



1 EMERGENCY

2 Clint Tuma & Amy Tuma  
3 PO BOX 1073  
4 10948 N Pilot Dr  
5 Willow AK 99688  
6 (907) 376-2232 – Message Phone  
7 (907) 376-0530 - Fax

8 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA  
9  
10 THIRD JUDICIAL DISTRICT AT PALMER

11 Clint Tuma and Amy Tuma, )  
12 )  
13 Plaintiff, )  
14 )  
15 v. )  
16 )  
17 Matanuska-Susitna Borough; Barry Orzalli; Ted )  
18 Franke; Christopher R. Miller; Robert Hanner; )  
19 Stephen D. Guisinger; Paul Riley; Paul Steiner; )  
20 Dennis Hotchkiss; Bob Lee; Philip Markwardt; )  
21 Rudy Poglitch; Timothy R. Sergie; Daniel Hamm )  
22 Sally Pollen; and Larry DeVilbiss. )  
23 )  
24 Defendants. )

Case No. 37A-16-1979C1

25 EMERGENCY MOTION FOR EXPEDITED CONSIDERATION

26 COMES NOW Clint Tuma and Amy Tuma, Plaintiffs in the above styled and  
27 numbered cause, proceeding without the assistance of counsel,<sup>1</sup> and brings this  
28 Emergency Motion for Expedited Consideration of the Expedited Complaint for  
29 Declaratory Judgment and for Injunctive Relief, in the above styled and numbered

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34 <sup>1</sup> Under their constitutional and statutory right to self-representation, AS 22.20.040(a), Appearance. (a) An action or proceeding may be prosecuted or defended by a party in person or by attorney.

1 cause, and hereby files this emergency motion for expedited consideration of his  
2 Emergency-Expedited Complaint for Declaratory Judgment and for Injunctive Relief.

3 This emergency motion for expedited consideration is supported by affidavits  
4 of Plaintiff Clint Tuma, and Plaintiff Amy Tuma, filed separately herewith.

5 REASONS FOR REQUESTING EXPEDITED CONSIDERATION

6 Plaintiffs request Expedited Consideration, of the Emergency Expedited  
7 Complaint for Declaratory Judgment and Injunctive Relief, because the Proposed  
8 Zoning Initiative, “Ordinance Serial No. 15-088, Matanuska-Susitna Borough”,  
9 Proposition No. B-1 on the Ballot, is scheduled to be voted on October 4, 2016.

10 As explained by the Plaintiffs in the Complaint the Proposed Zoning Initiative  
11 bypasses the mandatory Alaska Statutes; usurping undelegated municipality powers;  
12 deprives the Matanuska-Susitna Borough ‘a municipality’ of a power which state law  
13 specifically allows (and mandates) that it perform; it exceeds the Matanuska-Susitna  
14 Borough’s own legislative zoning powers; that it is unconstitutional, and that it would  
15 be unenforceable as a matter of law. The proposed initiative in this case was pursuant  
16 to AS 29.26.100 rather than under Article XI of the Alaska Constitution, but the  
17 Supreme Court has held proposed zoning initiatives are invalid, where they have  
18 bypass mandatory planning commission review of land use ordinances and would  
19 thwart the state legislature's delegation of land use authority to municipal assembly.<sup>2</sup>

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23 <sup>2</sup> Carmony v. McKechnie, 217 P.3d 818, 820 (Alaska 2009); Griswold v. City of Homer, 186 P.3d 558, 563 (Alaska  
24 2008); See Municipality of Anchorage v. Frohne, 568 P.2d 3, 8 (Alaska 1977) (“[T]he subject of the initiative must  
constitute such legislation as the legislative body to which it is directed has the power to enact.”).

