

MUNICIPALITY OF ANCHORAGE
ANCHORAGE ASSEMBLY

Minutes for Special Meeting of November 16, 1999

1. CALL TO ORDER:

The meeting was convened at 8:15 a.m. by Assembly Chairman George Wuerch in the Mayor's Conference Room Room, 632 West 6th Avenue, Anchorage, Alaska.

2. ROLL CALL:

Present: Dan Kendall, Dan Sullivan, Dick Tremaine, Allan Tesche, Melinda Taylor, George Wuerch, Kevin Meyer (8:43 a.m.), Anna Fairclough, Fay Von Gemmingen, Cheryl Clementson (9:00 am.)
Absent: Pat Abney (excused.)

3. EXECUTIVE SESSION:

A. Listen to Anchorage Telephone Utility (ATU) Audiotapes

Chairman Wuerch explained the purpose of the executive session was to allow Assembly members to listen to audio tapes of various executive sessions in early 1998 regarding the sale of the Anchorage Telephone Utility. He read a letter that was submitted to the Assembly by the Anchorage Daily News. Chairman Wuerch reviewed the rules of the executive session, and clarified any discussion of release of the tapes would be held in open session after the executive session. He added Assembly members were allowed to take notes for the purpose of refreshing their memory during the debate on when to release the tapes. However, those notes must be destroyed prior to members leaving the meeting today.

Mr. Tesche moved, to recess into executive session for the purpose stated by the
seconded by Ms. Von Gemmingen, Chairman.
and it passed without
objection,

The meeting recessed at 8:25 a.m. and reconvened at 10:40 a.m.

4. Release of Anchorage Telephone Utility (ATU) Audiotapes:

A. Resolution No. AR 99-340, a resolution of the Anchorage Municipal Assembly **determining that certain executive session tapes relating to the sale of ATU be released immediately**, Assemblymember Kendall. **(LAID ON THE TABLE)**

Mr. Kendall read from the Municipal Code 2.30.030K, regarding executive sessions.

Mr. Kendall moved, to approve AR 99-340 and insert the dates of both February
seconded by Mr. Sullivan, 10, 1998 executive sessions in Section 1.

Mr. Kendall spoke in support. He pointed out the request for release came from the *Anchorage Daily News*, who requested three tapes, those mentioned above and one from a Session on April 14, 1998. He explained the Assembly voted to release the tapes of the February 10 Sessions five years hence, whereas they voted to release the April 14 tapes when the ATU sale was complete.

In response to Mr. Meyer, Deputy Municipal Attorney Bill Greene said there were no lawsuits pending on the sale of ATU. However, he clarified there was ongoing litigation on operational issues, which were routine and did not affect the sale. He said the Code provision "...matters which tend to defame or injure the reputation of persons" was a subjective judgment. To judge whether specific items were defamatory, he would have to know the statements and context.

In response to Mr. Tremaine, Mr. Greene said he did not know if the sale could be challenged, or if the time frame to do so has expired.

Mr. Tesche felt it was unlikely that the sale would be challenged legally at this point.

Ms. Von Gemmingen moved, to divide the question
seconded by Mr. Tremaine,
and it passed without
objection,

Ms. Von Gemmingen felt the tape of the afternoon Session, with the ATU Committee, did not include any information that would injure or defame the person mentioned in the Session.

Ms. Clementson spoke in support of releasing the afternoon Session tape.

Chairman Wuerch noted the afternoon Session consisted primarily of discussions about valuation scenarios. There did not seem to be any information that would be harmful to any individuals. He supported release of the afternoon tape.

Mr. Tremaine also spoke in support of releasing the afternoon Session tape.

Ms. Fairclough questioned the Assembly's authority to reverse the decision of a previous body.

Mr. Greene felt the Assembly, as a legislative body, is not bound to refrain from changing a previous decision. He added the Assembly is the same body as it was when the original release date was set, although some of the members have changed.

Mr. Tesche felt the Assembly can change a previous action, provided the same standards are applied as were applied to the previous action.

Question was called on the motion to release the February 10, 1998 Executive Session tape from the afternoon ATU Committee meeting and it passed:

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

NAYS: None.

Ms. Clementson moved, to extend the meeting to allow conclusion of the agenda.
seconded by Mr. Tesche,
and it passed without
objection,

Chairman Wuerch noted a motion to release the evening February 10, 1998 Executive Session tape was before the body.

In response to Ms. Clementson, Mr. Greene said it would be permissible to release the tape after redacting certain portions of the tape.

Mr. Kendall spoke in support of releasing the evening Session. He said the Session included discussion of the ATU situation, recommendations in the event the Municipality retained ownership of ATU, and recommendations to change the process of selecting ATU Board of Directors members. Also, there were recommendations about the management of ATU. Most of the recommendations came from a hired consultant. He felt the comments made by the consultant were no more serious than comments he has heard recently about various Municipal department officials. Mr. Kendall pointed out the comments were made in present time, almost two years ago. He felt the consultant was referring to a process the Assembly does in public. He pointed out one comment made about one person was a positive comment. He felt there would be no harm to the reputation of the persons involved if the tape was released.

Ms. Clementson felt it would be helpful, in general, to release the tape. However, she had concerns about portions of the tape.

Ms. Clementson moved, to amend the motion to redact the portions of the tape
seconded by Mr. Meyer, in which the consultant refers to Board structure and specific
comments regarding Board members, whether by name or
direct reference, and information on other companies
mentioned in the meeting.

Chairman Wuerch supported the motion.

Mr. Tesche opposed the motion. He felt the comments made, that Ms. Clementson proposed to be redacted, did not meet the criteria of defamation or reputation injury.

Mr. Kendall added that when ATU was a Municipal entity, and during the process of the sale, it was appropriate to keep certain information confidential. However, the utility was subject to the public process and the managers and Board members were subject to all the public scrutiny that entails. Now that the sale is complete, it was important to air everything publicly and put the issue in the past.

Ms. Von Gemmingen supported the motion. She pointed out various professionals were appointed to the ATU Board, and those people brought their professional reputations to the job. She felt the comments made by the consultant in the Executive Session were strong enough that they would injure the reputation of some of the Board members. She felt it was important to respect individuals who apply for service on various boards and commissions, so they can return to their regular occupations after Municipal service without concern that service might have caused them injury.

Mr. Kendall moved, to divide the question between comments about people and
seconded by Mr. Tremaine, those about other companies.
and it passed without
objection,

Question was called on the motion to amend by redacting the comments about other companies and it failed unanimously.

Question was called on the motion to amend by redacting comments about Board structure and specific comments regarding Board members, whether by name or direct reference, and it passed:

AYES: Tremaine, Wuerch, Meyer, Fairclough, Von Gemmingen, Clementson.

NAYS: Kendall, Sullivan, Tesche, Taylor.

Question was called on the motion to release the February 10, 1998 evening Executive Session tape as amended and it passed:

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

Ms. Fairclough moved, seconded by Mr. Sullivan, and it passed without objection,	to release the tapes of the Executive Session of November 16, 1999 as redacted the same way as the February 10, 1998 evening Executive Session tapes, concurrent with the February 10, 1998 tapes.
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Chairman Wuerch announced he and Ms. Clementson would work with the Clerk to redact the tapes, and invited any other Assembly members to participate. He instructed members to destroy any notes taken in the Executive Session earlier in the meeting, and submit them to the Municipal Clerk.

5. ADJOURNMENT:

The meeting adjourned at 11:20 a.m.

Chairman

ATTEST:

Municipal Clerk

Date Minutes Approved: January 25, 2000

LF/db