

# CITY OF BETHEL

P.O. Box 388 • Bethel, Alaska 99559

543-2297—Area Code 907

## PLANNING/PORT SPECIAL MEETING MINUTES

March 15, 1993

### CALL TO ORDER

Port Commission Chairman DeSousa called the special Planning/Port Commission meeting of March 15, 1993, to order at 7:35 pm.

### ROLL CALL

Present: (Port) Allen DeSousa, John Hawkins, Grant Fairbanks (late), Bruce Nerby, Buster Richardson, Allan Wintersteen; (Planning) Bill Adams, Joan Hamilton, Jake Metcalfe, Doug Moody, Tom Warner  
Absent, excused: (Port) Manny Konig; (Planning) John Guinn, Louie Andrew

Also present were Bartz Englishoe of Englishoe and Associates and Dave Perez of the Department of Natural Resources.

Port Commission Chairman DeSousa opened the Public Hearing on the Comprehensive Land Use and Development Plan for the City of Bethel's Reclaimed Tidelands.

### PEOPLE TO BE HEARD

Bruce Nerby spoke as a representative of his father, John Nerby, owner of Lot 9, Block 20 of Tract C. Mr. Nerby read from a prepared statement, a copy of which is attached as part of these official minutes. Mr. Nerby recommended the City hire a surveyor to examine the previous surveys for accuracy.

J.B. Crow read two prepared statements, copies of which are attached as part of these official minutes. Mr. Crow agreed with Mr. Nerby's recommendation of an independent surveyor examining all of the boundary evidence before the State grants the City a lease. Mr. Perez stated that the survey in question had been stamped by two surveyors and the State had accepted that survey as accurate.

Judy Bates of BNC read a letter from Bill Bivins, CEO of BNC, a copy of which is attached as part of these official minutes.

**PLANNING/PORT SPECIAL  
MEETING MINUTES  
MARCH 15, 1993  
PAGE 2**

Ben Dale informed the Commissions that a letter of intent had been issued to a processor for 200 feet of the Open Space in front of Tract C, contrary to the Commissions' direction at the previous meeting. Mr. Dale stated the letter had been sent in January.

Scott Earsley of Inlet Salmon spoke in favor of allowing processors to tie up along the Open Space. Mr. Earsley claimed the busy street and floating dock would invite trouble for the City in liability claims if the Open Space were developed into a public park area.

Chairman DeSousa closed the Public Hearing and opened the meeting to comments of Commissioners.

**COMMISSIONERS'  
COMMENTS**

Mr. Warner agreed with BNC's letter concerning the wording under "Riparian Rights"; the wording should be "rights" not "powers." Mr. Warner reminded the Commissions that the City Council designated the Open Space years ago and had a commitment to provide public access. Mr. Warner stated the City should reserve the Open Space on the seawall for the future.

Chairman DeSousa suggested better fencing along the Open Space and caution signs be installed.

Mr. Richardson stated that denying processors more room along the seawall would drive them out of Bethel and would therefore deny fishermen and the City the chance for additional income.

Mr. Wintersteen stated that removing the floating dock would hurt the businesses in the immediate area. Mr. Wintersteen also noted that he enjoyed the Open Space.

Chairman DeSousa related that the pilings at the lower end of the Open Space had shifted badly in the past and that rock had been dumped there to prevent further shifting. Mr. DeSousa stated that he had a problem with tying large vessels along that area until he was sure the pilings were stable.

Mr. Fairbanks suggested developing the lower end of

PLANNING/PORT SPECIAL  
MEETING MINUTES  
MARCH 15, 1993  
PAGE 3

Tract C as a park area. Mr. Fairbanks asserted that bringing in more processors would not bring in more money for the fishermen.

motion

M/M by Hawkins, 2nd by Moody to leave the plan as the Council designated as Open Space. Poll vote. Motion carried, 10-yes, 1-no (Richardson).

Mr. Warner asked if the Commission was going to consider the request for an independent look at the surveys. Mr. Warner stated the Commissions did not have the technical expertise to decide as a body.

Mr. Nerby stated a committee other than City employees should be appointed to look at the surveys. Mr. Richardson agreed, adding that the committee should have no connection to Bethel whatsoever.

Mr. Moody stated that the Commissions' role was to approve the zoning of the reclaimed lands, not to settle boundary disputes, restating the State's view that the lines are correct.

