work are making. At the Petersburg Children's Center the starting wage is \$13, with the only benefit being paid time off that is given after 6 months of working with us. Childcare, as is many other caregiving types of professions, is very demanding, exhausting and often stressful. Our teachers are often working on weekends, staying up all night thinking of ways to better help a child in need, and often feel guilty when they are away and need to take time for themselves. There have been many people who have worked at the Petersburg Children's Center who have said they love to work with children, and they would love to do it for their career; however it just does not make ends meet, and they need to be able to make a livable wage.

When I had to pull my daughter out of Petersburg Children's Center, for personal medical reasons, they did not have any room to readmit her until the expansion opened up. For three months I had to pay for a private high school student to babysit her while I was at work. I would come home to my baby girl just wearing a diaper, tv on Disney channel and the babysitter sitting on the couch with a phone in her hand. I was paying the babysitter the same amount, \$10 an hour, that the staff at the Petersburg Children's Center were making at the time. The difference between what I was paying for from my private babysitter and the care I was paying for from the center was astronomical. I always wondered if she ate, if she got any socialization, if she only watched tv all day, etc. etc. At Petersburg Children's Center I know the children are fed breakfast, lunch, and snacks; they go outside, teachers read to them, they learn their alphabet, numbers, shapes, get potty trained, etc.

I would like to close this testimony to say the teachers that work in the early childhood education field are doing the second most important job of a child's life. Their parents are the most important, however the caregiver/teacher that interacts with children for upwards of 9 hours a day is extremely important. Caregivers/teachers are often underappreciated and underpaid. This is not just the problem of the private sector, it has a multitude of different factors and requires a creative and inclusive approach from many different organizations and I hope we get the support from you all on the Petersburg Borough Assembly.

If you would like more information about anything, or have any questions for me please feel free to contact me via email. Thank you so much for considering investing in Petersburg's early childhood educators; in my opinion it is a valuable investment. Thank you!

--

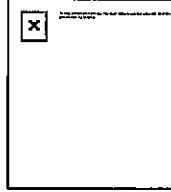
Thank you!!!

Sharlay Mamoe
Executive Director

Ask me about PCC/EN volunteer options!

Please help support PCC/EN while you shop at Amazon using SMILE!

<https://smile.amazon.com/ch/92-0047233>



Petersburg Children's Center/ Eagles Nest School Age Program
PO Box 138 Petersburg, AK 99833
PHONE # 907-772-3419
FAX # 907-772-3452

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PUBLIC NOTICE

Alaska Department of Environmental Conservation (DEC)
Wastewater Discharge Authorization Program
555 Cordova Street
Anchorage, Alaska 99501

NOTICE OF PROPOSED RE-ISSUANCE OF AN ALASKA POLLUTANT DISCHARGE ELIMINATION SYSTEM (APDES) GENERAL PERMIT TO DISCHARGE TO WATERS OF THE UNITED STATES

A Fact Sheet and associated documents are available for review. For inquiries or to request copies of documents, contact:

DEC Contact:

Anne Weaver
Alaska Department of Environmental Conservation
Division of Water
Wastewater Discharge Authorization Program
555 Cordova Street
Anchorage, AK 99501

Phone: 907-269-7483
Fax: 907-269-3487
E-mail: Anne.Weaver@alaska.gov

Draft Permit Public Notice Period:

Public Notice Start Date: December 14, 2022
Public Notice Expiration Date: January 27, 2023

Permit No.: AKG130000

Permit Name: Aquaculture Facilities in Alaska

Proposed Permit Coverage:

Permit Coverage: DEC proposes to re-issue APDES general permit (permit) AKG130000 to aquaculture facilities in Alaska that discharge process waste and wastewater to waters of the U.S.

Description of Discharges: Aquaculture facilities may discharge a variety of pollutants generated from uneaten feed, fish feces, fish carcasses, cleaning chemicals, and medications. The main pollutants of concern include total suspended solids (TSS), settleable solids (SS), pH, ammonia, dissolved oxygen (DO), and total residual chlorine (TRC). These pollutants have the potential to contribute to a number of adverse water quality impacts, including increased levels of turbidity and residues and low dissolved oxygen.

555 Cordova Street
Anchorage, AK 99501
907-269-6285

610 University Avenue
Fairbanks, AK 99709
907-451-2100

410 Willoughby Ave #303
Juneau, AK 99811
907-465-5300

43335 Kalifornsky Beach Road
Soldotna, AK 99615
907-262-5210

1700 E Bogard Road #B
Suite #103
Wasilla, AK 99654
907-376-1850

If you would like to see any additional supporting technical documents, contact **Anne Weaver**.

The documents are also accessible from the DEC website at:
<http://dec.alaska.gov/water/wastewater/>

To receive email notifications about the APDES Program, including when permits are available to review, follow the link below to join the APDES email list.

<http://list.state.ak.us/mailman/listinfo/DEC-APDES/>

Disability Reasonable Accommodation Notice

The State of Alaska, Department of Environmental Conservation complies with Title II of the Americans with Disabilities Act of 1990. If you are a person with a disability who may need a special accommodation in order to participate in this public process, please contact Nancy Sutch at (907) 465-3794 or TDD Relay Service 1-800-770-8973/TTY or dial 711 within 45 days of publication of this notice to ensure that any necessary accommodations can be provided.

Debra Thompson

From: John Murgas <johnmurgas@aptalaska.net>
Sent: Sunday, December 18, 2022 11:49 PM
To: Assembly
Subject: Recognition suggestion

...to Public Works for providing limited free sand to residents for safer footing on ice. Broken legs and arms (or worse) hurt everyone. john

Debra Thompson

From: Bill Tremblay <brtrembla@gmail.com>
Sent: Wednesday, December 21, 2022 8:35 AM
To: Assembly
Subject: A special meeting may be needed to address a State issue

Sent from [Mail](#) for Windows

There was a news article from KTOO news, played on KFSK this morning, noting that the State of Alaska has not issued SNAP checks to eligible residents SINCE OCTOBER! It's being reported that persons have been asked to reapply for these benefits but the State of Alaska has provided no information about why these benefits are delayed, when they might be reinstated, or if these benefits will be retroactively be funded.

Alaska has been suffering big increases in the cost of goods and some very low temperatures. Some families are having to decide whether or not to feed their families or provide heat (listen to the KTOO article on line). This is a disaster and needs to be immediately addressed. I don't know how many families in our community are being impacted by this, but it's probably enough to be of a concern for all of us. Please send a letter to the Governor asking WHY these essential benefits are not being paid? Also, ask that payments be retroactive to October.

Thank you for following up. THIS IS URGENT!

Bill Tremblay
P.O. Box 662
Petersburg, AK 99833
907-772-4461

Debra Thompson

From: Aardvark LLC <architectureoffaith@gmail.com>
Sent: Wednesday, December 21, 2022 11:39 PM
To: Assembly
Subject: Purloined Judgeship
Attachments: 1PE-22-00031CI.pdf; 1PE-22-00031CI--Plaintiff's-Opposition-Dismiss--19Sep22(final).pdf

Dear Petersburg Assembly,

I have attached the files relating to the purloined Superior Court judgeship here in Petersburg. This is the matter of which I spoke in the last Assembly Meeting, you might recall. Fred Triem has been given a hearing as of February 3rd at 8:30am and will speak on our behalf. Mr. Triem has already had a hearing on this matter, and now is waiting for the oral argument, which is immensely important for the future of this case, and the possibility of regaining Petersburg's legal stature. The first attached file shows the date and time of the Oral Argument. The second file contains more details on the case, including evidence, legal testimony and arguments that will be used by Fred Triem during the Oral Argument.

