

KETCHIKAN CHARTER COMMISSION

REGULAR MEETING
& WORKSESSION

February 25, 2005

The regular meeting of the Ketchikan Charter Commission commenced at 6:00 p.m., Friday, February 25, 2005, in the City Council Chambers. Vice-Chair PAINTER presided due to the absence of Chair THOMPSON.

Roll Call

PRESENT: OTTE, HARRINGTON, PAINTER, FINNEY, KIFFER
ABSENT: MCCARTY, THOMPSON

A: PLEDGE OF ALLEGIANCE**B: CEREMONIAL MATTERS/INTRODUCTIONS**

Borough Clerk, Harriet Edwards, was noted as present for the meeting.

C: PUBLIC COMMENTS

NONE

D. INFORMATIONAL REPORTS AND/OR COMMISSION PRESENTATIONS

OTTE passed on City Manager AMYLON's apologies for not being present. She also said that THOMPSON had indicated he'd already had a meeting about the budget and he would have more to report at the next meeting.

E. CONSENT CALENDAR

M/S HARRINGTON/FINNEY for approval of the minutes for the meeting of February 19, 2005.

The minutes were approved by a unanimous affirmative voice vote.

F. VOUCHERS

NONE

G-1 RECESS THE MEETING INTO WORKSESSION TO CONSIDER THE 2004 CONSOLIDATION PETITION, INCLUDING DISCUSSION OF THE BRIEF AND COMMENTS SUBMITTED TO THE LBC BY THE CITY AND BOROUGH

Note: Work sessions are informal discussion sessions held for the purpose of exchanging and gathering information. No action may be taken, formal rules of order are relaxed, and there is no requirement that minutes be kept.

M/S HARRINGTON/FINNEY to recess the meeting into work session. A unanimous affirmative roll-call vote was taken.

OTTE suggested that rather than discussing any of the items on the agenda, the list of notes on the comments and brief should be double-checked to determine if there is anything to bring forward at the next meeting.

IIA: Enterprise funds should pay. Get wording suggestions.
She then read from the City's brief: **"THE PETITION'S FAILURE TO PROVIDE FOR PAYMENTS IN LIEU OF GATEWAY SERVICE AREA TAXES FORCES SERVICE AREA RESIDENTS TO SUBSIDIZE AREAWIDE SERVICES"** A fundamental principle behind the recent consolidation proposals has been that areawide services should be paid for on an areawide basis. The Petition deviates from this principle when it fails to require Ketchikan Public Utilities and the Port of Ketchikan to make payments in lieu of taxes to the Gateway Service Area. In 2004 the City of Ketchikan will receive \$650,000 from KPU as payment in lieu of property taxes. It will also receive \$102,000 from the Port of Ketchikan as payment in lieu of taxes. These are two of the largest City "taxpayers." This money was available to fund the police, fire, and public works services upon which these two agencies rely. The Petition removes this source of funding, thereby placing a heavier burden upon the taxpayers of the Gateway Service Area.

It is particularly appropriate for the Port to pay service area taxes. The Gateway Service Area will have the obligation to provide land transportation facilities to cruise ship visitors and operators. The Port is a heavy user of these facilities. Since the new Municipality will not have street or road powers, the service area will need to provide streets, sidewalks, and traffic safety for the Port but will not receive compensation from the Port for those services. The service area will also provide solid waste collection, fire protection, and emergency medical services to the port. This is particularly important in the context of new security regulations and the dependency of the Port on the Police Department. Without the services provided by the Gateway Service Area, the Port literally could not survive. Yet, the Petition exempts the Port from contributing to the cost of these services. Under the Petition, the Gateway Service Area will subsidize the areawide Port operations and KPU."

HARRINGTON says that it does not. That is in error because it does not prohibit that. It is in there that the Assembly may charge a payment in lieu of taxes. It is permissive. It is not mandatory and he said he'd fight because he doesn't want it enshrined in this document what it should be.

PAINTER said that he agreed because some of the enterprise funds currently operate at a deficit. The airport is a good example. For the foreseeable future, the airport is going to remain operating in a deficit and if fees and rates went up to the point that it was out of its deficit spending, the tenants would revolt. OTTE wanted to know what the Airport would be paying the Gateway Service Area for in PILT. PAINTER said that it's operated as an enterprise fund.

