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Attorneys for Plaintiffs Fred Hosford and Kathy Hosford

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA
FIRST JUDICIAL DISTRICT AT JUNEAU

FRED HOSFORD and KATHY HOSFORD,

Plaintiffs,

v.

MUNICIPALITY OF SKAGWAY
BOROUGH; ANDREW CREMATA, in his
capacity as Mayor of the Municipality of
Skagway; STEVE BURNHAM, JR., SAM
BASS, JAY BURNHAM, ORION HANSON,
REBA HYLTON, and DUSTIN STONE, each
in their capacity as Assembly Members of the
Municipality of Skagway,

Defendants.

Case No. 1JU-21- 00664 CI

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

COME NOW plaintiffs Fred and Kathy Hosford (“Plaintiffs”) hereby file this complaint against the Municipality of Skagway Borough, Andrew Cremata, in his capacity as Mayor of the Municipality of Skagway Borough, Steve Burnham, Jr., Sam Bass, Jay Burnham, Orion Hanson, Reba Hylton, and Dustin Stone, each in their capacity as Assembly Members of the Municipality of Skagway Borough (hereinafter collectively referred to as “MOS”) by stating and alleging the following:

I. INTRODUCTION

1. This case concerns the unlawful construction, rental, and usage of a cabin (“Dyea Cabin”) constructed and managed by the MOS as part of the Dyea Flats Campground within the historic and protected Dyea Flats.

2. By ignoring Federal, State and local law, including failing to go through the required permitting process, the MOS has violated Plaintiffs’ constitutional right to due process, multiple provisions of the Skagway Municipal Code (“SMC”), and have caused damages to Plaintiffs.

II. PARTIES

3. Plaintiffs Fred and Kathy Hosford are longtime residents and citizen taxpayers of Skagway and are the owners of the Chilkoot Trail Outpost located near the Dyea Flats Campground within the Dyea Flats.

4. Defendant Municipality of Skagway Borough is a first-class borough within the State of Alaska, and is charged with owning and managing the Dyea Flats and the Dyea Flats Campground.

5. Defendant Andrew Cremata is being sued in his official capacity as the Mayor of the Municipality of Skagway Borough.

6. Defendants Steve Burnham, Jr., Sam Bass, Jay Burnham, Orion Hanson, Reba Hylton, and Dustin Stone are being sued in their official capacities as elected members of the Assembly for the Municipality of Skagway Borough.

III. JURISDICTION AND VENUE

7. This court has jurisdiction over this dispute, as well as the ability to enter a declaratory judgment and provide injunctive relief, under AS 22.10.020.

8. Venue is proper in the First Judicial District as all of the parties, and the Dyea Cabin, are situated within the First Judicial District.

IV. RELEVANT FACTUAL ALLEGATIONS

9. The Dyea Flats is a 271-acre area located at the mouth of the Taiya River near Skagway. The Dyea Flats have historical significance for, among other things, being the trailhead for the Chilkoot Trail. The Chilkoot Trail was one of the primary ways prospectors traveled to the Yukon as part of the Klondike gold rush between 1897 and 1903.

10. 202 acres of the Dyea Flats is owned by the MOS and is subject to a Dyea Flats Land Management Plan (“Management Plan”). This Management Plan — originally established in 1996 — was last revised in 2010. The Management Plan was an integral part of the MOS’s efforts to obtain title to the 202 acres of the Dyea Flats from the State of Alaska. Relevant SMC provisions for the Management Plan are outlined in SMC 16.08.010-.040 and SMC 16.10.010-.040.

11. The transfer of title of the 202 acres of Dyea Flats to the MOS by the State of Alaska was conditioned on the creation and existence of and the MOS’s promise to adhere to the Management Plan. In fact, the Alaska Department of Natural Resources initially rejected the MOS’s request for title to the Dyea Flats, and only approved the conveyance of title to the MOS because of the existence of a Management Plan which would protect the area.

12. An important component of the Management Plan is its reliance on the Dyea Community Advisory Board (“DCAB”), codified in SMC 3.15.010-.080. The DCAB consists

of five voting members and a non-voting ex officio member from the MOS Borough Assembly (“Assembly”). The DCAB meets monthly, and is charged with advising the Assembly “on issues and policies relating to public lands in the Dyea,” including “land use, planning, land disposal, land and water conservation, utilities, recreational and commercial development.” The DCAB is also “responsible for the periodic review of . . . [the] Management Plan.”