Mr. Perez stated that even if an independent surveyor finds the surveys are inconsistent, the findings would have to be brought before the original surveyors and not the State.

motion

M/M by Warner, 2nd by Wintersteen that the Commissions accept the draft of the Comprehensive Land Use and Development Plan for the City of Bethel's Reclaimed Tidelands, with the change noted on page 8, changing the word "powers" to "rights", and that the recommendation be presented to the City Council at their next regular meeting.

Discussion-

--Mr. Hawkins pointed out that the word "be" is missing at the end of the second line of the next to the last paragraph on page 8.

--Mr. Englishoe added that he could address any future actions needed at the end of the Land Use Plan.

--Ms. Hamilton asked if the names of the land owners would be filled in before it goes to Council.

--Mr. Nerby asked if he should abstain from voting on the motion due to a conflict of

**PLANNING/PORT SPECIAL  
MEETING MINUTES  
MARCH 15, 1993  
PAGE 4**

interest as heir to his father's property. Chairman DeSousa determined that Mr. Nerby should abstain.

Poll vote on the motion. Motion carried, 9-yes, 1-no (Richardson), 1-abstention (Nerby).

Mr. Perez stated the next step in the process would be the issuance of the lease to the City once the Council accepts the Land Use Plan.

In response to a question from Interim City Manager Nancy Gross, Mr. Perez stated that the City would not be able to take ownership of the reclaimed tidelands because, by statute, the City would have to be a first-class or home-rule city, or the action initiated before April 20, 1963.

**motion**

M/M by Hawkins, 2nd by Warner to adjourn the meeting at 9:30 PM. Voice vote. Motion carried unanimously.



Connie Tucker, Commission Clerk

CITY OF BETHEL  
PO Box 388  
Bethel, Ak. 99559

RE: Draft "Comprehensive Land Use and Development Plan for the City of Bethel's Reclaimed Tidelands."

Dear sirs,

I am representing my father and his interests in regards to the "plan". He is an upland owner of riverfront property and is in danger of losing property and riverfront access as the plan provides at this time.

John Nerby has owned the property at Lot 9, Block 20 in tract C since 1975. During this time he has used this property and it's riverfront access to conduct various business ventures. These ventures varied from a riverside gas pump with a vehicle ramp that provided rear around public access to the river, to a fish processing operation. He also owns a large warehouse that has a lot of potential for producing income. Riverfront access was vital to his past endeavors and will be in the future if he is to pursue his dreams.

The city is claiming that John Nerby's, and others, riverfront access land is no longer their own due to reclaimed tide lands resulting from the construction of the seawall. They base their assessment of the reclaimed tideland boundaries on two different surveys. Surveys that are inconsistent with one another. Surveys in which we understand parts were not physically surveyed but were taken from previous maps and a variety of surveys.

As an upland owner my father is concerned for his rights and the future livelihood of his investment.

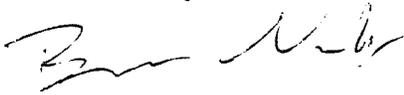
As a citizen of Bethel he is concerned that the city is basing their actions on information that is clearly false. He fears that the city may have dollar signs in their eyes and may be willing to overlook the public's best interest in the development, or over development, of our seawall. The city may also be opening themselves up to possible litigation.

Let's take this opportunity to review the surveys, explore the discrepancies and make educated decisions in regards to the reclaimed tidelands and overall land use plan.

Our recommendation is that the city hire an expert surveyor to work with a committee to address the specific issue of these tideland boundaries. This group would also contact the upland owners and review their situations on a case by case basis.

Thank you for your consideration in this matter.

Sincerely,



Bruce Nerby for John Nerby

March 15, 1993

15 March, 1993

To:

Joint Meeting of:

City Planning Commission,

City Port Commission,

and Alaska Dept. of Natural Resources -

This statement is for the record.

It is a focusing on the State's Tidal Survey that depicts a "meander" line thereby quantifying the location and amount of reclaimed land.

The "Plan" being considered tonight relates to "reclaimed lands created by the construction of the bulkhead."

The State's Survey bears only a <sup>e</sup>slight relationship to the seawall that I had in place in 1983 at the time of the present seawall's construction.

I claim that little, if any, land was reclaimed.

DNR persists in accepting the (to me) flawed meander line survey.

I am now and intend to continue to make every effort to both use and protect my vested rights as an upland owner.

These rights have been mine - and used by me - for over twenty years.