OTTE continued that Ports & Harbors and KPU should be paying something, but if HARRINGTON says that the language is already there to allow that. PAINTER said yeah, it says, "may". HARRINGTON said it doesn't define what that percentage would be or anything. That would be up to the Assembly to decide. He continued that he could understand why the City fathers and mothers are uptight about that, in that it is not enshrined in here and they would like it enshrined in here, but that goes counter to everything we've been doing to give that future Assembly all of the tools they need to maintain the government and not restrict it. KIFFER said that it doesn't give them the option to operate an enterprise fund at a loss; for instance, the airport needed snow removal or something like that. If we put it in the Charter, it means that airport is going to have to pay for it. That should be the Assembly's decision if they're going to, for the good of an areawide service that they're going to subsidize it, they should have the authority to do that. If it's put in the Charter, we're not going to have that option. PAINTER said currently it has the word "may". HARRINGTON said it is built into the budget as one of the income streams that is exclusively to the Gateway Service Area because we were maintaining in the budget all of the current tax processes. He said he could see no real reason to play with this other than to say it's there and the Assembly can do with it as they please. It also allows for the Municipal Assembly to start charging a PILT for the entire mill rate, which he said, he'd be adamantly opposed to, but it gives the Assembly that ability. OTTE reminded the Commission that we've said we're not leaving town and we know what's in the document and we could certainly come to the meetings to remind them.

HARRINGTON said he wanted to bring up another topic. He said the City has been very clear, also, in that ¼% sales tax that was shifted areawide. We have in the structuring of the sales tax and the property tax, given the future Assembly the ability to change those revenues. He said he was not sure we need to build quarter percent into this document and that it seemed to him like it was minutia at this point, since a super majority of the Assembly can, by ordinance, change that. He said he wasn't sure that it was needed, but on the other hand, if we're building a future budget predicated on that, we may have to leave it in there, but he said he'd like to address that in a future meeting whether that ¼% is needed specified in the document. FINNEY asked if that wasn't going to sort itself out when the budget is re-done, that it would either justify it or whatever. He said he'd like to leave some number in there, but

whether it's a quarter percent or higher. OTTE suggested that topic be covered in work session at the next meeting when THOMPSON is present.

PAINTER said the ¼% was for the maintenance of the facilities and structures that are going areawide.

HARRINGTON brought up a minor thing in Section 10.05 of the Charter. It is exclusively talking about sales and use taxes. It does not deal with the ratification of those, but that's the title of the section. He said he'd like to delete the last half of the title of that section dealing with ratification. That is dealt with in a later section, so, he said, he wanted to delete this reference at the next meeting.

OTTE said that in the Brief, it says that there may be an error or conflict in Sections 11.01 and 11.04. "If the City's interpretation of these two sections is correct, a vote would be required before revenue bonds could be refunded. (She said she thought we'd dealt with that.) She continued from the City's brief; "any such requirement needs to be eliminated from the Charter. Refunds are undertaken to take advantage of favorable market conditions; i.e. lower interest rates. If a vote is required, it will be difficult, if not impossible; to refund bonds because market conditions change rapidly and quite often the window of opportunity is very limited. The City's Bond counsel has reviewed this issue and concurs with staff's assessment."

HARRINGTON read from Section 11.04: "but only when authorized by the Assembly and ratified by the voters for the acquisition, construction, reconstruction, repair, improvement, extension, enlargement, and/or equipment of the said utility or enterprise, for refunding or for purposes authorized by Section 11.03 of this Charter." OTTE suggested that this item be brought to the next agenda to get the reference to refunding out of there. She said she thought that if the reference to refunding were deleted... She said she thought that had been taken out. She questioned whether Bob Newell had come and talked about it. PAINTER said he thought so. OTTE continued that it might have been one of those things that got lost in translation?

FINNEY said that he might be missing something, but he said that right now it says that this requirement for ratification does not apply? PAINTER said that he thought that right now that it's in the document that it be approved by voters; 11.01 and 11.04. OTTE said that 11.01 has the power to borrow. FINNEY said that 11.01(d) says that: "The requirement for ratification does not apply to borrowing money to meet appropriations for a particular fiscal year, nor to indebtedness to be paid from special assessments to be made on benefitted property, nor to refunding indebtedness." HARRINGTON said that Section 11.01(d) says we don't need ratification there, but in 11.04 it says we do. He said that we could just exclude "for refunding" out of 11.04. OTTE said there would be an agenda item at the next meeting to delete that phrase.