1           Because Plaintiffs' Emergency Expedited Complaint seeks the Declaratory  
2 Judgment that the proposed zoning initiative is invalid, and seeking an injunction to  
3 prevent the zoning initiative<sup>3</sup> from being placed before the voters, to have the zoning  
4 initiative removed from the Ballot, and to prevent any votes from being counted on  
5 the zoning initiative, until after this matter is resolved, and it is scheduled for a vote  
6 on October 4, 2016, the time would expire before this Court could provide the normal  
7 time for motions practice between the Plaintiffs and the Defendants, and still have the  
8 time to review, and make a decision, before the scheduled vote on November 4, 2016.

10           The proposed zoning initiative is invalid, where it bypasses mandatory  
11 planning commission review of land use ordinances, and would thwart the state  
12 legislature's delegation of land use authority to the municipal assembly.<sup>4</sup>

14           In the event that the time expires and the voters pass the invalid proposed  
15 zoning initiate, and it becomes law, then the floodgates of unnecessary litigation  
16 would be loosed to repeal the invalid zoning Ordinance, and the potential for many  
17 additional takings actions, because of the invalid proposed zoning ordinance.

18           Because of the Supreme Court teachings, in *Griswold v. City of Homer*,<sup>5</sup>  
19 *Carmony v. McKechnie*,<sup>6</sup> and *Municipality of Anchorage v. Frohne*,<sup>7</sup> that zoning by  
20 initiative is invalid, expedited consideration should be granted in this case.

22 <sup>3</sup> Initiative Ordinance Serial No. 15-088, the Matanuska-Susitna Borough Proposition No. B-1 "Prohibiting  
Marijuana Establishments Except Those Involving Industrial Hemp in the Area Outside of the Cities".

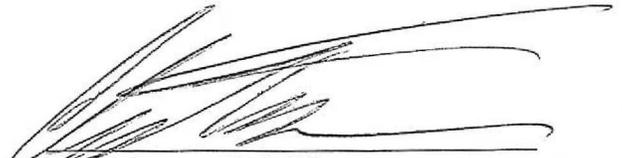
23 <sup>4</sup> See, e.g., *Kaiser Hawaii Kai Dev. Co. v. City & County of Honolulu*, 70 Haw. 480, 777 P.2d 244, 247 (1989)  
24 (holding that "[z]oning by initiative is inconsistent with the goal of long range comprehensive planning" and was not  
intended by legislature); *Carmony v. McKechnie*, 217 P.3d 818, 821 (Alaska 2009) (quoting *Griswold v. City of  
Homer*, 186 P.3d 558, 563 (Alaska 2008)) (internal quotation marks omitted).

1           There would be minimal, if any, prejudice to the Defendants, other than what  
2 minimal inconvenience they would normally experience in regular motions practice,  
3 and the benefit to the voters, not to be subjected to a vote on an invalid Proposed  
4 zoning initiative, that could not be enforced as a clear matter of law, weighs heavily in  
5 favor of expedited consideration being granted in this case.  
6

7           This matter must be heard on an expedited basis because the time would expire  
8 before it could be heard in regular time.

9           WHEREFORE, for the above and foregoing reason, the Plaintiffs respectfully  
10 request the Court grant this emergency motion for expedited consideration in the  
11 interest of justice.

12           Respectfully submitted this 9 day of September 2016.

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16             
Clint Tuma, Plaintiff, *pro se*

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18             
Amy Tuma, Plaintiff, *pro se*  
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21

22 <sup>5</sup> 186 P.3d 558 (Alaska 2008).

23 <sup>6</sup> Carmony v. McKechnie, 217 P.3d 818, (Alaska 2009); and See also Griswold v. City of Homer, 186 P.3d 558, 563 (Alaska 2008))

24 <sup>7</sup> See Municipality of Anchorage v. Frohne, 568 P.2d 3, 8 (Alaska 1977) (“[T]he subject of the initiative must constitute such legislation as the legislative body to which it is directed has the power to enact.”).

