

MINUTES
NOME BOARD OF EQUALIZATION
MAY 4th, 6th 10th & 23rd 2022

The Board of Equalization was called to order at 5:30 PM on May 4, 2022 by Mayor Handeland in Council Chambers of Nome City Hall, located at 102 Division Street in Nome.

ROLL CALL - MAY 4, 2022 - 5:33 PM

Members Present: Jerald Brown; Scot Henderson; Mark Johnson; Martinson

Members Absent: Doug Johnson (excused); Sigvanna Tapqaq; Paris Hebel, Youth Representative

Also Present: Chip Leeper, Acting City Manager; Bryant Hammond, City Clerk; Arne Erickson, Contract Assessor; Brooks Chandler, City Attorney

In the audience: Angie Gorn, Debbie Peacock, Dan Pardee, NSHC; Steve Osborne, Wendy Pearson, Hobbes, Strauss, Dean & Walker, attorney's for NSHC

HEARING OF APPELLANTS

1. Mayor Handeland noted that the appeals of Mr. Tweet, Mr. Bockman, Mr. Sparks, and Mr. Hubert were settled prior to the meeting, and that no hearing would be needed for a through e.
2. Norton Sound Health Corporation Appeals for 001.221.05A, 001.201.05, 001.201.01.001.201.01A, 001.115.01, 001.241.54, and 001.211.03A
 - Arne Erickson, contract assessor, argued the question of these appeals were not a question of value and therefore not pertinent to the Board of Equalization. He recommended attorney's for the City and NSHC address the issue.
 - Steve Osborne and Wendy Pearson, attorneys for Hobbes, Walker, Dean & Strauss, representing NSHC presented their general arguments for tax exemption for the parcels in question and began discussing specifics, starting with the 7-plex.
 - The Council, Clerk, and Attorneys discussed the property values and the appropriate venue for the question of appealing the exemption denial by the Clerk.
 - Bryant Hammond, City Clerk and acting as the assessor, argued his denial of the six property tax exemptions were the correct reading of Alaska Statute.
 - Wendy Pearson responded to Mr. Hammond, arguing he applied the wrong tests and defined "hospital" incorrectly.
 - The Council discussed the arguments with regard to healthcare and housing and asked questions.
 - Brooks Chandler, City Attorney, discussed procedural concerns, noting that the appeals do not reference Nome Code of Ordinances. He requested the tax exemption applications.
 - Clerk Hammond explained the exemption applications were received timely and that he would add them to a supplementary packet to complete the record. He

discussed the conversation thus far with NSHC and referenced the Code he was following.

- City Attorney Chandler expressed concern that the administrative record was not complete without the applications for exemption included.
- Mayor Handeland suggested recessing for two days and putting out a supplemental packet so that all parties had access to the entire record.

Without objection, the Board stood in recess until 5:30 PM on Friday May 6, 2022.

ROLL CALL TO RE-ESTABLISH QUORUM – MAY 6, 2022 – 5:40 PM

Members Present: Jerald Brown; Scot Henderson; Mark Johnson; Sigvanna Tapqaq

Members Absent: Doug Johnson (excused); Adam Martinson (excused); Paris Hebel, Youth Representative

Also Present: Bryant Hammond, City Clerk; Brooks Chandler, City Attorney

In the audience: Debbie Peacock, Dan Pardee, NSHC; Steve Osborne, Wendy Pearson, Hobbes, Strauss, Dean & Walker, attorney's for NSHC; Jeremy Jacobson; Diana Haecker, Nome Nugget

HEARING OF APPELLANTS (continued)

Mayor Handeland called the Board of Equalization back to order.