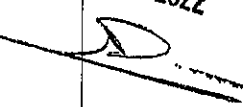
It behooves us to *adopt a resolution* in solidarity with his case(which is really OUR case) so that his words may carry our best intentions. To do otherwise would demonstrate to the Courts in no uncertain terms that we as Petersburgians do not care if they take away this aspect of our government permanently.

sincerely,

Joshua S. Adams (Schramek)

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FIRST JUDICIAL DISTRICT AT PETERSBURG

FRED W. TRIEM,)
)
 Plaintiff,)
)
 v.)
)
 ALASKA JUDICIAL COUNCIL,)
 ALASKA COURT SYSTEM, ET AL.)
)
 Defendants.)

FILED in the Trial Courts
State of Alaska
First Judicial District of Petersburg
DEC 19 2022
By: 

1PE-22-00031 CI


ORDERS FROM HEARING ON DECEMBER 9, 2022


For the reasons explained on the record December 9, 2022, the court enters the following orders:

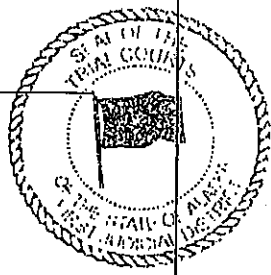
1. The Plaintiff's Request for Oral argument (Courtview motion #3) and the Supplemental Request for Oral Argument (Courtview motion #7) are **GRANTED**. Oral argument is set for February 3, 2023 at 8:30 a.m.
2. Decision on all other pending motions is **DEFERRED** until oral argument.
3. Pending oral argument, discovery is temporarily **STAYED**.

CERTIFICATION SO ORDERED this 19th day of December, 2022.

The undersigned certifies that on the 20th day of December, 2022, a true copy of the above was personally delivered or mailed/faxed to the following at their address/number of record.

BY: 
F. Treim, R. Kutchin


Jude Pate
Superior Court Judge



IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FIRST JUDICIAL DISTRICT AT PETERSBURG

IN THE MATTER OF THE SUPERIOR :
COURT JUDGESHIP FOR WRANGELL, :
PETERSBURG, AND KAKE. :

FRED W. TRIEM, :
Plaintiff, :

vs. :

ALASKA JUDICIAL COUNCIL [AJC], :
ALASKA COURT SYSTEM [ACS], *et al.*, :
Defendants. :

Case No. 1PE-22-00031CI

PLAINTIFF’S OPPOSITION TO MOTION TO DISMISS

(The Amended Complaint states claims upon which relief can be granted, thus is not dismissible.)

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Applicable Provisions of the Constitution, Statutes, and Rules of Court:

The CONSTITUTION

The Guarantee Clause of Article IV, § 4, cl. 1

The United States shall guarantee to every State in this Union a Republican Form of Government

U.S. CONST. art. IV, § 4, cl. 1 (underlining added).

The Supremacy Clause of Article VI, cl. 2

This Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any thing in the Constitution or Laws of any State to the Contrary notwithstanding..

U.S. CONST. art. VI, cl. 2 (underlining added).

+++++

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The Alaska CONSTITUTION

The court clauses of Article IV, §§ 1 - 4:

§ 1. Judicial Power and Jurisdiction

The judicial power of the State is vested in a supreme court, a superior court, and the courts established by the legislature. The jurisdiction of courts shall be prescribed by law. The courts shall constitute a unified judicial system for operation and administration. Judicial districts shall be established by law.

§ 2. Supreme Court

(a) The supreme court shall be the highest court of the State, with final appellate jurisdiction. It shall consist of three justices, one of whom is chief justice. The number of justices may be increased by law upon the request of the supreme court.

(b) The chief justice shall be selected from among the justices of the supreme court by a majority vote of the justices. His term of office as chief justice is three years. A justice may serve more than one term as chief justice but he may not serve consecutive terms in that office.

§ 3. Superior Court

The superior court shall be the trial court of general jurisdiction and shall consist of five judges. The number of judges may be changed by law.

§ 4. Qualifications of Justices and Judges

Supreme court justices and superior court judges shall be citizens of the United States and of the State, licensed to practice law in the State, and possessing any additional qualifications prescribed by law. Judges of other courts shall be selected in a manner, for terms, and with qualifications prescribed by law.

* * * *

§ 16. Court Administration

The chief justice of the supreme court shall be the administrative head of all courts. He may assign judges from one court or division thereof to another for temporary service. The chief justice shall, with the approval of the supreme court, appoint an administrative director to serve at the pleasure of the supreme court and to supervise the administrative operations of the judicial system.

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ALASKA STATUTES

Title 1 — General Provisions Chapter 10. Laws and Statutes Article 1. Common Law

AS § 01.10.010 **Applicability of common law.**

So much of the common law not inconsistent with the Constitution of the State of Alaska or the Constitution of the United States or with any law passed by the legislature of the State of Alaska is the rule of decision in this state. (§ 2-12 ACLA 1949; § 65-1-3 ACLA 1949)

Title 22 — General Provisions Chapter 10. The Superior Court

AS § 22.10.120. **Number of judges**

The superior court consists of 45 judges, six of whom shall be judges in the first judicial district, three of whom shall be judges in the second judicial district, 28 of whom shall be judges in the third judicial district, and eight of whom shall be judges in the fourth judicial district. At the time of submitting the names of nominees to the governor to fill a vacancy on the superior court bench, the judicial council shall also designate the district in which the appointee is to reside and serve.

AS §22.10.130. **Appointment and duties of presiding judges.**

The chief justice of the supreme court shall designate a presiding judge for each district. The presiding judge shall, in addition to regular judicial duties,

- (1) assign the cases pending to the judges made available within the district;
- (2) supervise the judges and their court personnel in the carrying out of their official duties within the district; and
- (3) expedite and keep current the business of the court within the district.

AS §22.10.140. **Chief justice may assign superior court judges.**

The chief justice may assign a superior court judge and that judge's court personnel for temporary duty from time to time not to exceed 90 days annually anywhere in the state except to permit completion of hearings in progress. A judge may be temporarily assigned for longer and additional periods with the consent of that judge (underlining added).

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ALASKA RULES OF COURT

Administrative Rules

Rule 24. Assignment of Judicial Officers

(a) **Assignments Within Judicial Districts.** Assignment of a judicial officer from the court location of the judicial officer's residence to locations within the same judicial district shall be made by the presiding judge of the judicial district or by the presiding judge's designee. In making such assignments, due regard shall be had of the status of accumulated calendars of the courts in the district to the end that judicial officers are assigned to such courts as needed in order to keep the calendars current.

(b) **Temporary Assignments in Other Judicial Districts.**

(1) When the volume of judicial business in the superior or district court in any judicial district warrants the temporary assignment thereto of one or more judicial officers from another judicial district, the presiding judge in the judicial district requiring such temporary assignment shall so advise the administrative director, giving details as to the reasons for the assignment, the length of time and the location of the temporary assignment.

(2) The administrative director shall thereupon determine the availability of judicial officers in other judicial districts and make such assignments as may be necessary.

* * *

(f) **Scope and Duration of Assignment.**

(1) A temporary assignment of an individual justice or judge under this rule shall be for specific cases or types of cases or proceedings; for general caseloads in a specific geographic location as necessary to ensure completion of a travel calendar; and for general caseloads as necessary to ensure continued judicial service during either the extended absence of a sitting judge or a judicial vacancy.

