

Lonnie McKechnie

From: Larry DeVilbiss
Sent: Friday, October 07, 2011 7:42 AM
To: Lonnie McKechnie
Subject: Veto
Attachments: Larry DeVilbiss.vcf

Lonnie

Please note that I am vetoing Resolution 11-062.

I have yet to meet a human being that preferred that route. At the same time I don't believe a less expensive alternative was even considered. Trunk Road is already being upgraded. A simple upgrade of Palmer Fishhook and it's intersection with the Glen would be less expensive and less invasive to current development and still create a viable alternate to the Palmer Wasilla access to Wasilla.

Yesterday, mid morning, I drove and timed all three routes from the mail stop light on the Glen in Palmer to the stop light at the KGB intersection in Wasilla. Here's what I found:

Palmer Wasilla via Parks- 13.6 miles- 17 minutes
Palmer Wasilla via Palmer Wasilla Highway- 11.4 miles- 23 minutes
Palmer Wasilla via Fishhook/Trunk/Bogard- 14.9 miles- 23 minutes

After Fishhook, Trunk, and Bogard are upgraded I believe we will have an economic alternative that does not dump major traffic in front of the Palmer High School and the difficult intersection at Arctic and Glen.



Larry DeVilbiss

Borough Mayor

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Matanuska-Susitna Borough
350 E Dahlia Avenue
Palmer, AK 99645

**MATANUSKA-SUSITNA BOROUGH
RESOLUTION SERIAL NO. 11-062**

A RESOLUTION OF THE MATANUSKA-SUSITNA BOROUGH ASSEMBLY AUTHORIZING EMINENT DOMAIN AND USE OF DECLARATION OF TAKING PROCEDURES TO ACQUIRE PROPERTY INTERESTS NEEDED FOR THE BOGARD ROAD EXTENSION EAST PROJECT.

WHEREAS, in Resolution Serial No. 08-023(AM), the Assembly approved Alternative 2, the red route, with the road right-of-way width being reduced to 150 feet from Felton Street west to the 90 degree corner of Arctic Avenue at Palmer High School, for the Bogard Road Extension East Project; and

WHEREAS, in that same Resolution Serial No. 08-023(AM), the Assembly approved the use of the Alaska State Right-of-Way Manual as a guideline for the project, and authorized the Borough Manager to initiate the necessary land purchases and condemnation along the selected route; and

WHEREAS, of the 35 parcels needed for the project, 26 have either already been acquired or are about to close as a result of negotiations with the landowners; and

WHEREAS, there are nine remaining parcels [Parcel Nos. E-3 (Moody), E-5 (Tuomi), E-10, E-10A and E-11 (Wiederkehr), E-14 (Nelson), E-17 (Fox), E-29 (Baim) and E-32 (Donn)] which the Borough has not been able to acquire through negotiations with the landowners, although negotiations continue with respect to several of the parcels; and

WHEREAS, the fair market fee simple value of each of these nine parcels (including any remainder damages) has been determined by following the procedures set forth in the State of Alaska Right of Way Manual, and is based on independent appraisals prepared by a qualified, professional appraiser and an approved review appraiser's determination of just compensation, in the following amounts: Parcel E-3 (\$68,600); Parcel E-5 (\$88,300); Parcels E-10, E-10A and E-11 (\$676,500); Parcel E-14 (\$23,800); Parcel E-17 (\$52,300); Parcel E-29 (\$62,800); and Parcel 32 (\$18,200); and

WHEREAS, in its negotiations with landowners, the Borough has sought to acquire fee simple title to the needed parcels, with the exception of Parcels E-3, and E10, E-10A and E-11 where, in response to specific concerns articulated by the landowners, the Borough has offered to acquire perpetual right-of-way easements, although if eminent domain proceedings have to be instituted by the Borough, AS 09.55.250 restricts the property interest that may be taken by the Borough to an easement; and

WHEREAS, even though an easement is technically a lesser interest than full fee simple title, the easements needed for the project will effectively deprive the landowner of any productive use of the property encumbered by the easement, such that the fair market fee simple value should still be paid since the landowner's residual interest in the burdened parcel will only have nominal value; and

