

# ANNUAL SERVICE AREA MEETING

October 10, 2009

# DUTIES AND RESPONSIBILITIES

Jim Whitaker, Mayor

# Mayor

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- The executive and administrative power of the borough is vested in the borough mayor.  
[FNSB 2.04.010]
- The borough mayor shall direct and supervise the administration of the construction, maintenance, and operation of all borough roads, bridges, drains, buildings, and other public works.  
[FNSB 2.04.040 1.3]

# Assembly

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- The assembly of the Fairbanks North Star Borough has full legislative responsibility for all service areas and may review and accept, reject or modify the budget, annual plans and proposed tax levy of the service area commission. [FNSB 14.01.161 A]

# Assembly Road Service Area Committee (ARSAC)

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- Establish priorities and recommend allocation of service area matching grant funds to qualified road service areas.
- Make recommendations to the assembly concerning road service area issues including ordinances and resolutions. [FNSB 14.02.040]

# Public Works Department (PWD)

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- Provides professional engineering planning, design, project management, general oversight services, and maintenance of Borough public facilities and roads.

# PWD/Rural Services

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- Provides supervision and operational support to road/sewer/street light service areas and service area district councils.
- Provides administrative and procurement functions, including budgeting, accounting, contracting and accounts payable, and provides engineering, contract management, mapping, and technical services.
- Provides training for commissioners.

# Service Area Commissioners

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- Submit a comprehensive budget to the mayor.
- Submit a plan describing the commission's proposed short- and long-term maintenance, permanent improvements and strategic plans.
- Recommend standards and specifications for contracts for the construction of improvements and performance of services within the service area.

- Act on behalf of the borough
  - to supervise and manage the affairs of the service area,
  - to implement policies and programs to protect the safety of the public and preserve the service area's capital assets in a fiscally prudent manner, and
  - to perform such further specific duties as may be, from time to time, delegated to it;

- Encourage participation and communication with residents and property owners within the service area;
- Make recommendation to the mayor regarding the service area, service area administration, and service area policies, as the commission deems proper. [FNSB 14.01.151]

# 90/10 MATCHING GRANT PROGRAM

By: Randy Johnson, Public Works Deputy Director

# History of the Matching Grant Program

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- The past 5 to 10 years the Borough received little in funding assistance from the State of Alaska.
- In 2006, the Federal Government allocated approximately \$8.0 million dollars, thru the State of Alaska, to the Fairbanks North Star Borough for road projects.
- The Borough organized the 6 District Councils and Assembly Road Service Area Committee to assist in communications from Assembly and Administration to individual service areas. Additionally the ARSAC developed and recommended to the Assembly matching grant and revolving loan programs.
- In spring 2007 the ARSAC committee approved scoring matrix and ranking criteria and recommends selection of 8 projects for the 90/10 matching grant program.
- The Borough received an additional \$10.0 million dollars from the State of Alaska for Road Projects

# Project Selection Criteria

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## Current Selection Criteria and Scoring Matrix

1. Project grant funding is limited to a maximum of \$500,000 (raised from \$400,000). The maximum grant is \$450,000 with a 10% service area match of \$50,000.
2. The project cost must be greater than \$20,000 to be eligible for a grant.
3. Service areas may receive only one project grant.
4. Service areas that receive a direct state appropriation for a project will not be eligible for a Borough 90/10 grant in the same fiscal year.
5. The project scoring criteria matrix for 2009 remained the same as that used in 2008.
6. Service area project priority is included as a scoring criterion for selection of projects in 2010.

**Score**

←—————→

**Weight**

Criteria	4	3	2	1	0
Safety Deficiency 6	History of accidents involving life or injury	History of accidents involving property damage	Design/condition deficiencies	History of complaints	No safety issues
Accessibility 6	Year round access problems	Emergency service difficult, school buses unable to use road	Seasonally inaccessible	Minimal access problems	No access problems
Maintenance and Operational Cost Reduction 4	Substantial Reduction over 50%	Reduction 25% - 50%	Small Reduction 10% - 25%	Minimal reduction less than 10%	No reduction in M & O
Road Designation 5	Major Collector	Minor Collector	Local Road 2 11-40 lots	Local Road 1 1-10 lots	Pioneer access or alley
Project Feasibility 4	No foreseeable problems	Minimal problems	Physical constraints could impede project	Major realignment required	Requires right-of-way acquisition, unmanageable physical constraints
Service Area Priority 3			1 <sup>st</sup> Priority	2 <sup>nd</sup> Priority	No Priority

