

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FIRST JUDICIAL DISTRICT AT JUNEAU

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CITY AND BOROUGH OF JUNEAU,
Appellant,

v.

STATE OF ALASKA, LOCAL
BOUNDARY COMMISSION, and
PETITIONERS FOR THE
INCORPORATION OF THE CITY OF
PETERSBURG,


Appellees.

CASE NO.: 1JU-12-00900 CI

APPELLANT BRIEF OF CITY AND BOROUGH OF JUNEAU

CITY AND BOROUGH OF JUNEAU

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District of the State of Alaska, Juneau.

By:



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CONSTITUTIONAL PROVISIONS AND STATUTES RELIED UPON

Alaska Constitution, Art. X, Sec. 3 - Boroughs.

The entire State shall be divided into boroughs, organized or unorganized. They shall be established in a manner and according to standards provided by law. The standards shall include population, geography, economy, transportation, and other factors. Each borough shall embrace an area and population with common interests to the maximum degree possible. The legislature shall classify boroughs and prescribe their powers and functions. Methods by which boroughs may be organized, incorporated, merged, consolidated, reclassified, or dissolved shall be prescribed by law.

3 AAC 110.640. Scheduling

(c) As provided under 3 AAC 110.430, the commission may postpone proceedings on a petition that has been accepted for filing to allow concurrent consideration and action on another petition that pertains to some or all the same boundaries and that has either been accepted for filing or is anticipated to be filed. The commission may postpone the proceedings for an anticipated competing petition only if the anticipated competing petition is received by the department no later than 90 days after the date of the first publication of notice of the earlier petition under 3 AAC 110.450.

I. JURISDICTIONAL STATEMENT

The City and Borough of Juneau ("CBJ") has appealed the final administrative decision¹ by the Local Boundary Commission ("Commission" or "LBC"), to include, as part of the newly-created Petersburg borough, a portion of land that has been previously identified by the Commission as most appropriately annexed to the CBJ.

The Superior Court has jurisdiction over this appeal pursuant to A.S. 22.10.020(d), A.S. 44.62.560(a), and Appellate Rule 602(b)(2).

II. STATEMENT OF ISSUES

Did the LBC abuse its discretion by creating a borough that fails to embrace an area and population with common interests to the maximum degree possible, in violation of Art. X sec. 3 of the Alaska Constitution, when it failed to consider the CBJ's competing claims with respect to overlapping territory identified in both the CBJ's petition for annexation and the Petersburg Petitioners' petition to incorporate?

III. STATEMENT OF THE CASE

On August 5, 2011, Staff to the LBC ("LBC Staff" or "Staff")² posted public notice of the acceptance of the Petersburg Petitioner's ("Petersburg") request to

¹ Exc. 1 – 16.

² There are two staff members to the LBC, both employed by the Division of Community and Regional Affairs, Department of Commerce, Community & Economic Development. (See 3 AAC 110.435, Role of Department Staff.)

incorporate as a borough.³ Because a portion of the area sought for incorporation had previously been included by the LBC within the CBJ's model borough boundary,⁴ and more recently referred to as the CBJ's "unorganized remnant,"⁵ the CBJ Assembly adopted a resolution directing staff to file an annexation petition for the territory running south from the CBJ's current border to just past Holkham Bay.⁶ Given that one hundred percent of area identified in the CBJ's annexation petition was also sought by the Petersburg Petitioners as part of their proposed borough, the CBJ filed notice of its intent to file an annexation petition for its "unorganized remnant," and asked the Commission to either postpone the Petersburg proceedings, or to consolidate the two proceedings, in order to allow for concurrent consideration of the two petitions.⁷ Though not publicly noticed,⁸ the LBC discussed the CBJ's request at its October 13, 2011, public hearing. The Commission decided that, should the CBJ file a petition to annex any of the same area being sought by Petersburg, it would not consolidate⁹ but would proceed as the Commission had with respect to Wrangell's and Ketchikan's overlapping petitions,

³ Exc. 17 – 19. Submitted on April 6, 2011, Petersburg's petition did not pass technical review and was not accepted for filing until August 5, 2011, the date public notice was first published. Exc. 20.

