

MUNICIPALITY OF ANCHORAGE
ANCHORAGE ASSEMBLY

Minutes for Regular Meeting of September 28, 1999

1. CALL TO ORDER:

The meeting was convened at 4:00 p.m. by Assembly Chairman George Wuerch in the Assembly Chambers, 3600 Denali, Anchorage, Alaska.

2. ROLL CALL:

Present: Dan Kendall (4:03 p.m.), Dan Sullivan (4:03 p.m.), Pat Abney, Allan Tesche, Melinda Taylor, George Wuerch, Kevin Meyer (4:10 p.m.), Anna Fairclough, Dick Tremaine, Fay Von Gemmingen, Cheryl Clementson.

Absent: None.

3. PLEDGE OF ALLEGIANCE:

Ms. Von Gemmingen led the pledge.

Ms. Taylor moved, to change the orders of the day to consider item 13, Board of Adjustment/Assembly Appeals.
seconded by Ms. Abney,
and it passed without objection,

A. Appeal 99-041 - Conditional Use for a Utility Facility in the PLI District (Tract B, Abbott Road Subdivision), Clerk's Office.

Mr. Tremaine pointed out that in reading the brief filed by the attorney for the appellant, there were two issues. One questioned if the appellant had due process. The second one questioned if there were substantial errors made in terms of buffering. He indicated that the appellant stated a transition space of 65 feet would not materially obscure a tank. He said that it was stated in AMC 21.45.200.E that a transition space shall accomplish one or more of the following objectives. Mr. Tremaine read D(1), "Applicability," which said the applicable code may apply the standards in subsection E(2). He pointed out that "shall" was obligatory, but "may" was permissive, not mandatory.

Mr. Tremaine referenced E(4), standards for peripheral buffer space containing only vegetation. He pointed out the appeal did not talk about any spaces, fences, or obstructions to views in the 65-foot buffer space other than vegetation, so he assumed they were talking about a buffer space only containing vegetation. He indicated that in the table under C, buffer space schedule, single family residential to commercial industrial, the buffer depth space was 15 feet as a minimum. He felt the 65-foot buffer met the letter of the law, but the intent was materially obscure. He said he saw no definition of fact of what materially obscure was. He felt the only way to determine that would be to go out and look at it, but legal staff advised against that. He said the record suggested that the utility company provided a buffer well in excess of that minimum required, so it was a groundless complaint.

Mr. Tremaine moved, to affirm the decision of the Planning and Zoning Commission on the issue of buffer.
seconded by Ms. Clementson,

Mr. Tesche stated he was in favor of the motion. He pointed out that the Commission did make an effort to offer a finding with respect to barriers. He said that on page 3 of the Commission's findings, they indicated adequate vegetative buffers would be provided and the sample paint scheme would help the reservoirs blend with the landscape. He felt the reference to those items were substantial evidence to support the decision.

Ms. Fairclough said the subdivision wanted a detailed drainage analysis. The appellant was asking for a 100-foot greenbelt buffer easement and a traffic impact analysis for the elementary school needed to be done. They also stated that the tank was 40 feet tall and 209 feet in diameter. She felt it would be prudent to discuss each point on the appellant's brief. She said it seemed it was going straight through Title 21 and hitting each specific ordinance and title, so she wanted to discuss the drainage issue. She pointed out they also alluded to access. She felt it needed to be on the record that the School District and the Municipality of Anchorage own two adjacent parcels. It was that information that the Platting Board used in not requiring access into that subdivision as far as a traffic analysis went. She pointed out there was a trail issue that had been discussed on page 144 of the packet.

Mr. Meyer referenced page A-13 of the appeal, the conclusion. He pointed out that the Holly Homeowners Association was only seeking a reasonable accommodation for such a huge structure abutting a residential area. He pointed out they talked about burying the tank versus keeping it above ground. He said he could not find any technical evidence to suggest that it could not be buried. There had been comments that the pressure would not be as good, but that was the only thing he found to justify keeping the structure above ground.

Chairman Wuerch pointed out, on page 26, was the transcript of the meeting where the professional engineer, Mr. Ratz, spoke about the elevation and the 357 pressure zone in Anchorage. He said if it was lowered even a small amount, booster pumps would have to be added to the system to provide adequate pressure to the 357 zone.

Ms. Fairclough asked if the tank was over 35 feet would a 1.5 buffer be required?

Mr. Kendall moved, seconded by Ms. Abney,	to substitute the Assembly's judgment and require a 100-foot buffer on the west side and affirming the remainder of the the decision.
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Mr. Kendall referenced page A-2, section D. The relief requested by the Holly Homeowner's Association requested a 100-foot vegetative buffer transition space on the west. He referenced page 59 and 23, quoting Mr. Steeple. He addressed the issue of the 100-foot setback versus the 55-foot setback that was currently on the site plat. He pointed out that limiting the tanks to the east would significantly impact the site, reduce the work area on the site, and cause problems with snow removal. He said when the site was originally procured in 1992 or 1993, it was procured with the statement that 15,000,000 gallons of water would be placed on the site. The 1994 plan looked at the site again and suggested 10,000,000 gallons be placed there. However, that was six years ago and things have changed in South Anchorage.

Mr. Kendall pointed out that a subdivision had been built adjacent to the site. He said that when it was first looked at, there were no homes there and there were no plans to put subdivision there. He felt it was appropriate that the tank be moved further to the east for the benefit of the subdivision. He pointed out that on the other side, school students would be looking at the tank, as well as people driving the highway. He indicated they should look at the homeowner's interest. If the tank was permitted, he suggested it be moved a little further to the east.

Ms. Clementson said she was against the 100-foot buffer. She said if the additional height did require an additional 1.5-foot in buffer space, they were more than meeting that amount. She felt the 65-foot buffer and painting the tanks addressed the concerns. She pointed out that 65 feet was not only adequate, but AWWU had explained what would happen to the other buffers and the topography of the site if they had to re-engineer the site to move the placement of a large tank.

Ms. Fairclough asked Mr. Kendall about the topography and whether the water would run to the north and away from the subdivision. She questioned if the site of the tank were changed whether it would change the hydrology and the flow of the water in the subdivision.

Chairman Wuerch referenced page 31. He pointed out that on line 23, the engineer said the water was going to be discharged by storm drain through the school site into the wetlands north of the school. On pages 98-102, the record stated that some topographic and elevation sketches gave a clear picture that the water, in order to flow into the houses, would have to flow uphill and that was not likely to happen.

Mr. Tesche spoke against the motion to substitute. He acknowledged that by a majority vote, the Assembly could substitute its judgment for that of a body below, but he did not feel that would be wise. He felt all aspects of the decision were amply supported by substantial evidence. He did not think it was appropriate for the Assembly to exercise a different function with the limited record before it. He said he was not pleased with the graphics in the record, because they were not as detailed or thorough as those presented to the Board. He stated that before he could substitute his decision for that of the body below, he would like to go to the site and see those things for himself. For those reasons, he would vote against the motion.

Ms. Von Gemmingen referenced page C-11 and noted that the Commission accepted and approved a 65-foot wide vegetation buffer. She pointed out that the 65-foot requirement, inclusive of a 10-foot easement, was measured at the narrowest point. She said the report indicated that the tank was at least 98 feet from the property line.

Mr. Meyer said he would also like to see the property himself, but since the Board of Adjustment was prohibited from doing that, they had to rely on the appeal. He said there was reference to spruce tree kill in the area and so a 65-foot buffer may not be adequate. He pointed out that camouflaging the tank was good as long as the paint was maintained. He said he would support Mr. Kendall's motion.

Question was called on the motion to substitute and it failed:

AYES:	Kendall, Abney, Meyer.
NAYS:	Sullivan, Tesche, Taylor, Wuerch, Fairclough, Tremaine, Von Gemmingen, Clementson.

Ms. Clementson said the reason the Planning and Zoning Commission postponed this the first time was to get answers to technical questions. These questions were raised in the appeal and pointed out as if they had not been answered, but she felt that they had been. She said the record was clear and replete with discussions and additional information on each point. She pointed out the Commission's ability to ask for further clarification or technical information had nothing to do with disrupting public process or giving anyone the right to due process.

Question was called on the motion to affirm the buffer issue and it passed:

AYES:	Kendall, Sullivan, Abney, Tesche, Taylor, Wuerch, Fairclough, Tremaine, Von Gemmingen, Clementson.
NAYS:	Meyer.