OTTE continued from the list of notes about Section 11.05, which BRANDT-ERICHSEN said, needs some clarification. She continued that 11.05 deals with, and she quoted from the section, " non-recourse revenue bonds and other non-recourse revenue obligations issued pursuant to this section shall be payable only from money or other property received as a result of projects financed by the non-recourse revenue bonds, or other non-recourse revenue obligations, and from money or other property received from private sources." OTTE said it was Greek to her. She said that she would email BRANDT-ERICHSEN on this issue and get some clarification on what he was talking about. The Borough's responsive letter says, "Section 11.05 of the draft Charter sets out the opportunity for non-recourse revenue bonds for economic development purposes. Economic development purposes is a very large umbrella. There is a risk that the use of non-recourse revenue bonds under section 11.05 would be a loophole for avoiding the ratification requirement for revenue bonds in section 11.04. This is not really a legal concern because State law does not require voter ratification of revenue bonds. Thus, voter ratification of any revenue bonds is a voluntary policy choice. However, we should be aware of this potential loophole."

HARRINGTON said that it sounds like these are very special bonds that have no binding effect on the Borough and he said he didn't know who would loan money on that. PAINTER said that if the Assembly wanted a project to go through, to get around voter ratification, they could go through the economic development area. OTTE said that she didn't want to say that the Assembly members are trying to pull the wool over people's eyes, because that's not the issue, but she continued, it would be more expedient for purchases or big ticket items to put them forward under an economic development basis. HARRINGTON said he thought if it doesn't have the full faith of the Borough behind it, who cares, if there is no recourse on the Borough? KIFFER wanted to know who would be getting the bond if the Borough were not backing it. HARRINGTON said that if it were only backed on an income stream from the...he said he didn't know, that it was probably one that could be referred to BRANDT-ERICHSEN and PAINTER said SBE could be asked to clarify the subject. KIFFER said that it almost sounds like something has happened in the past and he's trying to...OTTE said that she was aware of some uses of the economic development funds that may have been questionable as an economic development thing. KIFFER said this was specifically talking about bonding. FINNEY wanted to know why a bond would be needed if the same result could be obtained some other way. KIFFER said maybe he didn't completely understand what the non-recourse bonding is. PAINTER said he didn't think it was talking about the disaster funding. Everyone agreed that clarification would be appreciated. OTTE and HARRINGTON said that we need a lesson during the work session at the next meeting.

OTTE continued from the list of notes regarding Section 12.04 (b), then caught herself because that reference was already on the agenda. She indicated that the notes may be complete at that point and asked the other Commissioners for any further items from any of the comments submitted to the LBC for the Commission to discuss. She said if they found anything of this nature or if they wanted any agenda items for the next meeting to please let her know as soon as possible, so that

changes or fixes could be done expediently so that at the end of this process period, the Commission isn't trying to do everything at once.

PAINTER said that he thought that if THOMPSON got together with the finance directors and comes up with a realistic 3-year budget and we do the tax cap thing tonight, those are the two biggies as far as he's concerned. The rest of this is a lot of verbiage changes. OTTE said that the Commission would again work through the actual transition plan and budget verbiage to update that section to coincide with the budget.

G-2 RECONVENE INTO REGULAR SESSION

M/S HARRINGTON/FINNEY to reconvene the meeting into regular session. A unanimous affirmative roll-call vote was taken.

H: NEW BUSINESS

H-1 Amend Specific Items as Suggested in the Comments and Brief submitted by the City of Ketchikan and the Ketchikan Gateway Borough

M/S HARRINGTON/FINNEY to amend the Consolidation Petition as indicated in each separate item of the attached list.

FINNEY wanted to know if this agenda item would take care of all the listed items in the agenda statement. OTTE said that if it was desired to pull any of the items out and do them separately, that would be okay. FINNEY requested a moment to go through them again, as he thought there were one or two he had questions on.

HARRINGTON said that most of the items were minor in nature, editorial and verbiage changes. One area had 6% and 7% both indicated so the agenda item is to clean up the document for consistency or make an item clearer. OTTE said she'd changed the verbiage regarding the RCA's role in KPU's operation and she'd added that the City retains the rate-setting powers and a certain degree of self-regulation. PAINTER reiterated that the RCA does not set the KPU rates.

FINNEY wanted to know if that section was talking about the current situation and was told it was.