<http://notes4.state.ak.us/pn/pubnotic.nsf/cc52605f7c156e7a8925672a0060a91b/0328c9a301f95b1e892578e40002b1e7?OpenDocument>

⁴ In 1992, the LBC completed its "Model Borough Boundary" review, intended to be used as a "frame of reference in the evaluation of future petitions" coming before the Commission. *Model Borough Boundary Report*, State of Alaska, Department of Community and Regional Affairs, Rev. 1997, p. 2.

⁵ Unorganized Areas of Alaska that Meet Borough Incorporation Standards, A Report by the Alaska Local Boundary Commission to the Alaska Legislature Pursuant to Chapter 53, Session Laws of Alaska 2002, February 2003, pp. 91 – 92.

⁶ Exc. 24 – 26.

⁷ Exc. 21 – 26.

⁸ Exc. 27.

⁹ Exc. 28 – 31.

where they “had separate hearings and meetings but [they] knew what was happening with the other petition.”¹⁰

On October 26, 2011, the CBJ timely filed a Respondent’s Brief in the Petersburg matter,¹¹ and on November 2, 2011, the CBJ timely submitted its annexation petition.¹² (The November 2nd filing was time-sensitive; in order to be eligible for concurrent consideration, a competing petition must be filed no later than 90 days after the date notice of the earlier petition is first published. 3 AAC 110.640.)

On December 14, 2011, the LBC met to “officially” consider the CBJ’s request to consolidate the two petitions. Before the LBC was Staff’s recommendation that the Commission deny the CBJ’s request.¹³ Staff reasoned that it would not be “fair or equitable” to Petersburg, when Petersburg had filed “nearly seven months earlier,” and that “granting postponement/consolidation could be better justified if the two petitions had been filed more closely in time.”¹⁴ When allowed to comment, the CBJ pointed out Staff’s error in referring to a “filing”¹⁵ date “seven months earlier,” when the significant date for purposes of considering consolidation under 3 AAC 110.640 is not the date the earlier petition was first submitted but rather the date that public notice of the earlier

¹⁰ Exc. 28 – 29.

¹¹ R. 1229.

¹² Submitted on November 2, 2011, the petition passed technical review and was accepted on April 9, 2012. A copy of the CBJ’s Annexation Petition can be found on the LBC’s website: http://www.dced.state.ak.us/dca/lbc/2012_City_and_Borough_of_Juneau_Annexation/Petition/

¹³ Exc. 32 – 33.

¹⁴ *Id.*

¹⁵ As noted above, Petersburg’s brief was not “filed” until August 5, 2012. *See* fn.3, *supra*. The regulations clearly distinguish between petitions that have been “received” by Staff and those that have been “accepted for filing.” *See* 3 AAC 110.640(c).

petition was first published.¹⁶ The CBJ argued that it would be an abuse of discretion for the Commission to deny the CBJ's request for consolidation for being "untimely," based upon the date the Petitioners first submitted their petition for technical review, because that date has no relevance under 3 AAC 110.640.¹⁷

After opposing argument from Petersburg, one of the Commissioners asked Staff to comment on "how we will deal with these conflicting petitions and their overlapping boundary."¹⁸ Staff explained that consolidation was not necessary (or "fair to Petersburg"), and that when the Commission met for the Petersburg hearing, it would have "the Juneau responsive brief to the Petersburg petition, the Juneau [annexation] petition, and probably all the comments [to Juneau's annexation petition.]"¹⁹ This explanation was accepted by the Commission, with the Chair commenting that the Commission "was certainly capable of understanding the two different petitions," and "that it would have almost all the information we could possibly have at the time of the Petersburg hearing."²⁰ With this understanding, the Commission denied the CBJ's request that it concurrently consider the overlapping petitions.

On February 24, 2012, Staff issued its Preliminary Report to the Local Boundary Commission on Petersburg's petition,²¹ as required by 3 AAC 110.530(a). Despite Staff's assurances that Juneau's responsive brief and petition would be considered as the

¹⁶ Exc. 34.