Amended by ASRAC, May 2009

# 2007 Approved Projects

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Service Area	Road	Approx Proj Length	Total Cost	Status
Golden Valley	Chena Ester Ditch Gravel Reconstruction	1.37	\$400,375	In Progress
Newby Park	Conifer Drive Asphalt Upgrades	0.5	\$258,320	Complete 2008
Summit Drive	Summit Drive Asphalt Upgrades	2.5	\$500,000	Complete 2008
Yak Road	Old Chena Ridge Road Asphalt Surface Treatment	1.24	\$348,000	Complete 2008
Birch Hill	Bias Drive Gravel Upgrades	0.9	\$213,750	Complete 2008
Chena Hills	Roland Road Asphalt Surface Treatment	1.27	\$397,463	Complete 2008
Goldstream Moose Creek	Moose Mountain Road Culvert Crossing Upgrade	0.28	\$1,028,110	In Progress
Potlatch	Heritage Hills and Darlene Way Gravel Reconstruction	1.01	\$400,000	Construction 2009

# 2008 Approved Projects

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Service Area	Road	Approx Proj Length	Total Cost	Status
Tan Terra	Woodland Gravel Upgrades	0.33	\$133,000	Construction 2009
Deep Forest	Hoonah Drive Gravel Upgrades	0.33	\$194,605	Construction 2009
Chena Point	Chena Point Avenue Asphalt Surface Treatment	1.35	\$610,000	Construction 2009
Fairfields	Palomino & Clydesdale Gravel Upgrades	2.06	\$175,000	Construction 2009
Wildview	Goldmine Trail Asphalt Surface Treatment	1.4	\$400,000	Construction 2009
Vista Gold	Green Leaf & Pinewood Rebuild intersections	2	\$75,000	Construction 2009
Becker Ridge	Rosie Creek Road Asphalt Upgrades	2.81	\$2,600,625	Declined Grant
Straight Creek	Deraco Lane Gravel Upgrades	0.3	\$46,875	Declined Grant
Tungsten	Juniper Drive Gravel & Asphalt Surface Upgrades	1	\$400,000	Construction 2009
Chena Spur	Birchwood & Chetana, Gravel Upgrades	3.04	\$400,000	Construction 2009
North Ridge	Northridge Road Gravel Upgrades	0.7	\$183,750	Declined Grant

# 2009 Approved Projects

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Service Area	Road	Approx Proj Length	Total Cost	Status
Murphy	Yellowknife, Watson, Teslin, Williston, Liard Gravel Upgrade	5.0	\$2,462,500	Declined Grant
Herning Hills	Herning Road Gravel & Drainage Upgrades	0.8	\$515,714	Declined Grant
Haystack	Haystack Drive Gravel Upgrades	4.1	\$357,291	Construction 2010
Cordes Drive	Nugget Loop (West End) Gravel Upgrades	0.3	\$62,370	Construction 2010
Ridgecrest	Ridgecrest Drive Intersection Improvements	0.2	\$158,631	Separate State Grant
Edanella Heights	Roden Lane Asphalt Upgrades	0.1	\$103,367	Construction 2010
Chena Marina	Dolphin Way Gravel & Drainage Upgrades	1.1	\$233,957	Construction 2010
Martin	Old Murphy Dome Gravel Upgrades	5.8	\$2,577,388	Declined Grant
College Hills	Kittiwake Drive Asphalt Upgrades	0.6	\$441,408	Construction 2010
Joy	Toolik, Snowbird, Moses and Daniel Asphalt Approaches	4.0	\$59,400	Construction 2010

# 2010 Project Selection

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- Rural Services received project requests from Service Areas this past summer
- Ranking Committee to meet in October and rank project using selection criteria approved by ARSAC at May 11, 2009 meeting.
- Information will be presented to ARSAC for selection of new projects.