KIFFER questioned the addition to Exhibit F, P9, #8 from the Borough's comment letter: "The Assembly may combine the wastewater funds from the Gateway Service Area and the nonareawide sewer funds if it elects to operate both wastewater functions together." OTTE said that it's giving the Assembly the ability to, instead of having two separate funds, to allow them to operate them jointly. PAINTER said the

potential for savings is tremendous. FINNEY wanted to know if this was allowing the new Assembly to take sewer areawide. Others said yes. He said in the rest of the petition we've been down that road and it's one of those powers that would be allowed to go areawide. OTTE said if it's so desired. HARRINGTON said these are two very specific things; that is, the nonareawide sewer powers that they have and are currently charging money for and going out and pumping out the septic tanks; and the City's sewer system. This change would allow them (the new Assembly) to operate those as a single entity, if they so choose. OTTE said it gives the Assembly the latitude to make the change if they want to.

OTTE said she liked the suggestion on the last one dealing with Exhibit J, P22, and adding the paragraph about pre-selection of a method for selecting which agenda and meeting procedures, as well as which procurement process would be used immediately following consolidation. They've got to make a decision as to how things will be run.

KIFFER said he thought the Commission had discussions about the consolidation of services, which services would make sense to consolidate and which ones do not. He said that he was a little bothered by the type of services we're talking about in wastewater; the type of services that would be combined and are they really compatible. PAINTER said that the change was not to combine the services, it was just giving the new Assembly the latitude to operate the current City wastewater and the nonareawide wastewater service of the Borough: it's allowing them...they could combine the operations of those together. PAINTER said that it wasn't written for the joining to take place. KIFFER said that just the operations of the two are very different and to...OTTE asked, wastewater? HARRINGTON wanted to know if KIFFER's concern was some future power could run the sewer down the middle of the road and force everyone on North Tongass onto the system? KIFFER responded yes. OTTE said that isn't going to happen in our lifetime, or our kids' lifetimes. KIFFER said that's what they said in Shoreline, too. He indicated that he would be voting affirmatively on the motion.

A unanimous affirmative roll-call vote was taken on the motion.

H-2 Amend Charter Section 3.02(b): Legislation, Ordinances – General, Readings

M/S OTTE/HARRINGTON moved to amend Article III, Section 3.02(b) as suggested above by deleting the word "substantive" and adding the words "which materially change the subject of the ordinance".

OTTE indicated this verbiage had come from BRANDT-ERICHSEN and it was part of the discussions in which he and SCHWEPPE had written about the word "substantive" and how it was felt that the word was too broad and not defined enough. She said that the suggested wording appeared to go with the legal rulings on this type of thing.

A unanimous affirmative roll-call vote was taken on the motion.

H-3 Amend Article XII, Areawide, Nonareawide and Service Area Powers, Section 12.03(a) and Section 12.04(b)

(Note: This agenda item had two separate motions. The second of the motions was considered first in error. These two motions have been designated (a) and (b) for clarity)

H-3(b) M/S HARRINGTON/FINNEY to amend Article XII, Section 12.04(b) by adding the phrase, "if the voters reside in that service area", in the first sentence and adding the paragraph "Provided, however, that a boundary amendment which affects less than 6% of the number of parcels for a service area or adds less than 1000 residents to a service area, whichever is less, need not be approved as provided in subsection (1) and (2) above."

OTTE said that this was about the de minimus changes where, rather than going to the expense of a vote, the Charter would coincide with standards elsewhere. EDWARDS indicated that the change would take the Charter to the same standards as State law.

FINNEY said this one bothers him. KIFFER asked EDWARDS if this suggested change was State law and she answered maybe she was getting it mixed up with service areas and fire services. KIFFER said his problem with this one is the 6% of the parcels or 1000 people. What's being suggested is, without a vote of the people, talking about the entire Ward Cove, and if talking about 1000 people, that's Ward Cove to Lighthouse. We're talking about huge chunks of property. HARRINGTON said if we're talking the North end...KIFFER said that includes the entire Ward Cove area. HARRINGTON said that would be about right.

OTTE quoted from the Borough's response letter on this subject: "Charter section 12.04, subsection (b), calls for votes for adding or subtracting property from a Service Area. This section does not provide any waiver of a public vote for de minimus changes. If only one or two parcels are to be added or subtracted from a large Service Area it would appear to require a vote throughout the Service Area. The most relevant state statute on the subject, Alaska Statute 29.35.450, has de minimus exemptions for less than 6% changes in a service area. The charter provision is not defective as written. Whether a de minimus exemption should be permitted is a policy question. "

KIFFER said that if it were about 1 or 2 pieces of property, he would agree. PAINTER said it would have to be voted upon within the service area. OTTE said that currently any change to the service area must go to a vote of the residents of that service area, whether it's one lot or half of the service area.

