

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT PALMER

RECEIVED in the TRIAL COURTS
State of Alaska Third District
at Palmer

SEP 19 2016

Clerk of the Trial Courts

By _____ Deputy

THOMAS HANNAM, et al.)
)
 Plaintiffs,)
)
 v.)
)
 MATANUSKA-SUSITNA BOROUGH,)
 et al.)
)
 Defendants.)

Case No. 3PA-16-01952 CI

MATANUSKA-SUSITNA BOROUGH'S ANSWER TO PLAINTIFF'S EXPEDITED COMPLAINT FOR DECLARATORY JUDGMENT AND FOR INJUNCTIVE RELIEF

COMES NOW, Matanuska-Susitna Borough (the "Borough"), by and through the Matanuska-Susitna Borough Attorney's Office and presents this Answer to Plaintiff's Expedited Complaint for Declaratory Judgment and for Injunctive Relief, and states as follows:

Plaintiffs in this matter are *pro-per*. The complaint filed here appears to be in the simultaneous form of a complaint and motion for summary judgment or judgment on the pleadings. This Answer responds via page and line number as to factual allegations in paragraphs and addresses each paragraph individually. If the Court finds allegations unaddressed by the Borough, then the Borough respectfully requests a notice of intent to rule before entering default on those issues. It is the full intention of the Matanuska-Susitna Borough to answer and

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address all aspects of the complaint aspect of the filing while recognizing the *pro-per* status of the plaintiffs. Opposition to the motion aspect of the filing will be via a separate opposition.

Page 1

As to the paragraph beginning on line 18, the Borough DENIES there is an actual controversy at this time. The Borough ADMITS the remainder of the allegations.

Page 2

As to the paragraph beginning on line 1, the paragraph merely states the claim for relief and no responsive pleading is required.

As to the paragraph beginning on line 8, the Borough DENIES the allegations.

As to the paragraph beginning on line 11, the Borough DENIES the allegations.

As to the paragraph beginning on line 15, the Borough DENIES the allegations.

Page 3

As to the paragraph beginning on line 4, the Borough ADMITS the allegations except that the Borough DENIES any inference that all claims are ripe and DENIES the provisions of 44.62.010-950 apply.

As to the paragraph beginning on line 9, the Borough ADMITS the allegations.

As to the paragraph beginning on line 15, the Borough is without sufficient knowledge or information to answer at this time and therefore DENIES the allegations.

As to the paragraph beginning on line 17, the Borough is without sufficient knowledge or information to answer at this time and therefore DENIES the allegations.

Page 4

As to the paragraph beginning on line 2, the Borough ADMITS the allegations.

As to the paragraph beginning on line 5, to the extent that the Borough is required to respond, the Borough DENIES the allegations as they pertain to Larry DeVilbiss. The Borough ADMITS the remaining allegations.

As to the paragraph beginning on line 10, the Borough ADMITS Ballot Measure 2 was voted on in the November 4, 2014 Alaska Statewide general election. The Borough DENIES the remaining allegations.

As to the paragraph beginning on line 13, the Borough is without sufficient knowledge or information to answer at this time and therefore DENIES the allegations.

As to the paragraph beginning on line 18, the Borough is without sufficient knowledge or information to answer at this time and therefore DENIES the allegations.

Page 5

As to the paragraph beginning on line 3, the Borough ADMITS the allegations.

As to the paragraph beginning on line 7, the Borough DENIES the allegations as they pertain to Larry DeVilbiss. The Borough further DENIES the initiative is a zoning ordinance. The Borough ADMITS the remaining allegations.

As to the paragraph beginning on line 13, the Borough ADMITS the allegations.

As to the paragraph beginning on line 18, the Borough ADMITS the plaintiffs expressed their views as to illegality of the initiative to the Borough Assembly. The Borough is without sufficient knowledge or information to answer the other specific allegations at this time and therefore DENIES the remainder of the allegations.

Page 6

As to the paragraph beginning on line 4, the Borough ADMITS the Borough Assembly enacted Ordinance Serial No. 16-046 establishing a moratorium. The Borough DENIES the remaining allegations.

As to the paragraph beginning on line 8, the Borough is without sufficient knowledge or information to answer the allegations at this time and therefore DENIES the allegations.

As to the paragraph beginning on line 12, the Borough DENIES the allegations.

As to the paragraph beginning on line 15, the Borough is without sufficient knowledge or information to answer the allegations at this time and therefore DENIES the allegations.

