CALL TO ORDER

A Regular Meeting of the Kenai Peninsula Borough Assembly was held on February 3, 2009, in the Borough Assembly Chambers, Soldotna, Alaska. President Martin called the meeting to order at 7:00 p.m.

PLEDGE OF ALLEGIANCE AND INVOCATION

The Pledge of Allegiance was recited followed by the invocation given by Levi Parish from the First Baptist Church of Soldotna.

There were present:

Milli Martin, Presiding
Gary Knopp
Ron Long
Charlie Pierce
Hal Smalley
Bill Smith
Pete Sprague
Gary Superman

Absent:

Paul Fischer (excused)

Also in attendance were:

Colette Thompson, Borough Attorney
Johni Blankenship, Borough Clerk
Shellie Morgan, Deputy Clerk

COMMITTEE REPORTS

Assembly President Martin said the Assembly held a Utility Special Assessment District (USAD) work session and reviewed the history of the USAD program, also in attendance were representatives from Homer Electric Association, General Communications Inc., Enstar and Alaska Communication Systems.

Assembly Member Smith said the Finance Committee met and discussed its agenda items.

Assembly Member Knopp said the Lands Committee met and discussed its agenda items.
Assembly Vice President Sprague said the Policies and Procedures Committee met and discussed its agenda items.

Assembly Member Long said the Legislative Committee met and discussed its agenda items and the Assembly Members who attended the AML Legislative Conference in Juneau gave their reports.

Assembly President Martin said the Committee of the Whole met and discussed its agenda items.

APPROVAL OF THE AGENDA AND CONSENT AGENDA

MOTION TO APPROVE AGENDA: Sprague moved for the approval of the agenda and consent agenda.

President Martin called for additions, corrections or deletions to the agenda or consent agenda.

The following item was withdrawn by sponsor.

- Resolution 2009-015: Requesting the Administration to Provide Monthly Reports Regarding the Status of the Spruce Bark Beetle Mitigation Program (Martin) (Referred to Policies and Procedures Committee)

The following items were removed from the consent agenda.

- Resolution 2009-013: Requiring the Assembly to Approve the Creation of New Regular Positions to Perform Duties that have been Performed for 18 or More Consecutive Months (Mayor) (Referred to Policies and Procedures Committee)

- Resolution 2009-014: Authorizing Community Revenue Sharing Program Expenditures for Kalifornsky and Tyonek Communities (Mayor) (Referred to Finance Committee)

- Confirmation of New Department Head, Bonita Jane Miller, General Services Director (Referred to Policies and Procedures Committee)

The following item was added to the consent agenda.

- Request for Formal Assembly Objection to the Transfer of the following Liquor License Due to Unpaid Taxes (Referred to Finance Committee)

Amy Bowen d.b.a One Stop Liquors Kenai Peninsula Borough

Copies having been made available to the public, Borough Clerk Johni Blankenship noted by title only the resolutions and ordinances on the consent agenda.

- January 20, 2009 Regular Assembly Meeting Minutes
• Resolution 2009-011: Amending the Assembly Manual to Clarify Assembly Committees Procedures and to Conform to Provisions Which Have Been Amended in the Borough Code (Martin) (Referred to Policies and Procedures Committee)

[Clerk’s Note: Amendments were made to Resolution 2009-011 as follows: Section 4. (VI)(A)(1) to read, “Any travel to and from Borough Assembly meetings, or committee members’ travel to meetings of standing or special committees, or borough sponsored public hearings will be reimbursed [AT THE RATE OF 45 CENTS PER MILE] based on the current Internal Revenue Service mileage rate. Assembly members may submit for reimbursement on the expense sheets provided by the Clerk’s Office at assembly meetings. Travel within the borough at the direction of the assembly or the president will also reimburse at [45 CENTS PER MILE] the current Internal Revenue Service mileage rate.”

• Resolution 2009-012: Designating the Newspaper and Authorizing Award of a Contract for the Publication of the 2009 Property Tax Foreclosure List, and the Delinquent Personal Property Tax and Delinquent Real Property Lease Lists for the Tax Year 2008 (Mayor) (Referred to Finance Committee)

• Resolution 2009-016: Supporting the Submission of Projects for the 2009 Economic Recovery Package (Mayor) (Referred to Legislative Committee)

[Clerk’s Note: An amendment was made to Resolution 2009-016 as follows: Renumber the existing Section 2. as Section 3., and insert a new Section 2. to read, “That a copy of this resolution be forwarded to Senators Lisa Murkowski and Mark Begich, Congressman Don Young, and Governor Sarah Palin’s Washington DC office.”