¹⁷ *Id.*

¹⁸ Exc. 35.

¹⁹ Exc. 36 – 37.

²⁰ Exc. 32.

²¹ Exc. 39 – 63.

“conflicting petitions and overlapping boundary” were dealt with, Staff’s analysis was completely devoid of any consideration of the CBJ’s competing claims. Staff’s findings were premised entirely upon an analysis of the relationship between the people who resided in the areas outside of the then-City of Petersburg (dubbed “outliers,” none of whom reside in the contested area), and whether those residents had the requisite degree of commonality with the rest of the proposed borough residents, all living within Petersburg city limits, to support incorporation.²² In fact, Staff failed to engage in any consideration of the applicable statutory and regulatory standards with respect to the contested area whatsoever.

In its comments to the preliminary report, the CBJ argued that Staff had failed to engage in any critical analysis of the CBJ’s competing claims, and that although all of the findings and arguments relied upon by Staff related to that region south of the contested area, Staff had nevertheless determined that the “entire proposed borough” met constitutional standards.²³ The CBJ argued that the constitutionally-mandated standard that boroughs “embrace an area and population with common interests to the *maximum degree possible*,”²⁴ could not, by its plain language, apply to more than one entity with respect to the contested area, and accordingly an objective and thorough consideration of the CBJ’s competing claims was required.²⁵ The CBJ noted that Staff had failed to consider any of the CBJ’s evidence illustrating the CBJ’s closer connection to the

²² Exc. 40 – 63.

²³ Exc. 64 -66.

²⁴ Alaska Const., Art. X, sec 3 (emphasis added).

²⁵ Exc. 65.

contested area, such as:

- The fact that the vast majority of privately-held land in the contested area is owned by Juneau residents or Juneau-based companies, while there are no references in the briefing to any privately-held land in the contested area being held by Petersburg residents or companies (3 AAC 110.060(a)(1));²⁶
- That Staff had failed to consider the existing administrative and management related links between the CBJ and the contested area as identified by 3 AAC 110.060(b) – specifically, the model borough boundary for the area as previously identified by the LBC, various administrative units, and the fact that the vast majority of the contested area is “managed” out of Juneau for the purposes of many administrative and regulatory agencies (the U.S. Census Tracts, the REAA, Alaska Recording District, U.S.D.A. Forest Service Ranger Districts, U.S. Wilderness Areas, ADF&G game units and groundfish, salmon and shellfish ocean resource units, for example);²⁷
- That the contested area is used to a greater degree by CBJ residents and CBJ-based entities (such as, tourism and guiding companies either based in or provisioning primarily out of the CBJ; the fact that a review of Forest Service records show a much greater number of permits issued to Juneau residents than Petersburg residents, with 247 land use permits issued to Juneau-based entities in 2010, versus only 1 to a Petersburg based company.) (3 AAC 110.060(a) and 3 AAC 110.045);²⁸
- The CBJ’s competing claims related to commercial fishing of the area (3 AAC 110.045, 3 AAC 110.060);²⁹
- That although the preliminary report found that “Petersburg residents...use the area for hunting,” that statement does not hold true for the contested area. (Noting that the Alaska Division of Corporations, Business and Professional Licensing lists eight Juneau residents as big game hunting guides in 2011, but none from Petersburg, or that Alaska Department of Fish & Game records from 2006 – 2010 show 108 Juneau residents hunting the contested, overlap area but only 6 from Petersburg.);³⁰

²⁶ Exc. 67.

²⁷ Exc. 68.

²⁸ Exc. 69 – 70.

²⁹ Exc. 71 – 72.

³⁰ Exc. 72 – 73.