WHEREAS, AS 29.35.030(a) permits a municipality to use the declaration of taking or "quick take" procedures in exercising the power of eminent domain under AS 09.55.250 - 09.55.460; and

WHEREAS, AS 09.55.420 provides that the governing body of the municipality may exercise the power of eminent domain through the filing of a declaration of taking; and

WHEREAS, Resolution Serial No. 08-023(AM) did not explicitly mention use of the declaration of taking or "quick take" procedure when it authorized the Manager to initiate condemnation proceedings, if necessary, to obtain the property interests needed for the Project; and

WHEREAS, use of the declaration of taking or "quick take" procedure will help ensure that the Borough obtains the property interests needed for the project and avoid delays that could further disrupt the Project schedule if the declaration of taking or "quick take" procedure are not used; and

WHEREAS, the Borough has prepared draft decisional documents covering the nine parcels still to be acquired, which explain to the landowners the basis for the decision to acquire property interests from them for the project, including a summary of relevant project background information, the design alternatives and impacts considered, the Borough's consideration of public benefits and private loss, and that the property interests to be acquired are taken by necessity for a project located in a manner

that is most compatible with the greatest public good and the least private injury.

NOW, THEREFORE, BE IT RESOLVED, that the Matanuska-Susitna Borough Assembly authorizes the use of the declaration of taking procedures in connection with any eminent domain proceedings instituted to acquire the remaining property interests needed for the Bogard Road Extension East Project, and further directs the Manager to institute eminent domain proceedings and use the declaration of taking procedure (including the signing, filing and recording of a declaration of taking) as to any of the remaining property interests needed that have not been acquired through negotiation, and to deposit with the court as the just compensation the amount set forth in the approved review appraiser's determination of just compensation for the parcel.

BE IT FURTHER RESOLVED, the draft decisional documents are approved, but may be further revised if recommended and approved by the Public Works Director and Manager, respectively.

ADOPTED by the Matanuska-Susitna Borough Assembly this 20 day
of September, 2011.

LARRY DeVILBISS, Borough Mayor

ATTEST:

LONNIE R. McKECHNIE, CMC, Borough Clerk

(SEAL)

YES: Keogh, Woods, Ewing, Bettine, Colver, and Halter

NO: Arvin

Lonnie McKechnie

From: Larry DeVilbiss
Sent: Friday, October 07, 2011 8:19 AM
To: Lonnie McKechnie
Subject: Veto
Attachments: Larry DeVilbiss.vcf

Lonnie

Please note that I am vetoing Resolution 11-121

Before we start carving up our Hatcher Pass property I want to see a designated area for resort/residential development in the future. I fully support the Nordic concept but believe that the economic impact is going to be negative for a very long time and believe that accommodating a resort, recreational village up front will help turn this property into an economic engine. The 2008 "New Beginning" conceptual plan presented to the Assembly did not rule out the possibility of a future resort/residential component but the farther we go with just trails drawn over the entire South Side Development area the harder it is going to be to do anything different in the future.



Larry DeVilbiss

Borough Mayor

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Matanuska-Susitna Borough

350 E Dahlia Avenue

Palmer, AK 99645

Adopted: 09/20/11

**MATANUSKA-SUSITNA BOROUGH
RESOLUTION SERIAL NO. 11-121**

A RESOLUTION OF THE MATANUSKA-SUSITNA BOROUGH ASSEMBLY AMENDING THE SCOPE OF WORK FOR PROJECT NO. 35187, HATCHER PASS SKI DEVELOPMENT ROAD.