KIFFER said he wasn't against that. He said he wasn't against, for instance, a road is going in and some property needs to be utilized. But, 6%...if looking at the South end, the majority of property up into Forest Park could be taken. 6% is a lot of property. PAINTER said that it has to go to a vote within the service area. KIFFER said not according to this new language. FINNEY said if it was a minimal amount, it doesn't go to a vote of the service area. He said he's assuming that it would allow the Assembly to vote on it. KIFFER said he was okay with 2 or 3 lots. He said he wasn't okay with 60 or 70 lots, which would be in some of these larger service areas.

PAINTER said this would be put in the document to comply with the State statute. KIFFER said it would reflect the State statute. FINNEY said we didn't have to. The attorney said it didn't have to be in the Charter. FINNEY said that 6% of the number of parcels or adds less than 1000 residents...

EDWARDS said that there were two really good examples that happened just recently; reducing down the size of Waterfall service area and reducing the size of Gold Nugget service area in order to properly reflect the properties that were receiving the services of those service areas. If we had this Charter without this change, both of them would have had to go to a vote of the people in the service area. KIFFER wanted to know how many pieces of property were reduced. EDWARDS said that in Waterfall, they deleted all the properties that are on the water. FINNEY interjected that he has a waterfront lot and he'd never even heard that. He wanted to know if it wasn't part of Waterfall anymore and EDWARDS said no it wasn't. She said they weren't charging him the fee because the only service the area has now is road powers and those lots were on Tongass Highway, not on the service area roads. FINNEY said that they were telling him that 20 parcels...how many parcels are there? He said this was a great example and asked how many parcels were in Waterfall. He continued that 20 of them have been wiped out of that service area without even their knowledge? He said he didn't get the notices. PAINTER and EDWARDS said that it was those lots that are served by Tongass Highway and not the Waterfall Road system.

PAINTER said that with the same rationale was with the reduction of the Gold Nugget service area because there were lot owners that were paying the road fees but their access to their lot was not from within the service area.

FINNEY said that's all well and good; he asked EDWARDS if that would fit within the proposed language of this section, the way it's written. She said that if the new wording wasn't added as suggested by the Borough's comments, then that action under the Charter as it is now written would have required an expenditure

to have an election in both Gold Nugget and Waterfall service areas to make the changes.

FINNEY said his concern was that suppose the situation was reversed and his lot was added to the service area (he gave the example of being out of town and missing the notification of the impending vote) and the Assembly had voted for it, not the affected residents, and that was that. EDWARDS said that he would have received notification and the only way they would be able to do it would be by ordinance which requires two readings and she said, she was sure that if they were going to be trying to suck in a bunch of lots of people that don't want to come in, then...FINNEY said, like say Hyder and Myers Chuck? Everyone said no, that was annexation. EDWARDS continued that he would have definitely been up to the podium expressing his negative feelings to the Assembly.

KIFFER said that essentially the vote would be theirs and, he said, in the case of the North Tongass service area that would allow by a vote of the Assembly, to take the entire Ward Cove, in its entirety, all of it, all the way down to the Busich's property. KIFFER said there were 1800 lots. HARRINGTON said that if you look at it, it does not say 6%. It says 6% OR 1000 residents. 1000 residents would take it to Lighthouse. HARRINGTON said that there are service areas that aren't that big so they could be dissolved or service areas could be added with that many numbers. FINNEY said that he was all in favor of de minimus, but these numbers seem exorbitant and are too big to get you to de minimus.

HARRINGTON suggested this item be tabled until the next meeting in order to get some more input.

KIFFER said this had been discussed before and HARRINGTON had some language that required the agreement of the properties involved and KIFFER said that had been bumped back and forth and he really didn't know where we got. He said if for whatever reason the Assembly wanted to take 10 lots off of a service area and all those 10 property owners didn't have a problem with it, then that's fine. If one or two of them did, then it should go before the service area board and/or a vote of the people in the service if there was someone objecting to the action. If it's for a no-brainer thing like putting in a road or doing some minor changes, then the people aren't going to be upset about it and they'll agree with it. He said some sort of language that would bring the property owners into the mix.