I intend to both keep and use them

W.A. 11

J. B. CROW & SONS, Inc.  
P.O. BOX 567  
BETHEL, ALASKA 99559

March 15, 1993

City of Bethel Planning and Port Commissions

RE: Alaska Tidelands Survey (ATS) No. 1346.

J. Bruce and Lucy Crow are the owners of Lt 5, Blk 8, USS 3790, East Addition to the Bethel Townsite. This lot is located on East Ave. and fronts the Kuskokwim River at the juncture of Brown's Slough. This river frontage boundary has been adversely affected by ATS 1346.

The Special Instructions to ATS 1346 include the following statement, "The landward boundary of this survey shall be established along a natural line of mean high water which was in existence before currently existing fill material was placed" (Emphasis added).

From the surveyors notes found on Page 6 of ATS 1346, this boundary was established through the following sources.

Note #4: The landward boundary of this survey is based on the mean high water line as determined:

a. by Gallett and Silides Joint Venture, and depicted on the Multipurpose Bulkhead, Port of Bethel, Waterfront Property Plan.

b. Existing tidal survey at 2.7' line based on existing benchmarks located in Bethel.

Note #4 b. is the 1970 NOAA Tidal Bench Marks survey that purports to establish the elevation point of the mean high water line that is the separation point between the upland owners and the tidelands and reclaimed tidelands in ATS 1346.

This very limited, and quite probably conflictive evidence base used in ATS 1346 for establishing the upland boundary of the tidelands has produced many questions as to this surveys validity. It omitted the requirement for research by the surveyor to determine from all

evidence, the true location of the landward boundary of upland owners prior to the construction of the seawall.

In the case with Lt 5, Blk 8, such evidence does exist. The current protracted "Existing Mean High Water Line" depicted on ATS 1346 as it relates to Lt 5, Blk 8, is in significant error. This has been determined from numerous sources of evidence that we have gathered. The current mean high water line projected on ATS 1346 represents a significant land loss, and therefore a significant diminution in value, to Lt 5, Blk 8 from that which our evidence reflects was the true river boundary of this lot prior to the seawall construction. At this time we have no way of knowing how many other upland properties have been so affected.

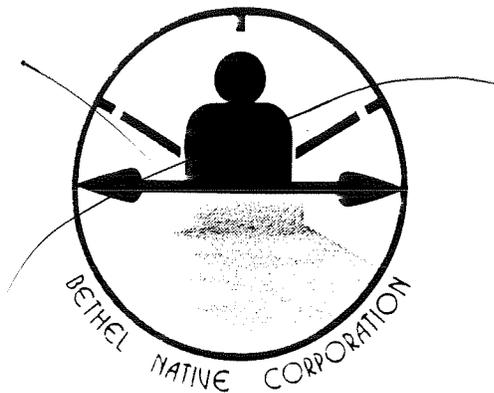
ATS 1346 is now a recorded survey which depicts the boundaries between the lands that will be subject to the States master tidelands lease to the City and the upland owners so situated within this lease area. Because of this, and the very limited evidence relied upon by the surveyor of ATS 1346, we most strongly recommend that the City examine all the boundary evidence depicting land ownership within this lease area before proceeding any further in this tidelands leasing process.

Such a review at this juncture of the planning process may well ward off costly future disputes.

Sincerely,

J. Bruce Crow

A handwritten signature in cursive script that reads "Bruce Crow". The signature is written in dark ink and is positioned below the typed name "J. Bruce Crow".



March 3, 1993

CITY OF BETHEL  
P.O. Box 388  
Bethel, Ak 99559

RE: Draft "Comprehensive Land Use and Development Plan for the City of Bethel's Reclaimed Tidelands."

Gentlemen:

We would like the following testimony entered into the public record and considered at the joint meeting of the Planning and Port Commissions which has been scheduled for March 15, 1993.

It is apparent that a lot of work has gone into the "Plan" and in general we support your efforts in finalizing the Plan. We have the following comments to offer:

**1. RIPARIAN RIGHTS:** We are concerned that there will be some effort to circumvent or expropriate the riparian rights of the upland owners through the use of onerous lease or usage fees, local legislation, or an outright taking. The same end could be accomplished by the City leasing the reclaimed tidelands to individuals or companies who have uses for the tidelands which would not be compatible with upland owners and which would prevent access by the upland owners. We believe that the legally vested rights of the upland owners must be protected. BNC will vigorously defend our vested rights should they be threatened.