Mr. Tremaine moved, seconded by Mr. Tesche,	to affirm the decision of the Planning and Zoning that due process was followed.
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Mr. Tremaine felt the transcript was very clear that in their (Planning and Zoning Commission) March meeting they had requested more information for the April meeting. He said that information was provided by AWWU. He pointed out that on April 5th, the appellant raised no objection to this, requested no extra time to talk, and submitted no extra material. He felt it was clear that the due procedure was followed.

Chairman Wuerch questioned if that included all the remaining issues of finding of fact and decisions by the Planning and Zoning Commission.

Mr. Tremaine said there had been several briefs submitted. He said the first brief, on page 4, used a “shotgun” approach to what the problems were. He referred to the briefs presented in pages A, which were very specific and subsequent. He believed this was the one that would take precedence in terms of what the appeal was about.

Chairman Wuerch said his question was really about page 75, the Planning and Zoning Commission’s resolution 99-029, which were their findings. He wanted to be sure there were no other exceptions. He questioned if Mr. Tremaine was affirming the balance of the document.

Mr. Tremaine said he was affirming the balance of the document.

Mr. Tesche felt that the evidence in the record adequately supported the findings of fact.

Mr. Kendall thought the due process question was more involved than the discussion implied. He referenced page D-9, affidavit of Tom Dryer, which indicated he had requested to provide new information at the April 5th meeting. Mr. Kendall thought the new information should be a public hearing matter.

In response to Mr. Tremaine, Municipal Attorney Dennis Wheeler read AMC 21.30.080, Conduct of the Hearing, which said the Board of Adjustment shall not hear argument nor take additional testimony or other evidence. You may only consider material contained in the appeal packet. He indicated that when the appeal packet contained something that would be considered new evidence, typically that should be screened by the clerk and remanded to the lower body. He indicated the appeal was not alleging new evidence, but they had added a piece of evidence to the end of the appeal process. He said typically that material comes as a surprise to the other side and they have no opportunity to respond to it or raise legal arguments that would address the issue. He advised the Board to ignore the attachment on the reply.

In response to Mr. Tesche, Mr. Wheeler affirmed that he said to ignore the material attached to the reply that was a reference to the affidavit of Mr. Dryer.

Ms. Clementson restated that it was up to the Planning and Zoning Commission to decide whether they were going to close a public hearing or whether they were going to continue a public hearing. She said technical information was generally not debatable items that had anything to do with a public hearing. She said they asked for specific clarification. She said when the Planning Department gets information submitted late, it could be included with the packet. She said it was hard for her to believe that someone was told that they could not submit written information to the Planning and Zoning Commission. She pointed out that the public hearing was closed so they could not testify, but as far as submitting additional information and asking it to be distributed, no one had the ability to stop that from happening. She thought it was very clear that there was no violation of due process.

Question was called on the motion to affirm the due process issue and it passed:

AYES: Sullivan, Abney, Tesche, Taylor, Wuerch, Fairclough, Tremaine, Von Gemmingen, Clementson.
NAYS: Kendall, Meyer.

In response to Chairman Wuerch, Mr. Tremaine said the Board of Adjustment had affirmed each and every finding and decision of the body. They specifically focused on two issues raised by the appellant and affirmed the decision of the Planning and Zoning Commission.

B. Appeal S-10404, Abbott Road Subdivision, Clerk's Office.

Mr. Tremaine moved, to uphold findings of the Platting Board
seconded by Ms. Clementson, in its entirety.

Mr. Tremaine said he found no cause, no evidence presented, and no argument to substitute the Board of Adjustment’s judgment for that of the Platting Board. He said after reviewing all of the evidence presented, he would choose the same decision and conditions as those made and imposed by the Board. He said he was offended by a “double shotgun” approach, because it showed no respect for the Board of Adjustment in terms of time or effort. He indicated bold statements had been made that something was not discussed at all, but it was very clear on the record that it had been.

Question was called on the motion to affirm the findings and it passed:

AYES: Kendall, Sullivan, Abney, Tesche, Taylor, Wuerch, Meyer, Fairclough, Tremaine, Von Gemmingen, Clementson.
NAYS: None.

The meeting recessed at 4:45 p.m. and reconvened at 5:10 p.m.

4. MINUTES OF PREVIOUS MEETING:

- A. Regular Meeting - March 2, 1999
- B. Regular Meeting - March 23, 1999

Ms. Von Gemmingen moved, to approve the minutes of the regular meetings
seconded by Ms. Clementson, of March 2, 1999 and March 23, 1999.
and it passed without
objection,

5. MAYOR'S REPORT:

Mayor Mystrom gave an update on the progress of the Comprehensive Plan revision. Tonight they would start the first of several open houses, at Goldenview Middle School. He said he would be at the open house tonight, but would be out of town for the other ones. He indicated the response had been good and they had received a lot of information. The Planning Department continues to work hard on it and everything is going very well. He said he appreciated the response to the two-hour work session this afternoon on the budget.

Chairman Wuerch indicated they had the first work session on the budget for the year 2000 millennium event. He said he hoped the public would take the budget summary booklet that the Administration had prepared and look through it. He felt they would be pleased.

Mr. Tesche said he attended one of the Comprehensive Plan working group sessions on Friday and felt it was well run and administered. He said he was struck by the willingness of many of the people there to come back for any additional sessions or consultations with the Municipality. He felt they had a lot of enthusiasm and energy for the task. He suggested they consider bringing those people back into session and getting additional comments from them.

6. ADDENDUM TO AGENDA:

Chairman Wuerch read the addendum items.

Mr. Kendall moved, to amend the agenda to include the addendum items.
seconded by Mr. Tremaine,
and it passed without
objection,

7. CONSENT AGENDA:

Ms. Abney moved, to approve all items on the consent agenda as amended.
seconded by Ms. Taylor,

A. BID AWARDS:

1. Assembly Memorandum No. AM 905-99, recommendation of award to various vendors for furnishing **heavy equipment with operators** to the Municipality of Anchorage, Public Works Department (ITB 99-B068), Purchasing.

B. ORDINANCES AND RESOLUTIONS FOR INTRODUCTION:

1. Ordinance No. AO 99-131, an ordinance amending various sections of Anchorage Municipal Code Title 21 concerning **procedures for obtaining a zoning variance**, variances from the Central Business District bulk regulations, when a zoning variance becomes null and void, procedures for obtaining an administrative variance for minor dimensional errors, projections into required yards, temporary handicap access ramps, and procedures for granting reductions for required parking with building additions and change of land use, Community Planning and Development. public hearing ~~10-12-99~~ 10-19-99.
 - a. Assembly Memorandum No. AM 906-99.
2. Ordinance No. AO 99-122, an ordinance adopting the **2000 General Government Capital Improvement Budget** and appropriating \$681,973 from the State Categorical Grants Fund (231); \$395,000 to the Anchorage Metropolitan Police Service Area Capital Improvement Program Fund (451) for the purchase and equipping of police vehicles; and \$286,973 to the Anchorage Fire Service Area Capital Improvement Program Fund (431) for communications, technology, or other capital improvements, Office of Management and Budget. public hearing ~~10-19-99 and 10-26-99~~ 10-12-99 and 10-19-99. (**addendum**)
 - a. Assembly Memorandum No. AM 809-99.
3. Resolution No. AR 99-235, a resolution of the Municipality of Anchorage **adopting the 2000-2005 General Government Capital Improvement Program**, Office of Management and Budget. public hearing ~~10-19-99 and 10-26-99~~ 10-12-99 and 10-19-99. (**addendum**)
 - a. Assembly Memorandum No. AM 809-99.
4. Resolution No. AR 99-273, a resolution of the Anchorage Municipal Assembly appropriating \$71,000 from Areawide General Fund (101) Balance and \$71,000 as a contribution from the Anchorage Fire Service Area Fund (131) Balance to the Areawide Fund (101) to provide **funding for a management review of the Anchorage Fire Department**, Assemblymember Von Gemmingen. public hearing 10-12-99. (**addendum**)
 - a. Assembly Memorandum No. AM 911-99.

Ms. Fairclough requested this item be considered on the Regular Agenda. See item 8.C.

C. RESOLUTIONS FOR ACTION:

1. Resolution No. AR 99-268, a resolution of the Anchorage Municipal Assembly **recognizing and honoring Cathea Pitts**, Assemblymembers Taylor, Abney, Clementson, Fairclough, Kendall, Meyer, Sullivan, Tesche, Tremaine, Von Gemmingen, and Wuerch.

Ms. Taylor requested this item be considered on the Regular Agenda. See item 8.D.