(2) A temporary assignment may not exceed 180 days in duration absent specific authorization by the chief justice; however a judge who is assigned pro tem on a specific case may continue to preside in that case beyond the expiration of the temporary assignment order.

(3) A single temporary assignment of a judicial officer to another judicial district may not exceed 90 days, unless the judicial officer consents to the additional assignment. Assignments in excess of 90 days or any assignment made without the consent of the assigned judicial officer may be made only by special order of the chief justice. * * * {Sub-sections (c) - (e), and (g) - (h) omitted}

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IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FIRST JUDICIAL DISTRICT AT PETERSBURG

IN THE MATTER OF THE SUPERIOR :
COURT JUDGESHIP FOR WRANGELL, :
PETERSBURG, AND KAKE. :

FRED W. TRIEM, :
Plaintiff, :

vs. :

ALASKA JUDICIAL COUNCIL [AJC], :
ALASKA COURT SYSTEM [ACS], *et al.*, :
Defendants. :

Case No. 1PE-22-00031CI

PLAINTIFF’S OPPOSITION TO MOTION TO DISMISS

(The Amended Complaint states claims upon which relief can be granted, thus is not dismissible.)

CHANGES IN THE JUDICIARY

(1983 annual address of the Chief Justice to the Legislature):

Since the time of my last appearance before this body, several changes have taken place within the ranks of the judiciary.

In the First Judicial District, a Superior Court judge has been assigned to the Wrangell/Petersburg area. That judge is Henry Keene, formerly the District Court judge at Ketchikan. His position, created by the Legislature in 1982, came into being upon the resignation of the former District Court judge at Wrangell, Robin Taylor. * * * The Palmer Superior Court, like those in Barrow and Wrangell/Petersburg, was created by legislation passed in 1982.

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Hon. Edmond W. Burke, Chief Justice, *The State of the Judiciary*, message to the Thirteenth Alaska Legislature, 15 February 1983, at pg. 1 (underlining added) [Exh. #10].

(1) Introduction and Overview — This is a case about a purloined judgeship: In 1982, the Legislature created a new judgeship for central Southeast Alaska communities; but it has been kidnapped and improperly moved to a different location and venue in Ketchikan. The judgeship should be returned to the location that was established for it by the Legislature.

Defendants have violated the Separation of Powers Doctrine by re-writing the legislation *sub silentio* and by amending — without constitutional authority — the legislative act that placed the judgeship in its original geographic location and that established its vicinage by law. Among the three branches of government, only the legislature has the authority to create a new judgeship and to establish its geographic location and its vicinage, the area that it serves. This attempt by the judicial branch to change this legislative decision is *ultra vires* and void.

The law that was enacted to create the disputed judgeship, Ch 70, SLA 1982 [Exh.#27], contains four sections, of which only one was codified (to amend AS 22.10.120, amending the number of judges within some of the four judicial districts). However, the other three sections of this enactment are also part of the law, and one of them identifies the communities in which the new judgeships will be located [Exh.#27].

Therefore, it is not a defense to this suit that the *codified* portion of the law is silent on the names of the communities in which the new judgeships are to be located, because this designation appears in the uncodified text and also throughout the legislative history of the bill (*i.e.*, in the committee hearings and in the floor debates in both the House and in the Senate). An example is the *Letter of Intent* – it was added to the bill by the Senate to require the previous district court judgeship in Wrangell-Petersburg to be eliminated before the legislation creating the new superior court judgeship could become effective in this location. [Exh.#26]

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(2) *Questions Presented:*

Q-1 Did the 1982 legislation that created the disputed judgeship establish its permanent geographic location and vicinage in Wrangell and Petersburg?

Answer: YES. When the Legislature enacted the legislation, it simultaneously (a) created the new judgeship and (b) designated its location. Only the Legislature possesses these two powers. The act was not amended or repealed after it was passed. The subsequent declaration of the Alaska Judicial Council [AJC] that purports to amend the act is *ultra vires* and was issued without constitutional authority. [Exh.#17: “Ketchikan Superior Court – position moved from Wrangell.”]

Q-2 Did the Alaska Court System [ACS] breach the covenant of Good Faith and Fair Dealing that inheres in its agreement with the Wrangell, Petersburg, and Kake communities (an agreement to give up their former shared district court judgeship as a condition of getting a new superior court judgeship)?

Answer: YES. The Senate’s *Letter of Intent* imposed a condition and an obligation on these communities. The mutual agreement to create the judgeship upon their performance of a condition formed a legislative compact, a *contract*. Alaska law recognizes the implied covenant of Good Faith and Fair Dealing and our case law has adopted the RESTATEMENT (SECOND) OF CONTRACTS, § 205.

Q-3 Does the hyper-concentration of judicial resources in Ketchikan deny access to the courts to the residents of Wrangell, Petersburg, and Kake for whom the Legislature expressly designated the vicinage of this new judgeship in 1982 (which later was diverted and re-invented as a Ketchikan judgeship)?

Answer: YES. The citizens of these three towns cannot have a “day in court” because they have no court. The Court System and the Judicial Council permanently

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deprived them of a court in a local vicinage by moving the judgeship to a distant location and by reinventing it as a Ketchikan judgeship. [Exh.#17 (“position moved”)].

Q-4 Does the public have a right to know *how, when, by whom, by what mechanism, by what authority, and by what procedure* was the judgeship moved to Ketchikan? Authorized by a court order? Perhaps an undisclosed SCO? Was the decision made by the CJ? By the PJ? By Art Snowden? By the local ACA? By an individual superior court judge acting with or without permission? And if with permission, then from whom? By what law or rule? *When* was all this done?

Answer: YES. The common law presumes that the public has a right of access to judicial records, which include the mystery memos and/or order(s) that authorized the move of the disputed judgeship to Ketchikan. The public’s ability to oversee and to monitor the workings of the Judicial Branch promotes the institutional integrity of the Judiciary.

Q-5 Did the Alaska Court System [ACS] and the Alaska Judicial Council [AJC] violate Article IV, § 4 of the U.S. Constitution, which “guarantee[s] to every State in this Union a Republican Form of Government”?

Answer: YES. When the Legislature approved the act, it simultaneously designated the location and vicinage for the newly created judgeship. Only the Legislature possesses these powers. Defendants have impaired our government’s functioning by usurping the Legislature’s exclusive authority and by subverting its Republican Form in which these major decisions are made only by an elected body of representatives who are chosen by citizens (i.e., in a *republic*).

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(3) *History of this dispute — The Factual Background:*

Table-I — Timeline of Principal Events:

<i>Date</i>	<i>Event or Document</i>	<i>Exh.#</i>
1981-1982	Petersburg and Wrangell seek a superior court judgeship	##01-07
22 May 1981	Rep. Ernie Haugen (Petersburg-Wrangell) introduces HB 590	#23
Jan-Jun 1982	The Legislature considers HB 590; then passes the bill	##24-28
Apr-May 82	Senate adopts <i>Letter of Intent</i> , new judgeship only if old abolished	#26
01 Jun 1982	HB 590 becomes law in ch 70 SLA 1982, creates new judgeship	#27
15 Nov 1982	Judge Robin Taylor resigns district court; old judgeship dissolved	#07, 26
Nov 1982	Judge Henry Keene is first appointment to the new judgeship	##08-10
1986	Judge Keene retires, is succeeded by Thomas Jahnke	##11-14
1988-90	Judge Jahnke declares <i>ex parte</i> he is changing his “duty station”	##11-13
June 2000	AJC declares relocation: “position moved from Wrangell”	##17-18
29 Nov 2021	AJC press release: to apply for the “Ketchikan” judgeship vacancy	#15
02 Dec 2021	Alaska Bar Association E-mail announcement (excerpt of Exh.#15)	#16
04 Jan 2022	AJC bar poll about applicants for Ketchikan judgeship vacancy	#19
06 Jan 2022	Five applicants for the Ketchikan judgeship vacancy	#20
Feb 2022	Three incumbent Ketchikan judges plan retirement celebrations	#21-22
23 Mar 2022	Original Application filed in the Supreme Court, Case No.S-18366	—
19 Apr 2022	Original Application denied by the Supreme Court	—
May 2022	AJC meeting(s) to review applications for <i>Ketchikan</i> vacancy	†
Mid-2022	Governor appoints new superior court judge for Ketchikan	—
22 Jun 2022	<i>This</i> suit filed; amended complaint filed, Case No. 1PE-22-00031CI	—

† The AJC website announced the meeting dates: May 9-13, 2022; Ketchikan, Anchorage, and Fairbanks Superior Courts & Retention.