WHEREAS, on November 1, 2005, the Assembly adopted Ordinance Serial No. 05-184 which accepted and appropriated Federal Fiscal Year 2006 SAFETEA-LU Section 1702 Earmark funds for transportation related projects throughout the Borough; and

WHEREAS, the above appropriation included federal funds in the amount of \$1,000,000 for Hatcher Pass Ski Development Road, project no. 35187, fund 430, \$4,000,000 for Seldon Road Extension West, project no. 35035, fund 430, and \$1,000,000 for Point MacKenzie Road improvements, project No. 35245, fund 410; and

WHEREAS, the scopes of work and budgets for these projects were approved by Assembly adoption of Resolution Serial No. 05-139 on November 1, 2005; and

WHEREAS, on February 6, 2007, the Assembly adopted Resolution Serial No. 07-010 which amended the budget for the Hatcher Pass Ski Development Road project to decrease the earmark amount to \$850,000 due to rescissions by Congress; and

WHEREAS, on March 6, 2007, the Assembly adopted Resolution Serial No. 07-024 which amended the budget for the Seldon Road Extension West project to decrease the earmark amount to \$3,400,000 due to rescissions by Congress; and

WHEREAS, Resolution Serial No. 07-024 also amended the budget for the Point MacKenzie Road improvements project to decrease the earmark amount to \$850,000 due to rescissions by Congress; and

WHEREAS, on June 19, 2007, the Assembly adopted Resolution Serial No. 07-065 requesting that Congress combine the funds for the Hatcher Pass Ski Development Road project, the Seldon Road Extension West project, and the Point MacKenzie Road Improvement project into a single project for Hatcher Pass Ski Development Road; and

WHEREAS, Congress approved the above request with the approval of the SAFETEA-LU Technical Corrections Act of 2008. This act was signed by the President of the United States on June 6, 2008; and

WHEREAS, on August 19, 2008, the Assembly adopted Resolution Serial No. 08-093 which approved the amended scope of work for Project 35187, Hatcher Pass Ski Development Road for the first phase of the project; and

WHEREAS, the first phase of the project is now complete and the Federal Transit Administration (FTA) has authorized the Borough to continue to the next phase of the project; and

WHEREAS, it is now necessary to amend the scope of work for Project No. 35187, Hatcher Pass Ski Development Road to include the additional work as authorized by FTA; and

NOW, THEREFORE, BE IT RESOLVED, that the Matanuska-Susitna Borough Assembly hereby approves the following amended scope of work:

AMENDED SCOPE OF WORK

Phase 1 - Environmental, pre-design, design, engineering and construction of roads for the Hatcher Pass area.

Phase 2 - Final design, construction (including but not limited to right-of-way acquisition, utilities, and wetland mitigation), and construction/project administration for transit facilities, access road, and parking improvements at the recreation area of Hatcher Pass, off the Palmer-Fishhook Road.

ADOPTED by the Matanuska-Susitna Borough Assembly this
20 day of September, 2011.



LARRY DeVILBISS, Borough Mayor

ATTEST:

LONNIE McKECHNIE, CMC, Borough Clerk

(SEAL)

PASSED UNANIMOUSLY: Keogh, Woods, Arvin, Ewing, Bettine, Colver,
and Halter

Lonnie McKechnie

From: Larry DeVilbiss
Sent: Friday, October 07, 2011 7:56 AM
To: Lonnie McKechnie
Subject: Veto
Attachments: Larry DeVilbiss.vcf

Lonnie

Please note that I am vetoing Ordinance 11-105

I do not like big phone books in my driveway either but I do not think Borough legislation is the solution. The big stick of the law does not fit the magnitude of the problem.



Larry DeVilbiss

Borough Mayor

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Matanuska-Susitna Borough
350 E Dahlia Avenue
Palmer, AK 99645

CODE ORDINANCE

By: Assemblymember Bettine
Introduced: 09/06/11
Public Hearing: 09/20/11
Adopted: 09/20/11

**MATANUSKA-SUSITNA BOROUGH
ORDINANCE SERIAL NO. 11-105**

AN ORDINANCE OF THE MATANUSKA-SUSITNA BOROUGH ASSEMBLY AMENDING MSB 8.05, SOLID WASTE, TO ADD A SECTION MSB 8.05.085, DISTRIBUTION OF COMMERCIAL LITERATURE, AND TO AMEND 8.05.010, DEFINITIONS.

