

ORDINANCE 2008-25

Agenda Item: N. 4.

Lands Committee

Page #60

PUBLIC COMMENTS

COMMENTS
IN
SUPPORT

15 Aug 08



John Harris
 Box 513
 Cooper Landing
 99572

Subject: Moose Pass Advisory Planning Committee,
 8 Aug 2008, The Moose Pass / Venn Kingsford
 Property Line Dispute.

To: John Williams, Mayor, K.P.B.

John

Routed From
 Mayor's Office to:

Clerk	<input checked="" type="checkbox"/>
Assembly	<input type="checkbox"/>
Legal	<input type="checkbox"/>
Finance	<input type="checkbox"/>
Assessing	<input type="checkbox"/>
Planning	<input type="checkbox"/>
Roads	<input type="checkbox"/>
SBB	<input type="checkbox"/>
Purchasing	<input type="checkbox"/>
Other	<input type="checkbox"/>

Date: 8/18/08

I attended the subject meeting and witnessed a process best described as a lynching. The animosity displayed toward Mr. Kingsford was palpable and without regard to the meeting subject. Errors were allowed that were clearly driven by personal and not procedural agenda.

For one, I was erroneously identified as an employee of Mr Kingsford while no other that testified were associated with their employment. Further in Mr. Jaffa's summation my testimony was recognized as pertinent however was omitted in the minutes submitted to the Boro Planning Commission.

Some people were allowed to testify without identifying themselves or their addresses.

None of the Moose Pass Committee members went to Mr Kingsford to observe the property line in question. Nor did any of those testifying against the proposal.

Testimony was allowed that was not relevant to the subject and only served to fuel the lynch mob mentality. This testimony was not gavelled down nor was its obvious impact mentioned in the local minutes.

I write this as a friend of Vern Kingsford but with an impartial approach to the subject matter. I stand with the logical recommendation made by your staff after their study of the disputed property line. Thanks for your time. Good to see you in the pen again.

John Warr

COMMENTS
IN
OPPOSITION

Blankenship, Johni

From: gary baker [gbaker2@arctic.net]
Sent: Monday, August 11, 2008 2:18 PM
To: Blankenship, Johni
Subject: Ordinance 2008-25

I wish to go on record as objecting to Ordinance 2008-25 authorizing the sale of approximately 2,010 square feet of Tract A Moose Pass School Site according to Plat No 74-483 to Vern and Lura Kingsford for the following reasons:

- 1. Considering Mr. Kingsford's history of "unintentional" trespass, it is difficult to believe that this was, indeed, unintentional.
- 2. This sale was negotiated without any public discussion beforehand.
- 3. The buffer between the Kingsford property and Moose Pass School should be larger, not smaller.
- 4. There are other alternatives. The buildings in question are not on permanent foundations and therefore can be easily moved.

Joyce Baker
35391 Seward Highway
P.O. Box 144
Moose Pass, Ak 99631

8-14-08

Kenai Peninsula Borough Assembly
144 North Binkley Street
Soldotna, AK 99669

I urge you to reject proposed Borough Ordinance 2008-25 concerning the sale of about 2,000 square feet of KPB school district property in Moose Pass.

- It sets an extremely bad precedent to allow a private individual to force the sale of public property merely by seizing it.
- The failure of an individual to exercise due diligence in having property surveyed before purchase, cannot become the basis for sympathetic treatment of trespass.
- The Kenai Peninsula Borough has established procedures for planned and orderly disposal of public land in service to the public interest. This sale would serve only the private interest of a very few individuals.

I believe that the public has a long-term interest in retaining full ownership of a developed school site at an extraordinarily desirable lakeside location.

Richard Smeriglio
31749 Solar Mountain Road
Seward, AK 99664

Blankenship, Johni

From: Bruce Jaffa [jaffa@eagle.ptialaska.net]
Sent: Friday, August 15, 2008 5:33 PM
To: Assembly/Clerk, Office
Subject: Ordinance 2008-25



jaffa.vcf

I am opposed to this proposed transfer. It would appear to me to be a bad deal for our school, based on erroneous information and contrary to our community schools best interests, The KPB long term interests and our comprehensive plan.

Mr Kingsford has stated in his application that the property involved in this transfer has been used exclusively by Lot 3 for 70 years. Historic plats, photos and simple research of the area refute this. I have discussed the use of this area behind the school with all three of my children, each who attended this school and progressed to higher education degrees. Each of their real experience contradicts Mr. Kingsford's claims of use. This is Borough property, it cannot be gained through trespass, prescriptive easement or in other manner, save the sale of this lot. Unlike private neighbors the KPB is immune to Mr. Kingsfords property tactics.

That a property owner or resident would be unaware of the legal lot lines seems implausible. A clear historic 1948 plat hangs on public display, framed in the Moose Pass Post office. It clearly shows that the Moose Pass Townsite lot lines are not perpendicular to Depot road.

This is valuable school property. Historic record shows the community contributing to the growth of the school lot never shrink the size. This is indeed a unique lot, and along the shores of a scenic Alaskan roadside mountain lake, deserving as a place for our most precious community asset. As Planning Commissioner Johnson noted on 8-11-08, the intent of the application is clearly be to gain 25' of valuable Trail Lake waterfront. The benefit to the school in this proposed sale is minimal. to none. Improvements to the property line should be the school's and the KPB's responsibility not a negotiated item to justify a sale.

Mr. Kingsford has built an overload of residences on Lot 3, a small historically single family lot. He has built stylish structures but ignored the infrastructure. He had no hesitation to place an AV gas tank next to the school. His sanitation system is archaic and probably in violation of DEC regulations. The eventual moving of these buildings may have been anticipated when they were built. None are on permanent foundations. They should be moved, the trespass terminated, a secure wood fence constructed between the school and this business.

Mr. Kingsford is justifiably proud of the range of students his business draws from around the world. But just for common sense, The neighboring school should be protected from chance encounters with strangers in the woods along the property line. A greater buffer of school property is gained by retaining the current legal lot line.

Sincerely,
Bruce Jaffa
MP 35.5 Seward highway
907-240-0362

August 16, 2008

Ron Long
Assemblyman

Borough Clerk
Joni Blankenship

The Platting Commission, and The Kenai Peninsula Borough Assembly

I have lived in Moose Pass since 1950 and went to Moose Pass School as did my father. My wife Terry Estes and I must go on record as against the sale of school property and Borough Ordinance 2008-25.

First, I fail to see how Verne Kingsford can claim 70 years of use by the owners of Lot 3. As a child at school and on weekends I played tetherball, hide and seek, and other games on this site. As I recall lot 3 at that time was owned by the Methodist Church, occupied by Ben Laird, and used as a parsonage through sometime in the 60s when it was sold to the Stevens' who were school teachers. In any case it is my understanding that adverse possession that Mr. Kingsford implies does not apply to government.

Second, there is a safety issue with the sale. The fire exit from the gym is on the north side and egress would be reduced by sale of the property and subsequent fencing. This area should be enhanced for use as a fire exit, utility, freight, and fuel delivery route and not reduced.

Thirdly, the present use of the property may change in the near future and its use in the future by the heirs or successors is unknown. Currently, the owner of lot 3 operates a business primarily not in the winter which may conflict with school only in the spring and fall. This may not be the case with near future owners.

Lastly, the distance from the building and critical infrastructure to the lot line is minimal, but still offers the possibility of fence and some green/ wind screening. Sale of the property would reduce or eliminate this possibility.

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Thank you,
Jeff & Terry Estes

Blankenship, Johni

From: Peter K Perry [revgoingon@gmail.com]
Sent: Saturday, August 16, 2008 9:24 AM
To: Assembly/Clerk, Office
Subject: Letter regarding Ordinance 2008-25, Item 4 on the 08-19-2008 agenda

Please distribute the following letter to my assembly representative to other assembly representatives. Thank you.

Peter K. Perry

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Tuesday, August 12, 2008

Representative Ron Long
P. O. Box 2464
Seward, Alaska 99664

Dear Mr. Long:

I write today in reference to Ordinance 2008-25, which is item N.4 of the August 19, 2008 Assembly Agenda, authorizing the sale of land to Vern and Lura Kingsford in Moose Pass. My interest is as a member of the extended Moose Pass community. As the pastor of the Moose Pass United Methodist Church, I am keenly aware of the importance of the small lakeside community's institutions. The school has served the community since the mid-1930s and is a point of pride among the community members. In addition to the expected role of educating our children, the school is also a community center, recreation facility, and meeting place. Community members have rallied around this issue in order to protect their school.

I believe that borough staff has proposed an expedient solution to the documented encroachment on the school property, but expedience is not always the best solution to a problem. Whether the encroachment in question was unintentional or not is a matter that cannot be reasonably ascertained, but is ultimately irrelevant. The land that is proposed for sale is a community asset and is being trespassed upon. The proposal before the assembly essentially rewards the trespasser by allowing him to purchase land that the community does not wish to sell. If the encroachment were a matter of inches, the expedient solution of a land transfer could be in the best interests of the community; however, this encroachment is significant and would require the transfer of over 2000 square feet of property in order to rectify it.