13. The Management Plan imposes substantial restrictions on uses within the Dyea Flats. For example, there are numerous restrictions for any vendor to obtain a commercial recreational permit, including strict limits on the number of vendors, how many clients each vendor has, the type of commercial recreational activity, and insurance requirements. All other non-permitted commercial activities, including “rentals,” are explicitly prohibited by the Management Plan, and any violation of the Management Plan is punishable by a \$300 per day civil penalty.

14. There is no exception allowing any entity, including the MOS, to ignore any part of the Management Plan. Furthermore, nothing within the Management Plan exempts the Dyea Flats from having to comply with other Federal, State, or local law or regulations, including the MOS’s zoning requirements for the area or conditional use permits. Indeed, the Management Plan only increases restrictions on use within the Dyea Flats, and relies on the DCAB to advise the Assembly on all land use issues.

15. The Dyea Flats Campground exists within the area subject to the Management Plan and is accessible by motor vehicles. And since June 2020, by unanimous resolution of the Assembly, any camper had to pay \$10 per night (or could purchase an annual pass for \$50) to

stay at a campsite within the Dyea Flats Campground. The June 2020 resolution does not mention any fee structure for renting out or reserving a cabin on the Dyea Flats Campground.

16. In part because of the Dyea Flats Campground’s growing popularity, the DCAB and the Assembly have tried (unsuccessfully until this year) to hire a campground host to help manage the Dyea Flats Campground since at least 2015. The DCAB and the Assembly have sought a campground host primarily because of increased fire and public safety concerns given the growing number of users at the Dyea Flats Campground.

17. In November 2019, the DCAB first discussed how generally providing a living space for a campground host within the Dyea Flats Campground could serve as an incentive to help fill the position.

18. In December 2019, the DCAB again discussed constructing a “Campground Host Dry Cabin.” One member of the DCAB floated the idea that the yet-to-be-constructed cabin could be rented out in the winter to help collect revenue. But this idea was ultimately neither adopted nor recommended by the DCAB.

19. In April 2020, after the beginning of the COVID-19 pandemic, and in part because of the DCAB’s recommendations, the Assembly authorized MOS staff to obtain quotes for constructing a shelter at the Dyea Flats Campground. In an accompanying memo from the MOS Manager Brad Ryan, it was understood that construction of either a cabin or a yurt would be “for a campground host.”

20. In September 2020, after considering two bids for constructing a cabin within the Dyea Flats Campground, and as part of a broader push to use CARES Act funds, the Assembly awarded a \$56,450 contract to the lowest bidder so that construction could begin.

Prior to awarding this construction contract, the Assembly's budget documents indicated that this cabin would be for a campground host. Construction of what would become the Dyea Cabin was completed in October 2020.

21. At no time prior to construction did the MOS obtain *any* required permitting for construction within the protected Dyea Flats. The MOS did not ensure that the Dyea Cabin complied with the requirement to obtain a building permit, nor did the MOS ensure that the Dyea Cabin had a conditional permit for either construction or use. The MOS also failed to apply for a conditional permit from the Planning and Zoning Commission, a requirement for the applicable Residential-Conservation District.

22. By failing to obtain the required conditional and building permits, the MOS failed to provide required notice to adjoining property owners and other stakeholders of its plans to construct the Dyea Cabin. The MOS's failure to comply with the permitting process meant that Plaintiffs were not informed of the Dyea Cabin's construction as they would ordinary be. The MOS's failure to comply with the permitting process also means that the required public process to ensure safety and compliance with other Federal, State, and local laws and regulations was not followed.

23. In January 2021, without approval from either the DCAB or the Assembly, and without any public notice, the MOS Parks and Recreation Department posted a form and calendar online and began taking reservation requests to rent out the Dyea Cabin for \$50 per night. The Dyea Cabin was listed as being able to accommodate up to eight people per night.

24. The Dyea Cabin was, in fact, rented out for multiple nights in February 2021 for \$50 per night. No prior approval was given by the Assembly before this occurred, and neither the Assembly nor the DCAB were even informed about these rentals.

25. Plaintiffs first learned about the construction of the Dyea Cabin and the MOS's unauthorized scheme to rent out the Dyea Cabin in February 2021. Plaintiffs then immediately contacted the MOS to obtain additional information about the Dyea Cabin's construction and the MOS's usage plans.

26. Plaintiffs also engaged counsel, who sent the MOS a cease and desist letter on March 1, 2021. Plaintiffs noted the lack of adequate public process and permitting, along with the transition from being a cabin for a campground host to a cabin available to rent for recreational use.