• Ordinance 2009-05: Amending KPB Chapter 14.31, Special Assessments–Road Improvements (Policies and Procedures Committee) (Shortened Hearing on 02/17/09) (Referred to Policies and Procedures Committee)

[Clerk’s Note: Previously numbered Ordinance 2008-35 which was defeated.]

• Ordinance 2009-06: Amending KPB 22.40.080 to Eliminate Reports of Commissions and Councils from the Assembly’s Regular Meeting Agenda (Martin) (Hearing on 03/03/09) (Referred to Policies and Procedures Committee)

• Ordinance 2009-07: Confirming the Assessment Roll for the Moose Range Meadows South Subdivision Utility Special Assessment District and Establishing the Method for Terminating Assessments and Making Refunds to Property Owners (Mayor) (Hearing on 03/03/09) (Referred to Finance Committee)

[Clerk’s Note: Assembly Member Pierce declared a conflict with Ordinance 2009-07 as he was an Enstar Natural Gas Manager. President Martin ruled a conflict did exist and Assembly Member Pierce abstained from voting on the introduction of Ordinance 2009-07.]
• Ordinance 2009-08: Establishing the Solid Waste Department (Mayor) (Hearing on 03/03/09) (Referred to Policies and Procedures Committee)

• Ordinance 2009-09: Creating a Flood Hazard District, Outside the Flood Insurance Rate Map Area, Within the Seward-Bear Creek Flood Service Area to Include the 1986, 1995, and 2006 KPB GIS Mapped Flood Data Areas (Mayor) (Hearings on 02/17/09 and 03/03/09) (Referred to Lands Committee)

• Ordinance 2009-10: Authorizing a Negotiated Sale and Exchange of Certain Lands in the City of Homer with Leroy and Doris Cabana at Fair Market Value (Mayor) (Hearing on 03/03/09) (Referred to Lands Committee)

• Amending the 2009 Assembly Meeting Schedule (Referred to Policies and Procedures Committee)

• Request for Formal Assembly Objection to the Transfer of the following Liquor License Due to Unpaid Taxes (Referred to Finance Committee)

Amy Bowen d.b.a One Stop Liquors Kenai Peninsula Borough

President Martin called for public comment with none being offered.

AGENDA APPROVED AS AMENDED: Without objection.

COMMENDING RESOLUTIONS AND PROCLAMATIONS - None.

PRESENTATIONS WITH PRIOR NOTICE - None.

PUBLIC COMMENTS ON ITEMS NOT APPEARING ON THE AGENDA

President Martin called for public comment.

The following person addressed the Assembly regarding the Utility Special Assessment District program:

Paul Zimmerman, 23885 Dogwood, Kasilof

There being no one else who wished to speak, the public comment period was closed.

REPORT’S OF COMMISSIONS AND COUNCILS - None.

MAYOR’S REPORT

1. Agreements and Contracts
a. Approval of Contract with BJ Coopes to provide "Pediatric Education for Prehospital Professionals" Instruction for CES

b. Approval of Request to Waive Formal Bidding Procedures for Design and Layout Services for Kenai River Center

c. Approval of Contract with Change Order to Build Nikolaevsk Fire Sub-Station, Increase of $38,261.41

d. Approval of Contract with Galaxy Graphics to Provide Design and Layout Services for Planning and Kenai River Center

e. Approval of Request for Waiver of Formal Bidding Procedures for Ninilchik Solid Waste Transfer Site Temporary Bulkhead

f. Approval of Contract with Arno Construction, Inc. to Provide Temporary Concrete Bulkhead in Ninilchik for Capital Projects

g. Authorization to Award Contract for the Management of the Beluga Gravel Site

h. Approval of Sole Source Request - Annual Maintenance for Unisys Software

i. Approval of Sole Source Request - Annual Microsoft Office Licensing

2. Other

a. Project Reports - December 2008

b. Mayor's Weekly Reports 12 and 13

ITEMS NOT COMPLETED FROM PRIOR AGENDA - None.

PUBLIC HEARING ON ORDINANCES

Ordinance 2008-19-39: Authorizing the Acquisition of Lot 12, K-B Subdivision Part 4, KRD 85-34, for Expansion of the Poppy Lane Borough Maintenance Yard and Appropriating Funds for the Acquisition (Mayor) (Referred to Finance Committee)


President Martin called for public comment with none being offered.

