



CITY OF WASILLA

290 E. HERNING AVE.

WASILLA, ALASKA 99654-7091

PHONE: (907) 373-9050

FAX: (907) 373-0788

COUNCIL MEMORANDUM NO. 92-61


From: Mayor Stein
Date: June 15, 1992
Re: Parks Responsibilities

With the apparent 75% cut in the FY93 Matanuska-Susitna Borough parks maintenance contract, the Administration is concerned with the City's liability.

Wasilla has never formally transferred title to the various park lands to the Borough although Council, by ordinance, authorized the transfer in 1989. The Borough has not responded to our requests for its acceptance of titles.

At the Mayor's direction, Attorney Deuser has drafted a demand letter to the Borough asking that they formally accept parks lands, copy attached.

We wish to discuss the legal merits of this position in executive session because it involves potential litigation with the Borough.



John C. Stein, Mayor

Enclosure

LAW OFFICE
OF
RICHARD DEUSER

MAILING ADDRESS
165 EAST PARKS HIGHWAY
SUITE 201B
WASILLA, ALASKA 99687

PHONE AND LOCATION:
PHONE (907) 376-9484
KRENIK BUILDING, PARKS HIGHWAY

MEMORANDUM

MD
TO: Bob Harris
FROM: Richard Deuser
RE: Transfer of Parks to Mat-Su Borough -
Your Memo of April 29, 1992
DATE: May 5, 1992

Enclosed is a draft demand letter directed to the Matanuska-Susitna Borough. In evaluating this draft, I think it is important that (1) authority to take this position be confirmed with Council, and (2) that counter-arguments be made known to the Council, so that they understand potential weaknesses in the position stated in the draft.

I hope before anything is finalized that I have an opportunity to have input so as to feel comfortable that the Council is both informed and agrees.

Sincerely yours,

Richard Deuser
Richard Deuser

RD:jlm

Enclosure

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FOR DISCUSSION
ONLY

MAY 05

[CITY LETTERHEAD]

May ____, 1992

Matanuska Susitna Borough
Attn: Mayor Ernie Brannon
350 E. Dahlia Avenue
Palmer, Alaska 99645

Re: Request To Mat-Su Borough To Acknowledge
Assumption Of Its Statutory Responsibilities
To Provide For, Maintain, And Repair Parks
Located Within The City Of Wasilla

Dear Mayor Brannon:

The purpose of this letter is ^{to} draw your attention to the statutory responsibilities of the Mat-Su Borough to provide for and maintain parks within the City of Wasilla. As an aspect of that purpose, this letter is intended to notify the Borough that the City of Wasilla will not be performing tasks related to maintenance of parks within the City and is hereby notifying the Borough of the Borough's responsibility to immediately assume management and maintenance of Parks within the City of Wasilla. ✓

I. HISTORICAL BACKGROUND.

Title 29 is structured in an apparent effort to assure that management responsibility follows the entity with taxing authority to provide for designated local services. Relative to the immediate issue, management and maintenance of parks within the City of Wasilla, the background history will reach the conclusion that it is the responsibility of the Matanuska-Susitna Borough to manage and maintain park property that is located within the City of Wasilla. This makes political sense in that it is the Borough who has the taxing authority to raise money, through the property tax assessment/mill levy system so as to generate monies to pay for such management services.

By resolution of the Mat-Su Borough dated August 31, 1966, a question was placed upon the ballot of the election of October 4, 1966. That question was:

MAY 05

Matanuska Susitna Borough
Attn: Mayor Ernie Brannon
Page Two

FOR DISCUSSION
ONLY

Shall the Matanuska-Susitna Borough be granted the authority to provide for parks, campsites, and other year-round recreational facilities on an area wide basis?