27. The MOS's response to Plaintiffs' expressed concerns has been inconsistent at best. First, the MOS insisted that a proper public process was followed. Then, after a follow up letter to the MOS, the MOS took down the online reservation process.

28. In a memorandum dated March 24, 2021, MOS Borough Manager Brad Ryan outlined utilization options for the Dyea Cabin. This memorandum included an indication that he was "in favor of renting the cabin to the public during the winter," and was provided to Plaintiffs in a response from counsel for the MOS on March 25. The memorandum also reiterated the DCAB's longstanding position that the Dyea Cabin should only be used by a campground host.

29. Counsel for Plaintiffs responded to the MOS on March 29, 2021, re-emphasizing the MOS's lack of compliance with titles 15 (building permits), 16 (Management Plan), and 19 (conditional permits) of the SMC.

30. Following the March 29 letter, on April 1, 2021, Mr. Ryan authored a new memorandum recommending that the MOS “suspend offering the cabin for rent.”

31. The Assembly considered use of the Dyea Cabin on April 1, 2021, and voted to direct the MOS to pursue hiring a campground host who would stay in the Dyea Cabin. In doing so, members of the Assembly discussed the importance of ensuring that the proper public process was followed in constructing and using the Dyea Cabin.

32. Since February 2021, the DCAB has consistently emphasized that the Dyea Cabin was constructed with the intended purpose of housing a campground host for the Dyea Flat Campground, not for rental or other general public use through a reservation system.

33. Plaintiffs received documents from a public records request in April 2021. None of the documents provided by the MOS indicate that any building, conditional use, or other permits were ever issued (or even requested) to support the construction or use of the Dyea Cabin.

34. The MOS submitted conditional use permits relating to the Dyea Cabin to the Planning and Zoning Commission in May 2021. But consideration of the permits was pulled before the Planning and Zoning Commission meeting on May 13, 2021, and no such permits for the Dyea Cabin have been considered.

35. On June 3, 2021, the Assembly voted to allow for free public use of the Dyea Cabin by Skagway residents whenever it is not being utilized by a campground host. Representatives from the DCAB indicated the DCAB’s ongoing opposition to this plan because of its inconsistency with the Management Plan.

36. There is still no indication that any permits have been applied for or issued to the Dyea Cabin for its construction or use.

V. COUNT I
The Dyea Cabin Was Illegally Constructed

37. Plaintiffs reallege and incorporate by reference all previous and subsequent paragraphs as set forth herein.

38. The Dyea Flats Campground, where the Dyea Cabin is situated, is zoned as part of a Residential-Conservation District. SMC 19.06.010.

39. All recreational cabins situated within the Residential-Conservation District are permitted only by conditional use. SMC 19.06.020(3)(g); SMC 19.06.020(B)(1).

40. Furthermore, all construction first requires a building permit from the Planning and Zoning Commission. SMC 15.12.020. This building permit would ensure compliance with laws regarding flood plains, fire safety, and other critical issues to help reduce liability to the MOS.

41. SMC 19.04.040 provides that “[w]henver private use is made of any public land or public structures such private use shall fully conform to the regulations set forth in this title.” Therefore, there is no exception allowing the MOS to ignore its own SMC provisions.

42. The ordinary penalty for any violation of the MOS’s planning and zoning code is to “remove such buildings, structure or use.” SMC 19.04.090(D)

43. The MOS did not obtain the required permits before constructing the Dyea Cabin.

44. Because the MOS did not comply with its own required permitting process before constructing the Dyea Cabin, the Dyea Cabin must be removed and no use of the cabin may be permitted.

VI. COUNT II

The Dyea Cabin Has Been Rented Illegally, And Usage Cannot Be Permitted

45. Plaintiffs reallege and incorporate by reference all previous and subsequent paragraphs as set forth herein.

46. In addition to permits that are required before construction, some uses also require conditional permits pursuant to the SMC.

47. The Management Plan outlines strict requirements before commercial rentals can occur within the Dyea Flats.

48. The MOS rented out the Dyea Cabin in February 2021 without first obtaining the required conditional use permits. Not only was this done without the necessary prior permitting approval, but it also shows that any rentals or reservations of the Dyea Cabin by the public should be considered a prohibited commercial activity pursuant to the Management Plan.

49. Furthermore, an unpermitted structure — like the Dyea Cabin — cannot be used or occupied by anyone. SMC 19.04.010(A). And not only is there no exception for the MOS, but the MOS is explicitly required to follow title 19 of the SMC. SMC 19.04.040.

50. Because the Dyea Cabin was not constructed in accordance with the MOS's own permitting requirements, no use is permissible.

