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Alaska Alliance for Commerce
P.O. Box 784
Haines, AK 99827

Editor:
Roger Maynard
Email:
editor@hainesnews.net

Haines Borough Assembly Reacts to Lawsuit Threat

Haines business owners unite, warn Assembly not to overreach

By Roger Maynard

The Assembly addressed a packed house of interested citizens following an executive session held to address the perceived threat of a lawsuit against the borough by heli-tour operators. At the beginning of the public portion of the meeting Haines Borough Mayor Jan Hill made the following statement regarding the executive session:

"The Assembly discussed the threat of litigation and directed the borough attorney to further review and analyze the threat to determine the risk to the borough before taking any enforcement action (against Southeast Alaska Backcountry Adventures.)"

A lively public comment period followed with 3 people speaking against SEABA, and 13 people speaking for the business. Among the comments were the following:

Fred Einspruch was upset that the heli-skiers received additional days by emergency ordinance during the previous year, calling it a "dubious process." He was against the heli-ski companies receiving

additional days and in favor of penalizing SEABA for not shutting down their business when their quota had been reached.

Bill Kurz pointed out that most businesses in Haines operate with little regulation and interference by the borough government. The heli-

ski companies are being treated worse than other businesses.

Patti Campbell read a long statement from the Haines Chamber of Commerce in support of the heli-ski business.

Linda Giese said she grew up in

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Roger Maynard photo

Duck Hess (standing at left) explains to the Haines Borough Assembly and those in attendance why the helicopter industry is self-limiting due to weather conditions and other factors. Hess was among 13 business men and women who spoke in favor of the heli-skiing industry at Tuesday's assembly meeting.

The Helicopter Issue: A Short History

Before Haines heli-skiers, there was the Juneau heli-tour issue...

By Roger Maynard

Haines is not the only place in Alaska where helicopters are an issue. But it is the only place where the anti-everything crowd has such a toehold that they are on the verge of driving out the last vestiges of a legitimate tourism industry that could boost the economy enough to help carry local business through the last of the

winter doldrums.

Last year the Haines Borough Assembly Commerce Committee met with the heli-ski operators and came up with an agreed number of skier days that they thought everyone could live with. The heli-ski operators agreed to some other concessions such as carrying GPS units and so on. But when the committee's work was presented

to the Assembly, the package was tweaked and twisted by reducing "skier days" allowed, increasing monitoring requirements, adding to monitoring duties required of borough employees (without adding any personnel or resources to do the additional work,) and otherwise trashing the ordinance until it had little or no resemblance to the

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product presented by the Commerce Committee.

In the end, the anti-helicopter folks got what they wanted from the Assembly – a set of rules so restrictive that it was unlikely the heli-ski operators could carry on business without the possibility of violating one or more provisions of the ordinance, and a provision that any violation could result in revocation of the heli-ski operators permit to operate in following years.

Now, with the revelation that the heli-ski operators exceeded their maximum allowed skier days (and in spite of the fact it was a springtime "boost" for many Haines businesses,) the heli-haters are now engaged in a full-fledged game of "Now I've got you, you SOB," (as described by Dr. Eric Berne in his book *Games People Play*.) Having caught the helicopter company continuing to serve their customers instead of shutting down their business mid-season, they feel justified in venting unlimited rage against the heli-ski operators, and in making every effort to run them out of business.

Deborah Vogt and her friends have been peppering the Borough Assembly with memos, hoping to encourage revocation of the heli-ski company's permits. In her letter dated August 10, 2010, Vogt mentions that she worked *pro-bono*, giving advice to the Haines Borough Assembly when they denied a tour permit to Dave Button, an operator with numerous legal and safety issues in his past. She compares the Button Case to the present situation, apparently offering her legal advice to the Assembly for consideration in this matter as well.

