

**IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
THIRD JUDICIAL DISTRICT AT PALMER**

THOMAS HANNAM and RHONDA)
MARCY,)
) Plaintiffs,)
))
) vs.)
))
MATANUSKA-SUSITNA BOROUGH,)
et al.,)
) Defendants.)
_____)

Case No. 3PA-16-01952 CI



CLINT TUMA and AMY TUMA,)
) Plaintiffs,)
))
) vs.)
))
MATANUSKA-SUSITNA BOROUGH,)
et al.,)
) Defendants.)
_____)

Case No. 3PA-16-01979 CI

ORDER CONSOLIDATING CASES, DENYING EXPEDITED CONSIDERATION, AND STAYING CONSIDERATION PENDING BALLOT RESULTS

On September 2, 2016, in Case No. 3PA-16-01952 CI, Plaintiffs Thomas Hannam and Rhonda Marcy filed an *Expedited Complaint for Declaratory Judgment and for Injunctive Relief* with an accompanying *Emergency Motion for Expedited Consideration*. Plaintiffs assert that Initial Ordinance Serial No. 15-088, Ballot Proposition No. B-1, “Prohibiting Marijuana Establishments Except Those Involving Industrial Hemp in the Area Outside of the Cities”—appearing on the October 4, 2016, electoral ballot for the Matanuska-Susitna Borough (hereinafter “Borough”)—is an improper zoning ordinance usurping powers expressly reserved to the legislature and bypassing the mandatory legislative zoning process. Plaintiffs advance an as-applied constitutional challenge asserting that the ordinance, if it passes, would function as a



governmental taking of privately held commercial properties without due process or just compensation. Plaintiffs name as Defendants the Matanuska-Susitna Borough and the individual sponsors of the ballot measure. Plaintiffs request declaratory relief; a prohibitory injunction preventing the ballot measure from going before the voters; a prohibitory injunction removing the ballot measure from the ballot; a prohibitory injunction barring a count of any ballot measure votes collected; a mandatory injunction for the Borough to issue land-use permits to the Plaintiffs pursuant to AS § 17.38.210(h); and an award of attorney's fees and costs. Plaintiffs request expedited consideration of the above claims for relief in light of the pending October 4, 2016 vote.

In Case No. 3PA-16-01979 CI, Plaintiffs Clint and Amy Tuma advance essentially identical claims against the same defendants. The Court finds that Case No. 3PA-16-01952 CI and Case No. 3PA-16-01979 CI concern common questions of law and fact. In the interests of justice and judicial economy, Case No. 3PA-16-01979 CI is **CONSOLIDATED** into Case No. 3PA-16-01952 CI, and the consolidated matter is **ASSIGNED** to Judge Zwink.¹ All future filings shall be filed in Case No. 3PA-16-01952 CI and captioned as shown above.

The Borough filed its *Answer, Opposition, and Cross-Motion for Summary Judgment* in Case No. 3PA-16-01952 CI on September 19, 2016. The Borough first asserts that Plaintiffs' claims are barred by the equitable doctrine of laches and that Plaintiffs fail to state a claim for which relief may be granted. The Borough requests expedited oral argument to expand on those legal theories. The Borough next argues that Plaintiffs lack standing to assert their claims for relief because the injuries anticipated are speculative in nature and would be rendered moot if the electorate declines to pass the ballot measure. Similarly, the Borough argues that Plaintiffs' are not entitled to a preliminary injunction at this time because they fail to advance a *prima facie*

¹ Alaska R. of Civ. Pro. § 42(a).

claim that irreparable injury would result should the measure be allowed to proceed to a vote: Plaintiffs may request a prohibitory injunction staying enforcement of the ballot measure if it passes.

As a practical matter, absentee voting has already begun, and the electorate has been presented with the Borough's official election brochure containing the ballot measure.² Any relief available before October 4, 2016, would be inherently disruptive and prejudicial to the ordinary voting process already in progress. Plaintiffs' claims and the Borough's affirmative defenses implicate core questions of constitutional law, due process, and the extent to which Plaintiffs' claims are justiciable. These matters require careful deliberation that cannot be rendered on the proposed timeline.

For the reasons presented above, the Court **DENIES** further expedited proceedings and hereby orders the entire matter **HELD IN ABEYANCE** pending the results of the October 4, 2016 election. In the interim, parties may submit any responsive filings on the ordinary schedule.

DATED and ENTERED at Palmer, Alaska, on September 22, 2016.

I certify that on 9/22/16
a copy of this document was sent to
 CSSD Attorney(s) of record Spiropoulos
 Plaintiff Defendant Other Hannam, Marry, Tuma,
At the address(es) of record: Tuma, Orzalli, Frank,
Rec'd Jnl [Signature] Miller, Hanner, Guisinger,
Deputy Clerk Riey, Steiner, Hotchkiss, Lee, Markwardt,
Paglitch, Sergie, Hamm, Pollen, DeVilbiss

[Signature]
David Zwick
Superior Court Judge, *pro tem*

[Signature]
Vanessa White
Palmer Superior Court

² Court's exhibit 1.
Hannam et al. v. Borough et al., Case No. 3PA-16-01952CI
Order Consolidating Cases, Denying Expedited Consideration, and Staying Consideration Pending Ballot Results
Page 3 of 3

MATANUSKA-SUSITNA BOROUGH

ELECTION BROCHURE

ELECTION DAY IS OCTOBER 4, 2016



Absentee Voting

Ballot Propositions

Candidate Profiles

Frequently Asked Questions

Sample Ballots

Voter Qualifications

Borough Clerk's Office • 350 E. Dahlia Avenue • Palmer, AK 99645
Lonnie R. McKechnie, CMC, Borough Clerk

Table of Contents

Letter to Voters 3

Voting Information 4 - 5

Frequently Asked Questions 6

General Precinct Information 7

Precinct Locations 8

Precincts Within Assembly/School Board Districts 9

Candidates 10 - 13

Ballot Propositions 14 - 18

Voting the Ballots 19

Sample Ballots 20 - 33

Absentee Voting Information 34

Absentee By-Mail Ballot Application 35

Letter to Voters



MATANUSKA-SUSITNA BOROUGH
 BOROUGH CLERK'S OFFICE
 350 East Dahlia Avenue, Palmer, AK 99645
 Phone (907) 861-8683 Fax (907) 861-7845

September 5, 2016

Dear Voter:

The Borough Clerk's Office is pleased to provide you with the Election Brochure for the October 4, 2016, Regular Election. Inside you will find information on candidates for office, ballot questions, polling places, voting options, frequently asked questions, and other information concerning the election.

If you are unable to vote at your precinct on Election Day, you may vote absentee. An absentee by-mail ballot application and information on absentee in-person voting are included in this brochure.

I hope that you find this publication useful as you prepare to vote in the upcoming election. If you have any questions, please visit us online at www.matsugov.us/elections or call 861-8683.

Sincerely,

Lonnie R. McKechnie, CMC
 Borough Clerk

Election Day is
Tuesday, October 4, 2016
Get out and VOTE!

This publication is distributed by the Matanuska-Susitna Borough Clerk's Office pursuant to MSB 25.05.120. One copy is mailed to each registered voter household within the Borough to inform voters of candidates, propositions, and general voting information.