Supplemental Information – Applications for Exemption and Assessment Notices

- a. 001.221.05A NSHC Block 91, Lots 3 & 4
 - Wendy Pearson discussed the specific use of the 7-plex and characterized the facility as a hospital, citing a former AG opinion. She argued its use was direct and primary for the operation of the hospital, citing case law. She argued that the vitally necessary standard Clerk Hammond used was inappropriate, citing case law.
 - Steve Osborne argued that regardless of state law, the property was exempt under the federal preemption doctrine.
 - Clerk Hammond, acting as the assessor, argued the federal preemption and sovereign immunity arguments were not relevant to the matter at hand.
- b. 001.201.05 NSHC Block 127, Lot 7A
 - Wendy Pearson argued the West Campus was required for the operation of the hospital as records were kept there, training occurred there and equipment was stored and serviced there. She characterized the facility as the hospital and not an ancillary property.
 - Steve Osborne responded to Clerk Hammond's discussion of the Ketchikan Gateway Borough case, saying the case was not analogous to the current case.
 - Clerk Hammond argued, that as patients were not seen there, the facility was not in fact a hospital. While records were stored there, such did not make it a hospital. He clarified his discussion of case law, arguing he was applying the correct standards.
- c. 001.131.01A NSHC Block 33, Lot 19
 - Wendy Pearson discussed deeded covenants requiring the property to be used for health purposes. She described its use, arguing that housing doctors and medical staff was

institutionally necessary to the operation of the hospital. She reiterated her position that the Catholic Bishop case was narrower than Clerk Hammond's reading.

- Clerk Hammond argued that Kuzgi House was not a hospital, and that its use was convenient to the operation of NSHC, but not vitally necessary. He noted there were other places for doctors and medical staff to stay in town.
 - Council Member Henderson asked if their argument was relevant to buildings the hospital leases.
 - Wendy Pearson made the distinction that those properties were leased for profit and different from the hospital properties, citing a case and examples.
- d. 001.115.01 NSHC Block 116, Lot 1A
- Wendy Pearson discussed the buildings on the lot and their respective uses, arguing the uses were hospital uses, integrated with the hospital care system. She cited case law in several jurisdictions considering patient housing as a hospital use. She reiterated her position that the vitally necessary standard was not the correct standard.
 - Clerk Hammond noted that the wing where COVID patients were being actively treated was exempted, but the wing focused on housing was not. He reiterated his position that housing patients was convenient to the operation of the hospital but not vitally necessary. He noted patients in Nome were not required to pass through the patient hostel to be treated.
- e. 001.241.54 NSHC Block 30, Lot 66 & 67
- Wendy Pearson noted this property was vacant, was deeded to the hospital in 2006, and was currently up for sale.
 - Mayor Handeland confirmed the property was owned by NSHC on January 1, 2022.
 - Steve Osborne argued the covenants supported the preemption argument due to pervasive regulation.
 - Clerk Hammond argued that a property cannot be vacant and a hospital use at the same time and that under strict construction of AS 29.45, taxable.
 - Council Member clarified the property was exempt in the past and the change in use triggered the denial for tax exemption.
- f. 001.211.03A NSHC Block 110, Lots 1 & 2
- Wendy Pearson argued the property will be used to expand healthcare services in the future. NSHC's intent is to use the property only for hospital uses. She argued that the federal preemption argument rendered the property non-taxable.
 - Steve Osborn agreed with Ms. Pearson and discussed case law for support.
 - Clerk Hammond reiterated his position that the space was not being used for "exclusive non-profit hospital use" and thus was not exempt from taxation. He disagreed that federal preemption applied.
 - Council Member Brown asked if NSHC personnel were required to stay in NSHC corporate housing.
 - Ms. Pearson argued that housing was an incentive and free, that staff were not likely to find and pay for housing on their own. She argued the proximity to the hospital was important.
 - Council Member Brown surmised such constituted compensation.

A motion was made by C. Brown and seconded by C. M. Johnson to enter into executive session to discuss the six NSHC appeals with the City Attorney.

The Board of Equalization entered into executive session at 6:54 PM.

The Board came out of executive session at 7:23 PM.

Hearing no objections, the Board of Equalization stood in recess until 5:30 PM, May 10, 2022.

ROLL CALL TO RE-ESTABLISH QUORUM – MAY 10, 2022 – 5:30 PM

Members Present: Jerald Brown; Scot Henderson; Doug Johnson; Mark Johnson; Sigvanna Tapqaq

Members Absent: Adam Martinson (excused); Paris Hebel, Youth Representative (excused)

Also Present: John K. Handeland, Mayor; Glenn Steckman, City Manager; Bryant Hammond, City Clerk; Brooks Chandler, City Attorney

In the audience: Debbie Peacock, Dan Pardee, NSHC; Steve Osborne, Wendy Pearson, Hobbes, Strauss, Dean & Walker, attorney's for NSHC; Diana Haecker, Nome Nugget; James Ventress

HEARING OF APPELLANTS (continued)

A motion was made by C. M. Johnson and seconded by C. Henderson to enter into executive session to discuss legal matters the immediate knowledge of which could have adverse consequences on City of Nome finances.