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 9 day of September, 2016, a true and complete copy of the above and foregoing document was served on the appropriate parties by placing it in the United States Mail with first class postage prepaid and addressed as follows:

*All service by process server*

Matanuska-Susitna Borough  
350 E. Dahlia Ave  
Palmer, AK 99645  
Phone: (907) 861-7801

Larry DeVilbiss.  
2300 N. Aurora Lane  
Palmer, AK 99645

Daniel Hamm  
8661 East Regents Road  
Palmer, Alaska 99645

Sally Pollen  
2000 Pennington Lane  
Palmer, Alaska 99645

Barry Orzalli  
1561 South Bever Lake Road  
Wasilla, Alaska 99623

Ted Franke  
5381 East Pine Street  
Wasilla, Alaska 99654

Dennis Hotchkiss;  
3040 N. Belos Street  
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Robert Hanner  
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Rudy Poglitsch  
7180 E. Twin Lakes Drive  
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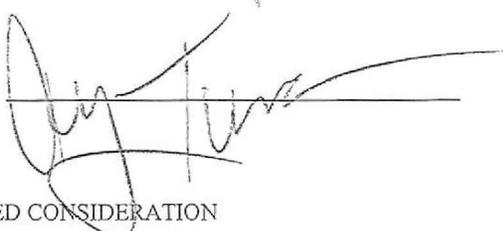
Paul Riley  
7851 E. SouthShore Drive  
Wasilla, Alaska 99687

Philip Markwardt  
3641 Puffin Circle  
Palmer, Alaska 99645

Paul Steiner  
10739 E. Center Street  
Palmer, Alaska 99645

Bob Lee  
1500 E. Robin Lane  
Palmer, Alaska 99645

Dated this 9 Day of September, 2016,

Signed, 

1 Clint Tuma & Amy Tuma  
PO BOX 1073  
2 10948 N Pilot Dr  
Willow AK 99688  
3 (907) 376-2232 – Message Phone  
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4



5 IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

6 THIRD JUDICIAL DISTRICT AT PALMER

7 Clint Tuma and Amy Tuma, )  
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9 v. )  
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Dennis Hotchkiss; Bob Lee; Philip Markwardt; )  
12 Rudy Poglitsch; Timothy R. Sergie; Daniel Hamm )  
Sally Pollen; and Larry DeVilbiss. )  
13 Defendants. )  
14

Case No. 3PA-16-1979CI

15  
16 AFFIDAVIT OF CLINT TUMA IN SUPPORT OF THE  
EMERGENCY MOTION FOR EXPEDITED CONSIDERATION

17 STATE OF ALASKA )  
) ss.  
18 THIRD JUDICIAL DISTRICT )

19 I, Clint Tuma, being first duly sworn, deposes and states:

20 1. That I am an adult resident of the State of Alaska, and that I am one of the  
21 named Plaintiffs in the above styled and numbered cause.  
22  
23  
24



1 CERTIFICATE OF SERVICE

2 The undersigned hereby certifies that on the 8 day of September, 2016, a true  
3 and complete copy of the above and foregoing document was served on the appropriate  
4 parties by process server, or by hand, fax, or by placing it in the United States Mail with  
5 first class postage prepaid and addressed as follows:

6 Matanuska-Susitna Borough  
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8 Palmer, AK 99645  
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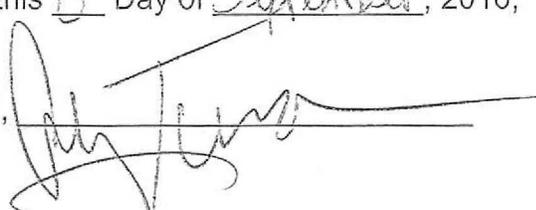
17 Paul Riley  
18 7851 E. SouthShore Drive  
19 Wasilla, Alaska 99687

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3641 Puffin Circle  
Palmer, Alaska 99645

19 Paul Steiner  
20 10739 E. Center Street  
21 Palmer, Alaska 99645

Bob Lee  
1500 E. Robin Lane  
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21 Dated this 8 Day of September, 2016,

