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February 8, 2024

Hon. Tom Morphet
Haines Borough Mayor
Haines Borough
P.O. Box 1209
Haines, AK 99827

Re: Legal Services Status Update

Dear Mayor Morphet:

This is a status report on significant work we have done for Haines Borough since October 1, 2023, also identifying matters we are currently working on or anticipate may soon require further work.

General Counsel

We advised the manager on the borough's participation in the AP&T rate-setting matter pending before the Regulatory Commission of Alaska and, with the manager, met with Skagway officials to discuss the borough's participation. We worked with the planner on easement agreements for a stormwater drainage project. We advised on public records, assembly authority when meeting as a committee of the whole, and several open meetings questions.

Board of Equalization and Property Tax

In October, we advised on several property tax assessment issues, including several assessments that were appealed to the board of equalization. We have not received notice that any of the board of equalization's decisions have been appealed to the superior court and for that reason view this work as concluded.

An ad hoc committee's recommendations to the assembly for code amendments that restructure the board of equalization and the appeal procedure were referred to us. We advised that the assembly may delegate appeal hearing authority to a board composed of borough residents (as opposed to the assembly sitting as the board under the current ordinances). We re-drafted the committee's proposed code changes for clarity and consistency with other code provisions. We are not presently working on any ad hoc committee's recommendations, but anticipate that this overall work will be ongoing.

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Haines Borough Code calls for periodic property tax foreclosures. The one-year redemption period for the pending foreclosure action ends on February 23. We are working with Ms. Fullerton and Ms. Lambert on this matter. Following publication of the end of redemption period notices, we will request the court to issue a tax deed to any foreclosed property that has not been redeemed. This will likely occur in late March or early April.

We also advised on the refund of property taxes that were overpaid as a result of taxpayer error.

Charter Amendment

On January 22, we were asked if we could prepare an ordinance to amend the Haines Borough Charter to prohibit ore storage and shipment at Lutak Dock and to put this amendment before Haines Borough voters for ratification. We advised that we could not prepare a charter amendment ordinance by February 6. We recommended that an ordinance be developed with the assembly during work sessions or with a subcommittee over several meetings before introducing a charter amendment ordinance at a regular assembly meeting. Issues that should be addressed in that process include the text of the proposed charter amendment (which must be carefully drafted and examined for potential legal conflicts), legislative findings that explain the basis for the assembly seeking the charter amendment, whether the proposition should go before the voters at a regular or special election, and how the question will be presented on the ballot.

We are not actively working on a charter amendment ordinance. We are prepared to work with the assembly, a committee, or borough officials on the ordinance as the assembly may direct.

Lutak Dock Project

We have advised the assembly, mayor, and manager on numerous issues relating to the borough's contract with Turnagain Marine Construction as well as MARAD grant funding of the Lutak Dock project. We are not presently working on Lutak Dock Project assignments. Further legal work on Lutak Dock Project issues is likely as the project progresses.

Planning & Zoning Issues

We have advised on procedural matters relating to the assembly remanding a conditional use permit back to the planning commission for rehearing.

Three planning and zoning appeals are pending before the Superior Court at Juneau. Our work on these appeals has related to review and preparation of the record on appeal, communicating with the appellants regarding the record and procedural issues, and procedural court pleadings and notices.

The first appeal was brought by Lynette and George Campbell and relates to the borough ordering the Campbells to cease and desist from heliport activities unless they obtain a condition use permit. This case had been stayed. The court dissolved the stay at the Campbells' request. The Campbells' opening brief is currently due on March 4, though that deadline can be extended by 30 days upon the Campbells' request. The borough's brief will be due in early spring.

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The second and third appeals relate to the heliport conditional use permit granted to the Campbells. One appeal was brought by numerous borough residents referring to themselves as Chilkat Valley Rural Citizens ("CVRC"). The other appeal was brought by the Campbells. Because the CVRC appeal and the Campbell appeal are both appeals of the same conditional use permit decisions, we moved to consolidate these two CUP appeals consolidated into a case. The court granted that motion, and the Campbells' CUP appeal has been consolidated into the CVRC CUP appeal. The record on appeal for the consolidated case has been transmitted to the Juneau court. CVRC identified that the transmitted record contains materials that were not before the assembly as part of appeal to the assembly.¹ We are working to resolve CVRC's concerns. We anticipate the court will issue a briefing schedule soon. The appellants' briefs will likely be due in late March and, absent any extensions of time, the borough's brief in late April. Thirty-day extensions of time are granted by right, so this timeline may be pushed back a month or two.

We are presently working on a question relating by-right uses in the Mud Bay Rural Residential and Lutak Inlet Planning and Zoning districts referred to us by the manager earlier this week.

Personnel

We advised the mayor on matters related to the borough manager's evaluation and employment agreement. A question relating to collective bargaining referred to us by the manager yesterday is pending and is expected to be answered today.

So that this update is suitable for distribution to the assembly in its meeting packet, we omit sensitive attorney-client communications. Upon your request, we will provide further information regarding any of the work summarized above. Please let us know if you have any questions.

Very truly yours,

CHANDLER, FALCONER,
MUNSON & CACCIOLA LLP

By:



Charles A. Cacciola

¹ As example, a Haines Economic Development Corp. report that was before the assembly at the same meeting but for an unrelated agenda was incorrectly included in the approximately 1,200 pages transmitted to the court.