Page 7

As to the paragraph beginning on line 3, the Borough ADMITS that zoning by initiative is invalid. The Borough DENIES the remaining allegations including any inference that the initiative here is a zoning ordinance.

As to the paragraph beginning on line 7, the allegations call for a legal conclusion to which no responsive pleading is required. To the extent one is required, the Borough DENIES the allegations.

As to the paragraph beginning on line 12, the Borough DENIES the allegations.

As to the paragraph beginning on line 17.5, the Borough DENIES the allegations.

As to the paragraph beginning on line 20.5, the paragraph merely states the claim for relief and no responsive pleading is required.

Page 8

As to the paragraph beginning on line 3, the paragraph merely states the claim for relief and no responsive pleading is required.

As to the paragraph beginning on line 8, the paragraph merely states the claim for relief and no responsive pleading is required.

Page 8-13

As to all paragraphs beginning on page 8 line 12 and concluding on page 13 line 4.5, the allegations quote the Alaska Supreme Court and to which no responsive pleading is required. To the extent that plaintiffs have argument or factual conclusions contained in various parts of the quotes, the Borough DENIES the same.

Page 13

As to the paragraph beginning on line 5.5, the Borough DENIES the allegations.

As to the paragraph beginning on line 11.5, the Borough ADMITS its zoning power flows from Alaska statutes providing for planning, patting and land use regulation by local governments. The Borough DENIES the remaining allegations.

Page 13-18

As to the paragraph beginning on page 13 line 17.5 and concluding on page 18 line 5, the allegations quote the Alaska

Statutes and Alaska Supreme Court and thus no responsive pleading is required. To the extent that plaintiffs have argument or factual conclusions contained in various parts of the quotes, the Borough DENIES the same.

Page 18

As to the paragraph beginning on line 6 the allegations quote the Arizona Supreme Court and thus no responsive pleading is required. To the extent that plaintiffs have argument or factual conclusions contained in various parts of the quotes, the Borough DENIES the same.

As to the paragraph beginning on line 13, the Borough DENIES the allegations.

Page 19

As to the paragraph beginning on line 1, the Borough DENIES the allegations.

As to the paragraph beginning on line 3, the Borough DENIES the allegations.

As to the paragraph beginning on line 8, the Borough DENIES the allegations.

As to the paragraph beginning on line 13, the Borough DENIES the allegations.

Page 20

As to the paragraph beginning on line 5, the Borough DENIES the allegations.

As to the paragraph beginning on line 8, the allegations quote the Alaska Supreme Court and thus no responsive pleading is required.

As to the paragraph beginning on line 14, the Borough DENIES the allegations.

Page 21

As to the paragraph beginning on line 4, the Borough DENIES the allegations.

As to the paragraph beginning on line 10, the Borough DENIES the allegations.

As to the paragraph beginning on line 13, the Borough DENIES the allegations.

As to the paragraph beginning on line 19, the Borough DENIES the allegations.

Page 22

As to the paragraph beginning on line 5, the Borough DENIES the allegations.

As to the paragraph beginning on line 12, the Borough ADMITS the Superior Court has the powers alleged, but DENIES any allegation that such a remedy is appropriate here.

As to the paragraph beginning on line 15, the Borough DENIES the allegations.

Page 23

As to the paragraph beginning on line 1, the allegations quote the Alaska Constitution and thus no responsive pleading is required.

As to the paragraph beginning on line 5, the allegations contain legal arguments not factual allegations and thus no responsive pleading is required. To the extent one is required, the Borough DENIES the allegations.

As to the paragraph beginning on line 8, the allegations contain legal arguments (not factual allegations) and quote the Alaska Constitution and thus no responsive pleading is required. The Borough DENIES the remaining factual assertions.

As to the paragraph beginning on line 14, the allegations quote the Alaska Constitution and thus no responsive pleading is required.

Page 24

As to the paragraph beginning on line 1, the Borough ADMITS the Supreme Court has held that when the Initiative violates the constitutional restrictions on the initiative process it should have been rejected. The Borough DENIES the remaining allegations.

As to the paragraph beginning on line 7, the Borough DENIES the allegations.

As to the paragraph beginning on line 11, the pleading is directed at other defendants, the Borough is without sufficient knowledge or information as to what the other defendants knew or did not know and therefore DENIES the allegations.

Page 25

As to the paragraph beginning on line 4, the Borough DENIES the allegations.

As to the paragraph beginning on line 9, the Borough DENIES the allegations.

As to the paragraph beginning on line 17, the allegations quote the United States Supreme Court and thus no responsive pleading is required.