22  
23 Signed, 

1 Clint Tuma & Amy Tuma  
2 PO BOX 1073  
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18 Dennis Hotchkiss; Bob Lee; Philip Markwardt; )  
19 Rudy Poglitsch; Timothy R. Sergie; Daniel Hamm )  
20 Sally Pollen; and Larry DeVilbiss. )  
21 )  
22 Defendants. )  
23 )  
24 )

Case No. 3PA-16-1979 CI

25 AFFIDAVIT OF AMY TUMA IN SUPPORT OF THE  
26 EMERGENCY MOTION FOR EXPEDITED CONSIDERATION

27 STATE OF ALASKA )  
28 ) ss.  
29 THIRD JUDICIAL DISTRICT )

30 I, Amy Tuma, being first duly sworn, deposes and states:

31 1. That I am an adult resident of the State of Alaska, and that I am one of the  
32 named Plaintiffs in the above styled and numbered cause.

33 2. That I believe the underlying motion must be heard on an expedited basis  
34 because the time will expire before it could be heard in regular time, based on the facts

1 presented in the complaint for declaratory judgment and for injunctive relief, including an  
2 essential fact that it is on the Ballot, scheduled to be a voted on October 4, 2016.

3 3. That I have prepared and reviewed my emergency motion for expedited  
4 consideration of my underlying Emergency Expedited Complaint for Declaratory  
5 Judgment and for Injunctive Relief, finding any factual assertions made therein to be  
6 true to the best of my knowledge and belief.

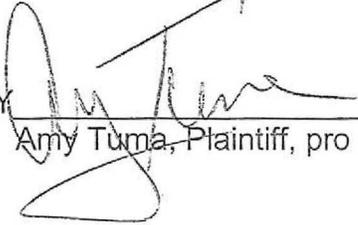
7 4. That I have not brought the emergency motion for expedited consideration to  
8 cause any unnecessary delay, the motion is brought for the purpose of protecting my  
9 constitutional and statutory rights, the motion will not cause any undue prejudice to the  
10 Defendants, and I believe my motion complies with the Alaska Rules of Civil Procedure.

11 5. Affiant sayeth further naught.

12 RESPECTFULLY submitted on this the 8 day of September, 2016.

13

14

BY   
Amy Tuma, Plaintiff, pro se

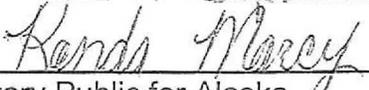
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16

SUBSCRIBED AND SWORN to before me this 8<sup>th</sup> day of September, 2016.

17

18

By   
Notary Public for Alaska  
My Commission expires: 12-25-16

19

20



21

22

23

24

CERTIFICATE OF SERVICE

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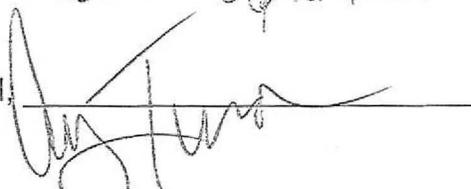
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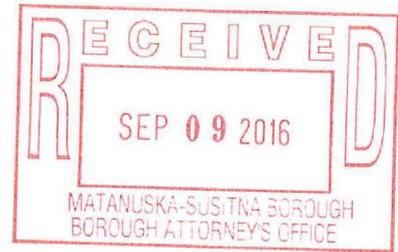
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15 Rudy Poglitsch; Timothy R. Sergie; Daniel Hamm )  
16 Sally Pollen; and Larry DeVilbiss. )  
17 Defendants. )

Case No. JPA-16-1979C1

ORDER

16 This matter came before the court on Plaintiffs' Emergency Motion for Expedited  
17 Consideration, of Plaintiffs' underlying Emergency-Expedited Complaint for Declaratory  
18 Judgment and for Injunctive Relief, and it appearing good cause has been shown,

19 It is Hereby ORDERED, that the Plaintiffs' Emergency Motion for Expedited  
20 Consideration, is Hereby GRANTED. The motion will be heard on an expedited basis.

21 DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2016.

22 Hon. \_\_\_\_\_,  
23 Superior Court Judge

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