MOTION TO AMEND: Smith moved to amend Ordinance 2008-19-39 as follows:
The sixth whereas to read, “the KPB Planning Commission at its regularly scheduled meeting of January 26, 2009 recommended enactment by unanimous consent.”

MOTION TO AMEND PASSED: Without objection.

VOTE ON MOTION TO ENACT AS AMENDED:
Yes: Knopp, Long, Pierce, Smalley, Smith, Sprague, Superman, Martin
No: None
Absent: Fischer
MOTION TO ENACT AS AMENDED PASSED: 8 Yes, 0 No, 1 Absent

Ordinance 2008-34: Authorizing the Repeal of an Educational Use Deed Restriction with Reversionary Rights on a Parcel of Land in the City of Seward that was Deeded to the State of Alaska by the Kenai Peninsula Borough (Mayor) (Referred to Lands Committee)

MOTION: Knopp moved to enact Ordinance 2008-34.

President Martin called for public comment with none being offered.

MOTION TO AMEND: Knopp moved to amend Ordinance 2008-34 as follows:

The eighth whereas to read, “at its regularly scheduled meeting of [December 15, 2008] January 26, 2009 the Kenai Peninsula Borough Planning Commission recommended enactment by unanimous consent;”

MOTION TO AMEND PASSED: Without objection.

VOTE ON MOTION TO ENACT AS AMENDED:
Yes: Knopp, Long, Pierce, Smalley, Smith, Sprague, Superman, Martin
No: None
Absent: Fischer
MOTION TO ENACT AS AMENDED PASSED: 8 Yes, 0 No, 1 Absent

Ordinance 2009-01: Amending KPB 5.12.050 and 5.12.055 Regarding Board of Equalization Procedures and Eliminating the Sunset Date of the Appointed Board of Equalization (Mayor) (Referred to Policies and Procedures Committee)
MOTION: Sprague moved to enact Ordinance 2009-01.

President Martin called for public comment with none being offered.

VOTE ON MOTION TO ENACT:
Yes: Knopp, Long, Pierce, Smalley, Smith, Sprague, Superman, Martin
No: None
Absent: Fischer
MOTION TO ENACT PASSED: 8 Yes, 0 No, 1 Absent

Ordinance 2009-02: Authorizing a Five-Year Extension of the Option to Lease Ladd Landing Between the Kenai Peninsula Borough and PacRim Coal, LP (Mayor) (Second Hearing on 02/17/09) (Referred to Lands Committee)

MOTION: Knopp moved to enact Ordinance 2009-02.

President Martin called for public comment.

The following people spoke in opposition to Ordinance 2009-02:

Marge Hays, Box 2876, Soldotna
Kevin Barksdale, PO Box 244894, Anchorage
Hugh Hays, Box 3626, Soldotna
Gerald Brookman, 715 Muir Avenue, Kenai
Bob Shavelson, PO Box 3269, Homer, Executive Director of Cook Inlet Keeper
Paul Zimmerman, 23855 Dogwood, Kasilof

There being no one else who wished to speak, the public comment period was closed.

MOTION TO POSTPONE: Sprague moved to postpone Ordinance 2009-02 until February 17, 2009.

VOTE ON MOTION TO POSTPONE:
Yes: Knopp, Long, Pierce, Smalley, Smith, Sprague, Superman, Martin
No: None
Absent: Fischer
MOTION TO POSTPONE PASSED: 8 Yes, 0 No, 1 Absent

Ordinance 2009-03: Amending KPB Chapter 5.35, Special Assessments—Public Utilities, to Redefine Benefitted Parcels to Include Those Whose Owners Approve the Assessment District and Intend to Connect to the Main Utility Line (Superman, Knopp) (Referred to Policies and Procedures Committee)
[Clerk’s Note: Assembly Member Pierce declared a conflict with Ordinance 2009-03 as he was an Enstar Natural Gas Manager. President Martin ruled a conflict did exist and Assembly Member Pierce abstained from discussion and voting on the postponement of Ordinance 2009-03.]

MOTION: Sprague moved to enact Ordinance 2009-03.

President Martin called for public comment.

The following person spoke in opposition to Ordinance 2009-03:

**Paul Zimmerman**, 23855 Dogwood, Kasilof

There being no one else who wished to speak, the public comment period was closed.

MOTION TO POSTPONE: Superman moved to postpone Ordinance 2009-03 until March 3, 2009.