Page 26

As to the paragraph beginning on line 7, the allegations quote the Alaska Supreme Court and thus no responsive pleading is required.

Page 27

As to the paragraph beginning on line 3.5, the Borough DENIES the allegations.

As to the paragraph beginning on line 6.5, the allegations quote the Alaska Supreme Court and thus no responsive pleading is required.

As to the paragraph beginning on line 10, part of the allegations quote the Alaska Supreme Court and thus no responsive

pleading is required. The Borough DENIES the remaining allegations.

As to the paragraph beginning on line 16, the Borough DENIES the allegations.

Page 28

As to the paragraph beginning on line 5, the Borough DENIES the allegations.

As to the paragraph beginning on line 10, the Borough DENIES the allegations.

As to the paragraph beginning on line 17, the Borough is without sufficient knowledge or information to answer at this time and therefore DENIES the allegations.

As to the paragraph beginning on line 20, the allegations quote the Alaska Statutes and thus no responsive pleading is required.

Page 29

As to the paragraph beginning on line 5.5, the allegations make a legal argument to which no responsive pleading is required. To the extent one is required, the Borough DENIES the allegations.

As to the paragraph beginning on line 7.5, the Borough DENIES the allegations.

As to the paragraph beginning on line 17, the Borough ADMITS signatures for the initiative were signed and submitted in 2015. The Borough DENIES all other allegations.

Page 30

As to the paragraph beginning on line 3, the Borough DENIES the allegations.

As to the paragraph beginning on line 6, the Borough is without sufficient knowledge or information to answer at this time and therefore DENIES the allegations.

As to the paragraph beginning on line 10, the Borough is without sufficient knowledge or information to answer at this time and therefore DENIES the allegations.

As to the paragraph beginning on line 16, the allegations contain a legal conclusion to which no response is required. To the extent one is required, the Borough is without sufficient knowledge or information to answer at this time and therefore DENIES the allegations.

Page 31

As to the paragraph beginning on line 1, the Borough DENIES the allegations.

As to the paragraph beginning on line 5, the Borough ADMITS there was a letter May 15, 2015 and ADMITS the allegations of the quoted sentence on lines 5-7 of the compliant. The Borough ADMITS there were fourteen signatures. The Borough DENIES the May 15,

2015 letter was part of the initiative here and DENIES the remaining allegations.

As to the paragraph beginning on line 13, the Borough DENIES the allegations.

Page 32

As to the paragraph beginning on line 4, the allegations contain citations and quotes of various court cases, and legal conclusions to which no response is required. To the extent one is required, the Borough DENIES a taking occurred here and therefore DENIES the allegations.

AFFIRMATIVE DEFENSES

1. Plaintiffs' claims are not ripe for adjudication.
2. Plaintiffs' complaint, in whole or in part, fails to state a claim upon which relief can be granted.
3. Plaintiffs' claims are barred under the doctrine of qualified immunity.
4. Plaintiffs' claims are barred under the doctrine of legislative immunity.
5. Plaintiffs' claims are barred under the doctrine of discretionary function immunity.
6. Some of Plaintiffs' specific requests for relief are barred by laches.
7. Plaintiffs' failed to join indispensable parties as to certain claims.

8. Plaintiffs' acted unreasonably.

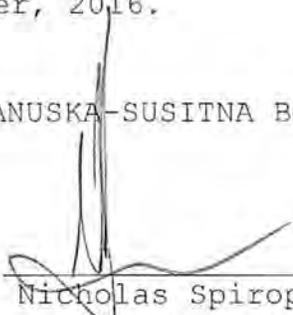
9. The Borough reserves the right to supplement defenses as they become apparent through discovery or otherwise.

WHEREFORE the Matanuska-Susitna Borough prays that the court:

1. Enter judgment for the Borough and against plaintiffs.
2. Grant the Borough attorney fees and costs of defense.
3. Any other legal or equitable relief in favor of the Borough the court may deem appropriate.

DATED this 19th day of September, 2016.

MATANUSKA-SUSITNA BOROUGH

By: 

Nicholas Spiropoulos
Borough Attorney
Alaska Bar No. 0010068

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CERTIFICATE OF SERVICE

I hereby certify that on the 19th day of September, 2016, I caused to be served, via U.S. Mail, postage prepaid, a copy of Matanuska-Susitna Borough's Answer To Plaintiff's Expedited Complaint For Declaratory Judgment And For Injunctive Relief on the following:

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Kelly Beatriz, Legal Secretary