WHEREAS, Alaska Statute 29.35.050 provides that a municipality may by ordinance "provide for the establishment, maintenance, and operation of a system of garbage and solid waste collection and disposal for the entire municipality, and for districts or portions of it" and "require all persons in the municipality to use the system and to dispose of their garbage and solid waste as provided in the ordinance," and

WHEREAS, Alaska Statute 29.35.010 provides that all municipalities have the power to "regulate the operation and use of a municipal right-of-way, facility, or service," and

WHEREAS, pursuant to MSB 1.10.225 the Borough exercises the power to provide for garbage and solid waste collection and disposal outside of the cities, and

WHEREAS, the Borough has constructed, maintains and operates a system of solid waste transportation and disposal in all areas outside of the cities, which includes operating a Central Landfill, and

WHEREAS, the costs to provide solid waste transportation and disposal are paid by taxpayers on a non-areawide basis, and by user fees averaging \$60.00 per ton for disposal at the Central Landfill, and

WHEREAS, approximately 21,900 tons of paper were placed in the Central Landfill in 2010;

WHEREAS, according to the Solid Waste Management Plan, Year 2010 Update, prepared for the Borough by SCS Engineers, the proportion of paper waste placed in landfills nationally is estimated to be 0.3 percent telephone directories, and 3 percent commercial paper products (lower for telephone directories in the Borough because of smaller size),

WHEREAS, the volume of waste and cover material placed in the Central Landfill has averaged one cubic yard per 1000 pounds of municipal solid waste, and therefore based on the national estimates stated above, the maximum space required for telephone directories and commercial paper in the Central Landfill was about 1445 cubic yards per year,

WHEREAS, Alaska Statute 46.06.021 directs the Alaska State Department of Environmental Conservation to promote waste stream reduction as the first priority goal in solid-waste management, and

WHEREAS, diversion of municipal solid waste saves the Borough approximately \$5 per cubic yard, therefore, diverting

1445 cubic yards of waste per year could save the Borough \$7,225 per year, or about \$144,500 over a 20-year period by deferring waste cell construction, and

WHEREAS, unwanted directories and commercial paper delivered to properties are only a proportion of this total amount, however, any reduction will be beneficial to the Borough's overall goal of reducing the waste stream through different methods, which in turn will benefit taxpayers and users of the solid waste system; and

WHEREAS, planning, platting, and land use regulation is an areawide power under Alaska Statute 29.40.010, with a provision for the cities to adopt such powers by consent; and

WHEREAS, the Assembly adopts land use regulations to further the comprehensive plan of the Borough in the area outside the cities, and

WHEREAS, the comprehensive plan states certain goals and policies, including to reduce land use conflicts, protect natural resources including watersheds and fish and wildlife habitat, protect and enhance the public safety, health and welfare of Borough residents, create an attractive climate for business investment, and protect residential neighborhoods and associated property values; and

WHEREAS, reduction of littering advances these goals, and

WHEREAS, unless commercial literature deposited on properties is secured in a location easily accessible to the property owners, it can become ruined by weather, and/or blown or washed into streets or onto neighboring properties; and

WHEREAS, such materials often become litter under these circumstances, which is unsightly, can impact property values and quality of life, is likely to enter storm drains or other drainage systems, and is likely to contribute to the environmental degradation of the land and waterways, or to cost residents, property owners and taxpayers time and funds to clean up, and

WHEREAS, any measures to reduce littering will benefit the Borough.

BE IT ENACTED:

Section 1. Classification. This ordinance is of a general and permanent nature and shall become a part of the Borough Code.

Section 2. Adoption of section. MSB 8.05 is hereby amended to add a section 8.05.085 which reads as follows:

(A) A person may not deposit commercial literature upon real property of another unless:

(1) it is placed upon the porch, stoop, or directly adjacent to the doorway of the main entrance

of a residence, business establishment, or other building; and,

(2) it is secured as well as reasonably possible to a porch, railing, door, or other permanently attached object within ten feet of the main entrance of the residence, business establishment or other building.