While perhaps not specifically relevant to your decision, I want to inform you officially that the Moose Pass United Methodist Church, which borders Mr. Kingsford's property on the opposite side of his parcel, contends that he has also encroached on our property with two buildings and repeated unpermitted use of our parking lot and unnecessary access and egress across our property. In late 2007, we erected a fence on the church's property in an attempt to mitigate the trespass, even though it meant allowing the physical encroachments to continue. Despite what we believe to be a neighborly solution that allows Kingsford use of approximately four feet of the church's roadside frontage, Mr. Kingsford continues to trespass by parking vehicles on the church's property. Occasionally, he has parked large vehicles along the highway right-of-way, completely blocking access to our church parking lot. He has stated that he is doing this in retribution for our having built the fence. Borough officials and State Troopers have been called by the church on several occasions to address the difficulties. The church, in building the fence between the properties, took an expedient step that reduced our available parking space and has not resulted in changed behavior from Mr. Kingsford. Our seemingly expedient solution has not to date proven to be wholly satisfactory.

8/18/2008

On both the basis of our experience with our neighbor, and more importantly, on the principle that the community's desires to maintain the historical use of the land proposed for sale ought to be honored, I urge you and the Assembly to reject Ordinance 2008-25. Mr. Kingsford's encroachments need to be removed from the school property, preserving the land and lake frontage as a community asset, for the benefit of the children of today and of future generations.

Most sincerely yours,

Peter K. Perry

cc: Kenai Borough Assembly members

Rev. Peter K. Perry
Seward Memorial and Moose Pass UM Churches
PO Box 5, Seward, AK 99664
<http://www.sewardumc.com>
revgoingon@gmail.com
907-224-7368 work

Blankenship, Johni

From: Erin and Kevin Knotek [ekmk@ptialaska.net]
Sent: Tuesday, August 19, 2008 12:53 AM
To: pa12gary@hotmail.com; Pete Sprague; akjfischer@hotmail.com; Margaret Gilman; merkes2@yahoo.com; bsmith@xyz.net; gsuperman@gci.net; rlms; millimom@xyz.net
Cc: Assembly/Clerk, Office; Anderson, Dorilynn
Subject: Ordinance 2008-25

Dear Assembly members:

Please find attached my letter regarding Ordinance 2008-25. I plan to speak at the assembly meeting on Tuesday evening. Should anyone have questions pertaining to this issue, please contact me at (907) 288-3674.

Thank you,
Erin J. Knotek
Moose Pass

P.O. Box 83
Moose Pass, Alaska 99631
August 17, 2008

Kenai Peninsula Borough Assembly members
144 N. Binkley Street
Soldotna, Alaska 99669

Dear Assembly members:

I am opposed to Ordinance 2008-25 and I encourage you to vote against the enactment of Ordinance 2008-25 that would authorize the negotiated sale at fair market value of approximately 2,010 square feet of Tract A Moose Pass School Site according to Plat No. 74-483 to Vern and Lura Ann Kingsford.

History:

My 12 year old daughter, Kara, had a school assignment his year. Her subject matter was Early Alaskan Education. In doing research, she learned about early champions of Alaskan education, including Sheldon Jackson. It was at that time, she came across an article by Mary Parker that told of yet another early education pioneer, Leora Roycroft, mother of now deceased Alaskan Ed Estes of Moose Pass.

In 1928, she wanted desperately to have a school. Including her own four children, she "borrowed" a child from the Hunter Railroad section to have a minimum of five children to start the school. The first school was in a tent. The school moved form place to place until 1935 when a school was built at its current site for the cost of \$5,000. The original school is still there, having been added on to and renovated. *Do you realize this school site has been part of our Alaska history 24 years before statehood and 29 years before the Kenai Peninsula Borough was incorporated?* The Moose Pass School site is part of our local, Kenai Peninsula Borough, and state history.

Would Leora Roycroft have though her 800 square foot school would grow to the size it is today? I am sure she would have expected the site to grow but never shrink, especially in regards to the size of the Moose Pass School site.

Merits vs. trespassing:

In a small town, rumors go around all the time. I seem to be at the end of a rumor right now that Mr. Kingsford, overheard the morning after I spoke at the August 11th Planning Board meeting, was going to sue me for defamation of character. Rumors, rumors rumors. Rumors do no one any good. My family has flown with Mr. Kingsford and with his pilot Duane. On Tuesday, August 12th, as I stood on the shore of the Resurrection River with my son who was fishing for Pinks, a tourist asked me, "What do you know about Scenic Mountain Air?" How ironic.

I politely encouraged them to contact Scenic Mountain Air, spoke highly of the pilots, and gave them the contact number. But you see, as much as some might like to speak ill or in support of the Kingsfords in their personality or merits to our community, Ordinance 2008-25 is not about that. Ordinance 2008-25 is a *trespassing* issue.

Trespassing:

The Ordinance refers to KPB 17.10.220 where it states “authorizes the sale of the smallest practical area to the trespasser.” First, the Borough refers to the Kingsfords as trespassers and I will hence use the Borough’s identifier of “trespasser” so as to eliminate any conflict hence forth.

The trespassers have EIGHT structures on Borough land. I find it incomprehensible that a business man would not have his survey line done, as the trespasser testified at the Planning Board. Furthermore, in this day and age, I find it unacceptable that someone would use a tree line as a boundary. I am of the opinion eight structures on someone else’s property is far from unintentional. Trespassing is trespassing and the trespassers are in clear violation and should be required to remove their structures *immediately*, which by the way are not on permanent foundations and can be moved.

KPB 17.10.220 A states:

“a person shall not trespass on borough land. If the mayor has knowledge of a trespasser, then the mayor shall take steps to remove the trespasser. Unless provided otherwise, the trespasser shall restore the borough land to the same condition it was in at the time just before the trespass began. The trespass shall pay all costs uncured by the borough as a result of trespass.”

This code also had parts B and C to it. For some reason, the Borough representative has chosen to by pass Part A and *go directly C*, which allows the negotiated sale of the smallest practical area to the trespasser. I’d like to show the Borough, its employees of maintenance, administration, and school staff had knowledge and let it be known.

Borough and KPBSD had prior knowledge:

From February 2005 to May of 2007, I was a Kenai Peninsula Borough School District employee. When I was hired in 2005, I was sure to mention to Mark Norgren the neighbors’ activities, including those on the West side with the Moose Pass Methodist Church. I had a new puppy in March of 2005 who I brought to work. On my breaks, I would walk my puppy on the West end of the school and it was clear that structures were being built far too close, perhaps even on, the school property.

In July of 2006, the Moose Pass School held a public meeting about the impending loss of our school lunch program. Glen Szymoniak, then assistant superintendent, and Dave Spence of Planning and Operations attended. After the meeting, I talked to both individuals about the neighbor and asked that they be aware of his activities. Since then, I have spoken to Mr. Spence about the neighbor’s employee and/or clientele parking on school property. In addition the school year of 2006 brought a new principal to Moose Pass, Steve Pautz, and I was sure to draw his attention to the neighbor and the activities.

Current Knowledge of the Borough and KPBSD and trespassing:

The School District has been aware of trespassing by the neighbor. This year an “Employee Only” parking sign was erected in the School Parking lot to discourage Scenic Mountain Air employees from parking on school property. A work order was put in for this sign and approved by the Borough maintenance. In addition, the school also has had to lock a gate which gives access to the back of the Moose Pass School property.

The school needed to stop trespassing of fuel trucks that were using school property to access Mr. and Mrs. Kingsford's fuel tanks. Currently, deliveries to our school require the driver to come into the school and make contact with the school secretary and obtain a key to the locked gate. In addition, the gate at the west end of the property had to have a lock installed for employees of Scenic Mountain Air were trespassing. The Borough and the School District have been aware of trespassing.

A History of Trespassing on adjacent property:

As a member of the Moose Pass Methodist Church, which is adjacent to Mr. and Mrs. Kingsford's property to the West, they have shown repeated trespassing actions. These trespasses are documented by the law enforcement officer for the Chugach National Forest, Paul Kane, and also with the Alaska State Troopers.

My husband, a trustee for the church, has in his possession, a plat obtained from the Borough. He has been working on septic issues for our church. The plat he obtained some time ago from the Borough clearly states across Mr. and Mrs. Kingsford's parcel **ENCROACHMENTS** in relation to the school. Once again, it demonstrates the Borough had knowledge.

SOLUTION:

On Tuesday, August 19th, 2008, I will speak to a solution for this property. I will offer to you a color coded map showing suggestions for a solution. I will not fax it or email it for it will not transfer correctly.

Please defer to Exhibit A, the Asbuilt certification. Please note that the gymnasium is on the West side of the school site. The playground is on the East side of the school site.

Currently, students exit and enter the building by the main door when boarding and disembarking the school bus. Students also exit the building by the "Step" as indicated on the Asbuilt. Please note the students also exit these two entrances to get access to the flag pole/island that is NOT on the Asbuilt. They also use these entries to get to and from the playground for recess, physical education, and after school community sports. Also not shown on the Asbuilt is the basketball hoop. The student's activities and I can speak as the former playground attendant and aide to the school, are not in any way on the West side of the building. The employees of the Moose Pass School currently park on the west side of the school site.