2. Resolution No. AR 99-272, a resolution of the Anchorage Municipal Assembly **honoring and remembering Paul B. Baer**, Assemblymembers Tesche, Abney, Clementson, Fairclough, Kendall, Meyer, Sullivan, Tremaine, Von Gemmingen, and Wuerch.

Ms. Fairclough requested this item be considered on the Regular Agenda. See item 8.D.

3. Resolution No. AR 99-270, a resolution of the Anchorage Municipal Assembly granting temporary approval for a conditional use for sales of alcoholic beverages (Restaurant and Eating Place) located on Lot 12B, Block 28, Original Townsite of Anchorage, generally located between 3rd and 4th Avenues on the west side of "G" Street, d.b.a **Sack's Cafe and Restaurant**, Assemblymember Tesche.
 - a. Assembly Memorandum No. AM 910-99.

Mr. Tesche requested this item be considered on the Regular Agenda. See item 8.D.

4. Resolution No. AR 99-271, a resolution authorizing the **granting of a tax refund as a result of manifest clerical error on Real Property Account 002-134-57 and Personal Property Account 5113-23002**, Finance.
 - a. Assembly Memorandum No. AM 907-99.

D. NEW BUSINESS:

1. Assembly Memorandum No. AM 903-99, **Chugiak-Eagle River Parks and Recreation Board of Supervisors appointment** (Judi Ramage), Clerk's Office.
2. Assembly Memorandum No. AM 904-99, **Chugiak-Eagle River Parks and Recreation Board of Supervisors appointments** (Ray Nabinger, Dominica VanKoten), Clerk's Office.
3. Assembly Memorandum No. AM 896-99, **AMVETS Post #49** - Renewal of Club Liquor License (Spenard Community Council), Clerk's Office.
4. Assembly Memorandum No. AM 897-99, **Al's Alaskan Inn** - Transfer of Ownership of a Beverage Dispensary Tourism Liquor License (Taku/Campbell and Abbott Loop Community Councils), Clerk's Office.

Mr. Tremaine requested this item be considered on the Regular Agenda. See item 8.E.

5. Assembly Memorandum No. AM 898-99, **"D" Street Cafe** - New Restaurant/Eating Place Liquor License and Restaurant Designation Permit (Downtown Community Council), Clerk's Office.

Mr. Tremaine requested this item be considered on the Regular Agenda. See item 8.E.

6. Assembly Memorandum No. AM 899-99, **Glacier Brew House** - Transfer of Ownership/Transfer of Location for a Beverage Dispensary Liquor License and Restaurant Designation Permit (Downtown and South Addition Community Councils), Clerk's Office.
7. Assembly Memorandum No. AM 900-99, **Sacks Cafe & Restaurant** - Transfer of Ownership/Location of a Restaurant/Eating Place Liquor License and Restaurant Designation Permit (Downtown Community Council), Clerk's Office.

Mr. Tesche requested this item be considered on the Regular Agenda. See item 8.D.

8. Assembly Memorandum No. AM 901-99, **Ski & Benny Pizza** - Transfer of Ownership of a Restaurant/Eating Place Liquor License and Application for a Restaurant Designation Permit (Government Hill Community Council), Clerk's Office.
9. Assembly Memorandum No. AM 902-99, **Whaler Bar & Grill** - Transfer of Ownership of a Beverage Dispensary Liquor License, Clerk's Office.
10. Assembly Memorandum No. AM 908-99, proprietary purchase of **mobile radios** from Motorola Communications, Inc. for the Municipality of Anchorage, Department of Property and Facility Management/Purchasing.
11. Assembly Memorandum No. AM 909-99, change order No. 2 to purchase order 80357 to exercise the option with Damco Paving Corporation for providing **miscellaneous asphalt and concrete repair services** for the Municipality of Anchorage, Municipal Light and Power/Purchasing.

E. INFORMATION AND REPORTS:

1. Information Memorandum No. AIM 78-99, Internal Audit Report 99-09 - **Cash Controls, Museum of History and Art, Cultural and Recreational Services**, Internal Audit.
2. Information Memorandum No. AIM 79-99, **contracts awarded between \$30,000 and \$100,000 through formal competitive processes** for the months of July and August 1999, Purchasing.
3. Information Memorandum No. AIM 80-99, **Sole Source Procurement Report** for the months of July and August 1999, Purchasing.

Ms. Taylor requested this item be considered on the Regular Agenda. See item 8.F.

4. Information Memorandum No. AIM 81-99, **Sign Ordinance Progress Report**, Community Planning and Development.

Question was called on the motion to approve the remaining items on the consent agenda as amended and it passed:

AYES: Kendall, Sullivan, Abney, Tesche, Taylor, Wuerch, Meyer, Fairclough, Tremaine, Von Gemmingen, Clementson.
NAYS: None.

8. REGULAR AGENDA:

- A. TIME CRITICAL ITEMS: None.
- B. BID AWARDS: None.
- C. ORDINANCES AND RESOLUTIONS FOR INTRODUCTION:

- 1. Resolution No. AR 99-273, a resolution of the Anchorage Municipal Assembly appropriating \$71,000 from Areawide General Fund (101) Balance and \$71,000 as a contribution from the Anchorage Fire Service Area Fund (131) Balance to the Areawide Fund (101) to provide **funding for a management review of the Anchorage Fire Department**, Assemblymember Von Gemmingen. public hearing 10-12-99. (**addendum**)
 - a. Assembly Memorandum No. AM 911-99.

Ms. Von Gemmingen noted line 15 should reflect the language “management of review of Anchorage Fire Department.”

Ms. Von Gemmingen, Mr. Kendall, and Ms. Taylor joined in introducing AR 99-273 as amended. The public hearing was scheduled for October 12, 1999.

D. RESOLUTIONS FOR ACTION:

- 1. Resolution No. AR 99-268, a resolution of the Anchorage Municipal Assembly **recognizing and honoring Cathea Pitts**, Assemblymembers Taylor, Abney, Clementson, Fairclough, Kendall, Meyer, Sullivan, Tesche, Tremaine, Von Gemmingen, and Wuerch.

Ms. Taylor moved, to approve AR 99-268.
seconded by Ms. Von Gemmingen,
and it passed without
objection,

Mr. Tesche read the resolution and Ms. Taylor presented the resolution to Ms. Pitts.

- 2. Resolution No. AR 99-272, a resolution of the Anchorage Municipal Assembly **honoring and remembering Paul B. Baer**, Assemblymembers Tesche, Abney, Clementson, Fairclough, Kendall, Meyer, Sullivan, Tremaine, Von Gemmingen, and Wuerch.

Ms. Von Gemmingen moved, to approve AR 99-272.
seconded by Mr. Kendall,
and it passed without
objection,

Mayor Mystrom said he served on the Assembly for six years with Mr. Baer, who served from 1977 through 1985. He said Mr. Baer brought a lot to the Assembly and did a lot for Anchorage. He indicated Paul had a good background in real estate and law. Paul’s focus was real estate and he brought a real business sense to the community and was highly respected by all of his fellow Assembly people. Mayor Mystrom said he especially remembered a role Paul played in determining the location for the Z.J. Loussac Library. He indicated that initially the site selected for the library was south of the University Center. Paul felt that there could be a better site and he brought forward the location the library now occupies. Mayor Mystrom felt that was a great decision. He noted Mr. Baer was a moderate conservative and he continually looked out for the interest of the taxpayers, but he had real sense of compassion for people. He felt Anchorage residents should remember him fondly and be thankful for the chance to have someone like him serve on the Assembly.

Mr. Tesche said he had worked very closely with Mr. Baer in a number of property management issues. He said he remembered Paul’s work on the Humana land exchange. He had a very strong commitment to making sure that the city got the best value on various real estate deals. Paul later served as the director of the Municipal Heritage Land Bank. Mr. Tesche said Paul always looked out for the best interest of the Municipality to make sure they got the best deal for the taxpayers. He felt Paul should be remembered and respected for that.

Mr. Sullivan read the resolution. He mentioned that Mr. Baer served with former Mayor George Sullivan’s administration.

Ms. Abney indicated she had the opportunity to work with Mr. Baer when he was Director of the Heritage Land Bank. This was during her first years on the Assembly and they were working on the Comprehensive Plan for Girdwood. She said one of the things she always appreciated about Paul was that he made sure that those representing the area were invited to all the meetings. She said her dealings with Mr. Baer were very positive.