FINNEY said that approach would get into trouble in doing that. He said, as an example, there were 5 properties and they wanted to be a part of the service area and the Assembly says they will vote it up. All 5 come in and say yes, but they are going to affect 10 properties of existing service area members in a

negative way. The 5 that aren't in the service area because the Assembly votes them in and the 5 people that ought to be voting...the scenarios are there that there is some spin on it. He said he thinks KIFFER has some valid concerns about the 6% of the parcels. It's not area, it's parcels. So there could be a 100-acre parcel and several of those could over-ride a huge service area because it's not 6% of the parcels in the service area that allows the Assembly to wheel and deal on that. He said he was with HARRINGTON and would second the motion to postpone this until the next meeting.

M/S HARRINGTON/FINNEY to postpone changes to Section 12.04 until the next meeting. OTTE said she'd try to come up with some of the discussion points from the prior minutes. PAINTER said that maybe SBE could explain a little more. EDWARDS said she'd bring it up with SBE on Monday.

A unanimous affirmative roll-call vote was taken on the motion to postpone.

H-3(a) M/S HARRINGTON/KIFFER to add #4 Water Services to Article XII, Section 12.03(a) and to delete the last sentence in Article XII, Section 12.03(a).

FINNEY asked for clarification of this item. He said that his concern is the language that is being taken out. It is pretty restrictive, saying, "No areawide power shall be interpreted to include or authorize any of the powers described in (1) through (5) above."

OTTE read the explanatory language provided by BRANDT-ERICHSEN. "Section 12.03(a) of the Charter, appears to have two conflicting statements. First there is a paragraph which says that nothing in the Charter prohibits the municipality from providing police firefighting, solid waste collection, or other auxiliary functions to the exercise of an authorized areawide power at areawide expense when necessary to operate facilities used for areawide services, or to respond to a disaster. The next paragraph contains a sentence stating that no areawide power shall be interpreted to include or authorize any of the powers described in (1) through (5) above. The list referenced includes police, firefighting, and solid waste collection.

Thus, on the one hand, section 12.03(a) is saying that no areawide power includes or authorizes police, firefighting or solid waste collection in connection with exercise of an areawide power, and on the other it is saying that these same services may be provided in connection with exercise of an areawide power. This apparent contradiction makes the provisions confusing."

PAINTER said this is saying that if the municipality has an areawide power, the service area cannot also provide that power? KIFFER said he'd read it as saying that if a service area power, like fire fighting, was chosen to go areawide, that they wouldn't be able to with that language in there. They wouldn't be able to assume those powers. He said that was the way he read it.

OTTE asked EDWARDS if that was what she was getting out of the suggested motion. EDWARDS said that she understood is that it's reading nothing in the Charter prohibits the municipality from providing police, firefighting, solid waste collection, or other auxiliary functions to the exercise of an authorized areawide power... She gave an example, saying an areawide power is school powers. They provide water service to just the schools. This allows the municipality to do that, to provide water service to just the schools because the schools is an areawide power, the water service to the schools would be auxiliary to the operation to the operation of the schools. Everyone went aha! She said that was the only example she could think of. EDWARDS continued that by striking the language, it's saying that this service area power can be provided to an areawide power as a secondary thing. And by having that sentence in the last paragraph, then there's a contradiction of that statement, because it's saying that no areawide power shall be interpreted to include any of the powers described in 1-5.

HARRINGTON said that what was done was to limit the authority of the Borough Assembly in the exercise of powers, however, we don't want to limit them if there is a function like an airport or school or something, but fire and police powers better not be exercised by the municipality without getting a vote first. He continued that the emphatic wording really wasn't necessary.

PAINTER said that another example of education being an areawide power to Pt Higgins elementary is that school maintenance plows the drive into the school and sands the parking lot and if, for example, the State ran into budgetary problems, which they have done in the past, and they were unable to do snow removal on North Point Higgins Road, the municipality could perform that function as an auxiliary function to their areawide school powers. PAINTER continued this would also apply to the new Fawn Mountain School. The only way the road can be maintained from the highway to the school right now is through school powers and would have to be done by the school maintenance because that's in a service area with no road powers.

HARRINGTON said that was his addition to the section and it was inserted to make it emphatic that in no way was it desired for the Assembly to take these powers.

OTTE interjected that the Commission was certainly starry-eyed back there and they'd come a long way in a year ☺ HARRINGTON agreed.

EDWARDS said it was limited because it was lined out in the Charter what powers are areawide and what powers will be done by service areas and the only way that could be changed is through a charter amendment.

A unanimous affirmative roll-call vote was taken on the motion.

H-4 Amend Exhibit J, Page 20

M/S HARRINGTON/FINNEY to amend the section of Exhibit J, Page 20, by adding new language (underlined) in paragraph (f) and adding a new paragraph (g).