That proposition passed and the correctness of the tabulated vote was certified by action of the Mat-Su Borough at the special meeting of October 6, 1966. The action of the voters authorizing adoption of park powers as an area wide power of the Borough was confirmed by assembly passage of Ordinance No. 73-17 by action of April 17, 1973. In relevant part, Section 05.10.050 stated:

Parks and Recreation. The Borough shall exercise the power to provide Parks and Recreation as approved by the electorate...

The above cited Ordinance was an apparent attempt to codify the action of the voters as taken in 1966.

Since these events there have been a number of Ordinances that have been passed and modified by subsequent Borough Assemblies on the subject of Parks and Recreation. Nevertheless, the fundamental fact remains the same - Parks and Recreation is a power assumed by the Borough on an areawide basis by vote of the public. That fact remains true today and has never been altered or changed.

II. STATUTORY RESPONSIBILITY OF BOROUGH
FOR PERFORMING POWERS ADOPTED ON
AN AREAWIDE BASIS.

Several Alaskan statutes make it clear that an areawide power, adopted by the Borough, places the responsibility for exercise of the power with the Borough. These statutes make sense in light of the fact that the Borough is the taxing entity that is authorized by law to raise the funds for performance of such areawide services.

Particular attention is drawn to the terms of A.S. 29.35.250(b) which provides:

On adoption of a Borough ordinance to provide for areawide exercise of a power, no City may exercise the power unless the Borough ordinance provides otherwise, or the Borough by ordinance ceases to exercise the power.

MAY 0 5

DRAFT

FOR DISCUSSION
ONLY

Matanuska Susitna Borough
Attn: Mayor Ernie Brannon
Page Three

Of course, since the action of adoption of the areawide power of Parks and Recreation was done by vote of the public, action by the Borough assembly to alter that act of the public would be invalid. The Borough can only rescind the adoption of an area wide power by the same vehicle - a vote of the public. Consequently, the modifications of Borough ordinances that have occurred since the time of the facts outlined above have no impact or affect upon the central conclusion - Parks and Recreation remains an areawide power held by the Borough government.

Attention is also drawn to the terms of A.S. 29.35.340. Subsection A states:

On acquisition of an areawide power the first or second class Borough succeeds to all of the rights, powers, and duties of any City or service area with respect to that power. The Borough succeeds to claims, franchises, and other contractual obligations, liability for bonded and all other indebtedness, and to all of the right, title, and interest in the real and personal property held by the City or service area for the exercise of the power.

In addition, Subsection (c) requires the transfer of rights, assets, liabilities and other such similar things to the entity holding the areawide power (in this case - the Borough). In relevant part, the City within the Borough:

...shall arrange for an orderly and equitable transfer of rights, assets, liabilities, powers, duties, and other matters related to acquisition of the areawide powers.

In light of the above analysis it becomes important for the City and the Borough to effectuate the legislative mandate of Title 29.

III. PARKS AND RECREATION PROPERTIES AND RESPONSIBILITIES WITHIN THE CITY OF WASILLA.

There are seven separable real properties that are within the scope of Parks and Recreation located within the City of Wasilla. They are as follows:

Matanuska Susitna Borough
Attn: Mayor Ernie Brannon
Page Two

1. Wasilla Lake Wayside park. By Deed of May 8, 1978, amended July 2, 1980, the State of Alaska deeded to the City of Wasilla the property generally referred to as Wasilla Lake Wayside Park. The terms of the Deed restricted the use of the property to park use. Related to the Wasilla Lake Wayside Park is the Wasilla Lake Wayside Park parking lot leased from the State of Alaska to the City of Wasilla. Again, that lease document makes reference to the use of the parking lot in conjunction with the adjacent park facilities.
2. Fritzler Ballfields (Iditarod School). By lease document between the Lessor, MSB, and the Lessee, the City of Wasilla, the City of Wasilla became the operator of the Frizler Ballfields. The terms of the lease continue to run through May 20, 1995.
3. Nunley Park. This local park was deeded from the United States to the City of Wasilla by document dated July 15, 1977. Pursuant to grant funds from governmental sources, the Park was developed. As a condition of those grant funds, the City is required to maintain the property for park purposes.
4. Katherine Subdivision Park. By Deed of December 29, 1981, Wasilla became the owner of Lot 2, Block 2, Katherine Subdivision. By terms of the Deed, having incorporated restrictive covenants, the use of the property is limited to park use.
5. Carter Park. By Deed dated February 25, 1980, the City of Wasilla was granted title to Carter Park. The terms of the Deed restricted the use of the property to use as a park.
6. Ravenswood Park. By Deed to the City of Wasilla, dated December 21, 1983, the developers of Ravenswood granted the City of Wasilla property. The terms of the Deed require that the property be used as a park.
7. Bumpus Ballfield. The City currently assists with the operation of Bumpus Ballfield. This is part of a larger 40 acre tract that has never been subdivided. It currently is improved with softball diamonds.