- 3. Resolution No. AR 99-270, a resolution of the Anchorage Municipal Assembly granting temporary approval for a conditional use for sales of alcoholic beverages (Restaurant and Eating Place) located on Lot 12B, Block 28, Original Townsite of Anchorage, generally located between 3rd and 4th Avenues on the west side of "G" Street, d.b.a **Sack's Cafe and Restaurant**, Assemblymember Tesche.

Assembly Memorandum No. AM 900-99, Sacks Cafe & Restaurant - Transfer of Ownership/Location of a Restaurant/Eating Place Liquor License and Restaurant Designation Permit (Downtown Community Council), Clerk's Office.

Mr. Tesche moved, to consider AR 99-270 with item 7.D.7, AM 900-99.
seconded by Ms. Taylor,
and it passed without
objection,

Mr. Tesche indicated AR 99-270 was a resolution granting a temporary approval for a conditional use for sales of alcoholic beverages, a restaurant and eating place license at what would now be Sack's Cafe on the west side of G Street, between 3rd and 4th Avenues. He felt the memorandum attached to the resolution was excellent and detailed why the issue was being presented to the Assembly in this context. He pointed out that there would be a public hearing on October 12, 1999 on the conditional use permit. He felt that the Downtown Community Council would have had an opportunity to offer its own comment on the conditional use permit by that time. He said the matter only came before the Assembly on a technicality. The former restaurant into which Sack's will move had lost their continuing conditional use permit because of a bounced check, as explained in Mr. Coffey's memorandum. The two places have been used as restaurants for the last 10 to 15 years. The operators of Sack's have been very responsible. He felt they should be allowed to schedule their grand opening on time, with the understanding that they would return for the conditional use hearing on October 12, 1999.

Mr. Tesche moved, to approve AR 99-270.
seconded by Ms. Taylor,

Ms. Clementson noted the Assembly, in the past had a habit of issuing temporary approvals of conditional uses prior to public hearings, and there had been problems. She pointed out the reason a conditional use permit had a public hearing process was to allow time for staff to give them information and for the public to participate. She felt offering a temporary approval on a conditional use superceded that public process. She said she would vote to support this one, but would strongly caution the Assembly not to do it again in the future.

Question was called on the motion to approve AR 99-270 and it passed:

AYES: Kendall, Sullivan, Abney, Tesche, Taylor, Wuerch, Meyer, Fairclough, Tremaine, Von Gemmingen, Clementson.
NAYS: None.

Mr. Tesche moved, to approve AM 900-99.
seconded by Mr. Meyer,
and it passed without
objection,

E. NEW BUSINESS:

1. Assembly Memorandum No. AM 897-99, Al's Alaskan Inn - Transfer of Ownership of a Beverage Dispensary Tourism Liquor License (Taku/Campbell and Abbott Loop Community Councils), Clerk's Office.

Mr. Tremaine moved, to approve AM 897-99.
seconded by Mr. Meyer,

In response to Mr. Tremaine, Attorney Dan Coffey referred to the applicant, Mr. Choy who acknowledged there were 11 different police incidents at the bar. He said he had not heard of any significant problems from the neighbors. He thought the number of incidents seemed reasonable for an establishment this size. Mr. Choy explained they had a couple of break-ins on vehicles in the parking lot, which would be vandalism and burglary. He said there was a drug incident that involved one of their hotel rooms, which was rented to a normal, sober 45-year old man. He said they had a lot of regular tenants, besides their daily tenants. He thought the assault incident was a domestic problem and did not involve the alcohol portion of the business. He said there was also an incident involving a man who had violated a conditional release.

Mr. Tremaine said he was satisfied and would be voting in favor of the motion.

In response to Ms. Von Gemmingen, Mr. Choy explained the incident report about himself, which was suspected assault on a juvenile. He said a year and a half ago he took control of his daughter; she had problems with the new environment. There was no incident further than that. He said what his daughter wanted was more freedom and less control and he was not willing to give that. He indicated his daughter had gone to a friend's house and the friend's mother had called the police. He said the issue had been addressed about six or eight months ago.

In response to Mr. Meyer, Mr. Choy said his daughter was 15 years of age.

In response to Mr. Tesche, Dan Coffey said there was no disposition to the case. The police interviewed Mr. Choy and there were no charges filed. He said there had been an interview and discussions with the daughter by the police. He indicated there were no charges filed.

Ms. Fairclough said she called the State Alcoholic Beverage Control Board to find out why the incidents were listed. She felt that just because there were lots of incidents on a report does not mean that the proprietor was doing a bad job.

Question was called on the motion to approve AM 897-99 and it passed:

AYES: Kendall, Sullivan, Abney, Tesche, Taylor, Wuerch, Meyer, Fairclough, Tremaine, Von Gemmingen, Clementson.
 NAYS: None.

2. Assembly Memorandum No. AM 898-99, "D" Street Cafe - New Restaurant/Eating Place Liquor License and Restaurant Designation Permit (Downtown Community Council), Clerk's Office.

Mr. Tremaine moved, to approve AM 898-99.
 seconded by Ms. Clementson,

Ms. Clementson moved, to postpone action on AM 898-99 until after item 12A,
 seconded by Mr. Tesche, AR 99-269.
 and it passed without
 objection,

F. INFORMATION AND REPORTS:

1. Information Memorandum No. AIM 80-99, Sole Source Procurement Report for the months of July and August 1999, Purchasing.

Ms. Taylor moved, to accept AIM 80-99.
 seconded by Mr. Kendall,

In response to Ms. Taylor, Management Information Systems Director David Rudisill indicated City View was an application development package that the Municipality purchased in the last year or two. It is used to develop GIS related applications against various data sources. It is a product of a fairly small company which is the only source of technical support for that product. He said he expected there would be an ongoing need for technical support over time. He indicated he was not familiar with the Idaho Computer Services software maintenance license renewal but would find out for her.

In response to Ms. Taylor, Executive Manager Elaine Christian said Benson Planning Associates would assist Kevin Waring with the plan and the write-ups. She said she was not sure if they had done work for the city before, but indicated they had worked with both CPD Director and staff in other arenas. Ms. Christian said they were a local company.

Mr. Meyer pointed out that the portable speed bump project had been sole sourced to recycle technology, which he felt was good. He said they initially pledged it at \$50,000 and then agreed to \$25,000 to try it this summer to see how it worked. He indicated \$17,900 was spent. He said the feedback he had received indicated the speed bumps had worked. He hoped the remaining \$8,000 could be used to purchase more speed bumps.

In response to Mr. Meyer, Public Works Director Jim Fero said there were costs included to install and remove the speed bumps, which do not appear on the purchasing report. He indicated several had been moved. He did not know exactly what had been spent on moving them, but he said he could find that out.

Question was called on the motion to accept AIM 80-99 and it passed without objection.

The Assembly then paused to consider a Special Order.

Resolution No. AR 99-274, a resolution of the Anchorage Municipal Assembly requesting that the Administration transfer \$32,000 from the Hot Shot allocation of the FEMA grant to the Chipper Fund for the purpose of completing the **1999 spruce slash chipping**, Assemblymember Abney. **(LAID ON THE TABLE)**

Ms. Abney moved, to approve AR 99-274.
 seconded by Mr. Tremaine,

Ms. Abney read the proposed resolution.

In response to Chairman Wuerch, Employee Relations Director Tom Tierney said the assertion there was money left over from the hot shot program was not known to him. He indicated this was the first time he had seen this proposal.

Question was called on the motion to approve AR 99-274 and it passed without objection.

Ms. Clementson moved, to reschedule the public hearing for item 7.B.1, AO 99-131,
 seconded by Mr. Meyer, for October 19, 1999 and hold a work session on that date.
 and it passed without
 objection,

9. OLD BUSINESS AND UNFINISHED ACTION ON PUBLIC HEARING ITEMS:

- A. Assembly Memorandum No. AM 842-99, Zoning Board of Examiners and Appeals appointments (Tom T. Anderson, W. Jon Dunham), Mayor's Office.
 (POSTPONED FROM 9-14-99)

Chairman Wuerch gave the history of the memorandum and noted a motion to approve was on the floor.

Question was called on the motion to approve AM 842-99 and it passed without objection.

Mayor Mystrom recognized the appointees and congratulated them on their appointments.

- B. **NOTICE OF RECONSIDERATION:** Resolution No. AR 99-252, a resolution of the Municipality of Anchorage **authorizing the application for matching capital grant funds through the Municipal Capital Project Matching Grant Program** - AS 37.06 - for State Fiscal Year 2001, Office of Management and Budget.
1. Assembly Memorandum No. AM 850-99.
(AMENDED AND APPROVED 9-21-99; NOTICE OF RECONSIDERATION WAS GIVEN BY MS. CLEMENTSON 9-21-99)

Chairman Wuerch gave the history of the resolution and noted the question of whether to reconsider was on the floor.