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(a) Legislature created new judgeship and designated its vicinage (its geographic location): In 1982, the Alaska Legislature created a superior court judgeship for the two neighboring communities of Wrangell and Petersburg. [Exh.##23-28] Nearby Kake also benefited because its court calendar was traditionally handled by a visiting judge from Petersburg and Wrangell.

(b) Before passage, the Senate added a rider to the bill, a LETTER OF INTENT: A condition of authorizing a new superior judgeship was to decommission and to abolish the local district court judgeship that had been in existence since 1970 to serve the same communities with a resident judge (initially Hon. Duane K. Craske, and then Hon. Robin L. Taylor). Before the final floor vote, the Senate's passage of the bill added a *Letter of Intent* that merged into the bill and became part of the uncodified portion of this legislation. The *Letter of Intent* required that the then-existing district court judgeship be abolished in order before the new superior court judgeship would become effective.

It is the intent of the Legislature that the superior court judgeship in Wrangell shall not be filled until the Supreme Court eliminates the WRG-PSG district court judgeship.

SENATE JOURNAL pg. 1129-1130, 4 May 82 [Exh.#26 at pg. 3]. The *Letter of Intent* merged into the final version of the bill. SENATE JOURNAL pg. 1239, 10 May 82 [Exh.#26 at pg. 6] it was part of the bill at passage in both houses and was adopted and passed unchanged. House JOURNAL pg. 2353 [Exh.#25 at pg. 3-4], thereby became an uncodified part of the final act. [Exh.##27, 28].

(c) Appointment of first judge for the new judgeship in 1982: Soon after this new judgeship was created in mid-1982 and a new superior court judge had

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been appointed by the Governor in November 1982, Chief Justice Burke identified the newly-appointed judge for Wrangell and Petersburg when he explained these changes to the Legislature in his annual *State of the Judiciary* address in early 1983:

CHANGES IN THE JUDICIARY

Since the time of my last appearance before this body, several changes have taken place within the ranks of the judiciary.

In the First Judicial District, a Superior Court judge has been assigned to the Wrangell/Petersburg area. That judge is Henry Keene, formerly the District Court judge at Ketchikan. His position, created by the Legislature in 1982, came into being upon the resignation of the former District Court judge at Wrangell, Robin Taylor. * * * The Palmer Superior Court, like those in Barrow and Wrangell/Petersburg, was created by legislation passed in 1982.

Hon. Edmond W. Burke, *The State of the Judiciary*, message to the 13th Alaska Legislature, Juneau, 15 February 1983, at pgs. 1-2 (underlining added) [Exh. #10]. [Exh. #10]. The address is an *admission by a party opponent*. EVID. RULE 801(d)(2)(A-D)

(d) **“Position moved from Wrangell”:** The AJC declared the “position moved” but cited no cause and no authority [Exh. #17].

(e) **Recent retirement of the former judge and appointment of a new judge for the Ketchikan judgeship:** In January 2022, Hon. Trevor N. Stephens, who was the current incumbent in the disputed Wrangell-Petersburg superior court judgeship, announced his retirement, effective at the end of May 2022. [Exh. ##21, 22]. When the Alaska Judicial Council publicized this vacancy and solicited applications to fill it, it described the position as a superior court judgeship “in Ketchikan,” not for Wrangell and Petersburg [Exh.##15, 16, 19, 20]. The AJC conducted a public hearing in Ketchikan in May 2022, and the Governor since has since appointed a new superior court judge to fill the disputed judgeship . . . in Ketchikan.

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(4) *The Legal Landscape-I — Alaska law recognizes the Separation of Powers Doctrine, which is the cornerstone of our constitutional system:*

(a) *Our Supreme Court has described the separation of powers doctrine as “a brooding omnipresence”:* The Supreme Court of Alaska has recognized that the separation of powers doctrine is firmly embedded in the American scheme of government, at both the federal and state level: “Those who wrote our constitution followed the traditional framework of American government. The governmental authority of the State of Alaska was distributed among the three branches, the executive, the legislative and the judicial.” *Alaska State-Operated School System v. Mueller*, 536 P.2d 99, 103 (Alaska 1975) (Dimond, J.).

Alaska’s constitutional jurisprudence has developed with the separation of powers doctrine as a core and foundational principle:

Analyzing this tripartite form of government provided for Alaska, this court concluded, in *Public Defender Agency v. Superior Court, Third Judicial District*, 534 P.2d 947, 950 (Alaska 1975), that ‘. . . it can be fairly implied that this state does recognize the separation of powers doctrine.’ {ftn ⁷} Our recent opinion in *Continental Insurance Cos. v. Bayless & Roberts, Inc.*, 548 P.2d 398, 410-11 (Alaska 1976), acknowledges that the underlying rationale of the doctrine of separation of powers is the avoidance of tyrannical aggrandizement of power by a single branch of government through the mechanism of diffusion of governmental powers. {ftn ⁸} It is clear that the doctrine is not a common law concept; it is, however, a brooding omnipresence [¹] by virtue of its conceptually central role in the structure of American constitutional government.

Bradner v. Hammond, 553 P.2d 1, 5 (Alaska 1976) (Rabinowitz, J.) (underlining added) (the bracketed footnote is added in *this* memo). Footnote #8 observes that

¹ Cf. “The common law is not a brooding omnipresence in the sky, but the articulate voice of some sovereign or quasi-sovereign that can be identified.” *Southern Pacific Co. v. Jensen*, 244 U.S. 205, 222 (1917) (the original use) (Holmes, J., dissenting).

+ PLAINTIFF’S OPPOSITION TO DEFENDANTS’ RULE 12(b)(6) MOTION TO DISMISS 19 September 2022
In the Matter of the Superior Court Judgeship for Wrangell, Petersburg, and Kake - Case No. IPE-22-00031CI Page 8 of 25

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“The doctrine prohibits one branch from encroaching upon and exercising the powers of another branch.” *Id.*, 553 P.2d at 5, n.8 (underlining added; citing cases).

(b) *The Doctrine protects the Legislature’s decisions about location of judgeships from amendment, self-help, or trespass by the other two branches:*

In situations of conflict or friction between the judiciary and the other two branches of our government, this Court has prohibited action by one branch that may lead to trespass upon another branch. *See, e.g., Gieffels v. State*, 552 P.2d 661, 667 & n.5 (Alaska 1976) (Boochever, CJ.) (in light of separation of powers principles, Legislature may not impose a rule that would interfere with the proper functioning of the judicial system).

