

# KETCHIKAN CHARTER COMMISSION

## AGENDA STATEMENT

NO I-1

MEETING OF **September 3, 2004**

ITEM TITLE Amend Article XII, Section 12.03 (a)(4) dealing with streets and roads SUBMITTED BY Debby Otte
---

### SUMMARY STATEMENT

At the 8/27/04 meeting of the Charter Commission, City Attorney, Steve Scheppe, presented the attached memorandum for consideration by the Commission. His memorandum dealing with road powers and the potential situations that the new Municipality may require road powers to access public lands or buildings is self explanatory. The recommended motion below is suggested by Mr. Scheppe.

Currently Article XII, Section 12.03 (a) reads: The following powers shall be exercised only through service areas:

And (4) reads: Street construction and maintenance;

### RECOMMENDED ACTION:

"I move to amend Article XII, Section 12.03(a)(4) to read: **Street construction and maintenance, provided that the Municipality may, as an areawide power, construct new streets to primarily serve publicly owned property and may maintain those streets;** "

August 27, 2004

Via Facsimile to (907) 247-2101 (Commissioner McCarty)

Ketchikan Charter Commission  
Ketchikan, Alaska 99901

Re: Road Powers

Dear Charter Commission Members:

This memorandum will suggest a way in which the new Municipality's need to build roads might be balanced with the Commission's concern that roads should be paid for by the residents of the area served by the road. I am suggesting that line 12.03(a) (4) be re-written as follows:

- (4) Street construction and maintenance, provided that the Municipality may, as an areawide power, construct new streets to primarily serve publicly owned property and may maintain those streets.

Most of the Commission seems to believe that roads should be paid for by the residents of the area served by the road.<sup>1</sup> We can debate if this is the best way of providing roads. It is, however, a reasonable position, but one which limits growth. Despite the Commission's proposed language, we can be sure that over the course of the next 20 or 30 years, new roads will need to be built if the community is to grow or develop. We have presented several examples of this need. They include access to Gravina Island, development of road access to recreational areas, and access to any number of Municipal facilities which may be needed over the years (for example, a new landfill, new hydro power sites, etc.). These roads cannot be built by L.I.D.s or service areas. There is no tax base sufficient to pay the costs. They serve public lands such as federal, state, mental health trust, or Municipal land. If, for example, the new Municipality sought an L.I.D. for a road to its Gravina Island land, the L.I.D. would be paid for with areawide funds making the L.I.D. self-defeating.

The language I am proposing would apply to roads built after the consolidation occurs. In order to be funded on an areawide basis, the roads would have to primarily serve public property. Some private owners might benefit, but the public property would have to be the primary beneficiary. This could be shown by comparing the size of the private and public land, comparing the volume of traffic expected to the private and public land, or by determining the necessity of access to the public land. While this language is not an ideal way of dealing with the road issue, it conforms the Charter to the probable development of the community. Since most undeveloped property in the Borough is publicly owned, this language would allow the new Municipality to build roads necessary to develop the community. It also compares favorably with current practice. The Borough justifies its contribution to the Gravina Island road as an exercise of its ownership of the airport. While I may be incorrect, I am under the impression that the Borough has contributed or will contribute to Revilla Road under its recreational power. The City has generally not built roads to serve private parties unless those roads are built by L.I.D. Washington Park, Highlands, Bear Valley, and Ketchikan Lakes Road

<sup>1</sup> I understand the term "street" to be synonymous with road or highway. If the Commission intends to distinguish among these terms, it should do so in the Charter.

are examples.

The language I am suggesting still allows the Municipality to build and maintain these roads on a service area basis or under an L.I.D. It just gives the Municipality an areawide option. Even the City, which has areawide road powers, uses L.I.D.s and has refused to build some roads at public expense for private owners.

There may be an impression that the new Municipality can just interpret its areawide powers to broadly include roads when it wants to build a road with areawide powers. This is something we sought to avoid or limit in the 2000 draft Charter. If this occurs, the exceptions swallow the rule. Any road can be justified as an areawide exercise of "economic development" or "transportation" powers. Police and fire powers can be "justified" on the same basis. In order to assure that the service area powers in Section 12.03(a)(1)–(3) would not morph into areawide powers, we added to Section 12.03(a) the sentence:

"No areawide power shall be interpreted to include or authorize any of the powers described in (1) through (3) above."

Because some areawide powers cannot be exercised without limited police, fire, and solid waste collection, we provided that these powers could be an auxiliary function of an areawide power only when necessary or in case of disaster. Examples could be the need for garbage collection at a Municipal park, and fire and police protection at the airport. In each case the areawide power cannot be exercised without the power otherwise reserved to service areas. Under this language the Municipality could collect the garbage at its parks, but could not collect garbage from homes along the road to the park unless those homes were within a service area.

It has been argued that the State may stop funding street maintenance in the outlying areas if the new Municipality has "road powers." This strikes me as being a particularly weak argument. The Knowles' administration was not deterred by it since they intended to discontinue maintenance. It was the election of Governor Murkowski which reversed the State's policy. Furthermore, the State has not hesitated to discontinue services regardless of local power to replace those services. The Anchorage Hillside is an example where the State decided to pull back law enforcement even though Anchorage had no "powers" to provide law enforcement to the area. Finally, the State is well aware that even the present Borough has "road powers" if the residents of a service area need it. Even the Commission's draft Charter recognizes that the new Municipality has "road powers." It merely tells the new Municipality that those road powers will be exercised on a service area basis. All the State needs to do is tell the existing Borough or the new Municipality that the residents of the area being served by State road maintenance need to decide whether they want to do without maintenance or form a service area and pay for it. Finally, various road powers are given to municipalities by Statute.

There has also been comment that if the State terminates road maintenance on North Point Higgins Road, the Borough or new Municipality could simply consider maintenance of that road as part of its educational powers. My proposed language would not allow this since the North Point Higgins Road is neither new nor primarily serving the school. If educational power is defined so broadly as to include road maintenance, then the residents within the City have an equally valid argument that maintenance of Jefferson Street, Baranof Avenue, and Schoenbar Road, and some of their connecting streets should be maintained on the same areawide basis.

I am concerned that the Commission's effort to assure that roads are paid for by the residents who use them may fall victim to the law of unintended consequences. It may encourage future Assemblies to look at ways to broadly interpret the area powers that the Municipality has. Once that process begins, the limits on areawide power begin to dissolve. I think it is better to address the inevitable need for some areawide roads rather than leave this to the ingenuity of future officials.

Steven Schweppe, City Attorney  
Roads Memorandum

Page 4  
August 27, 2004

A handwritten signature in black ink, appearing to read "Steven Schweppe", with a horizontal line extending to the right from the end of the signature.

Yours very truly,  
Steven H. Schweppe City Attorney