Ms. Clementson urged her colleagues to vote for reconsideration. She felt the issue was one of economic balance, while some others were concentrating on geographic balance. She indicated the economic balance was the fact that the majority of the Anchorage Bowl had fairly high mill rates, especially when compared to other mill rates on the list. She did not feel it was clear how consideration for the mill rates went into the decisions on how to prioritize projects. She felt it was important to note that residential streets may not be added to the list. She explained if street construction in a residential area in the Anchorage Roads and Drainage Service Area (ARDSA) was needed, a road improvement district must be formed; residents of the district had to pay 100 percent of the cost. For street reconstruct, a road improvement district is also needed, although residents pay only 10 percent of the cost, and road bonds would supplement the remaining 90 percent. She pointed out that either way, the residents of the area paid for it. She said placing residential streets from other areas on the list gave people in her area a disadvantage. Ms. Clementson continued that last week when the list was amended, the majority of the projects were left alone, except for removal of the residential street projects, which are in the Eagle River area and limited road service areas. She did not feel this was the place to fund those projects. She felt it would not be right to have different policies for different areas of town. She pointed out that the Assembly was ARDSA's elected body. She said they were the only area that had a road board consisting of people who do not live in that area and do not represent the area. She pointed out there were no Anchorage representatives on the Chugiak/Birchwood/Eagle River Rural Road Service Area Board, nor are there Assembly representations on the Limited Road Service Area Boards. She said she added funding for the Elmore Road upgrade because it is a complex project. The preliminary design was already done and all that needs to be done was the final design before moving to right-of-way acquisition. She felt that project could be moved forward and completed instead of waiting for it to come up in next year's road bond. She felt this offered a good balance and took into account a lot of the issues that were raised last week. She asked for reconsideration and approving the previous list because it seemed to serve the greatest number of people.

Mr. Kendall felt the Assembly seemed to be going over the same things again in the debate. He urged a no vote.

Ms. Fairclough urged a no vote on reconsideration. She said the previous proposal appeared to lack equity. She said the Elmore Road project, going from a 70/30 grant, now would be a 62 percent grant from the state and taxpayers would pick up 38 percent of the burden. Ms. Fairclough named the percent of support for various projects: east Anchorage mid-town ball field taxpayers would pick up 39 percent of the project, Eagle River 39 percent of the project, 34 percent for the Eagle River ADA upgrades, 50 percent for the Girdwood, while everyone else stayed at 30 percent. She said the intent was to spread the money as far as possible down the list. She urged a no vote.

Ms. Von Gemmingen felt the previous list had been well thought out, researched and examined. She felt it deserved reconsideration. She said this was a difficult issue and she felt this was a good compromise. She asked the Administration for comment.

Mayor Mystrom said they were pleased with the results last week. They felt it should be the Assembly's decision. He did not have any problems with Ms. Clementson's proposal, but was also pleased with the final result.

Ms. Von Gemmingen urged reconsideration. She felt it was important to all Anchorage citizens.

Chairman Wuerch indicated residents who paid the least amount of taxes received the greatest benefit from the matching grant program. He felt something was wrong with the process. He felt it was important to maintain economic balance, not just geographic balance. He said he would not vote for reconsideration at this time because the Assembly did not have harmony on an alternative. He felt the list approved last week was acceptable.

Question was called on the motion to reconsider AR 99-252 and it failed:

AYES: Von Gemmingen, Clementson.
NAYS: Kendall, Sullivan, Abney, Tesche, Taylor, Wuerch, Meyer, Fairclough, Tremaine.

- C. Ordinance No. AO 98-64(S), an ordinance amending the Anchorage Municipal Code Title 21 to **increase the allowable maximum sign viewing area for churches and schools from 20 square feet to 50 square feet**, to increase the number of signs from one per church or school to one sign for each street frontage and to permit signs for schools to be illuminated or lighted, Assemblymember Bell.
(POSTPONED FROM 7-21-98)

Chairman Wuerch gave the history of the ordinance and noted a motion to adopt was on the floor.

Ms. Clementson moved, to postpone action on AO 98-64(S) until first
seconded by Ms. Von Gemmingen, meeting in June 2000.

Ms. Clementson said the Assembly received a memorandum updating the ordinance status. She said this was clearly being taken into account while they were putting together the sign ordinance. She said the representatives on the committee agreed that the ordinance needed more time to be worked on. She pointed out that the Assembly had previously agreed that all signs

needed to be taken into account at the same time. She felt it would be a mistake to vote now since they already had a draft document being worked on by the committee.

Mr. Kendall invited Glenn Clary, a representative from the church groups, to speak.

Mr. Clary, from the Anchorage Baptist Temple, said served on the sign sub-committee. He said the committee was not drafting an ordinance. The committee had been told that they had no power, and they could not help draft the ordinance. He said the Community Planning and Development (CPD) Department staff, specifically Sharon Ferguson, was drafting the ordinance that reflected legislation in Portland, Oregon and other cities. He said the ordinance had met with resistance by members of the community, the business area, the sign community and the church community. He said all they were requesting was that the Assembly help them to be on a level playing field with the other groups that have signs in the city. He felt they were stalling. He felt the committee should be empowered to take some action and revamp the sign ordinance after this item is approved.

Mr. Kendall said he was going to propose that the Assembly hold a new public hearing for the ordinance in December.

In response to Ms. Fairclough, Mr. Clary said 50 square feet would be 5 foot tall by 10 foot long and 20 square foot sign would be 4 foot tall by 5 foot long.

In response to Mr. Meyer, Mr. Clary said his church's sign was blown up in front of the church in 1980. He said that in 1981, they rebuilt the front of the auditorium and redesigned the sign with the old rock face that it has now. In 1992, when they constructed the new auditorium, they applied for a sign that would give them the ability to put changeable letters on the sign. He said that was not approved. He indicated that since 1982 they had gone in for sign ordinances. They (Planning and Zoning Commission) approved one sign permit and then withdrew that permit. He said that was why they (the church) had requested a sign ordinance. He indicated they had been up at least three times with new sign ordinances trying to resolve the problem. He indicated that schools in Anchorage had larger signs. He said subdivision signs in residential areas are 50 square feet, but churches have to maintain a 20 square foot area. He said there was a provision in the regulations that state that if you have more than one principal or accessory use, each accessory use and that primary use gets a certain amount of square footage of signs. He said they asked the Planning and Zoning Commission to add all of those together and allow them to have the 50 square foot signs. He indicated they were turned down at that point, which brought them back to the Assembly. He indicated they could have multiple signs as long as they were the right dimensions, but they could not have one big one.

In response to Chairman Wuerch, Mr. Clary indicated he was a part of the committee, but they had been told that the committee did not have any power.

Executive Manager Elaine Christian pointed out, for comparison purposes, that the Wal-Mart sign in mid-town was 45 square feet and the Denny's sign is 59 square feet.

Mr. Kendall felt there were two issues that had gotten confused over the years. He said the Assembly closed the public hearing on this on July 21, 1998. He indicated it had been postponed twice and now the proposal was to postpone it again. He said the request to change the regulations concerning churches was confusing. He said the committee looking at the larger issue had discovered that there were a lot of people who wanted to have input into the broader scheme of things. He said his proposal was to have a new public hearing since it had been so long and the Assembly members had not had a chance to hear what the proposal was. He felt there should be a public hearing very soon. He felt the committee should continue working on the broader picture of what signs within the Municipality should look like.

Mr. Kendall moved,
seconded by Mr. Sullivan,

to substitute a motion to reopen public hearing for
AO 98-64(S) on December 7.

Mayor Mystrom said he appreciated Mr. Kendall's willingness to take on this issue at the Assembly at the stage they were on right now. He said the CPD staff started working on it and put together a committee in July of 1998. He said they worked on the whole issue and developed a draft ordinance ready to go forward and present to the community. He said it was not received very well. There was a lot of controversy, a lot of problems, and a lot of things that the public did not like about it. The committee was directed to go back and get additional members from the church community, business community, and the sign industry. He pointed out it was a very difficult issue. He felt they needed to go back and get something that had more community support behind it. He thought it would be a difficult and non-productive time to have another public hearing when they have had meetings with the business community on the draft ordinance and the response was unfavorable. He felt they should bring something to the Assembly that had a reasonable chance of getting approved and being effective.