Surrounding the playground and the back of the school property is a fence. Currently there is small drive(14 feet wide) that parallels the classrooms to a locked gate. This drive is the route the full propane trucks use to access the back of our building. Fuel laden trucks pass within inches(*36 inches to be exact*) of our school rooms, not only causing a distraction during the school day but causing possible dangerous situation as it crosses the path of children and parallels classrooms. The potential for danger is eminent.

The fuel trucks cross the path to the playground, which as stated is used for recess, physical education, and after school sports programs. The fuel trucks cross the path to the flag pole, and I should note our students put and take down the flag each day. The fuel trucks cross the path of the basketball court/hoop.

My solution is that the WEST side of the building, near the gymnasium be used as a safety corridor and a DIRECT access to our fuel tanks. In our gymnasium we have three exits. The main entrance, the kitchen, and the west side toward the Kingsford property. Currently, the kitchen is kept locked when not in use by certified kitchen personnel. The gymnasium is rented for non-school activities. In the event of an emergency and the main entrance was blocked and the kitchen was locked, the **ONLY** exit would be the west side toward the Kingsford property.

I suggest eradicating the trespass of Kingsfords, we eliminate the trees and the current fence, move utilities, put in a new fence and a new driveway *directly* back to the propane tanks. Hence, we have drawn a possible hazard away from classrooms, playground, and paths of the school children and created a safety corridor.

Some costs will be incurred but the cost of maintaining our property rights is priceless.

In an August 7, 2008 conversation with Dave Spence of the KPBSD he stated the “District never has had any plans” and the (District) “has never use it” (the area in question).

I have pictures showing children from the past using the area. It is where our old playground was many, many years ago. As for “never having any plans”, **I offer the suggestion that this area be used as a safety corridor for emergency exit and propane delivery.**

The Moose Pass Advisory and Planning Commission voted unanimously against Ordinance 2008-25. The Planning Board for the Kenai Peninsula Borough voted 11 of 12 commissioners voted against the motion and it failed by unanimous consent. It should be noted Commissioner Lockwood was absent. Commissioner Peterson had already voted with the Moose Pass Advisory and Planning Commission and had to recuse himself.

I urge you to heed the advice of those commissions before you and vote against Ordinance 2008-25. The Moose Pass School site should remain free of trespassing. I also urge you to have the said trespassers remove all structures immediately.

Thank you,

Erin J. Knotek

Erin J. Knotek
Community Member
Parent Volunteer of Moose Pass School

Blankenship, Johni

From: Erin and Kevin Knotek [ekmk@ptialaska.net]
Sent: Sunday, August 17, 2008 4:11 PM
To: rlms; pa12gary@hotmail.com; Pete Sprague; akjfischer@hotmail.com; mbgilman@gci.net; merkes2@yahoo.com; bsmith@xyz.net; gsuperman@gci.net; millimom@xyz.com
Cc: Assembly/Clerk, Office
Subject: Ordinance 2008-25

Dear Assembly Members:

I am opposed to Ordinance 2008-25 which will go before the Assembly on Tuesday evening.

I urge you to review maps, unofficial minutes of the Planning Board where they by unanimous vote struck down the ordinance, minutes of the Moose Pass Advisory Planning Commission where they voted unanimously against the ordinance, and letters sent to the Assembly.

I would like to discuss this matter with Assembly members at their convenience. I can be reached at (907) 288-3674.

I will send a letter detailing my position, as well as speak at the Assembly meeting.

Thank you for your time.

Sincerely,
Erin J. Knotek
Moose Pass

8/18/2008

P.O. Box 83
Moose Pass, Alaska 99631
August 17, 2008

Kenai Peninsula Borough Assembly
144 N. Binkley Street
Soldotna, Alaska 99669

Dear Assembly members:

I am against Ordinance 2008-25. I don't feel someone who disregards the laws concerning property rights and ownership should be rewarded by the transfer of 2,010 square feet of prime lake front property of the Moose Pass School.

If this is precedent, I feel I should be able to go down to the other side of the Moose Pass School, build a cabin on Borough land, and expect that some day I, too, will be rewarded for my trespass.

As a trustee for the Moose Pass Methodist Church, I have dealt with this individual on trespass on the Church side. I know full well this is his standard method of operation to get what he wants.

Sincerely,

Kevin Knotek

Michael D. Cooney
Forestry Consultant
P.O. Box 169
Moose Pass, Alaska 99631
(907) 288 5022
mcooney@arctic.net

John J. Williams, Mayor
Office of Mayor John Williams
Kenai Peninsula Borough
144 N. Binkley Street
Soldotna, Alaska 99669

August 18, 2008

And

Ron Long, KPB Assembly Member
P.O. Box 2464
Seward, Alaska 99664

Dear Mayor Williams, and Assemblyman Long,

INTRODUCTION

This document is in response to Kenai Peninsula Borough proposed Ordinance 2008-25.

I understand the Borough's interest in disposing of Borough-owned land to the private sector for the purposes of immediate sales income, long-term tax revenue, resource development, and to promote local businesses and the regional economy. Recently, Assemblyman Long, and others, stated the Borough has a history of disposing of its land to unintentional trespassers for these reasons.

However, the Borough has a very serious responsibility to determine the facts of a trespass situation prior to disposing of its land. Most critically, the Borough must resolve any questions of fact relating to whether the trespass was intentional or unintentional. Only after the Borough has considered the evidence and determined the trespass was committed unintentionally should it consider disposing of its land. To act otherwise would be a failure to fully protect the public's interest, and would exacerbate the potential for the Borough to mistakenly reward intentional, illegal trespass actions designed to cheat and

defraud the public. Trespass on Borough land presents a genuine and often complex problem, but the simplest solution may not always be the most appropriate remedy.

This document contains an introduction, background information and facts including citations of Borough Code, and a summary/conclusion to demonstrate that the trespass committed by Vern Kingsford, DBA Scenic Mountain Air and Alaska Float Ratings (Kingsford), on the Moose Pass school site should not be remedied through adoption of Kenai Peninsula Borough Ordinance 2008-25.

BACKGROUND INFORMATION, FACTS, BOROUGH CODE

Kingsford has a history of intentional trespass in Moose Pass

Kingsford was engaged in a long-term property dispute which involved his intentional trespass onto land owned by the Moose Pass Methodist church. The church owns land located immediately adjacent to the northwest side of Kingsford's business property in Moose Pass.

Various church and community members have informed me that trespass by Kingsford included, but was not necessarily limited to:

- Kingsford's buildings (2) encroaching on church property.
- Kingsford's portable fuel tank and stand encroaching on church property.
- Kingsford's disposal of trash and building debris on church property.
- Kingsford's placement of an outlet hose from a pump used to empty his fuel storage containment basin on church property which may have resulted in the discharge of fuel contaminated water onto church property.
- Kingsford's lack of business parking resulted in Scenic Mountain Air and Alaska Float Ratings customers parking on church property.
- Kingsford parked his pick-up truck on church property which may have been the cause of a diesel fuel spill later identified on church property.
- Kingsford's intentional destruction of survey markers on church property.

To stop Kingsford from trespassing on church property, and to prevent possible future incursions and unauthorized use of church property by Kingsford, the church determined to have the common property line surveyed and to contract to have a barrier fence erected on church property. The property corners and church property lines were surveyed and located on the ground with monuments and wooden lathe survey markers by Cline & Associates, a registered Alaska land surveyor based in Seward, Alaska.

Shortly after the survey was completed, Kingsford removed and destroyed the survey markers. A signed, sworn, written affidavit from Paul Kane, U.S. Forest Service Law Enforcement Officer, documents that Kane observed Kingsford physically removing and destroying wooden survey markers along the church's recently surveyed property boundaries.

Church members filed complaints with the Alaska State Troopers. Subsequent Trooper investigation determined that damages resulting from Kingsford's trespass (intentional destruction of wooden lathe survey markers) were approximately \$500 and did not rise to the level of criminal trespass which required damages of \$1000 or greater. Criminal trespass charges were not filed against Kingsford and while the church considered civil action, it never officially filed suit against Kingsford.

A barrier fence was eventually constructed by the church's contractor (Kenai Fence Inc.), but was located well inside the church property boundary because it could not be practically constructed against or very nearly touching Kingsford's buildings and other encroaching structures.

Borough Lands and Resources: 17.10.220 Trespass on borough land.

17.10.220. (A) states in part, "A person shall not trespass on borough land. If the mayor has knowledge of a trespasser, then the mayor shall take steps to remove the trespasser. The trespasser shall pay all costs incurred by the borough as a result of the trespass."

Borough Code strictly and clearly prohibits trespass on Borough land and further provides that the trespasser will be removed and required to pay damages resulting from the trespass. A prudent, responsible business owner could, prior to developing his property, have the corner monuments and property lines located by means of a professional land surveyor for the purpose of avoiding trespass. Once property corners and boundaries are known (marked on the ground), it is relatively simple to locate infrastructure and conduct business operations in a manner respectful of neighboring properties while upholding civil and legal responsibilities to avoid trespass.

Kingsford has, (by his own admission in a recent public meeting) avoided the expense of contracting to have his property surveyed, and thus he has failed to perform the minimum due diligence necessary to avoid trespass. Actions carried out in the absence of due diligence can be fairly described as negligence. Negligence is not synonymous with "unintentional", but rather is a careless disregard for the damaging consequences of the action on the rights and property of others.

