

I. CALL TO ORDER

The special meeting of the Matanuska-Susitna Borough Assembly was held on August 28, 2007, at the Borough Assembly Chambers, 350 E. Dahlia Avenue, Palmer, Alaska. The meeting was called to order at 6:05 p.m. by Mayor Curtis D. Menard.

II. ROLL CALL

Assembly members present and establishing a quorum were:

Ms. Lynne Woods, Assembly District No. 1 (*Deputy Mayor*)
Ms. Michelle R. Church, Assembly District No. 3
Ms. Mary Kvalheim, Assembly District No. 4
Ms. Cindy L. Bettine, Assembly District No. 5
Mr. Robert Wells, Assembly District No. 6
Mr. Tom Kluberton, Assembly District No. 7

Staff in attendance were:

Ms. Michelle M. McGehee, CMC, Borough Clerk
Mr. John Duffy, Borough Manager
Mr. Nicholas Spiropoulos, Borough Attorney
Ms. Amanda E. Charles, Executive Assistant to the Borough Clerk
Ms. Tammy Clayton, Finance Director
Ms. Marian Romano, Assistant Borough Manager
Ms. Patty Sullivan, Public Information Manager

III. APPROVAL OF AGENDA

Mayor Menard inquired if there were any changes to the agenda.

GENERAL CONSENT: The agenda was approved without objection.

IV. PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was led by Representative Carl Gatto.

V. NEW BUSINESS

- A. INTRODUCTIONS (For public hearing - 09/04/2007, 7 p.m., Borough Assembly Chambers)
 - 1. Ordinance Serial No. 07-132: AN ORDINANCE DECLARING THAT THE SEAT FOR ASSEMBLY DISTRICT NO. 2 SHALL REMAIN VACANT UNTIL DECEMBER 1, 2007,

IF SUCH VACANCY CONTINUES TO EXIST BEYOND THE CERTIFICATION OF ELECTION TO BE HELD ON OCTOBER 2, 2007.

a. IM No. 07-228

Ms. McGehee read the introductions into the record.

MOTION: Assemblymember Woods moved to introduce the legislation as read into the record by the Clerk and set the public hearings for September 4, 2007.

VOTE: The motion passed without objection.

VI. ITEMS OF BUSINESS

1. Resolution Serial No. 07-097: A RESOLUTION OF THE MATANUSKA-SUSITNA BOROUGH ASSEMBLY ACCEPTING THE RESIGNATION OF ASSEMBLYMEMBER BILL ALLEN (ASSEMBLY DISTRICT NO. 2) AND DECLARING A VACANCY IN THAT DISTRICT SEAT.

a. IM No. 07-229

Mr. Spiropolous:

- stated that Mr. Allen had attended the last regular meeting and had announced that he had taken a position with the city of Palmer as the City Manager;
- clarified that the Assembly must accept the resignation; and
- stated that Resolution Serial No. 07-097 is accepting the resignation of Mr. Allen and declaring the seat for District No. 2 vacant.

MOTION: Assemblymember Woods moved to adopt Resolution Serial No. 07-097.

VOTE: The motion passed without objection.

2. Ordinance Serial No. 07-096: AN ORDINANCE ADOPTING MSB 8.32, ELECTRICAL GENERATION FACILITY OR POWER PLANT.

a. Resolution Serial No. 07-070: A RESOLUTION ADOPTING THE SCHEDULE OF FEES AUTHORIZED UNDER MSB 8.32.220, FEES; FOR APPLICATION UNDER MSB 8.32.
(Sponsored by: Assemblymembers Kluberton and Allen; Main motion pending from 07/17/07)

(1) IM No. 07-162

Ms. McGehee:

- stated that the main motion is on the floor; and
- clarified that the public hearing had closed.

Mr. Duffy:

- provided a staff report; and
- spoke regarding a number of amendments that were technical in nature.