At the roll call:

Aye: Brown; Henderson; D. Johnson; M. Johnson; Tapqaq

Nay:

Abstain:

The motion **CARRIED**.

The Board entered into executive session at 5:33 PM.

The Board came out of executive session at 5:40 PM.

Council Member Tapqaq declared a conflict of interest, noting her relationship with NSHC, saying she could not be objective.

Mayor Handeland allowed Council Member Tapqaq to abstain from the roll call vote.

A motion was made by C. M. Johnson and seconded by C. Henderson to grant the NSHC appeal for Block 91, Lots 3&4.

At the roll call:

Aye:

Nay: Henderson; D. Johnson; M. Johnson; Brown

Abstain: Tapqaq

The motion **FAILED**.

A motion was made by C. M. Johnson and seconded by C. Henderson to grant the NSHC appeal for Block 127, Lot 7A.

At the roll call:

Aye: Brown

Nay: D. Johnson; M. Johnson; Henderson

Abstain: Tapqaq

The motion **FAILED**.

A motion was made by C. M. Johnson and seconded by C. Henderson to grant the NSHC appeal for Block 33, Lot 19.

At the roll call:

Aye:

Nay: M. Johnson; Brown; Henderson; D. Johnson

Abstain: Tapqaq

The motion **FAILED**.

A motion was made by C. M. Johnson and seconded by C. Henderson to grant the NSHC appeal for Block 116, Lot 1A.

At the roll call:

Aye: Brown

Nay: Henderson; D. Johnson; M. Johnson

Abstain: Tapqaq

The motion **FAILED**.

A motion was made by C. M. Johnson and seconded by C. Henderson to grant the NSHC appeal for Block 30, Lots 66 & 67.

At the roll call:

Aye:

Nay: Brown; Henderson; D. Johnson; M. Johnson

Abstain: Tapqaq

The motion **FAILED**.

A motion was made by C. M. Johnson and seconded by C. Henderson to grant the NSHC appeal for Block 110, Lots 1 & 2.

At the roll call:

Aye:

Nay: Brown; Henderson; D. Johnson; M. Johnson

Abstain: Tapqaq

The motion **FAILED**.

The Council directed the City Attorney to memorialize their discussion in executive session in writing and have it prepared for adoption at 6:30 PM, before the Regular Meeting of the Nome Common Council on May 23, 2022.

The Council stood in recess until 6:30 PM on Monday May 23, 2022.

ROLL CALL TO RE-ESTABLISH QUORUM – MAY 23, 2022 – 6:30 PM

Members Present: Jerald Brown; Scot Henderson; Doug Johnson; Mark Johnson; Adam Martinson; Sigvanna Tapqaq

Members Absent: Paris Hebel, Youth Representative (excused);

Also Present: John K. Handeland, Mayor; Glenn Steckman, City Manager; Bryant Hammond, City Clerk; Brooks Chandler, City Attorney

In the audience: Debbie Peacock, Dan Pardee, NSHC; Steve Osborne, Wendy Pearson, Hobbes, Strauss, Dean & Walker, attorney's for NSHC; Diana Haecker, Nome Nugget

UNFINISHED BUSINESS

A. Adoption of Findings of Fact and Conclusions of Law in NSHC Property Tax Appeals.

A motion was made by C. Henderson and seconded by C. Martinson to adopt the Findings of Fact and Conclusions of Law in NSHC Property Tax Appeals.

At the roll call:

Aye: Henderson; D. Johnson; M. Johnson; Martinson;

Brown

Nay:

Abstain: Tapqaq

The motion **CARRIED**.

ADJOURNMENT

Hearing no objections, the Nome Common Council, sitting as the Board of Equalization, adjourned at 6:35 PM.

APPROVED and SIGNED this 25th day of July, 2022.


JOHN K. HANDELAND
Mayor

ATTEST:


BRYANT HAMMOND
City Clerk