It is particularly disturbing to note that while Kingsford never undertook the expense of having any portion of his own land surveyed for the purpose of avoiding trespass, and he did in fact trespass, he is now apparently willing to pay for a partial survey of his property so he can take public land away from the Moose Pass school site and own it and utilize it in his private business.

Borough Lands and Resources: 17.10.220 (C), 17.10.100(I), and 17.10.230

The Borough's ability to dispose of land under authority of these Ordinances once preliminary conditions have been satisfied, seems rightfully, to hinge on the

question of the trespasser's intent. It would obviously be against the bulk of Borough Code, not to mention a gross violation of the public's trust and interest to reward a party guilty of intentional trespass with valuable public land already dedicated and used for the vital purpose of public education.

Referring to Exhibit A "Encroachment Detail" and the July 24, 2008 Memo from Mayor Williams and Assemblyman Long to the KPB Assembly, there are four items listed/shown encroaching on the Moose Pass school site and which are labeled "to be moved". As the result of a visit I made to the Moose Pass school site on the afternoon of August 17, 2008, it appears all four items have been moved and pulled back toward Kingsford's property and now appear to occupy the area of the Moose Pass school site proposed for sale to Kingsford.

My site visit also revealed that all buildings or objects which encroach on the Moose Pass school site appear to be constructed on skids and/or temporary foundations that would permit their ready removal or re-location.

Based on the above information it would be possible to rationally conclude that the buildings may have been intentionally constructed in this fashion in anticipation that they might at some point have to be relocated a short distance once, and if, the trespass was discovered. It is also apparent that with less effort than was likely required to trespass in the first place, Kingsford could, if required, completely remove all of the encroaching structures from the Moose Pass school site, and place them on his ownership: the issue would be substantially resolved.

I have worked in the areas of forest, land and natural resource management since 1979. During this time I have been involved in the investigation of numerous cases of trespass, including around Moose Pass, and many of the instances of unintentional trespass showed at least some evidence that the trespasser had made an honest mistake, often through at least partial ignorance of proper land survey methods. The most common mistake I have encountered is a failure to correctly apply magnetic declination (variation) to horizontal angle measurements taken from survey plats; this results in improper angle measurements in the field (approximately 20-25 degrees off of the correct angle in the vicinity of Moose Pass for the period between 1985 and 2008-magnetic declination varies slightly from year to year for a given location). The second most common mistake I have found is a failure to make accurate distance measurements on the ground; this error results in improper boundary location that is roughly parallel to the location of the correct boundary.

Kingsford is an experienced airplane pilot and navigator and is likely proficient with the concept and application of magnetic declination. In studying the location of the encroaching buildings depicted on Exhibit A in relation to the true property line, and given that the corner monument at the western-most corner of the Moose Pass school site (located NW of the school well) is in place and the northeast property boundary of Kingsford's ownership generally follows along the

lakeshore, it appears to me, based on my experience and review, that neither of the two common errors discussed above would seem to account for Kingsford's trespass.

NOTE: It should be noted that the bearing of "N 36⁰ 36' 31" W" shown on Exhibit A is incorrect assuming the north arrow is properly depicted. The correct bearing should read, "N 36⁰ 36' 31" **E**". (Bold emphasis added).

Also, if Kingsford had access the Moose Pass school's "ASBUILT CERTIFICATION", it would have been relatively simple for him to at least estimate the approximate location of his property line by measuring off of features depicted in the drawing, and then locating his buildings and improvements conservatively, inside his ownership, to avoid trespass. I am unaware of any evidence to indicate he attempted to do this.

KPB School District Assistant Superintendent

On August 16, 2008 I had a brief telephone conversation with Dave Jones, Assistant KPB School District Superintendent about Ordinance 2008-25. I asked Jones if the School District had an official position regarding Ordinance 2008-25. Jones replied that since he felt at least a portion of Kingsford's property could be accurately characterized as an "attractive nuisance" that the School District was supporting adoption of the Ordinance because it included a provision for Kingsford to pay for construction of a fence between his expanded property and what would remain of the Moose Pass school site.

I don't dispute Superintendent Jones' characterization of Kingsford's operation and property, but suggest that any attractive nuisance on Kingsford's property is certainly a direct consequence of Kingsford's own actions (or lack thereof) and accordingly he should bear any associated burden of liability. To reduce his liability exposure Kingsford could construct a fence on his property at his expense. Alternatively, the KPB could construct a fence on the Moose Pass school site to protect the health, safety and welfare of Moose Pass school children, and could pay for the project using the property tax and other tax money already paid to the Borough by their parents. Either action could be accomplished without the need to transfer ownership of any public land to Kingsford.

Borough Lands and Resources: 17.10.010 Policy/purpose.

17.10.010. (A)(5) states, "It is the policy of the Kenai Peninsula Borough to manage all borough owned and municipal entitlement lands and resources to provide for: The retention of borough lands essential for health, safety and educational needs."

Very simply, the Borough will not be fulfilling its policy to retain borough-owned lands essential to fulfilling educational needs if it sells even a portion of the Moose Pass school site to Kingsford. Based on the reasonable assumption that

the population in the region and around Moose Pass could be expected to increase over time, it is also rational to predict that eventually, the Moose Pass school will require all of its present land base, and possibly additional land, to fulfill its function. It would be irresponsible from both fiscal and policy standpoints to assume now that the Moose Pass school will be able to function fully and adequately in the future on a significantly reduced land base. In addition to providing for education, the school site, its buildings and infrastructure including the playground and soccer/baseball field, have always been and will continue to be the focal point of nearly all community activities and functions.

17.10.010. (A)(6) states, "It is the policy of the Kenai Peninsula Borough to manage all borough owned and municipal entitlement lands and resources to provide for: The orderly disposal of lands and resources in a manner which is fair to all."

Ordinance 2008-25 does not represent an "orderly disposal of lands". The memo from Mayor Williams and Assemblyman Long to the KPB Assembly states in part, "It is necessary to hear this ordinance on shortened time..." The Borough and the KPB School District were both aware of the trespass situation at least as early as this spring, but the Ordinance has been proposed in late summer just prior to the start of school and appears to have been fast-tracked in order that it can be approved without careful consideration of all the relevant facts, and with only limited public involvement.

If Ordinance 2008-25 represented a disposal of Borough land that was "fair to all", then there would be little or no controversy attached to it, and public testimony related to it would be overwhelmingly supportive. By contrast, all of the Moose Pass residents I have spoken with adamantly oppose adoption of Ordinance 2008-25 and believe it is fundamentally unfair.

Borough Planning Commission

Following recent public hearing and public testimony, the Kenai Peninsula Borough Planning Commission voted not to adopt Ordinance 2008-25.

Moose Pass Advisory Planning Commission

Following recent public hearing and public testimony, the Moose Pass Advisory Planning Commission voted not to adopt Ordinance 2008-25.

Moose Pass Comprehensive Plan

The Moose Pass Comprehensive Plan contains specific, strong recommendations designed to protect, maintain or enhance the existing school and its property.

Section 1 (A) (1) states in part, "The community favors expansion of the school when necessary. The current building is paid for, but may not meet future needs as enrollment increases. In the 1991 survey, the community did not support the

option of choosing a new school site. The school continues to be a focus for community functions.”

Section 1 (C) (1) (g) states, “keep the school local.”

The Moose Pass Comprehensive Plan contains a strong recommendation to fully consider local votes and opinions in borough decisions related to borough land disposal.

Section 1, C, 3 (b) states, “Proposals to transfer public lands for economic purposes should be reviewed by the community well ahead of the actions. After several public meetings in Moose Pass, the responsible agencies should give the votes and opinions of the community their full, heavy weight in decision making.

SUMMARY/CONCLUSION

It is possible Kingsford's trespass on the Moose Pass school site was unintentional, but we have only his word that this is the truth. Unintentional or not, it is not disputable that by means of trespass Kingsford has enjoyed a substantial business and personal benefit, over a long period of time (18 years by Kingsford's own admission) at the public's expense, and this behavior should not be rewarded.

On the public interest side of the equation there seems to be a preponderance of facts and information that would suggest it is highly possible Kingsford's trespass was other than unintentional, and because his actions create a serious question as to his intent, he should not be rewarded by transfer of Borough land:

- Kingsford has a history of intentional trespass in Moose Pass.
- Kingsford admits not having undertaken the effort and expense of having his property surveyed prior to the school site trespass.
- All objects and structures encroaching on the school site appear to be constructed so as to be readily moveable, and four structures appear to have been recently moved short distances.
- I am unaware of any credible evidence to suggest Kingsford trespassed on the school site unintentionally.

It is the Assembly's responsibility to obtain and fully evaluate the facts and evidence surrounding Kingsford's trespass, particularly with respect to whether or not it was intentional. If there is doubt as to Kingsford's intent, the Assembly should not pass Ordinance 2008-25.

Beyond the circumstances of the trespass, there is Borough Code, public comment and testimony, actions by both the Moose Pass Advisory Planning Commission and the KPB Planning Commission, and content in the Borough approved Moose Pass Comprehensive Plan that all strongly recommend against adoption of Ordinance 2008-25.