The *Gieffels* case is the mirror image of the instant case; here, this present judgeship dispute presents the intrusion *by* the judicial branch into the exclusive turf of the legislative branch – i.e., ACS and AJC silently changing the vicinage of a judgeship that previously had been determined by the legislative act that created the judgeship. This presents a conflict between the branches. *Cf.*, “In order to invoke the doctrine of separation of powers, actions by two branches of government must be involved.” *Hornaday v. Rowland*, 674 P.2d 1333, 1339 (Alaska 1983) (Rabinowitz, J.).

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(5) *The Legal Landscape-II — Separation of Powers – The Legislature is the only branch that can create a judgeship and is the only branch that can determine its vicinage (i.e., its geographic location and area of service):*

(a) *The Framers of the Constitution designated the judgeship power to be a legislative power:* The starting point for study of this topic lies in the history of our federal Constitution, specifically its incorporation of the separation of powers doctrine:

One additional aspect of mixing deserves notice. In defense of his interpretation of the common defense and general welfare clause as a separate and substantive grant of power to the Congress, William Crosskey has argued that some of the congressional powers that appear in Section 8 of Article I were included there not to secure them as against the states but to prevent their passing to the President as executive prerogatives. One need not agree with Crosskey's position on federal as against state powers to conclude that his argument has merit and has implications for the separation of powers doctrine. Commercial powers, the naturalization power, and the power to establish courts, subdue rebellions, make war, raise armies, or callout the militia were prerogatives that the delegates to the Convention did not hesitate to turn into legislative powers. In doing so, they simply followed the prior example of the state constitutions.

GERHARD CASPER, SEPARATING POWER – ESSAYS ON THE FOUNDING PERIOD, 21 (Harvard 1997) (footnotes omitted; underlining added).

(b) *Federal judgeships are created by Congress, and with this power is the legislative authority to establish geographic location and vicinage:* When Congress creates new federal court judgeships, it describes the geographic area to be served and the precise location where court will be held. Examples are seen in the federal statutes that routinely are amended to expand the number of federal judgeships at both the trial court and the appellate levels: For example:

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- 28 U.S.C. § 133 (authorizing federal district court judgeships and sometimes declaring place of court: e.g., “shall reside at Wichita.”).
- 28 U.S.C. § 44 (“each circuit judge shall be a resident of the circuit for which appointed at the time of his appointment and thereafter while in active service.”).

Court for the Eastern Division shall be held at a suitable site in the city of Riverside, the city of San Bernardino, or not more than 5 miles from the boundary of either such city.

- 28 U.S.C. § 84(c)(1) (creating judgeship and designating location of the court in Southern California).

(c) Alaska law precisely replicates the federal law principle:

The authority of Congress to establish judgeships in our federal system is replicated here in our state government as well. The Alaska Constitution confers upon the Alaska Legislature the exclusive power to create judgeships. ALASKA CONST. Article IV, § 3: “The number of judges may be changed by law” (underlining added).

Question: Does our legislature have the constitutional authority to create judgeships?

Excerpt from the Minutes of the Alaska Convention of 1955:

V. RIVERS: May I ask a question of Mr. Taylor?

PRESIDENT EGAN: You may, Mr. Victor Rivers.

V. RIVERS: Mr. Taylor, if the Governor does not appoint and the appointment springs from judicial council, why is not only one name recommended to him instead of two?

TAYLOR: It is to give a choice.

V. RIVERS: He has a choice power and appointive power?

TAYLOR: That is correct. I might say that there will be legislative act to implement these sections that are in here. He

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will have to appoint because it devolves upon him. There can be three to give him a choice if he wants them, according to what the legislature says.

1 ALASKA JUDICIAL COUNCIL, MINUTES OF THE DAILY PROCEEDINGS – ALASKA CONSTITUTIONAL CONVENTION, 32nd Day, at pg. 590 (9 December 1955) (underlining added). Other authority explains that the separation of powers doctrine is part of state law.

(d) The Legislature did not (and could not) delegate its power to the Judiciary: When the bill was passed, it designated the location of the new judgeships. The legislation did not convey authority to the court system to locate the sites of these new judicial offices. This power cannot be shared or delegated.

The doctrine of separation of powers does not permit a legislature to abdicate its function to the judiciary by passing statutes which operate at the discretion of the courts, or under which courts are allowed to determine conditions in which the statute will be enforced.

1 NORMAN J. SINGER, SUTHERLAND STATUTORY CONSTRUCTION, § 4:6, *Delegation to the judiciary*, 149-50 (7th ed. 2010), (underlining added).

(6) The uncodified portions of the legislation are part of the law, and they include the geographic placement of the new superior court judgeships: When Rep. Ernie Haugen (R-Petersburg) introduced HB 590 on 22 May 1981, the original version of the bill stated only that the number of judges within the First Judicial District would be increased from four to five. [Exh.## 23] But then, two other members of the House jumped on Mr. Haugen's wagon and added their communities to the request for a superior court (*i.e.*, Palmer and Barrow), so the final version added three judgeships. [Exh.## 27, 28].

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(a) *The entire legislation became law, both the codified and uncodified sections:* The codified portion of Alaska’s superior court judgeship statute, which appears as AS 22.10.120, does not name the individual communities in which the court shall sit, but instead lists only the total number of judgeships in each judicial district. However, the uncodified portion of the authorizing legislation does designate and does identify the precise locations, the specific communities or towns wherein the new court is to sit and to conduct its proceedings. [Exh.## 24, 28 (annual editions of BILL HISTORY & JOURNAL INDEX, SUMMARY OF ALASKA LEGISLATION); *see generally*, Exh.## 25, 26. (proceedings in House and Senate)].

It is not a defense to this suit that the *codified* portion of the law is silent on the names of the communities in which the new judgeships are to be located, because this designation appears in the uncodified text and also throughout the legislative history of the bill.

An uncodified portion of the bill, Sec. 3, identifies facilities “for lease or rental of space in . . . Wrangell for the use of the superior court.” The legislation identified the communities in which the new judgeships would be located. [Exh.#27 (underlining added)]

(b) *Uncodified text is still law:* Just because a key provision of legislation does not later arrive in the bound, blue statute pamphlets does not mean it is not law. Uncodified laws still have the force of law:

Uncodified provision. A ‘noncode section’ is one which, though enacted with a piece of legislation, is not codified within the state code; such noncode provisions are appropriately considered by a court when interpreting statutes. As a general matter, uncodified provisions of an act express the legislature’s view on some aspect of its operation; they are not the source of the substantive provisions of the law. Uncodified

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provisions express the legislature’s view on a particular aspect of the operation of a new statute

82 C.J.S. *Statutes*, § 308, Allocation of statutes in code or revision (2022) (underlining added; footnotes omitted).

- Once enacted by the legislature and signed by Gov., the entirety of a bill, including provisions uncodified, become law. *Smith v. Guest*, 16 A.3d 920 (Del.2011).
- Courts apply the same standards of construction to both codified and uncodified provisions. *Chin v. Merriot*, 23 N.E.2d 929 (Mass. 2015).
- Uncodified law is binding law. *St Clair Twnshp v. City of Hamilton*, 125 N.E.2d 863 (Ohio 2019).
- Reliance upon an uncodified portion of Alaska statute. *Adamson v. Municipality of Anchorage*, 333 P.3d 5 (Alaska 2014).