No Pro-bono Attorney

A word of caution to the Borough Assembly is in order here: Deborah Vogt is very clearly the complainant in this case. She is not unbiased. She is only presenting information favorable to her goal of putting any heli-ski

company out of business. Vogt risks nothing. She is entirely within her rights to complain and work for the demise of a business she despises. And there is no penalty for her if she is wrong.

The Assembly, however, is in a different position. As representatives of the people, they have a responsibility to know the limits of their authority. Where they need legal advice, it is their duty to seek it from unbiased, dependable sources.

To give Vogt's opinions consideration as a pro-bono legal counsel to the Haines Borough in this case would be an abdication of the Assembly's responsibility to the people of Haines; to place the Borough at risk of being sued (at TAXPAYERS expense) by passing illegal ordinances (such as over-regulating aircraft opera-

"Among the solutions advanced to reducing such noise was to ban flightseeing flights, pass an ordinance to reduce the number, or establish a curfew limiting the time in which the flights could be conducted. The cases, statutes and regulations regarding local control of noise are such that any such discriminatory restrictions would probably not withstand judicial scrutiny and could lead to loss of all federal funds to the Juneau Airport pursuant to provisions of 14 CFR Parts 151 and 161."

Mr. Rick Durden

Tolley, VandenBosch, Korolewicz & Brengle, P.C.

tions) using biased legal opinions would be grossly negligent.

THE JUNEAU EXPERIENCE - Failed Mediation

Aircraft noise has long been an issue in Juneau, from floatplane operators in Gastineau Channel to helicopter tours, as documented in a chronology by the City and Borough of Juneau Tourism Management Office. The chronology begins in 1988; by March 2000 some federal agencies involved agreed to fund an effort to mediate the noise issue. The report says:

"This collaborative effort was designed to find negotiated solutions to flightseeing noise. Nine caucus groups were established to represent the following interests: the CBJ, U.S. Forest Service, fixed wing operators, heli-

copter operators, cruise lines, local businesses, conservation interests, Peace and Quiet Coalition and Cruise Control, Inc. The mediation team was able to complete the design phase but, unable to reach agreement on next steps, dissolved in December, 2000. However, the Mediation Design Team does contain much useful information and a summary of issues."

Deborah Vogt was the alternate representative to the mediation for the Peace and Quiet Coalition. Some of the mediation notes indicate she and her husband were at odds with the mediator over the issue of public meetings and/or tape recording meetings. Other notes indicate that Lynn Canal Conservation was also involved. Regarding the breakdown in mediation,

After some discussion including re-starting the mediation process without including the Peace and Quiet Coalition, the CBJ decided to abandon the mediation process. The *Juneau Empire* reported:

"We're going to drop (noise mediation) and take the process before the PPC," said Planning and Policy Committee Chairman Jim Powell this morning. "We're taking the product from the mediation effort, particularly the issues of quiet (aircraft) technology and satellite heliports, and we're asking the city attorney what we can do to regulate, not what we can't do, which is what we did in the past."

October 2000, Flightseeing Noise Initiative

The CBJ Tourism Management Office chronology also documents the outcome of the Flightseeing Noise Initiative that was placed on the ballot by the anti-helicopter folks during the same period:

"This initiative proposed a City ordinance to regulate noise from flightseeing tours. If passed, the ordinance would require the City to request the federal government reduce Juneau Icefield helicopter landings, enact municipal regulation of tourist flight schedules, restrict the construction of new heliports and prohibit municipal research related to new heliports. 3,562 votes were cast in favor of this initiative; 8,030 votes were cast against it. Disagreements about the CBJ's authority with regard to flightseeing are not yet resolved."