In the public's best interest, I recommend that a KPB Assembly Member draft and introduce an Ordinance that would require Kingsford to pay the equivalent of a lease fee, retroactive for the 18 years Kingsford claims to have illegally enjoyed occupancy and use of the Moose Pass school site. Revenue derived from this Ordinance could be used to partly fund a teacher's aid position in the Moose Pass school or to purchase sports equipment for the Moose Pass school children, and it would serve as a strong deterrent to prevent future trespass on Borough ownership.

I urge you and all KPB Assembly Members to vote against Ordinance 2008-25, and to strongly support Mayor Williams in performing his duty under 17.10.220. (A) to remove Kingsford, his improvements and his commercial operations from the Moose Pass school site, and require him to pay the Borough the cost of any damages determined including those described in the preceding paragraph.

Sincerely,

Mike Cooney, Forestry Consultant

*document including CC list transmitted electronically because time is of the essence

CC: Grace Merkes, Assembly President
Pete Sprague, Assembly Vice President
Paul Fischer, Assembly Member
Margaret Gilman, Assembly Member
Milli Marten, Assembly Member
Bill Smith, Assembly Member
Gary Superman, Assembly Member
Gary Knopp, Assembly Member
Kenai Peninsula Borough Clerk
Tim Navarre, KPB Mayor's Chief of Staff
Max Best, KPB Planning Director
Tom Barret, KPB School District Environmental Compliance Officer
Dave Spence, KPB School District Director of Planning and Operations
Dave Jones, KPB School District Assistant Superintendent
Holly Montague, Deputy Borough Attorney
Moose Pass Advisory Planning Commission
Alaska Public Offices Commission
Peninsula Clarion Newspaper

Blankenship, Johni

From: Milli [millimom@xyz.net]
Sent: Monday, August 18, 2008 8:06 AM
To: Blankenship, Johni
Subject: FW: ORDINANCE 2008-25 MOOSE PASS

Did you get a copy of this one Johni?? I have one more to forward as well. Thanks Milli

From: Marcia Shea [mailto:alaskamarcia@yahoo.com]
Sent: Wednesday, August 13, 2008 5:38 PM
To: rims@ptialaska.net
Cc: psprague@acsalaska.net; skjfischer@hotmail.com; mbgilman@gci.net; millimom@xyz.net; merkes2@yahoo.com; bsmith@xyz.net; gsupperman@gci.net; pal2gary@hotmail.com
Subject: ORDINANCE 2008-25 MOOSE PASS

I am against this ordinance, please read the attached letter or below. I have also mailed hard copy to each of you...

Thanks, Marcia Shea

Ron Long
PO Box 2464
Seward AK 99664-2464

August 13, 2008

I would like to address Ordinance 2008-25, authorizing the negotiated sale at fair market value of approximately 2,010 square feet of Tract A Moose Pass School Site according to Plat No. 74-483.

I am against this Ordinance being approved. If I read this correctly a trespasser is being rewarded. This makes no sense to me. The Moose Pass School should not be expected to give up land because a neighbor has squatted on it. What's next? The parking lot so the neighbors have room to park?

I'm sorry to hear that the business next to the school does not have enough room but it doesn't give them the right to take land away from our children. The children are the best thing we have and why we live here. We cannot afford to start chipping away at our school land. It could make a difference some day in the future.

It's the families and the children that make this town, not the businesses. Yes, it is great that many of us can make a living without leaving Moose Pass but that doesn't take precedence over a place of education for our children.

I have nothing against the Kingsford's, in fact I like the float planes but they should not be rewarded for a wrong doing. I do not believe this was an unintentional trespass as I believe they also tried to encroach on the church side. The encroachment can be solved by them moving off the school property and staying on their own Site.

Thank you for listening.

8/18/2008

Marcia Shea
PO Box 1
Moose Pass AK 99631-0001
907-288-3119

cc: Pete Sprague
Paul Fischer
Margaret Gilman
Milli Martin
Grace Merkes
Bill Smith
Gary Superman
Gary Knopp

Blankenship, Johni

From: jjh@seward.net
Sent: Monday, August 18, 2008 9:48 AM
To: assemblyclerk@bourough.kenai.ak.us
Subject: Moose Pass land Transfer

August 18, 2008

Kenai Borough Assembly Members:

As a member of the Moose Pass Planning Advisory Committee I want to go on record as being opposed to the proposed ordinance 2008-25 transferring school property to Vern and Lura Kingsford. Our meeting last week was heavily attended and the public was very explicit in their opinions and rationale for not transferring the property. It would be a mistake to ignore such an outcry.

Our committee is in the process of revisiting our comprehensive plan. One of the biggest concerns is the lack of public lands. Transferring any property, especially school property is nonsensical. Who knows what the needs will be 20 or 50 years from now.

The Borough's desire to move expeditiously is admirable. I hope you vote against the ordinance but keep up the pace, make Mr. Kingsford move his buildings and then build a fence as soon as possible. I would suggest you take the fence all the way to the corner marker so that further and continued trespass will not occur on the school parking lot.

Respectfully submitted,

Jeff hetrick
P.O. Box 7
Moose Pass, Alaska 99631

Blankenship, Johni

From: Milli [millimom@xyz.net]
Sent: Monday, August 18, 2008 1:44 PM
To: Blankenship, Johni
Subject: FW: Proposed sale of KPB property in Moose Pass to Vern Kingsford

FYI Milli

From: Ben Ikerd [mailto:ikerdhome@gmail.com]
Sent: Monday, August 18, 2008 12:46 PM
To: TNavarre@borough.kenai.ak.us; rlms@ptialaska.net; millimom@xyz.net; bsmith@xyz.net; mbest@borough.kenai.ak.us
Subject: Proposed sale of KPB property in Moose Pass to Vern Kingsford

Concerning the proposed sale of approximately 2,010 sq. ft. of borough property in Moose Pass to Vern Kingsford:

The proposed sale of apporximately 2,010 sq. ft. of borough land, on which the Moose Pass School is situated, has created a significant amount of daily communication among Moose Pass residents. I am aware you have had input on this issue. I would like to add my opinion as briefly as possible.

I am not in favor of the land sale. That piece of land in question my be needed for future school needs. Vern Kingsford owns an adequate piece of land to accommodate his buildings. The buildings that are encroaching on KPB property are not permanent structures. They are built on skids so they can be moved. Vern Kingsford has stated that he didn't know exactly where his property line was located. The property owners on the East and West sides of Vern Kingsford's property (KPB and United Methodist Church, respectively) have each conducted land surveys and notified Vern Kingsford where their shared property lines are located. I favor the simple, and I think the obvious, solution to the encroachment and that is for Vern Kingsford to move his buildings so they no longer encroach on borough property. That will resolve the issue, keep the two pieces of property in tact, and save all of the recording that would be necessary to document changes to the existing property line.

Bernard "Ben" Ikerd
35221 Seward Hwy.
Moose Pass, AK

P.O. Box 176
Moose Pass, AK 99631
August 15, 2008

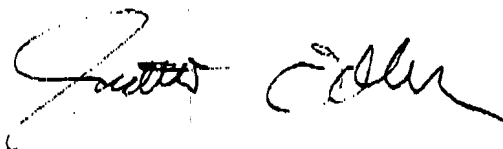
Dear Assembly members:

I am writing regarding Ordinance 2008-25. My concern is for the welfare and safety of the students at the Moose Pass School.

Mr. Kingsford has compromised the water of the school by positioning his fuel tanks extremely close to the school well. He haphazardly leaves materials, tools, and equipment on school property. He boldly attempted to fuel his diesel tanks cutting through and remaining on school property while the tanks were being fueled.

Mr. Kingsford has blatant disregard for the safety of the Moose Pass School and its students. Do not reward Mr. Kingsford's unfortunate manner and intentional disregard for the school by offering to let him purchase this land.

Thank you for you time and service.



Judith Odhner
Parent and parent volunteer for 14 years

Blankenship, Johni

From: Patti Heim [pattiheim@mac.com]
Sent: Monday, August 18, 2008 3:35 PM
To: Assembly/Clerk, Office
Subject: Moose pass

This guy has caused more than his share of problems in that and other communities around there. He should not be allowed to purchase property that he has misused. We should all encroach on schools & churches to purchase these choice properties.
Ms Heim

Sent from my iPhone

Morgan, Shellie

From: Blankenship, Johni on behalf of Assembly/Clerk, Office
Sent: Monday, August 18, 2008 7:46 PM
To: Morgan, Shellie
Subject: FW: proposed sale of Moose Pass school land

-----Original Message-----

From: Jeanne Waite Follett [mailto:jfollett@arctic.net]
Sent: Monday, August 18, 2008 5:48 PM
To: Assembly/Clerk, Office
Cc: Navarre, Tim; rlms@ptialaska.net
Subject: proposed sale of Moose Pass school land

This probably is one of those times I should keep my mouth shut. Then again, there is something to be said for standing up for your beliefs. Vern Kingsford and his wife are friends of mine, and have been since they arrived in Moose Pass.. Because of my late husband, the Kingsfords came here to operate their float plane business. My brother in law sold the property to the Kingsfords, the same property where they now live and operate their business.