# MAINTENANCE, CONSTRUCTION AND CAPITAL PROJECTS

By: Bill Gryder, Rural Services Manager

# Capital Projects

- Borough ordinance and code:
- A capital project has a **useful life of five years or more** and a **project cost of \$20,000 or greater**. [FY 2009-2010 Budget, Ordinance 2009-20, Capital and Multi-Year Projects Summary, page 325]
- The assembly must approve all transfers between appropriations to a capital project and a service area by ordinance. [3.03.060 C]
- If the work has a useful life of five years or more and a project cost of \$20,000 or greater, it must go through the assembly as a capital project and cannot be done with service area operating funds. Examples are:
  - Reconditioning the road base, adding D-1 and high-float asphalt surface treatment
  - Reconditioning the road base, and adding Brown's Hill surfacing
  - Widening an existing road to 24' and adding surface material
  - Any asphalt treatment, such as overlays or first time paving
  - Adding gravel to build up a section of road.
- If you are adding material and the project cost is \$20,000, the work is going to be a capital project.

# Public Construction

- State law: Prevailing wages must be paid under a public construction contract.
- *Sec. 36.05.010. Wage rates on public construction.*
- *A contractor or subcontractor who performs work on **public construction** in the state, as defined by AS 36.95.010, shall pay not less than the current prevailing rate of wages for work of a similar nature in the region in which the work is done.*
- *Sec. 36.95.010. Definitions.*
- *In this title, unless the context requires otherwise,*
- *(3) "public construction" or "public works" means the on-site field surveying, erection, rehabilitation, alteration, extension or repair, including painting or redecorating of buildings, highways, or other improvements to real property under contract for the state, a political subdivision of the state, or a regional school board;*
- The Borough is a political subdivision of the state and, because the Borough is providing road services within the service area, if the work falls within the state Little Davis-Bacon Act definition of public construction, the contractor must pay prevailing wages.

# Maintenance

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- All repair work is maintenance, but all maintenance is not repair.
  
- A very limited but useful definition of maintenance for our service area contracts is that work for which payment of prevailing wages is not required under a public contract. This includes:
  - Snowplowing or hardpack removal
  - Grading an existing surface,
  - Shaping of shoulders,
  - Cleaning of ditches and culverts, or
  - Brushing the roadsides.

# Final Thoughts

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- Please do not try to correlate borough capital projects with state public construction. They are different definitions for quite different purposes.
  
- After all this discussion, the service area commission's involvement in these issues is quite simple.
  - Commissions need to keep the requirements for capital projects in mind when planning work and requesting work from their contractors.
  
  - However, payment of prevailing wages is an issue of state law, and the contract between the Borough and the service area contractor, and does not involve the service area commission.

# SERVICE AREA PRESENTATION

By: A. René Broker, Borough Attorney

# Legal Background Of Service Areas

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- ❑ Under Alaska's constitution, service areas are created, altered or abolished by the assembly, subject to law or charter. The constitution specifically authorizes the assembly to levy taxes, charges or assessments in a service area.  
[Art. X § 5.]

# State Law

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- ❑ Under state law, service areas are operated “by ordinance.” [AS 29.35.450].
- ❑ State law authorizes but does not require the assembly to “provide for an appointed or elected board” to **supervise** the furnishing of services in the service area.  
[AS 29.35.460].

# Case Law

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- ❑ Service areas are not independent legal entities. Instead, a service area is simply a “specific geographical area within which a municipal service is furnished by a borough.” Its powers are derived from, and limited by, state law and municipal ordinance. *North Kenai Peninsula Rd. Maintenance Serv. Area v. Kenai Peninsula Borough*, 850 P.2d 636, 639 (Alaska 1993)

# Borough Law

- ❑ Borough ordinance authorizes service area commissioners to supervise and manage the affairs of the service area [FNSB 14.01.151 D] but that duty and responsibility is subject to all applicable laws and ordinances including the separate duties and authorities of other Borough departments and the appropriating power of the Assembly.

# Whose Money Is It?

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- ❑ State law authorizes:
  - The borough to levy a property tax in a service area for functions limited to the service area. [AS 29.45.010]
  - The assembly to levy taxes in a service area to finance the special services. [AS 29.35.470]
  - Tax money = **public funds** subject to all applicable laws and other restrictions.
  - Responsibility to the public to properly oversee and safeguard funds within the scope of your duties.