Technical Amendments

- Page 7, (B)(3)(b), to strike the word “being” and to insert the word “be” in its place.
- Page 11, (vi)(d)-(f), the words “is” and “section” should be switched around in each sentence.
- Page 12, (6)(a), to strike the words “most of”.
- Page 15, (7)(a)(iv), to the phrase “section (7)(a)” and to insert in its place the phrase “this section”.
- Page 18, (B)(7)(c), to strike the word “effected” and insert in the word “affected” in its place.
- Page 22, (vi) and (vii), to strike the phrase, “shall be provided,” from the end of both paragraphs.
- Page 33, (B)(7)(h)(iii), to insert the word “to” between the words “impact” and “affected”.
- Page 45, third sentence, to remove the phrase “approved by staff” and to insert in its place the phrase “the director”.
- Throughout the ordinance, to strike any reference to “APUC” and to insert in its place the reference to “RCA.”
- Page 58, MSB 8.32.090(A), to strike “borough attorney” and to insert in its place “the borough”.
- Page 67, MSB 8.32.220(A), to strike th word “extend” and to insert in its place the word “extent”.

Ms. McGehee read the technical amendments into the record.

MOTION: Assemblymember Church moved to adopt the technical amendments as presented by Administration.

VOTE: The primary amendment (technical amendments) passed without objection.

Amendment No. 1

MOTION: Assemblymember Kluberton moved a primary amendment to Ordinance Serial No. 07-096, page 37 of the packet, to paragraph (i)(a), to strike the language “, and the locations where photographs were taken from (g)(6)(C)”, to read as follows:

“(a) Topographic maps at a scale of 1:24,000 that depict directions from which the project would be seen, the view areas most sensitive to the potential visual impacts of the project; and”

VOTE: The primary amendment passed without objection.

Amendment No. 2

MOTION: Assemblymember Kvalheim moved a primary amendment to Ordinance Serial No. 07-096, page 47 of the packet, to strike paragraph (h)(ii) in its entirety.

~~(ii) A map showing sensitive receptors within the area exposed to the substances~~

~~identified in subsection (7)(h)(i).~~

Assemblymember Church queried why there was a recommendation to strike the language.

Mr. Duffy:

- clarified that it was mistakenly left in the ordinance; and
- added that the map which is being referenced does not exist.

VOTE: The primary amendment passed without objection.

Amendment No. 3

MOTION: Assemblymember Woods moved a primary amendment to Ordinance Serial No. 07-096, page 47 of the packet, paragraph (h)(iii) to strike the reference to “(iii)” and to replace it with the reference of “(ii)”, to insert the word “on” before the word “affected,” to insert the word “any” before the word “increase,” and to insert the word “in” before the word “the” to read as follows:

~~{(iii)}~~ **(ii)** An analysis and discussion of the proposed project’s potential impact **on** affected population(s) within a six-mile radius of the project’s location and any measures that will be implemented to reduce or eliminate **any** increase **in** the potential for respiratory problems and illnesses, cancers, harm to fetal development, and other related diseases.

VOTE: The primary amendment passed without objection.

Amendment No. 4

MOTION: Assemblymember Bettine moved a primary amendment to Ordinance Serial No. 07-096, page 47 of the packet, (h)(iv), to strike the reference to “(iv)” and to replace it with “(iii)”, to read as follows:

~~{(iv)}~~ **(iii)** For purposes of this section, the following definitions apply.

VOTE: The primary amendment passed without objection.

Amendment No. 5

MOTION: Assemblymember Wells moved to adopt a primary amendment to Ordinance Serial No. 07-096, page 71 of the packet, MSB 8.32.070(A), to insert the word “operate” before the word “or” and to insert the word “operated” after word “constructed” to read as follows:

“(A) It is unlawful to construct, install, **operate,** or cause to be constructed, **operated,** or installed, any electrical generating or power plant facility within the borough, unless prior approval has been granted by the planning commission.”

Assemblymember Wells queried if power plants which fall below 50 megawatts would be affected.

Mr. Duffy clarified that it would not affect such facilities.

MOTION: Assemblymember Church moved a secondary amendment to the section title, to add “, or operation” after the word “installation” and before the words “of unapproved” to read as follows:

“8.32.070 CONSTRUCTION, INSTALLATION, OR OPERATION, OF UNAPPROVED ELECTRICAL GENERATING POWER PLANT”

VOTE: The secondary amendment passed without objection.

VOTE: The primary amendment, as amended, passed without objection.