I am not writing to argue whether or not Mr. Kingsford knowingly encroached on school property. He admits he did so on the church property, and that encroachment still is being contested in ways large and small.

The situation with the school is another matter. This is where the Kingsfords and I will have to agree to disagree. Were this an unoccupied piece of borough property, I would say sell it and be done with it.

This is, as Mr. Navarre stated, the smallest piece of property dedicated to a school in the borough. The well on the property is not certified and drinking water must be hauled to the school. I see no reason to further decrease the amount of land available to the school for its necessary clearances--water, septic, fuel, etc. Also, we are hoping, some day in the future, that the school expands to accommodate a larger student body. It will need all the land it can get.

As to erroneous surveys, this has happened in my neighborhood near Tern Lake, and more specifically, the lots across the Seward Hwy. from the Kingsford. All the involved property owners adjusted to the corrected survey lines without rancor. I suggest it would be less expensive for Mr. Kingsford to move his buildings than to pay for the land, survey, replat, fence, etc.

Jeanne Follett
Moose Pass

8/19/2008

Morgan, Shellie

From: Blankenship, Johni on behalf of Assembly/Clerk, Office
Sent: Monday, August 18, 2008 7:46 PM
To: Morgan, Shellie
Subject: FW:

-----Original Message-----

From: Victoria Johnson [mailto:akreflec@seward.net]
Sent: Monday, August 18, 2008 5:51 PM
To: Assembly/Clerk, Office
Subject:

Please note that I am suggesting to vote not in favor of ordinance 2008-25.

Regards,
Victoria Johnson
Alaskan Reflections
Victoria Johnson
907 288-3642
Fax 413 502 9199
<http://www.alaskaantler.com>

Blankenship, Johni

From: jjh@seward.net
Sent: Monday, August 18, 2008 10:29 PM
To: rlms@ptialaska.net
Subject: Ordinance 2008-25

Dear Kenai Peninsula Borough Assembly Member,

My name is Rose Hetrick. I am the Special Ed Aide at the Moose Pass School. I am writing to urge you to vote against Ordinance 2008-25 for the following reasons.

The school property is valuable. It belongs to the children of Moose Pass both present and future. It has been used in the past as a playground and should be available for use in the future as needs arise. The sale of the property will be of no benefit to the students.

Anyone with a modicum of intelligence, common sense and honesty would have had their property lines surveyed out of respect for their neighbors before they made improvements to their land. Mr Kingsford easily could have determined his property boundaries using the corner markers adjacent to the Methodist Church while he was in the seven year dispute with the congregation. To reward his negligence with this sale seems unjust.

As a taxpayer, I support the Kenai Borough spending funds to survey the property and build a fence.

I am not against Mr. Kingsford's business and acknowledge his importance to the community. However, I do not see how moving his buildings back on his property would adversely affect his business. In fact it might improve his strained relationship with the community.

During my 15 years at the Moose Pass School, I have observed numerous instances of trespass by Mr. Kingsford's employees and clients on school property. I have reported these instances to my principals and to Glen Szymoniak for many years. Some of these trespasses continue to this day.

Thank you for taking the time to consider my comments.

Respectfully,

Rose Hetrick
41841 Seward Highway
Moose Pass, Alaska 99631

Blankenship, Johni

From: Tom and Heather [thjj@arctic.net]
Sent: Monday, August 18, 2008 11:41 PM
To: Assembly/Clerk, Office
Subject: Ordinance 2008-25; Moose Pass School land sale

Dear Kenai Peninsula Borough Assembly,

I have lived in Moose Pass for over 25 years. I have one son at the Moose Pass School, and a younger son who will attend in the future. I would like to go on record as opposed to Ordinance 2008-25, the Moose Pass School site land sale, for the following reasons:

1. All of the encroaching buildings and structures are on temporary foundations (skids) and can be moved off of the school property.
2. A future gymnasium expansion, which has been discussed locally for many years, can only be on the west side of the school property.
3. The Borough is setting a dangerous precedent in allowing an adjacent property owner to encroach on, and subsequently purchase, part of a school site.
4. The alarming rushed timeline of this process with little public notice and opportunity for public input.
5. The property owner involved has also encroached on the adjacent land to the west of his property, therefore demonstrating a pattern of behavior that is hard to dismiss as "unintentional."

I do not believe that this ordinance is in the best interest of the school, the community, or the Borough. I strongly urge you to vote against Ordinance 2008-25. I appreciate the opportunity to comment on this issue. Thank you for your time and consideration.

Sincerely,
Thomas Lindquist
Mile 34.7 Seward Highway
37114 Hannisford Drive
Moose Pass AK 99631

August 18th, 2008

Dear Assembly Members,

First let me state that I am opposed to Ordinance 2008-25, the proposal to sell a 2,010 sq. ft parcel, including 25 linear feet of lake front, of the Moose Pass School site to the encroaching Mr. Vern Kingsford on the west.

There are 2 major reasons in my opinion for opposing this ordinance and I would like to follow with my input.

1. I do not believe any amount of the school site should be sold, as it is already a very small site and the area back behind the school is the only area that could be used for expansion if need be. Once that property is sold there is no getting it back and there is no other property for sale.
2. In Ordinance 2008-25, Section 3 - it states the land to be sold is being sold to resolve an "unintentional trespass...."

I have testified as to this particular issue at the Moose Pass Advisory Meeting as well as the KPB Planning Commission Meeting and will be testifying again at the Assembly Meeting on August 19th, 2008. Just for the record though and for your information I would like to reiterate some of the facts I have presented to show why I believe it is an intentional trespass based on a pattern of trespass and also based on what I believe are the responsibilities and reasonable expectations of a property owner and business man.

First let me say that I find it hard to believe that a business man such as himself, Mr. Kingsford, would buy a piece of property without having it surveyed or knowing the property boundaries, but this is what he claims. He also claims that it is reasonable to look down a row of trees and assume that, the row of trees is his property line. Well, I guess maybe if you are just looking??? but, if you were going to build cabins, a covered deck, place a fuel tank and a few sheds on that side of your property wouldn't you as a responsible property owner who cares about the rights of others have a survey done!!

In a memo dated July 24th, 2008 it gave the distances of 4 of the encroachments on school property, the largest distance mentioned was a 9ft. encroachment. I am not sure why, but if you look at the as built survey you

will see the covered deck on the lake and it is in my opinion encroaching approximately 23ft!!! Eight encroachments, with the greatest distance being 23ft. across his property line...I ask you is this unintentional??? I can't see how, that is possible.

I am a member of the United Methodist Church whose property borders the opposite side of Mr. Vern Kingsford's property in Moose Pass. We have over the past 5 years had a dispute with the Kingsfords as to their constant trespass on Church Property, in many different ways. During this time we had a church survey done. This was on **May 15th, 2004**, over 4 years ago. Two of our corners are also Mr. Kingsford corners, and I would suggest that it would have been a very simple process to take a tape measure from each of those corners, knowing the dimensions of his property and come up with a pretty accurate property line on the west side of his lot (the one adjacent to the school site).

As for the pattern of trespass on the United Methodist Church Property-

I will try to stick to the illegal trespasses, mostly concerning 2 building that are in trespass and parking issues. Over the years Mr. And Mrs. Kingsfords business had grown and they began to use the church parking lot for their business clients. During the summer their clients would be parked in the church lot every day, and sometimes overnight. It was becoming an issue of discontent as no permission had been asked and no offer of payment had been made. At the time Lura Kingsford was a member of the church and we cared very much for her, consequently we tried to skirt the issue and not cause any hard feelings. It was suggested that we put up a parking donation sign to gain a few dollars for the church, being as it was in constant use. Lura was included in the decision making process to put up a sign for donations and we decided to request a \$2 donation per/day.

Upon putting up the sign, I was approached by Mr. Kingsford . He said, "Julie, I don't want you to put that sign up.", I of course asked him why and he stated that he felt we were nickle and dimeing the tourists to death. He said again adamantly, "Julie, I don't want you to put that sign up." We had quite an extended conversation as to the why's and why nots of putting the sign up, but in reality it wasn't his decision as it wasn't his property and I told him that. I mentioned to him that all he had to do was "ask" the church about making a donation or a monthly payment for parking at the church and he said, "I will not ask". It would have been a very simple fix and would have provided the necessary parking he needed for his business.

The sign for donations was put up a few days later by the men of our church, and after we did this more aggravating trespasses began.

The other issue at hand was whether or not a new addition that he added on to an existing building and an enclosed hot tub were built on church property. We thought that they might be, but we weren't positive. The trespassing seemed to be a consistent problem and after some consideration we decided to build a fence to protect our property and keep him from getting adverse possession, which at this point we were concerned about.

In order to build a fence and be sure of our property boundaries we had a survey done... upon which it was ascertained that, yes indeed, Mr. and Mrs. Kingsford's building were on church property. Within a week of having the survey completed, the stakes, every single one of them (and we had many on the side adjacent to the Kingsford property, as we wanted a well marked line for the fence) were pulled out of the ground. We have a signed affidavit from Mr. Paul Kain (the local park service law enforcement officer) stating that while having a conversation with Vern Kingsford, in which he made several derogatory remarks regarding a land dispute he was having with the Methodist Church, Kingsford reached down and pulled out of the ground the survey lath marking the property corner . Kingsford broke the lath in half and carried it away after he finished his conversation. Was this INTENTIONAL.. Yes..