Mr. Meyer felt a consensus survey would be the way to go. He questioned if the Assembly needed to postpone this ordinance until June to get a consensus.

Executive Manager Elaine Christian said it was clear there was controversy like that experienced on the antennae ordinance. But when the antennae ordinance came before the Assembly there was no testimony because staff was able to work out the issues and the Administration brought forward a document that could be supported by the community and the Assembly. The Administration would provide a better ordinance, she believed with the committee and more time to work out the issues. She recalled that when the ordinance was heard in July, there was a lot of controversy and testimony from neighborhood residents who were not interested in 50-foot signs in their neighborhoods.

Mr. Meyer pointed out that this had been going on for a long time. He said they thought it would be worked out by September, but no progress had been made since that time. He did not feel the people of the religious community had been treated fairly. He said he would support Mr. Kendall's motion.

Ms. Clementson indicated the proper motion last time this came up would have been to postpone indefinitely and to take it off the table. She said they wanted to keep a little pressure on the issue. She said if the Assembly was going to take action

on this issue, another public hearing was needed. She pointed out there was a draft ordinance available now. She said one of the provisions in the ordinance was a maximum sign size, which would be required in five years for all signs in town. She said she did not think that would pass when it got to the Assembly. She indicated that if this was approved, those signs could have to be pulled out one day. She pointed out that a lot of churches were located along collector streets, so it had an impact on residential areas. She felt the entire issue had to be considered together in context and not individually.

In response to Mr. Tesche, Ms. Christian felt it would not be possible to have the full ordinance ready by December. She indicated CPD staff was working day and night on the Comprehensive Plan.

Mr. Tesche felt it was not good to take issues up piece meal. He felt that on difficult issues like this ordinance, the process followed by the Administration was appropriate. He suggested concerns of committee members about process could be taken up privately with the Administration. He felt there was an inverse correlation of the size of signs and the quality of local land use planning.

In response to Ms. Taylor, Mr. Clary indicated a public hearing in December would be acceptable as long as they knew that some action would be taken. He said the committee had not been asked what they thought should be in the sign ordinance. He said the committee had held three meetings. He indicated that 70 people had attended the committee meetings.

Ms. Taylor felt the issue had been discussed for long enough. She supported a public hearing in December.

Mr. Sullivan said he disagreed with the premise that you had to take an ordinance in its entirety in order to make a rational decision. He said when you try to consider something so comprehensive in its entirety, you tend not to focus on specifics as well as you should. He felt that allowing the church to go from 20 square foot to a 50 square foot sign was necessary and a needed change. He noted church representatives have waited very patiently for some action on the issue. He felt it would be better to take the issue up in sections.

Ms. Fairclough said the public entered a July meeting with the idea that they would be allowed to share their concerns. The committee entered the meeting thinking they were going to talk about how they were going to proceed. She felt that the meeting basically fell apart from there, and people could not reach consensus. She felt the Administration thought the board was unbalanced and wanted to review the mix in the committee. She said while viewing signs in Seattle recently, she noticed their signs have been reduced in size. The Outback restaurant sign in Seattle was half the size of Anchorage's sign. She felt the sign law should be fair for everyone and it should be applied equally. She indicated that in either five or ten years everyone would have to reduce their signs to the size that the Assembly would determine to be acceptable. She felt that would cause businesses to spend more money than necessary. She supported the postponement.

Mr. Meyer felt a new public hearing was in order. He felt that church signs provide a community service because they list church and community activities.

Chairman Wuerch felt the issue had gone too long. He indicated that after the public hearing if the Assembly decided a 50-foot sign was not the right size, an amendment was a simple process. He felt it was troubling that a liquor store sign could be larger than a church sign. He indicated he would support the December 7 public hearing.

Ms. Christian said church signs in the proposed draft sign ordinance are 24-foot square in residential areas and bigger in other zoning districts. She said CPD staff was looking at signs based on the zoning district, not just the function of the facility. She indicated they could ask the committee to look at that one aspect for churches and schools.

Mayor Mystrom said the draft ordinance was not proposed by the Administration. It was prepared by CPD and has not had the review and scrutiny of the Administration. He felt it was possible to do that by December. He was not sure there would be any recommendations by that time.

Ms. Clementson pointed out it was not the public that came before the Assembly and asked to change this ordinance. She said this was a controversial issue and people feel strongly on both sides of the issue. She said what came up originally was the fact that many churches are located in residential areas. She said the motion before them was shall the Assembly substitute, because the original motion was to postpone until the first meeting in June to be taken up with the other sign ordinance. Mr. Kendall's motion was to substitute a public hearing on December 7th. She said there would still be a public hearing in June in conjunction with the rest of the sign ordinance if this were postponed until June.

Question was called on Mr. Kendall's motion to substitute and it failed:

AYES: Kendall, Sullivan, Taylor, Wuerch, Meyer.

NAYS: Abney, Tesche, Fairclough, Tremaine, Von Gemmingen, Clementson.

Question was called on the motion to postpone AO 98-64(S) to June 2000 and it passed:

AYES: Abney, Tesche, Fairclough, Tremaine, Von Gemmingen, Clementson.

NAYS: Kendall, Sullivan, Taylor, Wuerch, Meyer.

(Clerk's Note: This action was reconsidered. See minutes of October 12, 1999 meeting.)

10. APPEARANCE REQUESTS:

- A. **Robert Dilley**, regarding Airport Heights Traffic Committee and the Anchorage Montessori School's impact.

ROBERT DILLEY said he was a member of the Airport Heights Traffic Committee, a volunteer group that is trying to help residents work on traffic solutions. He said the Airport Heights Traffic Committee was able to secure, with help from their

Assemblyman Kevin Meyer, a \$60,000 traffic study. The report will show that the traffic needs to slow down. He indicated there were over 100 people at the meeting on the neighborhood side and over 100 people from the Montessori side. He said it had been going on for three years and this is the last opportunity for the members to take the time to look at some of the paperwork and other information that had transpired over the years. He highlighted the areas that were of interest. He said they felt that the Montessori school was part of the traffic problem. The new committee formed from the \$60,000 grant does not have any of the members from the original Airport Heights Traffic Committee on it from the neighborhood. There are four members from the Montessori school in that group, including the head of the board. He indicated they had been crying out to be heard for a long time and wanted to know when they would be heard. He felt the conditional use permit awarded to the property, which is Montessori's, needs to be looked at again. He indicated that after this review, they would like a public hearing so that the neighbors could be heard. The Municipality was using a 49-person petition as a device to create a new law, or an amendment to the law, regarding charter schools. He said he appreciated all the information that had been added to the study. However, he felt it was a biased group and that there were problems with the Montessori School. He indicated that the five-year request for the traffic study exactly correlated to the time when Kid's Club went away and Montessori expanded. He said they only wanted a fair shake in the deal.

In response to Mr. Meyer, Mr. Dilley said the information they would receive Thursday from the traffic study would be slanted in the areas that they were concerned about. He discussed a survey that had been done. He indicated that of the top three concerns, only a small percentage actually said Montessori on them. His concern was for the people who did not physically see the doorstep of the Montessori school and did not see where the cars came from that went through the neighborhood. Those people feel the traffic is cut-through.

Mr. Dilley discussed the increase in the amount of students at the Montessori school and how it affected the neighborhood. He indicated the speed bumps had helped. He indicated that the study that had taken a certain twist to it. He felt there was a public safety issue due to the amount of traffic coming and going from the Montessori school. He said they were only asking that the conditional use permit be opened back up so the neighbors have a fair chance to comment on it. He indicated that Public Works had been involved. They (the Airport Heights Traffic Committee) did a local study for the alley, but Public Works said none of those solutions would work because of the angles that are required. The Municipality was unwilling to put their stamp on anything. The neighborhood decided to not take up the temporary solution of the alleys at the time.

In response to Ms. Fairclough, Mr. Dilley said originally there was supposed to be three neighbors, three Montessori people, and a committee of about four people from Traffic and the Municipality. He indicated the actual Airport Heights Traffic Committee had been comprised of ten people.

11. CONTINUED PUBLIC HEARINGS:

- A. Resolution No. AR 99-238, a resolution of the Anchorage Municipal Assembly approving a conditional use for sales of alcoholic beverages (Recreational Site) located at South Center Subdivision, Block 2, Lot 5A, generally located on the east side of O'Malley Center Road and north of East 112th Avenue (O'Malley Ice Arena, LLC d.b.a. **O'Malley Ice Arena**) (Case 99-169), Community Planning and Development.
 - 1. Assembly Memorandum No. AM 817-99.
 (CONTINUED FROM 9-14-99)

Chairman Wuerch opened the public hearing and asked if anyone wished to speak. There was no one, and he closed the public hearing.