(B) A person may not deposit commercial literature upon real property of another if:

(1) the property contains a weatherproof sign, not less than twenty square inches in size with letters not less than one inch in height that states: "no trespassing," "no advertisements," "no solicitation," "no peddlers," "no yellow pages phone books," or any similar language giving notice that the occupants of the premises do not desire to have commercial literature left upon the property, and

(2) the sign is conspicuously placed either:

(a) at or near the property boundary next to the primary driveway, walkway, trail, or path that leads into the property, or

(b) within ten feet of the main door entrance to the residence, business establishment or

other building.

(C) This section applies to all areas of the Borough outside of the cities of Palmer, Wasilla and Houston.

(D) This section does not apply to the following:

- (1) white pages directories;
- (2) commercial literature deposited with the consent of the owner or occupant of the property;
- (3) newspapers or other publications and periodicals that are subscribed to by the owner or occupant of the recipient premises;
- (4) any mail or any other materials placed in United States Postal Service mail boxes;
- (5) any materials of any kind delivered by a licensed delivery service such as Federal Express or United Postal Service, or by the United States Postal Service.

Section 3. Amendment of section. MSB 8.05.010 is hereby amended to add the following definitions as follows:

- (11) "Commercial literature" means written or printed materials that are distributed primarily to solicit others to buy or trade products, edibles, services, or real or personal property. Commercial

literature includes yellow pages directories and product samples.

(12) "Secured" means attached or placed in such a manner that does not prevent a door or gate from properly closing, latching, or locking, and ensures that the wind cannot blow away the attached object.

(13) "White pages directory" means a paperbound volume which lists the names of subscribers alphabetically with their corresponding telephone numbers and which was provided by a telephone utility as defined in state law to its subscriber. A volume that was provided to a property that is not occupied by any telephone utility subscriber is not a white pages directory.

(14) "Yellow pages directory" is a published volume that consists primarily of business names and telephone numbers, contains advertisements, and references specific products or services.

(15) "Subscriber" means a customer of a telephone utility.

Section 4. Effective date. This ordinance shall take effect upon adoption by the Matanuska-Susitna Borough Assembly.

ADOPTED by the Matanuska-Susitna Borough Assembly this
20 day of September, 2011.

LARRY DeVILBISS, Borough Mayor

ATTEST:

LONNIE R. McKECHNIE, CMC, Borough Clerk

(SEAL)

YES: Keogh, Arvin, Ewing, Bettine, and Colver

NO: Woods and Halter

Lonnie McKechnie

From: Larry DeVilbiss
Sent: Friday, October 07, 2011 7:49 AM
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Attachments: Larry DeVilbiss.vcf

Lonnie

Please note that I am vetoing Ordinance 11-121

This ordinance removes a very useful power that was granted by State legislation and is a useful alternative to the cumbersome and often impossible alternative for changing RSA boundaries. This loss of power is a loss of effectiveness in serving the public needs.



Larry DeVilbiss

Borough Mayor

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Matanuska-Susitna Borough
350 E Dahlia Avenue
Palmer, AK 99645

CODE ORDINANCE

Sponsored By: Assemblymember Halter
Introduced: 09/06/11
Public Hearing: 09/20/11
Amended: 09/20/11
Adopted: 09/20/11

**MATANUSKA-SUSITNA BOROUGH
ORDINANCE SERIAL NO. 11-121**

AN ORDINANCE AMENDING MSB 5.20.005, REGARDING ALTERATION OF ROAD SERVICE AREAS.

WHEREAS, MSB 5.20 was last amended in 2008 to mirror the amendments to Alaska Statute 29.35.450(c); and

WHEREAS, during a recent public hearings it was alleged that the Assembly passed the 2008 amendments to make it easier for parcels to be removed from a road service area (RSA) and that such removals should happen wherever and whenever possible; and

WHEREAS, there is no such intent of the part of the Borough Assembly; and

WHEREAS, Borough Administration previously took a position that it did not support removal of parcels from an existing RSA without a vote of the residents of the RSA; and

WHEREAS, the Assembly has decided that the citizens of the RSA are the best people to decide whether to exclude a parcel from the service area by voting at an election.