- The CBJ's evidence that there were 20 commercially chartered flights originating out of Juneau with a destination in the contested area (at least as far south as Hobart Bay) between September 2010 and 2011, and only 1 out of Petersburg;³¹
- That Juneau presented evidence on the CBJ's historic ties to the contested area with respect to logging and mining and that the contested area was the domain of Juneau-based tribes, while the preliminary report was absolutely silent on the question of ethnic or cultural ties, identifying none between Petersburg and the contested area (3 AAC 110.060);³²
- That the report failed to consider the CBJ's argument that it was better positioned than Petersburg to provide services to the contested area, thus meeting the "best interests of the state" requirement posed in 3 AAC 110.065, while Staff's findings were related exclusively to the provision of services to the "outliers" (again, none of whom reside in the contested area.);³³ and
- That Staff failed to consider the CBJ's arguments concerning the most appropriate boundaries to be drawn in consideration of the contested area's natural geography. (3 AAC 110.060).³⁴

On April 19, 2012, the Commission held a public hearing to discuss, in part, the "procedures and requirements" for the upcoming Petersburg hearing.³⁵ Staff again confirmed to the Commission that in applying the statutory and regulatory standards, that the commission would be

looking at the standards for Petersburg borough incorporation, whether it does or does not meet the standards. That is what you're looking at this

³¹ Exc. 73.

³² Exc. 74.

³³ Exc. 75.

³⁴ Exc. 75 – 76. The only nod towards Juneau concerned the drawing of the northernmost borough boundary. Staff noted that as currently drawn, a straight diagonal line, Juneau's southern border does not "confirm to natural geography" as much as it could, and accordingly proposed redrawing the boundary. This modification does not appear to be a result of any of the arguments proffered by the CBJ, as there is no discussion of the CBJ's arguments in the report. Exc. 55 – 58.

³⁵ Exc. 78.

particular time. That is the only issue that is before you at this time, does the petition meet the standards or not?³⁶

Although Staff had previously told the LBC that it would have before it the CBJ's annexation petition to consider when it met on the Petersburg petition, at this hearing, Staff informed the LBC that it could take into account "the [Petersburg] petition, the comments on the petition, the briefs submitted, and it can take anything that has been spoken about at the hearing."³⁷ As to what would be allowed to be presented at the hearing, Staff notified the parties of the Chair's decision that only arguments and evidence presented in the "Petersburg Borough Incorporation petition process" would be allowed.³⁸

After the public comment period on the preliminary report closed, Staff issued its Final Report on the Petersburg petition to the Boundary Commission.³⁹ Staff correctly summarized the CBJ's argument that as Art. X sec. 3 requires that boroughs embrace an area and population with common interests to the maximum degree possible, where there is an area "sought by more than one potential or existing borough," that area "should go to the borough which has the stronger/strongest common interests."⁴⁰ Staff "respectfully disagree[d]," with the CBJ, stating that the CBJ's argument was "not valid" and that the mandate in Art X. sec 3 simply requires that boroughs "comprise an area and population"

³⁶ Exc. 79.

³⁷ Exc. 80 – 81.

³⁸ Exc. 82 – 86. *See also*, Exc. 87, where Asst. AAG Johansen reassures the Commission on the morning of the first day of the Petersburg public hearings, that only those exhibits that "relate to arguments in the Petersburg petition" would be allowed to be presented.

³⁹ Exc. 88 – 96.

⁴⁰ Exc. 91.

with “as much in common as possible.”⁴¹ Staff opined that Art. X sec. 3 simply requires that “that disparate boroughs should not be formed.”⁴² Staff’s final factual analysis was no different than that presented in the preliminary report. Staff declined to consider the CBJ’s competing claims or make any findings specific to the contested area, stating that the sole question before the LBC is not “to decide whether any of the areas within the proposed borough should go to another borough or petitioner.”⁴³ Instead, Staff stated, the sole purpose of both its final report and the LBC’s decisional meeting was to “address whether the Petersburg borough petition meets the necessary standards or not.”⁴⁴ As to the CBJ’s factual claims, Staff noted that “Juneau’s petition will be addressed and analyzed in the course of its petition proceedings.”⁴⁵

The public hearing on Petersburg’s petition, as required by 3 AAC 110.550, was held on May 30 and 31, 2012. In its opening statement, the CBJ explained that it only objected to the Petersburg petition to the extent that it sought to include an area that the LBC has previously identified as most closely connected to the CBJ.⁴⁶ The CBJ argued that Staff misunderstood the import of Art. X, sec. 3, despite the plain constitutional language, and the Alaska Supreme Court’s holding in *Petitioners for Incorporation of City and Borough of Yakutat v. Local Boundary Commission*,⁴⁷ where the Court confirmed that the LBC, in making borough boundary determinations, was required to

⁴¹ Exc. 91.