Mr. Tesche moved, to approve AR 99-238.
seconded by Mr. Sullivan,

In response to Mr. Tesche, Mr. Agni, representative of the applicant, said he had looked at another facility's conditions. He said those conditions met the physical layout and design of that facility. He prepared some conditions that he believed would be suited to this facility. He distributed the proposed conditions and a copy of the floor plan. He explained the conditions would apply in addition to those that had been presented to the Assembly with the staff packet. He said they were based upon comments and were developed after reviewing the conditions applied to the other facility. The second document was a floor plan, which showed that the restaurant facility was on a second level that is separated from the general circulation and all the amenities of the primary facility.

In response to Mr. Tesche, Mr. Agni indicated that the other facility had one ice rink, which would be predominately used by a youth club. He pointed out that this facility had two ice rinks with anticipation they would have adult utilization from the end of the workday until closing. He stated that the original application had operating hours limitation that proposed the weekday hours from 6:00 p.m. until midnight and weekend hours from 1:00 p.m. until midnight. He indicated those hours were already in their existing application but could be added to the additional conditions. He could not recall any conditions upon which they did not agree.

Mr. Sullivan stated that these were two very distinct facilities, with Mr. Agni's facility being much larger. He felt Mr. Agni was able to separate his youth patrons from the restaurant and drinking area more easily than the other facility. He felt the same conditions could not be applied to both facilities. He indicated that Mr. Agni had been in business in Anchorage for a long time and doubted that he would risk his reputation by operating the license in a reckless manner.

In response to Chairman Wuerch, Mr. Agni stated that the second floor mezzanine did physically connect with the stairs and seating. The restaurant area is partitioned and completely walled off. The wall will be solid up to 42 inches with glass above. They chose that type of wall because it is an effective restraint but transparent to allow viewing. The area marked as concession is a kitchen that would service the seating area for the restaurant. He indicated that there was a separate concession on the first level that would serve the traditional arena type snacks and beverages.

In response to Ms. Clementson, Mr. Agni said that food service was not required with alcohol service. He said that it was the State Alcoholic Beverage Control (ABC) Board that suggested the recreation site license designation. They will be providing

food as an additional amenity for their patrons, but it is not a condition of the recreation site license as specified in the Statute.

In response to Mr. Tesche, Mr. Agni said they had no objection to adding the words “food will be served as an amenity” to the conditions. Mr. Tesche felt adding that condition would resolve the issue.

In response to Ms. Clementson, Mr. Tesche said it was his intent that this condition was not necessarily required for a restaurant designation, but the food would be served and available. He felt there would be some element of discretion. He said he would not go so far as to instruct the servers that they cannot sell alcohol without a food purchase.

In response to Ms. Clementson, Deputy Municipal Attorney Bill Greene stated there were two different Code provisions. One deals with the requirements and regulations on a restaurant license and there are statutes on restaurant designations which deal with age of patrons, age of servers, entertainment, etcetera. He indicated that would not apply to the recreational site license.

Ms. Clementson felt it was time to stop combining family entertainment, recreation and sports activities with alcohol service. She felt that if the applicant was going to have areas designated as a restaurant, it is obviously going to be a restaurant, so she was not concerned about it being only a bar. However, she was concerned about someone dropping children off to play and then going in to drink. She felt it sent the wrong message to children. She opposed the license.

Mr. Tesche moved,	to amend AR 99-238 by including conditions presented by the
seconded by Mr. Kendall,	applicant, and adding two additional conditions regarding
	hours of operation and food service.

(Clerk’s Note: These conditions are attached as Exhibit A.)

Question was called on the motion to amend and it passed:

AYES: Kendall, Sullivan, Abney, Tesche, Taylor, Wuerch, Meyer, Fairclough, Tremaine, Von Gemmingen, Clementson.
NAYS: None.

Mr. Tremaine said he was encouraged to see that liquor advertising was not on the outside of the building and not inside the building other than in the liquor serving area. He felt that was a strong message that existed now for both facilities that were permitted. He felt that those conditions went a long way toward visually separating alcohol from sports. He pointed out that traditionally hockey teams drank in the locker room and it would be good to get it into a controlled area. He indicated he would vote in favor of the resolution.

Question was called on the motion to approve AR 99-238 as amended and it passed:

AYES: Kendall, Sullivan, Abney, Tesche, Taylor, Wuerch, Meyer, Fairclough, Tremaine, Von Gemmingen.
NAYS: Clementson.

12. NEW PUBLIC HEARINGS:

- A. Resolution No. AR 99-269, a resolution of the Anchorage Municipal Assembly approving a conditional use for sales of alcoholic beverages (Restaurant and Eating Place License) located on Anchorage Original Townsite Subdivision, Block 44, Lot 7, generally located on the northeast corner of West 5th Avenue and "D" Street (Norie A. Misallati d.b.a. **D Street Cafe**) (Case 99-181), Community Planning and Development.
 - 1. Assembly Memorandum No. AM 895-99.

Chairman Wuerch opened the public hearing and asked if anyone wished to speak.

MEGAN MISILLATI indicated she and her husband were the applicants. She said they had been serving lunches up to this point. They now wanted to include dinners and felt alcohol would be a good accompaniment.

In response to Ms. Taylor, Mrs. Misillati said they had appeared before the Downtown Community Council and the Council approved it with a formal vote.

Chairman Wuerch asked if anyone else wished to speak. There was no one, and he closed the public hearing.

In response to Ms. Von Gemmingen, Mrs. Misillati said they went before the Downtown Community Council the first Thursday of last month. She indicated that Mr. Tesche had been there. She said they did get the consensus of the “aye” vote. She indicated that her husband and the State Alcoholic Beverage Control (ABC) Board came up with the 50/50 food-to-alcohol service estimate. She indicated that it was mostly a restaurant, but they have the kind of food that people want to enjoy with a glass of wine. She said a lot of their lunch patrons had requested wine be provided with dinner. She said the average cost of a glass of wine would be \$5.00 or \$6.00 and the average cost of a dinner was \$13.00 to \$20.00. She said she didn’t know how accurate the 50/50 estimate was, but the 50/50 did not work out mathematically. She said lunches ranged from \$5.00 to \$10.00.

In response to Ms. Clementson, Mrs. Misillati said she had not seen a letter from Cyranos. She indicated that they never got the beer and wine license transferred to them because they didn’t complete all the steps in the right order.

In response to Mr. Tesche, Mrs. Misillati said the Downtown Community Council did take a formal vote. She said she and her husband were running the business jointly. She said there shouldn’t be a problem postponing the vote until October 12th in order to get clarification from the Downtown Community Council on their position.

In response to Mr. Tesche, Mr. Misillati said he had not seen the letter from Sandy and Jerry Harper. He indicated that they operated another place and were supposed to transfer the license. That did not happen and they (Misillatis or Harpers) applied to transfer it and it was cancelled. He indicated the license was under Jerry's name. The Misillatis had leased the place from the Harpers and were supposed to stay there and transfer the license to their name. Then they (Misillatis) pulled out of that business. He indicated there had only been one violation, but it was not under their name. He said the license had been taken until the transfer happened. He indicated they were seeking a separate license for the D Street Cafe, not a transfer. He assumed Cyranos would still operate the beer and wine license.

Mr. Tesche moved, to postpone action on AR 99-269 until October 12, 1999.
seconded by Ms. Taylor,

Ms. Von Gemmingen said she was concerned about the alcoholic beverage sales at 50 percent and food sales at 50 percent. She said that did not sound normal in a restaurant.

Mr. Misillati said that number was based on their experience at Cyranos. He indicated that most people are theatre goers who come in for dinner and beverages.

In response to Ms. Fairclough, Mr. Misillati said they would not have happy hours.

Ms. Clementson said if it was postponed, she would also like some information about the kind of housing Loussac-Sogn building had, which is on the top floor. She thought it was single-room-occupancy.

Mr. Tesche referenced a letter of September 13 from Mary Grisco, which stated the Downtown Community Council voted not to oppose the conditional use permit. The vote was not unanimous. The letter also said the Council did not discuss the cafe's application for a new restaurant license as they received that notice after the meeting agenda had been publicly noticed. The Council asked the application be delayed until the October 7, 1999 Council meeting. He indicated that the Council took action on the conditional use, but not on the separate issue of whether the Assembly should protest the license or not. He felt it was up to the Assembly to determine if there had been sufficient review of the matter or whether the members wanted the Council to look at the second part of the application again.

