

HIGH COURT UPHOLDS BOROUGH



ARCTIC SLOPE BOROUGH—During the effort to form the Arctic Slope Borough, the people of Anaktuvuk Pass were briefed on the intricacies of forming such a borough by the leaders from Barrow. Anaktuvuk Pass folks seemed pleased

with what they have heard at the time but should be even happier now because the State Supreme Court has approved the formation of the borough.

—Photo by MARGIE BAUMAN

Alaska Supreme Court Nods to Formation of Boundaries to Land

The Alaska Supreme Court has upheld a Superior Court decision that the giant North Slope Borough was legally formed and could maintain boundaries as selected across the Arctic Slope.

At the same time, it left some questions on the lower court suit brought by a number of oil industry firms to halt collection of borough taxes on oil interests at Prudhoe Bay.

"Had we lost it, it would have resolved everything against us," said Charles Cranston, one of the attorneys representing the North Slope Borough. "This allows us to simply pursue legal remedies in court."

Other cases aside, there was much jubilation Jan. 16 when the decision of the state's highest court was announced at the borough office in Barrow.

"We had one hell of a coffee break," said Mayor Eben Hopson, in an interview with the Tundra Times later.

"We were really happy about it," Hopson said. "There hasn't been any moment since the Superior Court decision when we didn't have full confidence, but still... it was a long wait and we're really happy about it."

"I screamed a little bit. I had both arms up in the air and everyone was jumping up and down," he said.

The Supreme Court, in agreement with the lower court ruling, dismissed all six claims brought by the oil industry.

These included arguments that the State Local Boundary Commission did not produce

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required findings of fact in its hearing for the borough; that the Superior Court should not have deferred to the commission's interpretation of the statutory criteria for incorporation, that acceptance of the borough petition was not supported by substantial evidence and that inclusion of the plaintiffs' (oil interests) property within the borough denied them substantive due process.

The suit had charged that the accepted incorporation petition should have been submitted to the legislature and that attorneys' fees should not have been awarded to the prevailing parties in the case.

The challenge to formation of the borough came from Mobil Oil Corp., Amerada Hess Corp., Amoco Production Co., BP Oil Corp., Exxon Corp., Phillips Petroleum Co., Union Oil Company of California; Frontier Rock and Sand, Inc; Mukluk Freight Lines Inc., Clifford C. Burglin; Locke Jacobs and Frank J. Novosel.

There remains some question

of whether the matter will go to the U.S. Supreme Court, on a constitutional issue, but meanwhile, things are looking up for the people of Barrow, Point Hope, Wainwright, Kaktovik and Anaktuvuk Pass.

The long flight for a borough above the Arctic Circle was initiated with two major thoughts in mind: improved educational facilities for the children on the Slope and bringing the government home to the people through more local control.

The high court decision will make it a lot easier for the borough to pursue revenue sharing, noted Hopson.

The borough was forced to enter into a private contract for community planning after the U.S. Department of Housing and Urban Development discovered the borough case was before the courts and decided not to go through with a \$25,000 planning grant for the borough.

At that point "we entered into a contract with our consultants to do a planning study which would eventually give us

a comprehensive planning program for the whole North Slope Borough," said Hopson. "It will be a lot easier now to pursue these (federal) funds," he said.

The Supreme Court, in its opinion written by Associate Justice Robert Erwin, made several important points in its decision, based on the present lifestyle of the predominantly Eskimo population of the Slope.

Oil interests had noted that the borough included Naval Petroleum Reserve No. 4 and argued that its inclusion cannot be justified as "necessary or desirable for integrated local government" because the reserve was within the exclusive jurisdiction of the federal government, leaving the borough powerless to regulate its use.

The court noted that the state had been granted concurrent jurisdiction over the reserve area until Congress enacts legislation to the contrary.

And the court said, "This question of jurisdiction aside, the Superior Court properly concluded that the record evidence of the reserve's importance to the subsistence lifestyle of area residents showed inclusion of the tract to be desirable for integrated local government so that it might fall within the new borough's planning and zoning power.

"This reasonably satisfies the geography standard," the court said.

The court also found that the borough had met the transportation standard disputed by the oil interests.

State statutes say that transportation facilities in the area proposed for incorporation "shall be of such a unified nature as to facilitate the communication and exchange necessary for the development of integrated local government and a community of interests."

The court noted that "regular travel among borough communities is available only by charter aircraft. Surface transportation is limited to dog teams and snow machines.

"Even at this stage of development, we agree with the Superior Court that the commission could reasonably have found travel facilities adequate to support borough government when present and future capacity is considered in the context of transportation in Alaska generally and compared to the present cost and availability of trav-

el to centers of government which affect the lives of North Slope residents."

Meanwhile, the temporary injunction of Fairbanks Superior Court Judge Warren Taylor remains in effect, so that the borough cannot tax lease holding interests on the slope. That injunction has delayed payment of some \$14 million, Hopson said.

The special legislative session last fall specifically exempted oil and gas leases from local taxation. However, it reserved for the state power to impose a 20-mil property tax on the oil industry.

Hit by the court and legislative action, the borough raised its own mil levy rate from 6.6 mils to 24.9 mils in order to have the same amount of revenue to meet its budget. Hopson said there were no plans at this time to lower that mil levy rate.