⁴² Exc. 91.

⁴³ Exc. 90.

⁴⁴ Exc. 90.

⁴⁵ Exc. 89.

⁴⁶ Exc. 97.

⁴⁷ 900 P.2d 721 (Alaska 1995)

make a thorough consideration of alternative boundaries, and make a decision as to optimal or best boundaries, Staff had failed to do so.⁴⁸ The CBJ argued that as the Commission had already made findings with respect to the contested area's optimal boundaries, and as there had been no critical analysis under Art X. sec. 3, that it was incumbent on the LBC to reserve decision on the contested area until it had thoroughly considered the CBJ's claims.⁴⁹

During the proceedings, the CBJ presented evidence, exclusively related to the contested area, on the following:⁵⁰

- Hunting and sport fishing practices;
- Private land ownership in the area;
- The history of mining in the area;
- Commercial fishing practices in the region;
- Logging efforts at Hobart Bay;
- Tlingit culture and native history of the area by a noted cultural anthropologist;
- Subsistence use of the contested area;
- The drawing of boundaries so as to comport with natural geography and watersheds in the area;
- The similarities between the boundaries being proposed by the CBJ with a number of administrative and political boundaries; and
- Recreational use in the contested area.

⁴⁸ Exc. 98 – 102.

⁴⁹ Exc. 103.

⁵⁰ Exc. 104 – 105.

At the decisional meeting held on June 1, 2012, the LBC declined to consider the CBJ's request that it reserve decision on the contested area, and in fact, declined to consider any of the CBJ's evidence.⁵¹ Not only did the LBC decline to consider the CBJ's evidence as to the contested area that was presented at the hearing, but, despite earlier asserting that it fully intended to do so, the LBC chose not to consider any of the arguments offered in the CBJ's annexation petition.

In making its decision, the Commission utilized a "checklist" prepared by Staff.⁵² Instead of recognizing Art. X, sec. 3 as a general condition that should apply to the entirety of its analysis of the statutory and regulatory factors, the draft checklist simply listed the constitutional provision as the first item to be "checked off."⁵³ Significantly, when the issue came up for discussion, the Commission based its decision that the standard outlined in Art. X, sec. 3 had been "met," solely on a finding that the "outliers" had the requisite degree of "common interests" to the City of Petersburg.⁵⁴ There was no discussion concerning either the Petitioners' or the "outliers'" relationship to the contested area in particular, and no discussion of the CBJ's competing claims.⁵⁵ Nevertheless, after a cursory discussion, the Commission found the constitutional standard "met."⁵⁶ No further discussion of Art. X, sec. 3 was held, and no findings were made specific to the contested area. The Commission declined to consider evidence

⁵¹ See Exc. 106 – 171 for the Commission's discussion of (at least those it considered) of the applicable regulatory and statutory standards.

⁵² Exc. 172 – 177.

⁵³ Exc. 172.

⁵⁴ Exc. 106 – 112.

⁵⁵ *Id.*

⁵⁶ *Id.*

presented by the CBJ on land ownership in the contested area, land use, the CBJ's historic connection to the contested area (mining and logging), the overlap of many administrative and agency management units with the boundary being proposed by the CBJ, ethnic and cultural ties between the contested area and the CBJ, or testimony regarding the creation of boundaries that conformed to natural geography.