VOTE ON MOTION TO POSTPONE:
Yes: Knopp, Long, Smalley, Smith, Sprague, Superman, Martin
No: None
Absent: Fischer
Abstained: Pierce
MOTION TO POSTPONE PASSED: 7 Yes, 0 No, 1 Absent, 1 Abstention

UNFINISHED BUSINESS - None.

NEW BUSINESS

Resolution 2009-013: Requiring the Assembly to Approve the Creation of New Regular Positions to Perform Duties that have been Performed for 18 or More Consecutive Months (Mayor) (Referred to Policies and Procedures Committee)

MOTION: Sprague moved to adopt Resolution 2009-013.

President Martin called for public comment with none being offered.

MOTION TO AMEND: Sprague moved to amend Resolution 2009-013 as follows:

Title to read, “A Resolution [REQUIRING THE ASSEMBLY TO APPROVE] approving the creation of new regular positions to perform duties that have been performed for 18 or more consecutive months”
MOTION TO AMEND PASSED: Without objection.

MOTION TO AMEND:

Sprague moved to amend Resolution 2009-013 as follows:


MOTION TO AMEND PASSED: Without objection.

President Martin passed the gavel to Vice President Sprague.

MOTION TO AMEND:

Martin moved to amend Resolution 2009-013 as follows:

Insert a new Section 2 to read, “The positions authorized to be created by this resolution shall terminate on or before the date that the Spruce Bark Beetle Program ends.”

MOTION TO AMEND PASSED: Without objection.

Vice President Sprague returned the gavel to President Martin.

VOTE ON MOTION TO ADOPT AS AMENDED:

Yes: Knopp, Long, Pierce, Smalley, Smith, Sprague, Superman, Martin
No: None
Absent: Fischer
MOTION TO ADOPT AS AMENDED PASSED: 8 Yes, 0 No, 1 Absent

Resolution 2009-014: Authorizing Community Revenue Sharing Program Expenditures for Kalifornsky and Tyonek Communities (Mayor) (Referred to Finance Committee)

MOTION:

Smith moved to adopt Resolution 2009-014.

President Martin called for public comment with none being offered.
MOTION TO AMEND: Smith moved to amend Resolution 2009-014 as follows:

The eighth whereas clause to read, “the Central Area Rural Transit System, Inc.[,] and the Cook Inlet Aquaculture Association, both [a] non profit corporations representing the community of Kalifornsky, and the Native Village of Tyonek have submitted grant requests to fund projects in their communities; and”

MOTION TO AMEND PASSED: Without objection.

MOTION TO AMEND: Smith moved to amend Resolution 2009-014 as follows:

Section 1. Table, Kalifornsky section to include, “Cook Inlet Aquaculture Association | Community Room Improvements | $6,535."

MOTION TO AMEND PASSED: Without objection.

VOTE ON MOTION TO ADOPT AS AMENDED:
Yes: Knopp, Long, Pierce, Smalley, Smith, Sprague, Superman, Martin
No: None
Absent: Fischer
MOTION TO ADOPT AS AMENDED PASSED: 8 Yes, 0 No, 1 Absent (08:45:14)

Confirmation of New Department Head, Bonita Jane Miller, General Services Director (Referred to Policies and Procedures Committee)

MOTION: Sprague moved to confirm the appointment of Bonita Jane Miller as General Services Director.

President Martin called for public comment with none being offered.

Vice President Sprague, and Assembly Members Long and Knopp spoke in opposition to the confirmation of Bonita Jane Miller as General Service Director.

President Martin passed the gavel to Vice President Sprague, and spoke in opposition to the confirmation of Bonita Jane Miller as General Service Director. Vice President Sprague returned the gavel to President Martin.
Borough Attorney Colette Thompson voiced her concern as to if the Assembly had the authority to deny confirmation according to KPB 2.20.030.

Vice President Sprague questioned the validity of KPB 2.20.030.

Borough Attorney Colette Thompson stated there was a presumption of validity, there was nothing that said the Ordinance was invalid, it was just that the language in the Ordinance referred to Ordinances and Statutes verses job descriptions.

MOTION TO POSTPONE: Pierce moved to postpone the appointment of Bonita Jane Miller as General Services Director until February 17, 2009.

VOTE ON MOTION TO POSTPONE:
Yes: Knopp, Long, Pierce, Smalley, Smith, Sprague, Superman, Martin
No: None
Absent: Fischer
MOTION TO POSTPONE PASSED: 8 Yes, 0 No, 1 Absent

PUBLIC COMMENTS AND PUBLIC PRESENTATIONS

President Martin called for public comment.