We partially agree with the recommendation on page 8 of the draft "Plan" which would... "allow only upland owners to enter into subleases for tidelands located in front of their property." We would agree with that statement provided the lease rates are nominal. Nominal being \$100 to \$500 per year. It must be assumed that even though the upland owner has rights of access, wharfage, dockage and moorage fees will still be applicable to the upland owner as well as all others who use the seawall. Consequently, the lease fee is an added burden on the upland land owner which must be paid in order to protect their vested rights. Otherwise, other users may have access and use of the reclaimed tidelands without a lease fee, and, by only paying wharfage, dockage and moorage fees may, in fact, preclude the upland owner from quiet enjoyment of his so called rights. Paying anything more than a City of Bethel

Testimony

Page 2

very nominal fee will constitute a taking of the rights and will create inequities with the system.

The way the recommendation reads would allow non-land owners to use the reclaimed tidelands by paying wharfage, dockage and moorage while land owners get to pay wharfage, dockage, moorage **AND A LEASE FEE**. If this lease fee is anything more than the City pays the State for leasing the reclaimed tidelands it is inequitable and we would disagree with the recommendation. If one party gets to use the reclaimed tidelands free then the second party should also get to use the reclaimed tidelands free.

We would recommend that the first sentence under "Riparian Rights of Upland Owners" read, "Riparian rights refer to the legally vested rights held by owners..." Our reasoning: in most contexts, "powers" generally are reserved for governments; "rights" are generally inherent and run (or are vested) with the individual or property.

2. We recommend that the land between "Tract C and Tract D" (Sheet 4 of 7) be zoned general use and the reclaimed lands be used for light industrial, storage and commercial uses related to fish processing. The waterway should be used for moorage of tender boats and fish processing vessels.

The area from the Joe Lomack Building up river to Brown Slough is commercial and industrial and having a city park in the middle of that is an incompatible use.

We have heard proposals that the City wants to put picnic tables and other improvements in the open area generally in front of the First National Bank. If this is a fact we feel the City should reconsider if for no other reason than from a liability stand point. For public use, which assumes families with small children, it is a dangerous and dirty area. On one side you have a very busy dusty or muddy street, which has a great deal of commercial traffic. On the other side you have a high sea wall with a swift river below. And between the two dangers you have very little land for recreation or public use. Inviting families and children to such an area is an invitation to disaster. We have seen what has happened when adults fall or jump into the river along this area just imagine what would happen if a child should fall into the river or run out in front of a truck.

If the City wants an open area along the river we would suggest the area between "Tract D" and "Tract E" be developed for public use. It does not have the high sea wall, is away from vehicular traffic and actually has some beach available.

Bethel does not lack for open areas for public use. What it does lack is available room for river oriented commercial activities. The seawall should be dedicated to improving the economy of the Delta and to do that as much of the seawall, and adjacent land, as possible should be dedicated to fishing and commercial activities.

When we look at the basic economy of Bethel and the Y-K Delta there are only two activities which bring outside money into the economy. Those are Government (including all of the welfare and pass through programs administered by the non-profits) and fishing. The other areas of economic activity, consisting primarily of retail and transportation, are merely the result of the first two and simply function to redistribute the income a time or two before it leaves our economy.

Unfortunately we can't do much about government. However, we can do a lot about the other source of income for the region by making it as attractive as possible for the fisheries to operate here. That means providing adequate space along the seawall for all of the operators at a reasonable price, extending public services such as sewer and water to the commercial riverfront areas, etc. Additional revenues for the Delta are possible through increased processing capacity and secondary processing but that requires additional investments in plant and equipment. However, when we see the City attempting to jam more processors into a smaller and smaller space we have to conclude that the City and region is not interested in economic development or in aiding new businesses to be established.

As a relevant aside, BNC has been investigating the possibility of establishing three different manufacturing facilities in Bethel, one of them being in the secondary fish processing field. However, we feel that there is a very anti-business bias in Bethel and are hesitant to make major investments in the community when the cooperation from the City is in doubt. We can not help but wonder if there aren't others in the same situation.

3. An apology is due the City of Bethel. The draft "Plan" brought to light the fact that BNC has failed to convey the rest of Tract 5C and Tract 5D of USS 4000 (at the petroleum dock) to the City as had been agreed. This is an oversight for which we apologize. Please be assured that we will be conveying the aforementioned property as soon as the deed can be prepared. The Draft "Plan" can be modified to show the City as the rightful owners.

Sincerely yours,

William C. Bivin, President/CEO