Amendment No. 6

MOTION: Assemblymember Woods moved a primary amendment to Ordinance Serial No. 07-096, MSB 8.32.140, Public Notice, (A)(1), to strike the word “well” after the word “subject”, to read as follows:

“(1) the owners, as recorded in the records of the borough, of any land adjacent to or located within 5,280 feet of any portion of the subject [WELL] site of facility; such notice to be sent by the director at the applicant’s expense;”

VOTE: The primary amendment passed without objection.

Amendment No. 7

MOTION: Assemblymember Wells moved a primary amendment to amend Ordinance Serial No. 07-096, MSB 8.32.160(A), Permit Criteria, to insert the word “approve” after the word “to”, to strike the phrase “on compliance with” and to insert in its place the phrase “in consideration of” to read as follows:

“(A) The planning commission decision to approve, approve with conditions or deny an application for an electrical generating or power plant permit shall be made and determined based ~~{ON COMPLIANCE WITH}~~ in consideration of the following criteria:”

VOTE: The primary amendment passed without objection.

Amendment No. 8

MOTION: Assemblymember Church moved to amend Ordinance Serial No. 07-096, MSB 8.32.020(A), Jurisdiction of Chapter Provisions, to strike “50” and insert “20”, to read as follows:

“(A) This chapter shall apply to the location, construction, and operation of all electrical generation facilities or power plants producing 20 [50] megawatts or more on all lands within the Borough with the exception of those lands within the cities of Houston, Palmer, and Wasilla.”

Assemblymember Bettine:

- requested a staff report regarding this amendment; and
- noted that it stems from the Planning Commission.

Mr. Duffy clarified that there was rumor throughout the community of a possible power plant being built at 20 megawatts.

Assemblymember Church added that hydro plants run at 10 megawatts.

Assemblymember Woods spoke to not supporting the amendment.

Assemblymember Bettine requested clarification from the Clerk regarding voting down this amendment and later adding an amendment.

Ms. McGehee stated that the Assembly can amend the ordinance at any time via a code amendment.

Assemblymember Bettine queried the affects of a cost differential in permits between 20 megawatts and 50 megawatts.

Assemblymember Kvalheim queried if this was due to nonrenewable resources.

Mr. Duffy:

- clarified that 20 megawatts was requested due to a chosen site; and
- spoke regarding how the lower limit is due to the nature of the ordinance.

Assemblymember Church withdrew her primary amendment.

There was no objection noted to the withdrawal of the amendment.

Assemblymember Kluberton spoke regarding the public process for a smaller facility, such as a conditional use permit.

Amendment No. 9

MOTION: Assemblymember Kluberton moved a primary amendment to Ordinance Serial No. 07-096, MSB 8.32.240, Definitions, Pollution, to add the words, “or soil,” to read as follows:

“ ‘Pollution’ means the contamination or other degradation of the physical, chemical or biological properties of water, [~~OR~~] air, or soil, including change in temperature, taste, color, turbidity, or odor, or such discharge of any liquid gaseous, solid, radioactive, or other substance into water, air, or soil, as will or is likely to create a nuisance or render such water or air harmful, detrimental or injurious to public health, safety or welfare, or to domestic, commercial, industrial, agricultural, recreational or other beneficial uses, or to livestock, wild animals, birds, fish or other aquatic life.”

VOTE: The primary amendment passed without objection.

Amendment No. 10

MOTION: Assemblymember Bettine moved a primary amendment to Ordinance Serial No. 07-096, to strike the references to the State of Alaska Public Utilities Commission, and to insert in its place the reference of Regulatory Commission of Alaska.

VOTE: The primary amendment passed without objection.

Amendment No. 11

MOTION: Assemblymember Bettine moved a primary amendment to Ordinance Serial No. 07-096, MSB 8.32.020(A), Jurisdiction of Chapter Provisions, to strike the phrase “with the exception of those lands within the cities of Houston, Palmer, and Wasilla,” to read as follows:

“(A) This chapter shall apply to the location, construction, and operation of all electrical generation facilities or power plant producing 50 megawatts or more on all lands within the Borough. [WITH THE EXCEPTION OF THOSE LANDS WITHIN THE CITIES OF HOUSTON, PALMER, AND WASILLA.]

Assemblymember Bettine requested clarification on receiving documentation from the cities.