Fred Sturman, 136 Riverview Avenue, Soldotna, addressed the Assembly regarding the current oil prices and governments responsibilities.

Nelma Cole, 157 S. Sterling Street, Soldotna, addressed the Assembly regarding the appointment of Bonita Miller.

Paul Zimmerman, 23855 Dogwood Avenue, Kasilof, addressed the Assembly regarding the USAD program.

There being no one else who wished to speak, the public comment period was closed.

ASSEMBLY MEETING AND HEARING ANNOUNCEMENTS

The next meeting of the Kenai Peninsula Borough Assembly was scheduled for February 17, 2009, at 7:00 p.m. in the Borough Assembly Chambers, Soldotna, Alaska.

ASSEMBLY COMMENTS

Assembly Member Superman stated that he was not happy with the new Administration and the way so much talent was being removed from the Borough, department heads with years of experience suddenly gone with no real explanation as to why. He said it was the prerogative of the new Administration; however, it was still a hard lesson to learn. He then said that he hoped to see an end to the continual flip flopping on the Administration’s decisions, and noted an example; notification
that the Spruce Bark Beetle program was essentially going to be downsized; certain positions being eliminated; and the end of the program was near, and then suddenly being told differently with no explanation of what had occurred. He said he hoped that the new Administration would think things through more thoroughly before taking action. He said that it was apparent that the Alliance for Concerned Taxpayers (ACT) was happy with the new Administration, but there were a lot of people who were not.

Assembly Member Smalley wished everyone a nice evening.

Assembly Member Pierce said at one time he had been told that being a Member of the Borough Assembly was fun, he said hindsight was 20/20 and it was easy to criticize someone after the fact. He said it was his opinion that most people, when making decisions were making them with the best intentions, and that being the Borough Mayor could not be fun all the time. He said that change and decisions that cause change were difficult, when you were dealing with people, and their lives, those lives belong to the people who were paying the bills, and they have spoken, they have asked for change, and more efficiency.

Assembly Member Smith responded to comments made regarding fuel oil dealers being on an unequal footing. He said that the fuel oil dealers could also run underground fuel lines and have distribution systems. He said if the dealers chose to develop and distribute their fuel through a pipeline they could also use the USAD process. He said he did not agree with ending the Spruce Bark Beetle program, and he thanked the Mayor for looking at the program more closely and making adjustments. He then stated, regarding confirmations, even the President of the United States had to have his major appointments confirmed.

Assembly Member Long said he appreciated the opportunity to travel to the Alaska Municipal League (AML) Conference in Juneau, and stated it was always a pleasure to be a part of a group that was pulling together and working toward the same goal. He said it was important to keep the information stream flowing more often this year, because of the way the economic stimulus package was changing so rapidly. He said he did appreciate the comments made regarding tough decision, but noted it was even tougher, yet, to go back and reassess a decision and change the decisions. He wanted to make absolutely clear that none of the comments he made regarding the confirmation of the new General Services Director, were personal in any way to anyone, they were merely a reflection of what he thought were the rules and guidelines that had been operated under in the past. Mr. Long also requested a teleconference site in Seward for the February 17, 2009 Assembly meeting, for public testimony regarding Ordinance 2009-09.

Assembly Member Sprague said decisions made by the Assembly and the Mayor are done with the best interest of the Borough, the decisions were not always easy and not always popular. He said no one made any of them run for office, it was done by choice, and was ultimately a very satisfying position. He then noted that long time homesteader Per E. Osmar passed away on January 30, 2009, he said Mr. Osmar gave him his first job in Alaska and offered his condolences to Mr. Osmar’s family.
Assembly President Martin reminded everyone that the Joint Budget Work Session with the School Board was scheduled for February 17, 2009 at 10:00 a.m. She then extended her appreciation to the Mayor for being able to attend and visit with the Governor while in Juneau. She also noted there were now three Kenai Peninsula Borough Assembly Members serving on the AML Board. Ms. Martin also requested a teleconference site be set up in Homer for the February 17, 2009 Assembly meeting, for public testimony regarding Ordinance 2009-02.

ADJOURNMENT

With no further business to come before the assembly, President Martin adjourned the meeting at 9:51 p.m.

I certify the above represents accurate minutes of the Kenai Peninsula Borough Assembly meeting of February 3, 2009.

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Johni Blankenship, Borough Clerk

Approved by Assembly:_______________________________