VII. COUNT III

Violation of Procedural Due Process Under The United States and Alaska Constitutions

51. Plaintiffs reallege and incorporate by reference all previous and subsequent paragraphs as set forth herein.

52. The Fifth and Fourteenth Amendments to the U.S. Constitution guarantee that no person shall be deprived of “life, liberty, or property without due process of law.”

53. Article I of the Alaska Constitution provides that “all persons have a natural right to life, liberty, the pursuit of happiness, and the enjoyment of the rewards of their own industry.”

54. The Due Process clause in the U.S. and Alaska Constitutions require that the government follow constitutionally adequate procedures before acting.

55. 42 U.S.C. § 1983 allows citizens to bring suit based on “the deprivation of any rights, privileges, or immunities secured by the Constitution and laws.” Section 1983 also provides that the person — like the MOS here — “shall be liable to the party injured in an action.”

56. A key component of the constitutional right to procedural due process is proper notice and an opportunity to be heard.

57. The MOS’s permitting process, outlined in the SMC, requires public applications and hearings for any conditional use or other building permits. The SMC also

requires that various commissions, like the Planning and Zoning Commission, must provide public notice to adjoining land owners who may wish to weigh in on a conditional use request.

58. In addition, in failing to file requests for permits, there was not proper consideration of the varying interests which infringed on Plaintiffs' right to "the enjoyment of the rewards of their own industry."

59. Because the MOS did not follow its own permitting procedure, the MOS failed to follow the required process before constructing and renting out the Dyea Cabin. Additionally, adequate notice was not provided to adjoining landowners and other citizens. The MOS therefore violated Plaintiffs' constitutional procedural due process rights under both the U.S. and Alaska Constitutions.

VIII. COUNT IV

Intentional Interference with Prospective Economic Advantage

60. Plaintiffs reallege and incorporate by reference all previous and subsequent paragraphs as set forth herein.

61. Plaintiffs' business is located near the Dyea Flats Campground.

62. By renting out the Dyea Cabin, the MOS have damaged Plaintiffs' business in the middle of a tourism slump caused by the COVID-19 pandemic.

63. Furthermore, by allowing for reservations for up to eight people to stay at the Dyea Cabin for *free*, the MOS is intentionally interfering with the ability for Plaintiffs' to generate income and remain in business.

64. The Dyea Cabin also substantially reduces the value of Plaintiffs' business, given the much cheaper alternative option that Plaintiffs' cannot compete with, both because it

is free and the MOS did not go through the time and expense of complying with its own permitting process.

65. The MOS only allowed for free reservations of the Dyea Cabin after being fully apprised of Plaintiffs' nearby competing business interest.

66. By allowing for free reservations of the Dyea Cabin, the MOS intentionally acted to disrupt Plaintiffs' future potential business relationships.

67. Because the MOS's decision to rent out and allow reservations for the Dyea Cabin, Plaintiffs have been harmed.

IX. COUNT V Damages

68. Plaintiffs reallege and incorporate by reference all previous and subsequent paragraphs as set forth herein.

69. Plaintiffs presented their arguments to the MOS since as early as February 2021.

70. Despite knowing about Plaintiffs concerns, the MOS has largely ignored them, and have continued to promote the use of the Dyea Cabin without going through the proper public processes.

71. In addition, the MOS has taken steps reactive to the action of Plaintiffs, but the MOS has failed to comply with the law.

72. The MOS has damaged Plaintiffs as a result of its multiple violations of law, and Plaintiffs are entitled to an award of damages as may be proven at trial.

73. At minimum, Plaintiffs are eligible for nominal damages as the means of vindicating their rights as a result of the constitutional violations.

X. PRAYER FOR RELIEF

WHEREFORE, Plaintiffs respectfully request that this Court:

- A. Declare that the MOS's construction of the Dyea Cabin, without obtaining any of the permits required by the SMC, was illegal;
- B. Declare that the MOS's authorized uses of the Dyea Cabin were given without the required permits to allow such conditional use, and were therefore illegal;
- C. Declare that the Dyea Cabin must be removed, or, in the alternative, cannot be used until the proper permitting process has concluded;
- D. Find that Plaintiffs are public interest litigants seeking the enforcement of constitutional rights in this proceeding;
- E. Award Plaintiffs their full costs and attorneys' fees as required by AS 09.60.010(c) or pursuant to law as nominal damages; and
- F. Grant any and all additional relief to which Plaintiffs are entitled.

DATED this 16th day of June, 2021, at Anchorage, Alaska.

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and Kathy Hosford

By: s/ Stacey C. Stone

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