Question was called on the motion to postpone action on AR 99-269 and it passed:

AYES: Taylor, Wuerch, Meyer, Fairclough, Von Gemmingen, Clementson.
NAYS: Kendall, Sullivan, Abney, Tesche, Tremaine.

Assembly Memorandum No. AM 898-99, "D" Street Cafe - New Restaurant/Eating Place Liquor License and Restaurant Designation Permit (Downtown Community Council), Clerk's Office.

Ms. Von Gemmingen moved, to approve AM 898-99.
seconded by Mr. Sullivan,

Ms. Clementson moved, to postpone action on AM 898-99 until October 12, 1999.
seconded by Ms. Taylor,
and it passed without
objection,

- B. **Ordinance No. AO 99-129**, an ordinance amending Anchorage Municipal Code Section 12.05.053 to **provide access by the Board of Equalization to additional assessment information** and provide for notice and an opportunity to be heard thereon by the appellant and the assessor, Assemblymembers Abney and Tremaine.

Chairman Wuerch opened the public hearing and asked if anyone wished to speak. There was no one, and he closed the public hearing.

Ms. Von Gemmingen moved, to adopt AO 99-129.
seconded by Ms. Taylor,

In response to Mr. Tesche, Chairman Wuerch thought the Board of Equalization (BOE) had identified this issue as a problem.

Ms. Abney noted the BOE had been sent copies of the proposed ordinance, but no comments were received.

Mr. Tesche thought this was a fine piece of legislation and would respond to a pretty serious situation with the Board. He wanted to be reassured that the language selected was all right with the Board from a procedural standpoint and would actually solve the problem.

Mr. Meyer said it would be good to know if the BOE was in concurrence with the ordinance. He requested that the Administration talk to one of the members to assure that they were in concurrence.

Ms. Von Gemmingen felt the Assembly should ask the BOE members directly since the Board represents the Assembly and can be contacted through the Municipal Clerk. She felt it was something that was wanted and needed. She said the Administration thought it was a good idea. She said the BOE needed all the tools they could get and this was one more tool. She opposed a postponement.

Ms. Abney indicated the BOE was dealing with a heavy load of appeals and she felt the sooner they received the ordinance the better it would be.

In response to Mr. Tremaine, Mr. Tesche said the response time would depend on the information and could take place in an evening or it might take a week or so. He said it would be within the discretion of the Board to decide how long was reasonable on a case by case basis.

Question was called on the motion to adopt AO 99-129 and it passed:

AYES: Kendall, Sullivan, Abney, Tesche, Taylor, Wuerch, Meyer, Fairclough, Tremaine, Von Gemmingen, Clementson.
NAYS: None.

Ms. Taylor asked that the Clerk send copies of the ordinance to the BOE members this week.

13. BOARD OF ADJUSTMENT/ASSEMBLY APPEALS:

- A. Appeal 99-041 - Conditional Use for a Utility Facility in the PLI District (Tract B, Abbott Road Subdivision), Clerk's Office.
- B. Appeal S-10404, Abbott Road Subdivision, Clerk's Office.

These items were considered earlier in the meeting. See after item 3.

14. SPECIAL ORDERS:

A special order was considered earlier in the meeting. See after item 8.

15. ASSEMBLY COMMENTS:

Chairman Wuerch indicated he would be out of town until the 7th and Ms. Taylor would be the acting chair in his absence.

Mr. Sullivan indicated he would also be out of town for a week. He noted a Budget Committee meeting was scheduled for October 12, 1999. At that time they would be distributing budget information.

Mr. Meyer announced there was a breakfast at the Senior Center on Monday at 8:00 a.m. He said they served good food and encouraged everyone to attend.

Ms. Fairclough said she was going on a tour of day care facilities on October 5th at 9:30 a.m. She indicated that if anyone was interested in accompanying her to call her. She recognized students in the audience.

Chairman Wuerch indicated students regularly attend Assembly meetings as part of class assignments and ask an Assemblymember to validate their presence by signing paperwork.

Ms. Clementson requested the Budget meeting be moved to October 12, 1999. She said there was a Site Selection Committee meeting that was difficult to coordinate a time and a date when the Planning Staff, School Board, and the Planning and Zoning Commission could be there. She indicated there was an opening from 12:00 noon to 1:00 p.m. and asked Mr. Sullivan if he would be willing to move his meeting to 12:00 noon that day.

Mr. Sullivan had no objection to moving to noon.

Chairman Wuerch said the Assembly had an open session with the Municipal Attorney and there was a follow-up executive session on October 19, 1999. He asked Deputy Municipal Attorney Bill Greene to make sure the Assembly office was advised if that date was not feasible. He indicated that the Clerk had informed him that the longstanding rebroadcast of Assembly meetings on cable television on Friday at 5:00 p.m. is no longer being aired. He asked the Clerk to inquire as to why it was discontinued and if there was a possible alternate time. Chairman Wuerch indicated that the November 9, 1999 was the last and final day of the Alaska Municipal League conference, which is being held in Soldotna. He indicated several members were attending that conference and had to drive back to attend the Assembly meeting that night. He indicated they would not be able to attend the daytime work session. He said the most important thing that would be discussed was proposed Assembly amendments to the budget. He suggested having the work session on November 2, 1999 to work on Assembly amendments.

Mr. Dusek suggested having the first Capital Budget public hearings on October 12, the second public hearings on October 19, and the work session on the Assembly proposed amendments on October 26. He confirmed that the document was officially submitted to the Assembly on September 10 in response to Ms. Fairclough's question.

Ms. Clementson moved, seconded by Mr. Tremaine, and it passed without objection,	to reschedule the dates of the public hearings for the Capital Improvement Budget and Program, item 7.B.2, AO 99-122, and 7.B.3. AR 99-235 to October 12 and October 19, 1999.
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Chairman Wuerch brought up the issue of the apportionment and the petition filed by Terry Martin and many co-signors that challenges the apportionment of the Assembly. He indicated that this was now before the Department of Law for review. It does have sufficient signatures. He said the Assembly had to resolve the issue by October 20, 1999. He felt it would be helpful to put together a taskforce of Assemblymembers who would work with the Attorney's office to make sure they are well briefed on it in time to render a decision on the 19th.

Mr. Kendall, Ms. Fairclough and Mr. Tesche volunteered.

Deputy Municipal Attorney Bill Greene indicated there would be a general memorandum outlining the process for the Assembly's information, which should be done very shortly.

16. UNFINISHED AGENDA: None.

17. AUDIENCE PARTICIPATION:

TOM McGRATH discussed the agendas and its publication. He felt that since it advertisers changed, it had been more difficult for the general public to gain access to the agenda. He said the *Journal of Commerce* is generally not delivered until Monday afternoons; the only alternative is to purchase the newspaper from a vendor on the weekend. He said there were also problems with access to the agenda on the Municipal website. He suggested having this on the web with real audio, which is accessible by more people in Anchorage than cable. He urged the Assembly to review the Business Personal Property tax system. He said the amount of business personal property tax revenue had not gone up substantially since 1996, even though the number of businesses filing a return has tripled. He said during the same period many big retail stores have opened in Anchorage and the other buildings that housed businesses are still full. He submitted that many businesses were filing a return that did not adequately reflect what they owned and that the Municipality had no plan on how to remedy that situation. He felt the taxpayers and the real property owners in Anchorage were picking up the slack. He encouraged the Assembly to address this situation.

THERESA OBERMEYER asked the Assembly to review some of the practices of the Anchorage School Board. She asked that the citizens of Anchorage create more confidence in public office. She said that at the last meeting the Assembly approved a \$35,000,000 bond for the Anchorage School District without any discussion. She asked that the Assembly look at one of the documents passed out at the Anchorage School Board meeting last night regarding budget transfers for the School Board. She wanted the Assembly to ask the Anchorage School Board members why they allowed this to continue.

JED WHITTAKER thanked the Assembly for standing up for First Amendment rights by hearing Ms. Obermeyer, unlike the School Board, which apparently does not.

18. EXECUTIVE SESSIONS: None.

19. ADJOURNMENT:

The meeting adjourned at 8:00 p.m.

ATTEST:

Chairman

Municipal Clerk

Date Minutes Amended and Approved: December 14, 1999

VC/kron

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