(c) Repeated mentions of Petersburg and Wrangell in the floor debates and in the legislative history confirm the Legislature’s intent to place the new judgeship there and not in some never-mentioned city 100 miles to the south:

(1) “This position is in Wrangell.” [Rep. Haugen (sponsor), House Judiciary Comm. 2 Feb 82–Tape Log 1295]

(2) “Mr. Snowden stated ... The upgraded judgeship would be in Wrangell.” [Sen Fin Comm Tape SFC 82, #24, Side 1, 30 Apr 1982]. {Mr. Art Snowden was the Administrative Director of the Alaska Court System in the 1980s.; he appeared and testified at legislative committees, including those that considered this legislation.}

(3) Several references in the committee and floor discussions to Petersburg and Wrangell, and to the existing district court judgeship then shared by these towns.

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(7) *The Legal Landscape-III – The Separation of Powers Doctrine is present in the Alaska Constitution – When the Legislature creates a judgeship it also determines its vicinage (i.e., its geographic location):*

Table-II — Allocation of constitutional authority in the appointment of superior court judges – The Separation of Powers Doctrine with its Checks & Balances:

Branch of Government	Scope of its Authority
<p style="text-align: center;">Legislative Article II</p>	<p>Enacts legislation that <i>creates</i> new judgeships, that <u>designates and determines their geographic locations</u> within the State; Appropriates funds for Court System’s facilities and operating expenses.</p>
<p style="text-align: center;">Executive Article III</p>	<p>Governor signs into law the bill that creates new judgeship, designates and determines locations; Appoints new judges to fill vacancies.</p>
<p style="text-align: center;">Judicial Article IV</p>	<p>Judicial Council administers the application and nomination process; Chief Justice is chair of Judicial Council; CJ meets with the Council; CJ annually reports to the Legislature; CJ can reassign judges “for temporary service.” †</p>

† “The Chief Justice . . . may assign judges from one court or division thereof to another for temporary service.” ALASKA CONSTITUTION, Art. IV, § 16 (underlining added).

Cf., AS 22.10.140 (chief justice may assign a superior court judge “for temporary duty . . . not to exceed 90 days annually anywhere in the state . . . A judge may be temporarily assigned for longer periods . . .”) (underlining added).

The full text of these sections appears at pages vii - viii, above.

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(8) *The Alaska Court System has breached the covenant of good faith and fair dealing by abolishing the former district court and then moving the replacement superior court to Ketchikan, leaving the victim communities with no judge at all:* Leaving Kake, Petersburg, and Wrangell in a judicial desert. [Exh.#17]

(a) *Historical note — In its debates, the Legislature required the elimination of the existing district court judgeship:* The Senate Finance Committee included this restriction in its approval of the bill; the full Senate then adopted this pre-condition on the occasion of the bill's final passage in the Senate:

HB 590 cont'd

Letter of Intent on SENATE CS FOR CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 590 (FIN) follows:

"It is the intent of the Legislature that the superior court judgeship in Wrangell shall not be filled until the Supreme Court eliminates the Wrangell-Petersburg district court judgeship".

SENATE JOURNAL, May 4, 1982, at pgs 1129-30 (underlining added).

+++++++

HB 590 cont'd

Senator Sturgulewski moved and asked unanimous consent that the Finance Committee Letter of Intent offered on page 1129 be adopted as a Senate Letter of Intent. Without objection, the Letter of Intent was adopted. * * * and so, SENATE CS FOR CS FOR SPONSOR SUBSTITUTE FOR HOUSE BILL NO. 590 (FIN) passed the Senate with Senate Letter of Intent.

SENATE JOURNAL, May 10, 1982, at pg. 1239 (underlining added).

SENATE JOURNAL, 12th Legislature, Second Session, at 1129-30, 1239 [Exh #26].

(b) *It is a legislative contract, subject to contract law:* In a three-way compact, the Legislature and the Court made a bargain with these communities: Give up your old Ford and you will get a new Lincoln in exchange. But the Court System breached the contract, took away *both* parts of the deal (the old judgeship and the new replacement), and left these towns with a mere bicycle.

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(c) *Breach of the covenant of good faith and fair dealing – The Court System broke its compact with these communities:* The Court took away the district court under the promise of the superior court, and then moved the new judgeship to a distant place; a breach of good faith.

Alaska law recognizes the implied covenant of Good Faith and Fair Dealing that inheres in every bargain; this Court has adopted the RESTATEMENT (SECOND) OF CONTRACTS, § 205, which provides:

§ 205. Duty of Good Faith and Fair Dealing

Every contract imposes upon each party a duty of good faith and fair dealing in its performance and its enforcement.

The duty of good faith and fair dealing implied in all contracts requires “that neither party will do anything which will injure the right of the other to receive the benefits of the agreement.” *Guin v. Ha*, 591 P.2d 1281, 1291 & n.24 (Alaska 1979) (Boochever, J.); *see also, Klondike Industries v. Gibson*, 741 P.2d 1161, 1168 (Alaska 1987) (Moore, J.) (neither party may do anything that impairs the other party’s right to receive the benefits of the agreement) (quoting Comment a of § 205: “Good faith performance or enforcement of a contract emphasizes faithfulness to an agreed common purpose and consistency with the justified expectations of the other party...” and Comment d of § 205: “Subterfuges and evasions violate the obligation of good faith in performance even though the actor believes his conduct to be justified. But the obligation goes further: bad faith may be overt or may consist of inaction, and fair dealing may require more than honesty.”).

Where a contract confers discretion upon one party, the covenant of good faith and fair dealing is breached when that party abuses its discretion. Abuse is found where the controlling party uses its discretion in a manner that was not contemplated

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by the parties when the contract was made. Breach of the covenant is also found where one party attempts to recapture foregone opportunities that were renounced at the time the contract was made. Steven J. Burton, *Breach of Contract and the Common Law Duty to Perform in Good Faith*, 94 HARV. L. REV. 369, 385-392 (1980) (explaining two types of breach).

The Court has breached the legislative compact in both ways — by misleading and by recapture: *First*, the towns and villages had an expectation – later betrayed – that they would have a resident judge within their local communities. *Second*, the Court recaptured its contractual promise and rendered it worthless when it moved the new judgeship to a distant location.

(d) *By moving the judgeship, the Court recaptured it and breached the compact with the Legislature:* *Recapture* is a breach of the covenant of good faith and fair dealing. Burton, 94 HARV. L. REV. at 385-94. *See generally*, STEVEN J. BURTON AND ERIC G. ANDERSEN, CONTRACTUAL GOOD FAITH – FORMATION, PERFORMANCE, BREACH, ENFORCEMENT, 45 (1995): “Bad faith in contract performance is a use of contractual discretion to recapture opportunities forgone when contracting”; *id.*, at 39: “[A]ny promisor who uses discretion in performance to recapture foregone opportunities is in breach of contract”; *id.*, at 40 & n. 67: “Several opinions endorse the specific idea that bad faith consists of a use of discretion to ‘recapture foregone opportunities’” (collecting cases); *id.*, at 43-44: “A promisor who recaptures foregone opportunities harms the promisee’s contractual expectation and reliance interests by redirecting resources away from the contract (underlining added).”

Conclusion: The ACS and the AJC *recaptured* the disputed judgeship by moving it to Ketchikan, thereby breaching the covenant of good faith and fair dealing.