Mr. Duffy clarified that he had not received input from the cities.

Assemblymember Bettine:

- stated that it was brought forth due to input from the work session; and
- added that no part of the Borough should be exempt.

Assemblymember Church:

- clarified that this is not a neighborhood issue, but rather a regional issue; and

- opined that since the cities have not come forward, they are assuming the Assembly will take the lead on this.

VOTE: The primary amendment passed without objection.

Assemblymember Bettine queried if this process would initially go before the Planning Commission.

Mr. Duffy affirmed the query.

Assemblymember Wells:

- noted a similar concern;
- stated that citizens have called this a “land use issue;” and
- queried if the permits for coal bed methane stop at the Planning Commission.

Mr. Duffy:

- affirmed the query; and
- clarified the necessity for it to go before the Planning Commission.

Assemblymember Bettine queried how to get the permit applications before the Assembly.

Mr. Duffy:

- stated that the Assembly could change the current code via an ordinance; and
- noted the political issues involved.

Mr. Spiropolous:

- stated that the Assembly could change the code as to the authority of the Planning Commission;
- spoke regarding how the Assembly would then be sitting as a quasi-judicial board which meant their decision may be appealed to the Board of Adjustment and Appeals; and
- clarified that it then presents a difficult legal position.

Assemblymember Wells:

- stated that he supports the ordinance, but not in the form presented tonight;
- opined that the process was done backwards;
- noted his belief that it should be remanded back to the Planning Commission for further assessment;
- stated that the Assembly took a fair amount of time for the coal bed methane ordinance and he believed that they should do so for this as well;
- spoke regarding input received from the federal government and the Alaska State Department of Environmental Conservation;
- spoke regarding current studies on the power needs for the entire region;
- spoke to page 28 of 71, socioeconomic factors, (E) of the section, which states that the applicant will need to report how the response times will increase for fire and EMS;
- noted that the next section states that the applicant must report, by grade level, how many more students will be in schools during constructional and operational phases;

- opined that the Borough is unable to come up with such reports, so it should not be required of the applicant; and
- stated that if given more time, the ordinance would produce a better product.

Assemblymember Kvalheim:

- stated that she would be voting for the ordinance;
- opined that the Borough is overdue for a power plant ordinance; and
- spoke regarding being proactive versus reactive.

Assemblymember Church:

- noted her support of the ordinance;
- stated that the Borough took the lead on the coal bed methane project, and the Borough should do so again with this ordinance;
- gave her support of Assemblymember Kvalheim's statement regarding being proactive not reactive; and
- spoke regarding how industries need to know what they need to do from the beginning.

Assemblymember Woods:

- noted that she reviewed the binders provided by MEA;
- clarified that all other areas reserved the right to do land use permits and land zoning;
- noted that she had been asked about the intention of the ordinance;
- stated that her belief is that it is to protect the water, the air quality, and the impact on the neighborhoods;
- opined her hope that this ordinance will ensure that the air remains clean and the water remains unaffected;
- added that this ordinance is a good start; and
- stated that she did have some questions with the ordinance, but she is willing to make adjustments in the future.

Assemblymember Kluberton:

- stated that Assemblymember Wells had good points;
- spoke regarding having support from the public for this ordinance;
- opined that the Borough owes it to the environmental quality and the neighborhoods as power plants come into operation;
- stated that the Assembly should be proactive by establishing this ordinance;
- noted that the Assembly can address the provisions later;
- added that they have shown a good record of doing that; and
- noted his support of the ordinance.

Assemblymember Bettine:

- stated that she is open to amendments from the industry in the future regarding concerns with economic feasibility;
- emphasized that the Regulatory Commission does not react until after the power plant is built;
- opined that it gave her great concern for the Borough's electrical bill; and
- noted that she is willing to support it with the few amendments thus far made.

VOTE: The main motion passed with Assemblymember Wells in opposition.

VII. AUDIENCE PARTICIPATION

The following persons spoke regarding their support of Ordinance Serial No. 07-096 and Resolution Serial No. 07-070: Mr. Chuck Henderson, Ms. Kathy Wells, Mr. Gilbert Lucero, Mr. Darin Markwardt, Mr. Steve Miller, and Ms. Rita Cambell.

