
Kenai Peninsula Borough

Special Assembly Meeting Summary

July 9, 2002 - 9:00 a.m.

Special Meeting - Soldotna, Alaska

CALL TO ORDER

A Special Meeting of the Kenai Peninsula Borough Assembly was held on July 9, 2002, in the Assembly Chambers, Borough Administration Building, Soldotna, Alaska. President Navarre called the meeting to order at 9:05 a.m.

PLEDGE OF ALLEGIANCE

The Pledge of Allegiance was recited.

There were present:

Tim Navarre, Presiding
Paul Fischer
Ron Long
Milli Martin

Grace Merkes
Bill Popp
Pete Sprague
Gary Superman

comprising a quorum of the assembly.

Absent:

Chris Moss (excused)

Also in attendance were:

Dale Bagley, Borough Mayor
Kevin Koch, Attorney for the Assembly
Linda Murphy, Borough Clerk
Sherry Biggs, Deputy Borough Clerk

APPROVAL OF AGENDA

(Tape 1, 60)

MOTION TO APPROVE AGENDA:

Popp moved for the approval of the agenda.

AGENDA APPROVED AS PRESENTED:

Unanimous without objection.

APPEAL HEARING

**Appeal of Mayor's Decision to Rebid the Stariski Timber Sale as filed by
ArcTech Services, Inc.**

PUBLIC COMMENTS *(Interested Parties)*

(Tape 1, 75)

Bill Choquette, attorney for Gates Construction, Inc., felt that nothing had changed from the last hearing and disagreed with Mr. Evans' statement that due process was not accorded his client.

[Clerk's Note: Mr. Choquette participated via teleconference from Anchorage.]

Susan Caswell, 48049 Igloo, Soldotna, AK, spoke in favor of awarding the Stariski Timber Sale to ArcTech Services, Inc.

Gary Effenbeck, 362 Beluga Street, Soldotna, AK, stated that the sealed bid process had been followed correctly and the highest bidder, ArcTech Services, Inc., should have been awarded the sale.

PRESENTATION BY APPELLANT

(Tape 1, 420)

Charles Evans, attorney for ArcTech Services, Inc., read aloud a letter from Husky Lumber, Inc., in support of awarding the Stariski Timber Sale to ArcTech Services.

Mr. Evans focused on the critical issues as seen by ArcTech Services. First, this was a sale of real property (timber) and rebidding the sale would undermine the integrity of the competitive bid process. Mr. Evans referred to a similar case, *Kodiak Island Borough vs Large*, which was upheld by the Alaska Supreme Court.

Mr. Evans argued this was a sale and not a procurement of supplies, services or construction. Mr. Evans said that Title 17 (Borough Lands) and not Chapter 5.28 (Procurement) of the Kenai Peninsula Borough Code of Ordinances applied to this case.

PRESENTATION BY APPELLEE

(Tape 1, 1570)

Colette Thompson, Borough attorney, represented the Kenai Peninsula Borough administration. Ms. Thompson stated the borough's solicitation reserved the right to reject any and all bids.

Ms. Thompson stated that *Kodiak Island Borough vs Large* did not apply to this appeal. The Kenai Peninsula Borough was initiating the steps for entering into a contract with ArcTech Services, but a signed contract was never in place.

Ms. Thompson stated under KPB 5.28.020 (P) "supplies" was "any tangible personal property" belonging to the borough and could be disposed of as surplus property through KPB 5.28.

QUESTIONS BY ASSEMBLY

(Tape 1, 2990)

Assembly Member Merkes asked for the definition of "tangible" property as it related to timber. Mr. Evans said it represented physical property and timber would be tangible property. Ms. Thompson concurred with Mr. Evans' definition.

Assembly Member Fischer asked if Mr. Evans had interpreted the Mayor's Authorization to Proceed as a verbal contract. Mr. Evans said the Authorization to Proceed memorandum constituted a written contract.

Assembly Member Fischer asked if the Mayor was bound to rebid the timber sale, based on the recommendation of the assembly. Mr. Koch stated that was a statement or recommendation from the assembly and could be deemed a violation of the Mayor's duties if it were not followed.

Assembly Member Superman asked at what point during a bid process the borough would lose the right to reject bids. Ms. Thompson said the borough would retain all rights of rejection up to the Mayor's signature on an actual contract.

Assembly Member Sprague asked about the various methods the timber bid was published. Mr. Evans said it was published three different ways: on the internet, in the newspapers, and in the actual bid documents. Mr. Evans noted the confusion with the two bid delivery locations.

Mr. Sprague asked Ms. Thompson to list the dates of submittal for the various appeals. Ms. Thompson explained the Mayor issued a letter to Gates Construction denying its initial appeal. Tom Burgess, the former KPB Purchasing Officer, issued an extension to Gates Construction, Inc. to file an appeal of the Mayor's decision.

Assembly Member Merkes asked about the rejection of all bids as Mr. Evans submitted on Page 10 of the record. Mr. Evans said this was a regulation from the Alaska Administrative Code.

Assembly Member Fischer asked if an appeal could be amended at a later date, beyond the borough's three day limit to file. Mr. Evans replied in the affirmative. Mr. Evans questioned the authority of the former purchasing officer in extending the filing period. Ms. Thompson said the purchasing officer could waive minor irregularities.

President Navarre asked how the Mayor's office delivered the letter to Gates Construction. Ms. Thompson noted the Mayor did not attach the information explaining the appeal process to his letter rejecting the appeal.

Assembly Member Sprague asked about the "minor irregularities" as it applied to the three day time extension. Ms. Thompson stated the extension did not harm either party. Mr. Evans said Gates Construction should have filed the appeal to the assembly on or before April 5th and the three day extension was issued in error.

Assembly Member Long asked about the waiver of irregularities, except for timeliness and manual signature requirements. Ms. Thompson said if waivers caused a substantial competitive disadvantage it would not be allowed. Ms. Thompson said nothing was done to prejudice ArcTech Services by allowing the time extension to Gates Construction to file an appeal to the assembly.

President Navarre asked if ArcTech Services, Inc. was bound by their bid, without their signature on a written contract. Mr. Evans said yes, because the borough held ArcTech's \$18,000 bid bond and the borough could have sued for additional damages. Ms. Thompson noted on Page 63 of the

record that a bid bond of 10 percent of the total estimated value of the timber sale was required to be submitted with each sealed bid.

ASSEMBLY DELIBERATIONS AND DECISION

(Tape 2, 1300)

MOTION: Merkes moved to deliberate in executive session due to the possible financial impact upon the borough.

MOTION PASSED: Unanimous without objection.

[Clerk's Note: The assembly recessed at 11:40 a.m. and reconvened at 1:07 p.m.]

(Tape 2, 1345)

MOTION: Popp moved to reconvene from executive session.

MOTION PASSED: Unanimous without objection.

(Tape 2, 1360)

MOTION: Popp moved to recess the special assembly meeting until 10:00 a.m. on August 6, 2002, in the Assembly Chambers, Soldotna, AK.

MOTION PASSED: Unanimous without objection.

President Navarre stated it was the intent of the assembly to resume its executive session at 10:00 a.m. and to issue a decision by Noon on August 6, 2002.

ADJOURNMENT

(Tape 2, 1375)

With no further business to come before the assembly, President Navarre adjourned the special meeting at 1:10 p.m.

I certify the above represents an accurate summary of the special assembly meeting of July 9, 2002.

Linda S. Murphy, Borough Clerk