MAY 9 5

DRAFT

FOR DISCUSSION
ONLY

Matanuska Susitna Borough
Attn: Mayor Ernie Brannon
Page Five

The City has documents related to each of the above-described properties identifying the legal description of the property and further identifying the terms and restrictions by which the City became entitled to that property. As implied by the above-short descriptions, there are numerous small details that require each of the properties to be individually analyzed when contemplating a transfer of title from the City to the Borough in compliance with the statutory requirements of Title 29 (see above discussion under Sections I and II). For example, a deed transferring title to a particular property from the City to the Borough might require referencing the specific restriction by which the City was originally obligated to use the property as a park. That obligation would then be repeated as an obligation imposed upon the Borough. The issue of reversion to the City in the event of failure by the Borough to fulfill its responsibilities, might have to be dealt with on an individual basis for each of the particular properties.

IV. NOTICE TO BOROUGH AND REQUEST FOR ACTION.

Effective with the transmittal of this letter, the City of Wasilla is advising the Matanuska-Susitna Borough of its responsibilities pursuant to Title 29. See above discussion. As a consequence of that notification, the City is requesting that the Borough enter into immediate and prompt discussions for the purpose of effectuating the requirements of Title 29, so as to transfer the rights, powers, and duties of the City of Wasilla to the Matanuska-Susitna Borough. More specifically, our first agenda should be to meet and designate the responsibility for drafting appropriate deeds and transfer documents by which the rights, liabilities and duties of the City of Wasilla will be formally transferred to the Borough as noted above. Each property may require individual drafting to properly identify the subject matter that is being transferred to the Borough and to further identify the reversion that may occur or will occur in the event of non-performance by the Borough.

In the interim time while the documents are being prepared, finalized, signed, and recorded, the Borough is hereby formally requested to immediately acknowledge that it will immediately undertake the day-to-day management and maintenance of the above-designated properties. More specifically, it is the position of the City of Wasilla that the responsibility of management and maintenance of these properties is a

MAY 05

DRAFT

FOR DISCUSSION
ONLY

Matanuska Susitna Borough
Attn: Mayor Ernie Brannon
Page Six

responsibility of the Matanuska Susitna Borough. As such, potential liability related to failure to properly manage and maintain these properties should be assumed by the Matanuska-Susitna Borough.

V. CONCLUSION.

Please advise immediately. The City anticipates that you will acknowledge that the Borough recognizes its management and maintenance responsibilities. The City further anticipates that you will acknowledge a willingness to proceed with the preparation, finalization, signing, and recording of appropriate documents to formally transfer the real property rights to the Mat-Su Borough.

As an alternative, the City remains open to the potential that the City would continue to operate these parks on a day-to-day management level, but only in the event that adequate funds are provided by the Borough so as to pay for the costs of such day-to-day management. In the absence of adequate provision of funds from the Borough to pay for management of these properties, the City insists upon the formal transfer of responsibility to the Borough for these recreational and park facilities.

Please advise at your earliest opportunity.