OTTE said that the explanation provided by BRANDT-ERICHSEN was on the front page of the agenda statement. She said it was fairly simple and that it was just adding another option. She said the Commission had decided that public facilities should not be considered on a geographical basis because that was impossible. She suggested if that method were used the Borough facilities would have to be moved out of the Gateway Service Area.

PAINTER said the item was self-explanatory.

A unanimous affirmative roll-call vote was taken to approve the motion.

H-5 Amend Article X, Sections 10.07 & Section 10.08: Property Tax Limit and Taxation: Supermajority Requirement to Raise Taxes or Fees Limit

M/S HARRINGTON/OTTE to delete Article X, Section 10.07 and amend Article X, Section 10.08 as suggested above, which says, **10.08 Taxation: Supermajority Requirement to Raise Taxes [OR FEES] Limit**

Any ordinance or resolution that will increase the rate of ~~[INCREASE FEES]~~, sales tax levies or increase the rate of property tax levies on an areawide, nonareawide or service area basis above the rate levied in the prior fiscal year shall require the affirmative vote of two-thirds (2/3) of the Assembly. ~~[OR BE APPROVED BY A MAJORITY OF THE QUALIFIED VOTERS WHO VOTE ON THE ORDINANCE OR RESOLUTION AT A GENERAL OR SPECIAL ELECTION. IF THE INCREASE IN THE RATE OF LEVY OF THE GENERAL SALES TAX, USE TAX OR FEE IS LIMITED TO A SERVICE AREA OR IS NONAREAWIDE, THE VOTE IS LIMITED TO THOSE QUALIFIED TO VOTE IN THAT AREA.]~~

HARRINGTON said that this eliminates the tax cap. He said he'd fought forever to have a tax cap. He said he'd like to still see the tax cap raised by a supermajority of the Assembly so that it's at least in there, but, he continued, it's sort of pointless.

PAINTER said that in his opinion this is the biggie and we can't go up to the 11th hour prior to the voters with the City and Borough governments not in favor of our Charter because of the inclusion of the tax cap.

KIFFER said the Commission could also not go to the people without one. He said that taking the tax cap out is going to affect how many yes votes we get

from the public. We have not operated at the cap forever. We're not talking about being able to raise taxes through a super-majority. The Assembly can do that as long as they don't go past the cap. We haven't gone past the cap ever. Why are we concerned about the cap to begin with? This is going to garnish us votes in the public eye and he said to him it's a little illogical to think that one year to the next that our Assembly and financial planners can't be concerned that hey, maybe next year we're going to be going over the cap. Maybe we should go now to get approval to get that raised.

OTTE said that she feels very strongly that a hard-numbered tax cap needs to not be in the Charter. She said she didn't think having a tax cap is going to do any good when the two financials are compared, either as two separate entities or as a consolidated government, taxes are going to go up. The tax cap is a great, it's like a campaign slogan and she didn't think that it was needed in the document.

PAINTER said that if it's left in the document, it has no teeth, anyway.

HARRINGTON said it does, as a friendly stance; it has enough teeth in it that the City is going to fight it.

FINNEY said that in the City's comments they say that since the tax cap is a major selling point for the consolidation; they acknowledge that and see it as such. If nothing else, it's a nice placebo if you're saying that it's got to be watered down and diluted enough to be nothing more than that, he said his suggestion is to leave it in there. Secondly, he said there are three parts of this. You're throwing the cap out. You're throwing away the ability for the majority of the people to vote this up or down. This is an OR statement. He said he's against that. He said he thinks that still needs to be left in there as a possibility. He said that the other thing is fees. He said he's still thinking that he doesn't want to see fees increased without a majority of the Assembly agreeing. He said he's heard all the rhetoric and he doesn't care if it's the library fee or the dog tax fee or anything else. He said that's simply 5 hands at the table approving the fee increase. He said that's how much opposed he is to this. He said he'd work with the body at-large to do what is desired with the cap. He said he could see a 7-0 vote, he could go there, but to not have it in there is, especially based on what he's heard from the public, and what he's seen in the City's own comments.

KIFFER said he understands and he's softened his stance a little on this. He said he understands by having that cap in there that we could get ourselves in a bind about running out of money toward the end of the year. The problem is that is not a result of the cap; it's a result of poor planning to begin with. He said he would probably go with FINNEY, here's the cap and if it's desired to raise it,

there has to be seven votes. That still gives the option. If nothing else happens, it's going to put the Assembly on point and say if this absolutely has to happen to continue government, we can make it happen.