The following persons spoke regarding their belief of inaccuracies in testimony given during the work session: Mr. Steve Denton, Ms. Bartley Coiley of Usibelli Coal Mine, and Ms. Lorali Carter representing MEA.

The following person spoke regarding their lack of support for Ordinance Serial No. 07-096 and Resolution Serial No. 07-070: Mr. Stu Graham, Mr. Dave Ruds, and Ms. Lucille Frey.

The following person spoke in a general nature regarding Ordinance Serial No. 07-096 and accompanying Resolution Serial No. 07-070: Representative Gatto.

MOTION: Assemblymember Kvalheim moved for immediate reconsideration of Ordinance Serial No. 07-096 and Resolution Serial No. 07-070.

Assemblymember Bettine:

- requested that Mr. Spiropolous speak regarding the affects of the amendment made regarding the cities; and
- noted that there may be another amendment needed.

Mr. Spiropolous:

- pointed out that Assemblymember Bettine's earlier amendment struck the words, "with the exception of those lands within the cities of Houston, Palmer, and Wasilla;"
- informed the Assembly, that by ordinance, the cities of Houston, Palmer, and Wasilla had been delegated the powers of planning, which is allowed by state law;
- added that state law allows the Assembly to revoke those powers;
- noted that an amendment is needed under the intent section of the ordinance; and
- spoke to the language of the necessary amendment.

(The regular meeting recessed at 7:38 p.m. and reconvened at 7:48 p.m.)

Ms. McGehee explained the process of reconsideration.

VOTE: The motion for reconsideration passed without objection.

MOTION: Assemblymember Bettine moved a primary amendment to Ordinance Serial No. 07-096, MSB 8.32.010, Intent, to insert a new subsection (B) to read as follows:

“(B) Not withstanding any Borough ordinances to the contrary, the Borough Assembly has decided that the delegation of planning powers or functions to the cities has not, and does not, prohibit the enactment of this ordinance on an areawide bases. To the extent necessary, the delegation of any power or function to the cities as it pertains to this ordinance is revoked. This is not intended to affect the remainder of any powers or functions delegated to the cities.”

Assemblymember Kvalheim:

- stated her support of the amendment; and
- requested that MEA bring back their comments and concerns.

VOTE: The primary amendment passed without objection.

MOTION: Assemblymember Kluberton called for the question (to stop debate).

VOTE: The motion to stop debate passed without objection.

VOTE: The main motion passed as amended with Assemblymember Wells in opposition.

VIII. MAYOR, ASSEMBLY, AND STAFF COMMENTS

Ms. McGehee:

- clarified the lawsuit against her; and
- noted that copies of the lawsuit were provided to the Assembly.

Assemblymember Kluberton extended his thanks to the staff for their work on this ordinance and on the presentation.

Assemblymember Kvalheim:

- extended her thanks to the staff for their work; and
- expressed her concern on MEA’s lack of communication with the Assembly.

Assemblymember Church:

- echoed Assemblymember Kvalheim’s concerns;
- thanked the staff for their work on this ordinance; and
- proposed that everyone needs to start working together.

Assemblymember Wells:

- echoed the concerns of his fellow Assembly members regarding the lack of communication between the Borough and the public bodies; and
- reiterated that he was not in opposition to the ordinance, he just thought it needed additional work.

Assemblymember Bettine:

- thanked the staff for producing the work session;

- spoke regarding the decision-making process; and
- commented that she is considering proposing a request that administration assemble a work session with staff, the Assembly, and the MEA management team.

Assemblymember Woods:

- thanked everyone who had contacted her; and
- extended her appreciation that the residents of the Borough were involved in the process.

Mayor Menard:

- thanked the Assembly for their work;
- extended his thanks to the public for their involvement;
- noted that there is a future opportunity for change in the ordinance if needed;
- requested better communication with MEA;
- suggested a work session to clarify matters; and
- noted that everyone wants an end result which is best for the residents and for the Borough as a whole.

IX. ADJOURNMENT

The regular meeting adjourned at 8:05 p.m.

/ S /

LYNNE WOODS, Deputy Borough Mayor

ATTEST:

/ S /

MICHELLE M. MCGEHEE, CMC, Borough Clerk

Minutes approved: 09/18/07