Did we contact law enforcement about this issue?? Yes, we did call to see what could be done. Being as the survey cost approximately \$500.00 it was not a felony and therefore he could not be arrested....and it was a civil matter, which would mean the church would have to go to court. Not really something we relished doing, so we let it go. Does that mean it didn't matter... No!! He constant disregard for the law and the rights of others continued!

Before having the fence built, we advised our contractors that it could be kind of nasty, having already experienced this with our neighbor Vern Kingsford...They started building the fence about 8:30 in the morning and by approximately 10:00 a.m. Vern was out there telling them that he was going to rip out every post they put in the ground. Consequently, it was necessary to call the troopers. They did come out to support the contractors and told them, as they had an as-built in their hand to build the fence. Vern proceeded to hollar that he owned the property all the way over in front of the church. Again, disregard for the law and the rights of others!

Vern had already been asked not to use the church parking lot for his parking and after the fence was built it was again made known to him that they were not to park on the church side of the fence. Did it stop?? NO! Our next step was to put up a sign stating "Church Parking Only, Others by Permission". Did this keep them from parking there?? NO! Next step.... We began to put flyers under the wind shield wipers of the vehicles parked illegally - noting that they were parked on church property and if they didn't move they would be towed at their expense. Finally, this seemed to work...but, no not exactly. Vern then had his vehicles or clients vehicles parked in the right of way all across the front of the church parking lot and completely blocking access to the parking lot!! Once again, disregard for the law and the rights of others. INTENTIONAL YES!

I believe he was hoping no one would notice his encroachments and eventually the land would be his, but I also believe that he was prepared to purchase it if necessary and it is the next best thing and would be a reward for his trespass. Please do not reward this trespass... the same laws and rights apply to all of us.

On a final note.... all of the encroachments on the school site are easily moved as they are not on permanent foundations. This certainly seems like the simplest, least costly and fairest solution of all. I'm not sure why that didn't happen in the first place, but it is what I believe is necessary.

Thank you so much for your time and consideration in this matter.

Sincerely,
Julie Lindquist
Moose Pass Resident

Blankenship, Johni

From: Andrea J DiDomenico [Andrea@mail.didomenicolaw.com]
Sent: Tuesday, August 19, 2008 4:29 AM
To: rlms@ptialaska.net; merkes2@yahoo.com; Assembly/Clerk, Office
Subject: Kingsford Matter

Assemblyman Long, Assembly President Merkes and Assembly Clerk: Attached is my letter in opposition to the proposed ordinance for the sale of land to Kingsford. Please provide a copy of my letter to the other members of the assembly. Please make my letter a part of the record.

Andrea J. DiDomenico <<AJDLETHD_.doc>>

Law Office of
ANDREA J. DiDOMENICO
e-mail – andrea@didomenicolaw.com

One Vosburgh Road
Mechanicville, New York 12118

Telephone (518) 664-7338
Telefax (518) 664-2090

August 18, 2008

Dear Assemblyman Long, Assemblywoman Gilman, Assemblyman Superman, Assemblyman Sprague, Assemblyman Martin, Assembly President Merkes, Assemblyman Knopp, Assemblyman Fischer and Assemblyman Smith:

I am writing to you to express my opposition to the proposed sale of a parcel of real property located in Moose Pass to Vern and Lura Ann Kingsford.

I am a land owner in Moose Pass. I have visited the area several times over the past thirteen years.

I have been impressed by the surroundings and vista that is the trademark of Alaska.

The community of Moose Pass is a small, tight knit community. The Moose Pass School, is located on a parcel of land that adjoins Trail Lake.

Although “squatters” rights may have been an individual’s claim to ownership of real property decades ago, the rights of a squatter should not be supported by a government entity. Especially, when the squatter has known the location of his boundary lines.

Mr. Kingsford appears to believe he can lay claim to whatever is in his way. Not only has Mr. Kingsford encroached on the school property, according to the article in the *Peninsula Clarion*, Mr. Kingsford has been bullying his way onto the adjoining church property.

When will the government say “enough is enough”?!

To condone such action by agreeing to sell land to the “squatter” is unfair to those property owners who honor and respect their neighbor’s boundary lines.

To approve the ordinance would be a great injustice to the community, especially the children who attend Moose Pass School.

I urge the Assembly to vote against the ordinance that would grant Vern and Lura Ann Kingsford ownership of approximately 2,010 square feet of land.

Very truly yours,

Andrea J. DiDomenico

Blankenship, Johni

From: Dawn Campbell [nwad20@yahoo.com]
Sent: Tuesday, August 19, 2008 7:31 AM
To: rlms@ptialaska.net; Assembly/Clerk, Office
Cc: psprague@acsalaska.net; akjfischer@hotmail.com; mbgilman@gci.net; millimon@xyz.net; merkes2@yahoo.com; bsmith@xyz.net; gsuperman@gci.net; pa12gary@hotmail.com
Subject: Ordinance 2008-25

From:
Dawn Campbell
27546 Seward Hwy.
Seward, AK 99664
907-288-3616

I would like you to know that I am opposed to Ordinance 2008-25. I feel that there should be an exception to the norm whenever a Kenai Peninsula Borough School is involved in this type of property dispute. The Moose Pass School probably has one of the smallest parcels of land, if not the smallest, in the borough.

Another point is that the easement the borough mentioned should probably be deemed abandoned, due to a lapse of use in it's history.

The community of Moose Pass is usually a quiet peaceful community and lately this has not been so. I ask all of you to help put the community back on track by "NOT" passing "Ordinance 2008-25".

Blankenship, Johni

From: Mark Ernst [infodesign@alaska.com]
Sent: Tuesday, August 19, 2008 8:57 AM
To: rlms@ptialaska.net
Cc: Assembly/Clerk, Office
Subject: Scenic Mountain Air, Moose Pass School land encroachment

Dear Mr. Long,

According to the Peninsula Clarion, August 17, 2008, the assembly will vote on whether to grant Vern Kingsford, owner of Scenic Mountain Air and Alaska Float Ratings, approximately 2010 square feet of land that currently belongs to the Moose Pass School. An agreement was met by borough officials and Mr. Kingsford as to the details about moving some of the items encroaching, putting up a fence and allowing Mr. Kingsford to purchase the encroached upon land. No doubt, this agreement was done with the assumption that this encroachment was unintentional by Mr. Kingsford.

However, it appears that this is not the first encroachment problem that Mr. Kingsford has been a party to. Therefore, the unintentional assumption should no longer be valid. There has been a history of encroachment problems with the Methodist Church on the other side of Mr. Kingsford's property. Mr. Kingsford's tactics appear obvious and should be able to be validated by communications with the individuals quoted.

Would the borough consider leasing the land to Mr. Kingsford?

When public land (i.e. Moose Pass School land) is sold, should it not be advertised 'for bid' to the general public, before being sold to one individual? Maybe the community of Moose Pass would like to buy the land and lease it back to Mr. Kingsford.

Perhaps the Moose Pass School itself could lease the land to Mr. Kingsford as a way to create income for the school's academic activities or maintenance.

If there is no other option than to sell it to Mr. Kingsford, the price should be substantially higher than 'market value'. Otherwise, it may set a precedent for other people to take advantage, by encroaching on public land and expecting to just purchase it.

Thank you for your consideration,

Mark P. Ernst
Dawn M. Ernst
27243M Seward Highway
Seward, Alaska 99664
907-288-5073
907-288-5074

Blankenship, Johni

From: sharyl seese [hazelsee@yahoo.com]

Sent: Tuesday, August 19, 2008 9:49 AM

To: Assembly/Clerk, Office; Paul Fischer; Margaret Gilman; Gary Knopp; Ron Long; Milli Martin; Grace Merkes; Bill Smith; Pete Sprague; Gary Superman

Subject: Moose Pass School Property

I do not believe that the KPB should give and /or sell any school property. Please, with your vote tonight, listen to the Advisory Planning Commissions unanimous vote against the transfer of Moose Pass School land.

Sincerely,

Sharyl Seese
537 1st Ave
Seward, Ak 99664

August 19, 2008

John J. Williams, Mayor
Kenai Peninsula Borough
144 N. Binkley Street
Soldotna, Alaska 99669

Ron Long, KPB Assembly Member
P.O. Box 2464
Seward, Alaska 99664

RE: Ordinance 2008-25

Dear Mayor Williams, and Assemblyman Long,

We have lived in Moose Pass for over 25 years. We are members of the Moose Pass Sportsmen's Club (our defacto government in Moose Pass) and have two children that have attended the Moose Pass School for 6 and 8 years.

We are opposed to the Ordinance 2008-25 which proposes to sell Borough property, utilized by the Moose Pass School, to Mr. Vern Kingsford in Moose Pass. Our reasons are the following:

1) Moose Pass School occupies a very small piece of Borough property; too small to be subdivided and sold.

The Moose Pass School is located on a very small piece of KP Borough property. There is currently very little space for reconstruction of school facilities such as the gymnasium, when it is needed in the future. The proposed sale offers to leave an approximate 19 foot buffer between the edge of the building and the new property line. This is not enough room for any changes that these school facilities might need in the future.