THEREFORE, BE IT ENACTED:

Section 1. Classification. This ordinance is of a general and permanent nature and shall become a part of the Borough code.

Section 2. Amendment of section. MSB 5.20.005, Alteration, Consolidation or Abolition of Service Areas is amended to read as follows:

5.20.005 Alteration, Consolidation or Abolition of Road and Fire Service Areas.

(A) (Repealed by Ord. 08-039 Sec. 2(part), 2008)

(B) (Repealed by Ord. 08-039 Sec. 2(part), 2008)

(C) A proposal to alter, abolish, consolidate or combine a service area that provides road or fire protection services may be made in the manner proscribed in MSB 5.10. However, when such a proposal is initiated by petition:

(1) a petition must contain signatures of persons owning at least 50 percent of the real property to be added to the existing area if a proposal would result in increasing the amount of real property within a service area; or

(2) a petition must contain signatures of persons owning at least 50 percent of the real property within the existing service area if a proposal would result in decreasing the amount of real property within the service area.

(D) If voters reside within a service area that provides road or fire protection services, abolishment of the service area is subject to approval by the majority

of the voters residing in the service area who vote on the question.

(E) A service area that provides road or fire protection services in which voters reside may not be abolished and replaced by a larger service area unless that proposal is approved, separately, by a majority of the voters who vote on the question residing in the existing service area and by a majority of the voters who vote on the question residing in the area proposed to be included within the new service area but outside of the existing service area.

(F) A service area that provides road or fire protection services in which voters reside may not be altered or combined with another service area unless that proposal is approved, separately, by a majority of the voters who vote on the question and who reside in each of the service areas or in the area outside of the service areas that is affected by the proposal.

(G) Subsections (D), (E) and (F) above do not apply:

(1) to a proposed change to a service area that provides fire protection services that would result in increasing the number of parcels of land in the service area or successor service area if the increase is

not more than six percent and would add not more than 1,000 residents;

(2) to abolishment of a road service area or consolidation of two or more road service areas if

(a) taxes have not been levied in the service area for road maintenance or construction during the last 12 months and there is no balance in any account available to pay for these road services for the service area;

(b) during the last 12 months, the service area board has not met with a quorum present and in accordance with law; or,

(c) there are no road maintenance contracts in effect for the service area or the existing road maintenance contracts fail to provide for minimum road standards required by law that are necessary to protect the borough from civil liability.

[(3) TO REQUIRE APPROVAL BY THE VOTERS RESIDING IN A SUBDIVISION OR PARCEL PROPOSED TO BE ADDED TO A ROAD SERVICE AREA IF ROADS MAINTAINED BY THE SERVICE AREA PROVIDE THE ONLY ACCESS TO THE SUBDIVISION OR PARCEL OR PROVIDE ACCESS TO THE SUBDIVISION OR PARCEL THAT IS REQUIRED BY THE SUBDIVISION PLAT OR BY OTHER REGULATION OR ORDINANCE;]

[(4) TO A CHANGE IN THE BOUNDARIES OF A ROAD SERVICE AREA TO EXCLUDE A SUBDIVISION OR PARCEL THAT DOES NOT RELY ON THE USE OF ROADS MAINTAINED BY THE SERVICE AREA FOR THE SUBDIVISION'S OR PARCEL' S ONLY ACCESS OR FOR ACCESS THAT IS REQUIRED BY THE SUBDIVISION PLAT OR BY OTHER REGULATION OR ORDINANCE.]

Section 4. Effective date. This ordinance subsection shall take effect upon adoption by the Matanuska-Susitna Borough Assembly.

ADOPTED by the Matanuska-Susitna Borough Assembly this 20 day of September, 2011.

LARRY DeVILBISS, Borough Mayor

ATTEST:

LONNIE R. McKECHNIE, CMC, Borough Clerk

(SEAL)

YES: Woods, Arvin, Bettine, Colver, and Halter

NO: Keogh and Ewing