The LBC's August 22, 2012, Decision followed the same recipe as Staff's preliminary and final reports.⁵⁷ While the decision at least acknowledges the CBJ's Art. X, sec. 3 argument, the LBC found no merit in it: "After considering [the CBJ's Art. X, sec. 3] claim, the LBC determines that the question is instead whether the proposed borough has an area and population with common interests to the maximum degree possible."⁵⁸ Similarly to its Staff's, the LBC's discussion of the applicable regulatory and statutory factors is absolutely silent as to any discussion of the CBJ's competing claims, or any discussion of the contested area at all for that matter, focusing instead solely on the relationship between the "outliers" and the City of Petersburg.⁵⁹

The issue now on appeal before this Court is fairly narrow: did the LBC abuse its discretion in setting the northern boundary for the new Petersburg borough by failing to observe the constitutional mandate that boroughs embrace an area and population with common interests to the maximum degree possible?

⁵⁷ Exc. 1 – 16.

⁵⁸ Exc. 6.

⁵⁹ Again, the sole nod to the CBJ was in the LBC's discussion of natural geography and boundaries, but a read of the decision makes clear that the LBC's decision to modify the boundary was based solely on a finding that the current CBJ southern boundary does not follow natural geography, and not on any argument made by the CBJ. Exc. 9.

IV. STANDARD OF REVIEW

In reviewing a decision that involves agency expertise regarding a complex subject matter or fundamental policy formulation, the court will defer to the agency if there is a reasonable basis for the decision, but where the issue involves an interpretation of law that does not implicate agency expertise, and in particular, constitutional interpretation, the court will use its independent judgment.⁶⁰

V. ARGUMENT

THE LBC HAS FAILED TO SATISFY ITS CONSTITUTIONAL OBLIGATION UNDER ART. X. SEC. 3, AS INTERPRETED BY THE ALASKA SUPREME COURT

The LBC's interpretation of Art. X, sec. 3, and its insistence that it need look no further than the four corners of the Petersburg petition standing alone, is in direct conflict with both the plain language of the constitution, and the Alaska Supreme Court's decision in *Petitioners for Incorporation of City and Borough of Yakutat v. Local Boundary Commission*, 900 P.2d 721 (Alaska 1995).

Ironically, in the *Yakutat* case, the LBC made the same exact argument to the Supreme Court that the CBJ makes now: that in order to satisfy its constitutional obligation to create boroughs that encompass an area and population with common interests to the maximum degree possible, the Commission must be able to look outside the four corners of whatever petition it has before it, and consider the most appropriate,

⁶⁰ *Keane v. L.B.C.*, 893 P.2d 1239, 1241 (Alaska 1995).

optimal boundaries for any given area.⁶¹ In that case, the LBC followed a staff recommendation to reserve a portion of the area sought by the Yakutat petitioners for inclusion in a future borough – even though there was no competing petition pending, and despite the fact that the Yakutat petitioners (unlike the Petersburg petitioners here) had at least in identifiable overlapping interest in the area.⁶² Yakutat argued to the Court that the LBC had exceeded its authority in assuming it had the discretion to choose “best” or “ideal” boundaries, insisting that the Commission should have been limited to considering whether the petition before it met borough incorporation standards standing alone.⁶³

The Court agreed with the LBC. The Court confirmed that the LBC’s authority to draw boundary lines had to be understood within the context of Art. X, sec. 3.⁶⁴ The Court explained that the LBC’s duty to create boroughs that embrace an area and population with common interests to the maximum degree possible, required the LBC to engage in exactly the type of analysis the Yakutat petitioners found objectionable:

An informed decision as to whether boundaries proposed in a petition for incorporation maximizes common interests of the area and population and thus meets the applicable standards, presupposes a thorough consideration of alternative boundaries and a decision as to what boundaries would be optimal.⁶⁵

⁶¹ 900 P.2d at 725.

⁶² *Id.* at 723.

⁶³ *Id.* LBC Staff has taken an almost identical position in this case, which is directly opposite to what it argued in the *Yakutat* case, and directly contrary to the Court’s holding. In the Final Report, Staff writes that the question before the LBC is not to decide whether any of the areas within the proposed borough should go to another borough or petitioner, but rather that the only question before the Commission is whether the Petersburg petition alone meets the applicable statutory and regulatory standards. Exc. 90.

⁶⁴ *Id.* at 725.