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(9) *Removing the judges from central Southeast Alaska blocks access to the courts and denies litigants their “day in court”*: This Court recognizes the importance of access to judicial facilities, especially for village communities such as Kake. *Aguchak v. Montgomery Ward Co. Inc.*, 520 P 2d 1352, 1353 (Alaska 1974) (Boochever, J.) (“we use the term ‘bush’ to refer to those sparsely-inhabited, minimally-accessible areas of the state which participate only marginally in the urban money economy”). In her 2013 address to the Legislature, C.J. Dana Fabe explained:

Access. The importance of early intervention brings me to another continuing concern: improving and strengthening access to justice in Alaska’s rural communities. As we all know, providing judicial services in remote villages across our state has been an enduring and formidable challenge from the earliest days of the Territory. * * *

Yet despite the logistical hardships, early state court leaders were unwavering in their commitment to rural Alaska. In 1970, Chief Justice George Boney spearheaded the first “Alaska Bush Justice Conference,” which passed the following resolution:

The locale of decision-making in the administration of justice in village Alaska must move closer to the village. To achieve this result there must be greater native participation at all levels in the administration of justice . . . there must be greater access to legal services and the process of justice in Village Alaska.

In his 1972 State of the Judiciary address, Chief Justice Boney recommended the construction of “no less than 50 . . . bush facilities” across the state. . . . [W]e have ensured that rural court locations are staffed with professional court personnel.

Chief Justice Dana Fabe, *The State of the Judiciary*, address to the Legislature, 13 February 2013, at pgs 6 - 8 (indented quote from C.J. Boney–1970; underlining added). [Exh.#10 - 2nd part]

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Alaska’s case law acknowledges a right of access to courts, to a “day in court”:

- “A right of access to the courts has been founded in specific state constitutional provisions pertaining to access.” *Keyes v. Humana Hosp. Alaska, Inc.*, 750 P.2d 343, 358-59 & n.32 (Alaska 1988) (Rabinowitz, J.).
- “Our cases have recognized that the due process clause of the Alaska Constitution guarantees the right of access to Alaska’s courts.” *State v. Native Village of Nunapitchuk*, 156 P.3d 389, 405 & n.75 (Alaska 2007) (Matthews, J.).
- “The courts may take creative actions to discourage hyperactive litigators so long as some access to courts is allowed.” *DeNardo v. Cutler*, 167 P.3d 674, 681 (Alaska 2007) (Carpeneti, J.).
- “[A] court . . . cannot justify denial of a party’s fair day in court.” *Mely v. Morris*, 409 P.2d 979, 982 (Alaska 1966) (Rabinowitz, J.).
- “[B]asic justice requires that . . . Agnes Lovell be given her day in court.” *Lovell v. Lovell*, 645 P.2d 151, 154 (Alaska 1982) (Rabinowitz, J.).

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The residents of central Southeast Alaska (e.g., Kake, Petersburg, and Wrangell) do not have access to the courts because they no longer have a judge. Their court was kidnapped and moved away without any disclosed reason or explanation.

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(10) *The Alaska public and the communities that have lost their judgeship have a right to know how, when, by whom, by what mechanism, by what authority, and by what procedure the judgeship was moved to Ketchikan:* The only clue that we have is found in the AJC's webpage that once described the disputed judgeship as "position moved from Wrangell." [Exh.#17] I have not been able to find any other mention of the move, and I have not found *any* explanation or justification for it?

Modern law recognizes that "the public's ability to oversee and monitor the workings of the Judicial Branch . . . promotes the institutional integrity of the Judicial Branch." *Doe v. Public Citizen*, 749 F.3d 246, 263 (4th Cir. 2014).

The *people's right to know* theme has been a central theme in the recent litigation about the Government's search warrant that was served upon the former President, now residing in Florida. The right to access derives from two sources: (1) a common law rule and (2) the First Amendment. The U.S. Attorney filed a four-page memo that is packed with discussion and case law authority about the *right of access to judicial files, records, proceedings, and decisions* (both common law and constitutional).² I recommend that memorandum of law to the interested reader who would want to learn more about this topic, which also is raised by the Amended Complaint here in the instant case.

This court should deny the pending motion to dismiss and then direct the parties to undertake discovery, including the mandatory *initial disclosures* that are required by Civil Rule 26(a)(1) and also by 26(a)(3).

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² *In re Sealed Search Warrant*, CASE NO. 22-MJ-8332-BER, United States' Motion to Unseal Limited Warrant Materials, Case 9:22-mj-08332-BER, Document 18 Entered on FLSD Docket 08/11/2022. {available on PACER}.

(11) Modern constitutional law recognizes a claim based on the Guarantee Clause; The Supreme Court has repudiated the older case law that is cited and relied upon by defendants in this case: Defendants' citation to older authority is not valid; the time has long passed in which a claim based in the Guarantee Clause would be rejected on the ground that it raised a non-justiciable political question.

The Guarantee Clause of the Constitution provides:

The United States shall guarantee to every State in this Union a Republican Form of Government

U.S. CONST. art. IV, § 4, cl. 1 (underlining added).

Defendants have impaired the functioning of our state government by usurping the Alaska Legislature's exclusive authority to create a new judgeship, and thereby subverting its Republican Form in which this major decision is made only by an elected body of representatives who are chosen by citizens (i.e., in a *republic*).

Defendants' motion to dismiss presents an outdated argument that is based upon superseded and expired legal authority: case law that was formerly valid but it no longer current. The defendants cite *Colegrove v. Green*, 328 U.S. 549, 556 (1946) (alleged violation of the Guarantee Clause "cannot be challenged in the courts"). Yes, there was a time decades ago when public schools were segregated and political questions were non-justiciable. But happily for plaintiff's cause, the law has changed:

- A "republican form of government" includes the right to have a system of state courts. *U.S. v. Downey*, 195 F.Supp. 581 (S.D. Ill. 1961).
- Abrogation of judicial immunity would destroy independence of state judiciary and would deprive states of republican form of government. *Bauer's v. Heiser*, 361 F.2d 581 (3rd Cir. 1966).
- [P]erhaps not all claims under the Guarantee Clause present nonjusticiable political questions." *New York v. United States*, 505 U.S. 144, 185 (1992).

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(12) **CODA – The motion to dismiss is “disfavored and should rarely be granted:”** Our case law, like that interpreting the similarly-worded federal version of Civil Rule 12(b)(6), is both extensive and unanimous in its vigorous dislike of the motion to dismiss:

(a) **A motion to dismiss is disfavored and should rarely be granted:** Alaska law strongly disfavors a dismissal for failure to state a claim. “The motion to dismiss for failure to state a claim is viewed with disfavor and is rarely granted.” *Knight v. American Guard & Alert, Inc.*, 714 P.2d 788, 791 (Alaska 1986). This admonition appears throughout Alaska’s civil practice jurisprudence. Examples from our Alaska case law are collected in the footnote.³

The reason often given for this disfavor is “the primary objective of the law is to obtain a determination on the merits of the claim, and that accordingly, a case should be tried on the proofs rather than on the pleadings.” 61 AmJur2d, *Pleading*, § 582, Motion as sparingly granted, at 477-78 (1999).

(b) **In Alaska, our case law adopts a liberal pleading standard:** A complaint should not be dismissed unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief. *Shooshanian v. Wagner*, 672 P.2d 455, 461 (Alaska 1983). See also, *Martin v. Mears*, 602 P.2d 421, 429 & n. 20 (Alaska 1979) (similar).

³ “Motions to dismiss are viewed with disfavor and should rarely be granted”:

Reed v. Municipality of Anchorage, 741 P.2d 1181, 1184 (Alaska 1987) (same)
Mattingly v. Sheldon Jackson College, 743 P.2d 356, 359 (Alaska 1987) (same)
Kollodge v. State, Op. No. 3342, 757 P.2d 1024, 1026 (Alaska 1988) (same)
Van Biene v. ERA Helicopters, Inc., 779 P.2d 315, 317-18 (Alaska 1989) (same)
Odom v. Fairbanks Memorial Hospital, 999 P.2d 123, 128 (Alaska 2000) (same)
Guerrero v. Alaska Housing Finance Corp., 6 P.3d 250, 253-54 (Alaska 2000) (same)
Catholic Bishop of N. Alaska v. John Does 1-6, 141 P.3d 719, 722 (Alaska 2006) (same).