A Legal Opinion:

Finally, the CBJ consulted with the firm Tolley, VandenBosch, Korolewicz & Brengle, P.C. regarding the best ways to deal with the noise issue. The advice they received in a letter from Mr. Rick Durden made it very clear that a mutual letter of agreement with the tour operators was the recommended method of dealing with the noise issue. The firm also clarified that the borough has NO authority to regulate where helicopters fly, saying:

"Among the solutions ad-

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Haines Borough Elections: Candidate Lineup

2 assembly seats, 3 school board seats to be elected Tuesday, Oct. 5

The filing period for candidates closed yesterday; the following candidates have been certified by the borough clerk to be on the election ballot:

Assembly Seat B (3 years):

- Linda Geise

- John Winge
- Steve Vick (*incumbent*)

Assembly Seat E (3 years):

- Greg Goodman

School Board Seat B

(3 years):

- Sarah Swinton (*incumbent*)

School Board Seat E

(3 years):

- Brenda Jones (*incumbent*)

- Sean Cone

School Board Seat G

(1 year):

- Ann Marie Palmieri (*incumbent*)

For more information on Haines Borough Elections visit the Haines Borough website at: <http://www.hainesborough.us/election.html>

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vanced to reducing such noise was to ban flightseeing flights, pass an ordinance to reduce the number, or establish a curfew limiting the time in which the flights could be conducted. The cases, statutes and regulations regarding local control of noise are such that any such discriminatory restrictions would probably not withstand judicial scrutiny and could lead to loss of all federal funds to the Juneau Airport pursuant to provisions of 14 CFR Parts 151 and 161.”

Also:

“Because a U.S. citizen has a right to travel through navigable airspace, 49 USC §40102, banning flightseeing flights without an available alternate location for them is probably a violation of that right.”

And regarding asking the FAA to tell aircraft where to fly:

“I was advised that some citizens believe that the CBJ should lobby for the passage of federal legislation (due to federal preemption it is the only level at which flight paths may be controlled) to control flights over the Channel area...”

“... Such legislation must come from the federal level as flight routes in navigable airspace have been absolutely preempted by the Federal government. It is my considered opinion that it would be virtually impossible to pass such legislation for the CBJ area within the next ten years, if ever. I cannot recommend such an approach, particularly in that no one can predict what the outcome

will be if such effort is crafted thousands of miles away from the problem being addressed.”

Letter of Agreement

Having tried various methods of resolving the noise issue including failed mediation and obtaining impartial legal advice, Juneau presently regulates tour operators through the Juneau Commercial Operators Letter of Agreement that was developed and mutually agreed to by the

Haines’ ordinances clearly overstep the authority of the Assembly, dictating where helicopters can and can’t fly, and where they can and can’t land – even though the borough is not the property owner. The borough government is at risk here – and if they lose a lawsuit, it will be Haines taxpayers who will have to pay the bill.

CBJ and various operators. The emphasis is on safety issues, and noise mitigation is addressed where appropriate.

There are still differences of opinions and controversies arise. The difference is that the CBJ must find common ground – a solution that works for everyone involved, not just the anti-helicopter folks.

In a Nutshell

In response to the controversy over helicopters, Juneau dealt with the issue step by step. They set up working groups to deal with the issue, they tried mediation, and finally they obtained an unbiased legal opinion and followed the advice of their consultant.

...And Then There Is Haines

After Deborah Vogt and her friends, including the Lynn Canal Conservation folks lost the fight in Juneau, that is, they failed to

totally control the conversation and stop heli-tours from operating in Juneau, they moved their focus to Haines – a smaller, less sophisticated Assembly that they could more easily control. For ten years Haines has argued over the heli-skier issue, but we are no farther along today than when the issue began.

Although the heli-ski businesses exist here, they are functioning in a completely negative

business environment where the heli-haters have control of the agenda. Now, the haters think they have engineered an ordinance and documented a violation that will allow them to squash a heli-ski company and drive them from the valley permanently.

Haines’ ordinances clearly overstep the authority of the Assembly, dictating where helicopters can and can’t fly, and where they can and can’t land – even though the borough is not the property owner. The borough government is at risk here – and if they lose a lawsuit, it will be Haines taxpayers who will have to pay the bill. Through their irresponsible actions, our assembly members will have (once again) cost us real money.