FINNEY said that if not, there could be a vote of the people and raise it. That could be sold. The sitting Assembly could say that they've got to take the cap from X up to X.5. We're not going to use X.5, we're going to use X.1, but if we don't, we're going to lose the bus; we're going to lose the library; we're going to lose other things. That's it. It's that simple. The people can decide. He said from what he hears, the consensus is let's be cutting that bus, let's be cutting the library. Maybe that's not the case. Maybe the people would say they were willing to pay that much more money to have those services.

PAINTER said the City currently has no tax cap. The Borough has a tax cap, but it can be changed by Resolution or Ordinance. FINNEY said they vote it up or down at the table.

M/S OTTE/PAINTER to postpone this item until the next meeting because as it appears now, it's a 3-2 vote and that's not legal for adopting any changes. PAINTER said he wanted to hear, as we did Saturday, from the Borough and City Management & the Finance directors before we vote on this because there are a lot of things that we've talked about and hashed over and over and over and he said, he knows we don't all agree on this but, this is a major sticking point for both the City and the Borough. He said that the new Municipality is going to operate with a fiscal year ending June 30 and the problems that they've stated as far as getting the revenue sharing from the State at the time the mill rate is to be established as set by the State, could pose some real problems for the municipal management. He said he'd rather not vote on this with two members missing.

OTTE suggested that some different language could be suggested. She said she didn't want the cap, but she can understand why it's a selling point, but it's a placebo. Maybe there is some way to put it in there, to have a cap that's not a number.

HARRINGTON asked EDWARDS if the Commission puts a number in the Charter and specifies that the number could be changed by resolution or ordinance of the Assembly, would that be enough or does it take a vote to change the number in the Charter if a number is specified and that it would be amendable by the Assembly? EDWARDS said why put it in the Charter in the first place? She said she thought that it could, in the last section where it says amendments to the Charter, some wording could probably be put in there to say that this particular item...she said she wasn't quite sure. But, if a cap is set and then it's

put in that it can be changed by the Assembly, why put the thing in there in the first place?

PAINTER agreed because as these changes here now. Any increase in the rate of sales tax levies or property tax levies, areawide, nonareawide or service area basis above the rate levied in the prior fiscal year would require a super-majority vote by the Assembly, which would be the same thing.

OTTE said that the fees could go back in there if that's what's desired. PAINTER concurred. That would probably be a good thing to do, to add fees. That has the same teeth as changing the tax cap by resolution. FINNEY said that was a good point. OTTE said that FINNEY and KIFFER are saying they want a vote of the people to change the tax cap.

KIFFER said he wasn't so sure that he's wanting a vote of the people. He said he wants...HARRINGTON said that it takes it a two-step process. One way is a vote to raise the taxes; another is a vote to raise...He said the Assembly has to act twice; one to raise the cap and one to raise the taxes. Both require a super-majority if it's in there, whereas the other way, it doesn't. He said a strong Assembly going to do that, but only if there's a need.

KIFFER said if seven votes occurred at this table, then it's going to be a valid need. It's not going to be something...how many times have we passed things on 6-1?

A roll-call vote was taken on the motion to postpone.

FOR: PAINTER, HARRINGTON, KIFFER, OTTE
AGAINST: FINNEY
ABSENT: MCCARTY, THOMPSON

The motion to postpone passed with a 4-1 vote.

I: COMMISSION COMMENTS

KIFFER said that he voted to postpone the tax cap issue and he said he's very strongly in disagreement about taking the cap out, but he said, we do need to operate as one and we need all of our people here. OTTE pointed out that MCCARTY wouldn't be here on the 11th at the next meeting, but everyone else should be.

OTTE said she understands what KIFFER is saying, but reality sometimes has to hit us. She said the next meeting is set for March 11th, Friday evening, 6 p.m. It should be interesting. THOMPSON will be back by then and should have at least

an inkling as to when the numbers will be coming. She thanked everyone for coming and reminded members not to lose their binders ☺

FINNEY said that he'd voted no on the motion to postpone because he wanted to discuss it further because he thinks that if we are going to reach an agreement the issue of the fees and a vote of the people are the key issues. There have been three big things taken out in this particular agenda statement and he thought there was room to maybe discuss that a little further and that's why he didn't want to postpone.

HARRINGTON said he thought we'd get there.

PAINTER said the only thing he wanted to comment on was to thank "Rose" for all the work she's done this week.

The meeting was adjourned at approximately 7:26 p.m.