A complaint should not be dismissed for failure to state a claim upon which relief can be granted unless it appears beyond doubt that the plaintiff can prove no set of facts in support of the claims that would entitle the plaintiff to any relief. *Angnabooguk v. State*, 26 P.3d 447 (Alaska 2001).

If, within the framework of the complaint, evidence may be introduced that will sustain a grant of relief to the plaintiff, the complaint is sufficient. *Linck v. Barokas & Martin*, 667 P.2d 171 (Alaska 1983).

(c) *Alaska law is especially reluctant to terminate a case when the pleader alleges an unusual claim or legal theory:* “Courts ‘should be especially reluctant to dismiss on the basis of the pleadings when the asserted theory of liability is novel or extreme, since it is important that new legal theories be explored and assayed in the light of actual facts rather than a pleader’s suppositions.’” *Knight v. American Guard & Alert, Inc.*, 714 P.2d 788, 792 (Alaska 1986) (quoting WRIGHT & MILLER treatise ⁴) (underlining added).

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⁴ In *Knight*, the court cited 5 C. WRIGHT & A. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1357, at 598 (1969) (“The motion to dismiss for failure to state a claim is viewed with disfavor and is rarely granted.”). Similar language still appears in the current edition of the treatise. 5B C. WRIGHT & A. MILLER, FEDERAL PRACTICE AND PROCEDURE § 1357, text at n. 34 (3d ed. and 2022 supp) (the footnote collects an army of cases that express the theme of “disfavored”).

(13) *Conclusion – Return the purloined judgeship:* This judicial kidnapping should be overturned and the missing superior court judgeship should be returned to the towns and villages that are the avowed, expressed, and intended site of this judicial office that the Legislature created for them by law. [Exh.## 23 - 28]

In the American system of tripartite government:

- The legislative branch creates a new judgeship; and
- The legislative branch determines *where* the new court will be situated by designating its geographic location and its vicinage in the legislation that creates it.

Defendants have violated the Separation of Powers Doctrine by foiling the choice made by the Alaska Legislature to create a superior court judgeship for the towns in central Southeast Alaska. The purloined judgeship should be returned to them.

Respectfully submitted this 19th day of September in 2022.



Fred W. Triem, No. 7912140
Attorney for Applicant-Petitioner

Attachments:

- List of Exhibits ## 01 - 28
- [proposed] order denying dismissal

CERTIFICATE OF SERVICE

I certify that on 19 September 2022, I will send this memo and its attachments by E-mail to Robert Kutchin, Esq., attorney for the defendants, AJC and ACS. *Fred Triem*

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In the Matter of the Wrangell-Petersburg Judgeship — List of the Plaintiff's Exhibits:

<i>Exh. #</i>	<i>Date</i>	<i>Description — Document — Event</i>
PART-I — HISTORY OF THE WRANGELL-PETERSBURG JUDGESHIP		
Exh.#01	02 Dec 1981	Wrangell <i>Sentinel</i> : “Wrangell may ask for superior court”
Exh.#02	02 Dec 1981	Petersburg <i>Pilot</i> : “Council expanded court” and “Trial delays”
Exh.#03	23 Dec 1981	“Superior filing Court will open January 1 [1982]”
Exh.#04	24 Feb 1982	“Good chance for local Superior Court judgeship”
Exh.#05	28 Apr 1982	“Council opposes land sale . . .” (<i>see</i> ltr. changing judgeship)
Exh.#06	11 Aug 1982	“Tent City ...” (<i>see</i> resolution supporting new super. judgeship”
Exh.#07	13 Oct 1982	“Taylor seeks Superior Court judgeship”
Exh.#08	17 Nov 1982	“Keene named to new Court Bench”
Exh.#09	08 Dec 1982	“[new WRG-PSG Judge] Keene to be welcomed Dec. 18th”
Exh.#10	15 Feb 1983	<i>The State of the Judiciary</i> address by CJ Burke and CJ Fabe
Exh.#11	01 Sep 1988	“Judge Jahnke is house hunting in both WRG and PSG mkts”
Exh.#12	06 Oct 1988	“Judge Jahnke building home in KTN, commute to PSG-WRG”
Exh.#13	03 May 1990	“Jahnke seeks Juneau Superior Court seat”
Exh.#14	17 Oct 2011	Obituary for Judge Henry C. Keene (Alaska Court System)
Exh.#15	29 Nov 2021	Judicial Vacancy Announcement – Ketchikan Superior Court
Exh.#16	29 Nov 2021	Judicial Position Description for Ketchikan Superior Court
Exh.#17	28 Dec 2021	AJC web page – historical log entry for Ketchikan in 2000
Exh.#18	28 Dec 2021	AJC web page – current entry for Ketchikan judgeship
Exh.#19	04 Jan 2022	AJC current announcement–bar poll for Ketchikan judgeship
Exh.#20	06 Jan 2022	Ketchikan Daily News: <i>Five apply for Superior Court judgeship</i>
Exh.#21	29 Jan 2022	Ketchikan Daily News: <i>Three local judges reflect... retirement</i>
Exh.#22	03 Feb 2022	Petersburg <i>Pilot</i> : <i>Judge Carey to celebrate retirement in Petersburg</i>
PART-II — THE LEGISLATION AND LEGISLATIVE HISTORY		
Exh.#23	22 May 1981	House Bill 590 (original version) by Rep. Haugen (Petersburg)
Exh.#24	July 1982	BILL HISTORY & JOURNAL INDEX, House of Representatives
Exh.#25	03 Jun 1982	HOUSE JOURNAL, Vol. 3 (excerpts about HB 590, Haugen bill)
Exh.#26	03 Jun 1982	SENATE JOURNAL, Vol. 2 (excerpts re HB 590, Haugen bill)
Exh.#27	1 Jun 1982	Ch. 70, Session Laws of Alaska [SLA], HB 590 becomes law
Exh.#28	July 1982	SUMMARY OF ALASKA LEGISLATION, 12th Legislature, 2nd Session

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In the Matter of the Superior Court Judgeship for Wrangell, Petersburg, and Kake - Case No. S-18366

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FIRST JUDICIAL DISTRICT AT PETERSBURG

IN THE MATTER OF THE SUPERIOR :
COURT JUDGESHIP FOR WRANGELL, :
PETERSBURG, AND KAKE. :

FRED W. TRIEM, :
Plaintiff, :
vs. :

ALASKA JUDICIAL COUNCIL [AJC], :
ALASKA COURT SYSTEM [ACS], *et al.*, :
Defendants. :

Case No. 1PE-22-00031CI

ORDER DENYING DEFENDANTS' MOTION TO DISMISS COMPLAINT

The court has been presented with the Defendants' Motion to Dismiss Complaint, which was filed on 25 August 2022 [CourtView, Case Motion #1}, and it appearing that plaintiff has shown cause for denying the defendants' motion, now therefore, it is:

ORDERED that defendants' Motion to Dismiss Complaint, of 25 August 2022 be and the same hereby is DENIED.

IT IS SO ORDERED this _____ day of _____ 2022 at Petersburg, Alaska.

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Hon. Katherine H. Lybrand,
Superior Court Judge

+ ORDER DENYING DEFENDANTS' MOTION TO DISMISS COMPLAINT
In the Matter of the Petersburg-Wrangell Judgeship, Case No. 1PE-22-00031CI