Sincerely yours,

CITY OF WASILLA

By: _____
John C. Stein
Mayor



CITY OF WASILLA

290 E. HERNING AVE.
WASILLA, ALASKA 99687
PHONE: 373-9050

Requested By: Administration
Prepared By: Administration

ORDINANCE SERIAL NO. 89-26

AN ORDINANCE OF THE CITY OF WASILLA, ALASKA RECOGNIZING AREAWIDE PARKS AND RECREATION POWERS OF THE MATANUSKA-SUSITNA BOROUGH, AUTHORIZING TRANSFER OF DEDICATED PARK LANDS AND REPEALING WMC 1.08.050 (o).

BE IT ORDAINED AND ENACTED BY THE CITY OF WASILLA, ALASKA AS FOLLOWS:

WHEREAS,

(1) The Matanuska-Susitna Borough has acquired areawide parks and recreation powers.

(2) As provided in AS 29.53.250(b), the City of Wasilla may not exercise an areawide power exercised by the Borough.

(3) As provided in AS 29.35.340(a) the Borough succeeds to all rights, title and interest in real and personal property held by a City for exercise of that power.

SECTION I. Classification. Section II is a non-code section. Section III is a code section.

SECTION II. Non-Code Section. Enactment.

(1) The City of Wasilla formally recognizes the power of the Matanuska-Susitna Borough to tax for and fund the acquisition, construction, operation and maintenance of parks and recreation lands, facilities and programs.

(2) The City of Wasilla hereby ceases to exercise any parks and recreation powers and activities that it may have formally or informally exercised.

(3) The Mayor of Wasilla is hereby authorized to transfer by quit claim deed the following lands, dedicated exclusively for the use of parks and recreation, that were heretofore owned, operated and maintained by the City, conditioned on the acceptance of those lands by the Borough:

See Appendix A attached hereto and made a part hereof.

(4) Nothing in this ordinance shall be construed to prevent the City of Wasilla from operating and maintaining

landscaping associated with public buildings, right-of-way, vacant public land, utilities or other City-owned property.

(5) Should the Matanuska-Susitna Borough desire to contract for the future operation of parks and recreation facilities in and around the City of Wasilla, the Mayor is hereby authorized to negotiate that contract providing that all basic parks maintenance and operation costs are fully reimbursed to the City.

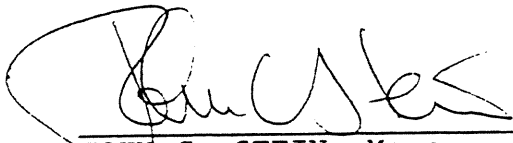
SECTION III. Code Section. Enactment. Section
1.08.050(o), "Recreation Facilities", of the Wasilla Municipal Code is hereby repealed.

SECTION IV. Effective Date. This ordinance becomes effective upon adoption by the Wasilla City Council.

Introduction: 07/24/89

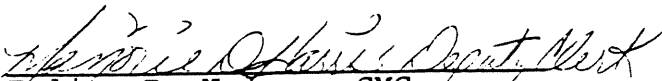
Public Hearing: 08/14/89

ADOPTED by the Council of the City of Wasilla on this 28th day of August, 1989.



JOHN C. STEIN, Mayor

ATTEST:



Erling P. Nelson, CMC
City Clerk

(SEAL)

APPENDIX A

ORDINANCE 89-26

LAND DEDICATED EXCLUSIVELY FOR PARK AND RECREATION USE TO BE
QUIT CLAIMED TO MAT-SU BOROUGH

- ~~(1) Bumpus Ballfield Complex, developed area only~~
- (2) Townsite Park (Leo M. Nunley Park)
- (3) Carter Park
- (4) Wasilla Lake Park
- (5) Ravenswood Subdivision Park (Undeveloped)
- (6) Fritzler Little League Fields Lease - Iditarod School
- (7) Catherine Subdivision Park (Undeveloped)
- (8) Wasilla Acres Lot 24 Block 6 (Undeveloped)

amended 8/22/89
[Signature]