Get out and VOTE

It’s up to us, the voters, not to let that happen. We need to

VOTE, and elect level-headed assembly members who are willing to listen to the majority and make decisions that benefit everyone, without catering to the anti-development folks exclusively. This year, we have the opportunity to send a message with our vote – our two most anti-business assembly members are up for election, and it’s time to replace them with folks who understand how a small town economy works.

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ASSEMBLY MEETING*(Continued from page 1)*

Haines in the 1960's when it was a booming place. She supports the heli-ski business for the additional economic activity it brings to the town.

Bud Stewart said he doesn't think the problem is with the heli-skiers — it is with the regulations. "I could write a regulation in one paragraph," he said, "Start doing business at the beginning of the season, stop when the season is over, and be a good citizen."

Bruce Bauer said he has been here from the beginning of this fiasco. He volunteered to be on the committee to draw up the map, but he agreed that the borough has no business trying to regulate where aircraft fly. He supports the heli-ski industry.

George Figdor said that historically people voted against the heli-ski industry and it was only through the process of regulation that the heli-ski industry could exist in this valley. The options were regulation, or no heli-ski industry. Figdor is in favor of penalizing SEABA for their "violation."

Deborah Vogt said, "Helicopters are really annoying — both to back country users and to wildlife." She also said, "I'm actually quite a fan of the industry," but then went on to explain why SEABA should receive the maximum proposed penalty and not be issued a permit to operate next season.

Sean Cone urged the borough to get competent legal advice before spending money on enforcement of illegal ordinances and the possible resulting lawsuits. Cone, a career medevac helicopter pilot, restated that the borough does not have the authority to tell aircraft where to fly, and cautioned against taking legal advice from Ms. Vogt because she has a personal interest and is giving biased advice.

Kerry Towne urged the Assembly to support private busi-

ness, especially businesses that provide an economic boost during the off-season. He said, "If you don't allow the business community to grow in the winter, you're doing us a disservice."

Nick Trimble of SEABA said there's a lot of misinformation out there about the business. He said that last year TEMSCO helicopters flew 80,000 people to view glaciers, compared to SEABA, who took 113 people into the mountains this year. He said that the weather, terrain and other factors already limit this business to a maximum full potential of about 48 people per week during the 92-day heli-ski season. SEABA has operated in Haines for 7 years, and this is the first year they operated in the black. The four investors made a net profit of \$16,000 — that's \$4,000 per investor after a 7-year investment — nobody's getting rich.

Christy Tengs Fowler suggested that the heli-ski regulations may be going about things in the wrong way. Even though Trimble's restaurant and lounge (Fort Seward Lodge) is a competitor, she still sees a boost to her business when the heli-skiers are in town. She supports the heli-ski business.

Roger Maynard with the Alaska Alliance for Commerce spoke in favor of heli-skiing. He pointed out that if the Assembly takes action against SEABA it has a negative effect, not only on SEABA, but on all other businesses.

Tim Thomas of Alaska Heli-skiing was just observing to see what is going on — this is his first assembly meeting. He voiced his support for SEABA and the heli-ski industry, and said that he thinks some sort of regulation is important.

Stan Jones said he lives near three bars that are sometimes too noisy, but he doesn't call the police or try to run them out of business. He also lives near Kerry Towne's mechanic shop, and sometimes there is too much noise when motors are being

tested, but he doesn't call the police and try to run them out of business — it's just the noise that comes from a business doing what needs to be done. It's wrong for the Assembly to try to shut down a business just because a few people are annoyed.

Duck Hess apologized for coming to the meeting late; a mudslide had shut Haines Highway at 19-mile and he had to

shuttle people past the debris. He said this is just one example of why wilderness tour businesses are self limiting. Some days natural events keep a tour from operating. The heli-ski business is limited by flyable weather, mechanical issues, logistics, safety, and a number of other factors. The Assembly does not need to place artificial limits on this type of business, he said.

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