# Legal Duties & Responsibilities

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- Ethical requirement not to vote on a question if you have a substantial financial interest.
- No one can “obligate, encumber, or expend borough money except in accordance with appropriations or as otherwise authorized by law.”  
[FNSB 3.01.020 A]
  - ❖ Don’t authorize expenditure of money unless there is a signed purchase order.
  - ❖ Don’t approve work for payment that hasn’t been completed as required by the contract.

# Personal Liability

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- Statutory immunity and insurance coverage does not extend to acts that are outside the course and scope of your legal duties. Includes violations of OMA / procurement laws.

# Procurement Rules

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- ❑ Applies to all expenditures of public funds by the borough unless specifically exempt by law.
- ❑ Only the Mayor is authorized to approve contracts, contract modifications or change orders.
- ❑ Any contract modification or change order more than \$100,000 needs to be approved by the assembly.
- ❑ A contract cannot be materially changed without rebidding.

# Overview Of The Open Meetings Act

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- ❑ Duty of Commissioners to “encourage participation and communication with residents and property owners within the service area.” [FNSB 1401.151E]

**The OMA applies to Service Area Commissions—you are NOT exempt.**

- You are a policy/decision making body.
- You are also an advisory body.

# OMA's Underlying Policies

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- Government should deliberate and act openly
- Public servants do not have the right to decide what is good or not good for the people to know.
- People must remain informed in order to retain control over the government they created.
- The Act must be liberally construed to effectuate these policies and avoid unnecessary exemptions and executive sessions.

# General Rule

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Requires that any time you:

- ❖ meet with a majority (or four or more whichever is less) of your commissioners,
- ❖ to consider a matter upon which you are empowered to act,
- ❖ that meeting must occur only in public,
- ❖ after reasonable notice.

# When Am I In A Meeting?

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- ❑ Start with the numbers + discussion of subject within your duties = meeting
- ❑ Informality doesn't matter/social gatherings
- ❑ All steps of deliberative process included
- ❑ E-mails/phone call/blogs/group signing

- ❑ Exception to the general rule—“meeting solely to act on matters that are administrative or managerial in nature”.
- ❑ Does not remove borough code requirement of quarterly meetings. [FNSB 14.01.141]

- **Exception** is meant to allow day-to-day supervisory decisions involving use of public funds previously approved in a public meeting such as:
  - When to plow the roads or perform other maintenance within approved annual plan.
  - To give direction to a contractor as contemplated within a properly awarded, and funded contract.
  - Inspecting and approving work performed by contractor.
  - Approving an invoice for payment.

# Exception Does Not Include Items That:

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- Determine or concern **required** annual plan for proposed short and long-term maintenance, and improvements.
- Set policy or establish programs of the service area.
- Approve a submission of a grant application or loan request.

- Recommend to the Mayor or Assembly including recommendations on the **required** annual comprehensive budget, proposed appropriation, tax levy.
- Recommendations to the Mayor/Assembly regarding budget transfers, renewal of contracts, capital projects, tax cap election.
- Recommend standards and specifications for contracts and agreements.

# What Is Reasonable Notice?

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- ❑ Minimum legal requirements are:
  - Date/time/place
  - Print or broadcast media + posted notice at place designated by body
  - Consistency Matters –if you do additional notice stick to it!
  - Content, content, content.

# Rules To Live By

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- ❑ Be scrupulous and above reproach whenever your duties involve the expenditure of public money.
- ❑ Don't take an action that effectively circumvents a discussion of public business at an open meeting.
- ❑ Know applicable laws and follow them. Failure to follow laws can have both Borough and personal consequences.

# EMS/RSA TASK FORCE

By: Tim Beck, Chair, ARSAC

# EMS/RSA Task Force

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## Mission Statement

- Improve accessibility and specifically emergency services access within the Fairbanks North Star Borough for improved safety and security for residents and emergency responders.

## Goals

- Improved communication between Fire Service Areas/Road Service Area Commissioners and Rural Services/Emergency Operations.
- Improved safety for fire, ambulance or other emergency vehicles while responding to public needs.
- Improved access for residents, school buses or other child safety issues.

## Action Time-Line

- Committee appointments November 16, 2009
- Committee recommendations March 31, 2010

# PROPOSED ORDINANCE CHANGES

By: Tim Beck, Chair, ARSAC