⁶⁵ *Id.* at 725. There is no way to reconcile the Supreme Court’s holding with the agency’s

The Court explained that

in discharging its duties the LBC Is inevitably called upon to undertake precisely the type of inquiry that Petitioners allege to be improper: an inquiry in to the ‘most appropriate boundaries’ for the proposed borough.⁶⁶

The Court’s analysis is exactly the inquiry that the CBJ has repeatedly and consistently argued to the LBC that it must undertake with respect to the area that both Petersburg and the City and Borough of Juneau lay claim to: an inquiry into which municipality – the CBJ or Petersburg – best meets the statutory and regulatory standards with respect to the contested area, and to draw boundaries in such a way that creates boroughs that are maximally cohesive. Yet, despite the clear directive from the Supreme Court or the unambiguous constitutional language of Art. X, sec. 3, in their Final Report on the Petersburg petition, LBC Staff instructs the Commission that the constitution holds no such requirement, that it simply requires that the LBC avoid creating “disparate boroughs.”⁶⁷ Staff repeatedly advised the Commission that the sole question before it was whether the Petersburg petition, standing alone, met borough incorporation standards and that the Commission has no obligation to consider “best boundaries.”⁶⁸

The Commission followed its Staffs’ recommendation and declined to look outside the four corners of the Petersburg petition. The CBJ presented overwhelming and uncontradicted evidence of its closer connection to the contested area, yet the LBC

assertion that “Neither the constitution, the statutes, nor the regulations call for areas to be part of the best possible borough.” Exc. 91.

⁶⁶ *Id.* at 725 – 726.

⁶⁷ Exc. 91.

⁶⁸ *Id.*

utterly refused to consider any of it.

The constitutional mandate contained in Art. X, sec 3 that boroughs embrace an area and population with common interests to the maximum degree possible cannot, by definition, apply to more than one entity. Either the post-annexation City and Borough of Juneau would embrace the contested area to the maximum degree, or the newly-created Petersburg borough would. According to the *Yakutat* court, in making that determination, the LBC was required to engage in a “thorough consideration of alternative boundaries” and to “make a decision as to what boundaries would be optimal.”⁶⁹ It is not the Commission’s role to simply rubber-stamp any minimally acceptable petition.⁷⁰ The Commission had before it not only its own earlier findings with respect to the model borough boundaries for the area, but it had substantially relevant of evidence from the CBJ – evidence presented at the Petersburg petition hearing, and more robustly, in its own annexation petition. Yet the LBC inexplicably failed to consider any of it. It was impossible for the LBC to make a full and complete determination that comports with its constitutional obligations without engaging in the type of analysis the Supreme Court has advised the Commission it must do. Creating a borough that encompasses the contested area without considering the CBJ’s competing claims to that area and without applying the statutory and regulatory standards specifically to that area, was an abuse of the Commission’s discretion.

⁶⁹ 900 P.2d at 725.

⁷⁰ *Id.* (“Petitioners’ arguments, however, reflect the mistaken premise that the LBC must approve any minimally acceptable petition for incorporation and has only limited authority to consider or adopt ‘the most desirable’ borough boundaries.”)

V. CONCLUSION


The Commission shirked its constitutional responsibility to objectively and critically analyze the CBJ's competing claim to the contested area. While the Commission has broad discretion to make boundary determinations, its discretion is not unfettered. The LBC was bound to critically consider the CBJ's competing claims, and to make a decision as to the optimal boundaries for the contested area. Doing so would have posed no prejudice to the Petersburg petitioners, but it has precluded the Commission from making a full, fair, and reasoned decision on the CBJ's annexation petition.

The LBC failed to make any findings whatsoever as to how the boundary between the CBJ and Petersburg should be drawn in order to ensure that each borough embrace an area and population with common interests to the maximum degree possible. For that reason, the LBC's final decision as to the northern boundary of the newly-formed Petersburg borough should be reversed and remanded to the agency to reserve decision until after the conclusion of the CBJ's annexation petition process.

RESPECTFULLY SUBMITTED February 22, 2013.

CITY AND BOROUGH OF JUNEAU

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