The current property boundary did not prove to be enough buffer from Mr. Kingsford's operations, how can a smaller buffer work any better? And will a smaller buffer work better when it comes to spilled petroleum products from Mr. Kingsford's operations in close proximity to School well and water system? Mr. Kingsford's and his employees' unauthorized use of the adjoining Methodist Church property resulted in at least three events of spilled petroleum products that were not cleaned up. We have attached pictures documenting these in Attachment 1 at the end of this letter.

How will this smaller buffer work to resolve the current septic system issues from Mr. Kingsford's property or future ones? What about future growth of Mr. Kingsford's business and potentially new structures? Mr. Kingsford and some Borough employees maintain that the piece of property is useless, not worth anything to the Borough. We maintain there is a huge value to the land, if nothing more than keeping as large buffer as possible from an irresponsible neighbor.

We reviewed the following policy regarding the KPB's responsibility in managing borough lands - **17.10.010. Policy/Purpose**. Two things sections caught our attention: (as highlighted):

- A. It is the policy of the Kenai Peninsula Borough to manage all borough owned and municipal entitlement lands and resources to provide for:
1. The efficient acquisition, management, classification and disposal of borough lands;
 2. The promotion of orderly development;
 3. The protection and orderly management of the borough's natural resources;
 4. The preservation of borough lands and resources for wildlife habitat, scenic value, recreational needs, and historic needs;
 5. **The retention of borough lands essential for health, safety and education needs;**
 6. **The orderly disposal of lands and resources in a manner which is fair to all.**

By passing Ordinance 2008-25, the Borough Assembly would be remiss in meeting these responsibilities outlined in items (5) and (6); particularly in providing safe and appropriate facilities for the present and future students of Moose Pass School.

2) Nature of the trespass on Borough property

As a business man, Mr. Kingsford has seen growth in his business since he started it in Moose Pass. Prior to building any new structures near boundary lines, any responsible business person or property owner would determine where his/her property boundaries are and be sure to keep his/her structures on his/her property. Did he show any sense of responsibility when he placed 8 structures on Borough property without permission? He also did not show responsibility in placing 2 buildings and assorted fuel tanks on the Moose Pass Methodist Church property adjacent to his property on the west side or in placing at least 2 structures on State lands along the Upper Trail Lake shore. In doing these actions, Mr. Kingsford has shown a continuing, blatant disrespect for others' property rights.

Under KPB ordinance **17.10.220 Trespass on Borough Land** it reads as follows:

- A. A person shall not trespass on borough land. If the mayor has knowledge of a trespasser, then the mayor shall take steps to remove the trespasser. Unless provided otherwise, the trespasser shall restore the borough land to the same condition it was in at the time just before trespass began. The trespasser shall pay all costs incurred by the borough as a result of the trespass.
- B. The mayor is authorized to negotiate the terms of a license to an unintentional trespasser because of an extreme hardship that will be suffered by the trespasser. The license is subject to approval by assembly resolution.
- C. Under the provisions of Section 17.10.100(l) and 17.10.230, a trespass may be resolved through negotiated sale of the smallest practical area to the trespasser with all or a portion of the survey and related costs being paid by the trespasser.
-

Under paragraph A, the mayor's responsibilities are fairly clear. But it is evident that these responsibilities are not being considered. Why not? Under paragraph C, the ordinance authorizes the Borough to sell property through a negotiated sale but only to someone who unintentionally trespassed (under provisions 17.10.100 (l)). Due to Mr. Kingsford's repeated trespass actions regarding both the Borough property in question, the Methodist Church on the west side of his property, and state land on the north side, a reasonable person would conclude these trespasses are intentional.

3) Expedited time frame to "resolve" this issue

The following portion of the proposed ordinance reads:

Whereas...hearing on shortened time frame is necessary as the borough requires as many conditions to be met prior to the start of the school 2008 or as soon thereafter as practical.

We are alarmed by the short time frame to act on this. The trespass issue has been occurring for the past several years and parents of the students attending the school notified the principal and other Borough School District employees years ago about the trespass issues. And only now there is a rush to resolve it to Mr. Kingford's satisfaction without the proper thought and consideration given to it? This seems like a "rush" job which in our experience rarely results in positive outcomes for the long term.

4) The ordinance does not mention other options considered to resolve the trespass issue

Mr. Kingsford's trespass structures are all on skids which means it would be relatively easy for him to move them back on his property. Rather than losing a chunk of the already too small parcel of land from the school, did the Borough analyze what it would cost to have Mr. Kingsford simply move his structures back on his own property as Borough municipal code dictates (17.10.220)? Where is the discussion for this option?

If a fence is deemed necessary to protect the school children and the school's interest from the attractive nuisance next door, why not build a fence on the current property line and resolve this issue immediately? It gives a larger buffer between Mr. Kingsford's operations and the school facilities and protects the Borough's future unknown needs for this property. We realize this costs money, but it would be worth the cost to ensure the Borough keeps all of its options open regarding operations of the school facility and the students' safety into the future.

5) Lack of research information regarding this ordinance

When discussing land sales, where are the aerial photos which would show how the school is located in relation to other structures on other properties, the lake shore, flood prone areas from the lake, areas for future school expansion/reconstruction if it was needed, etc? Isn't this important information to have when making this type of final decision on potential sale of valuable public property? None of this information was available for review by the public. Was this information made available to both of you and the other Assembly members when considering this ordinance?

In summary, we believe the information presented in the ordinance has been inaccurately portrayed, the ordinance goes against Borough responsibility in managing public property, and other options have not been given full consideration. In conclusion, we believe this ordinance may have negative long term consequences for the Borough, the Moose Pass School, and the public who have a genuine interest in this Borough property.

Thank you for your time in reading this letter,

Sincerely,

Mark and Karen Kromrey
Moose Pass Residents

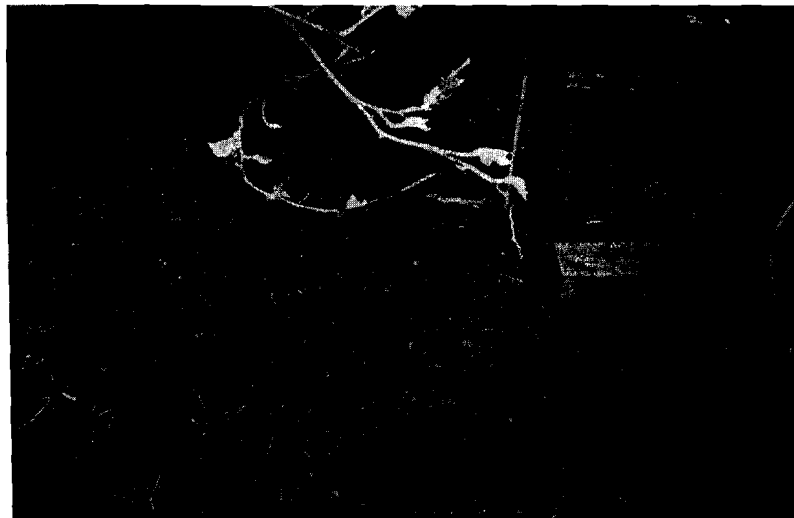
CC by e-mail:

Grace Merkes, Assembly President
Pete Sprague, Assembly Vice President
Paul Fischer, Assembly Member
Margaret Gilman, Assembly Member
Milli Marten, Assembly Member
Bill Smith, Assembly Member
Gary Superman, Assembly Member
Gary Knopp, Assembly Member
Kenai Peninsula Borough Clerk

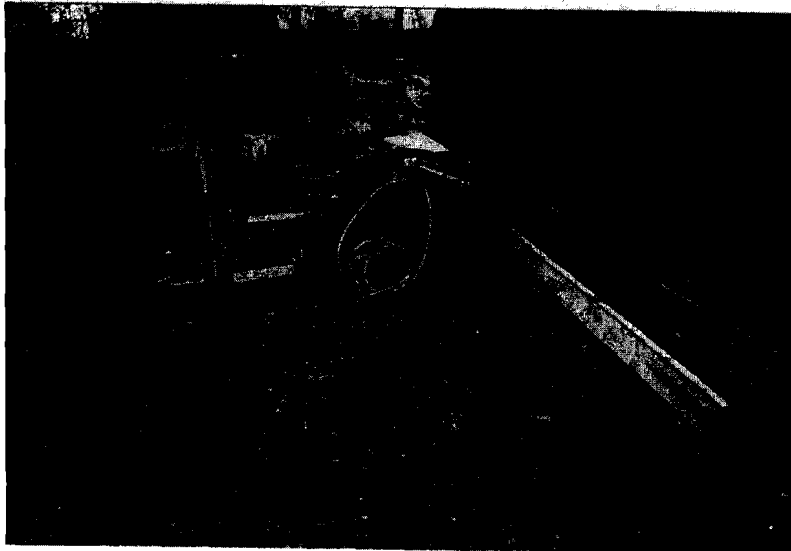
Ordinance 2008-25
Attachment 1



This picture shows the petroleum products spilled on church property from Mr. Kingsford repairing a vehicle. He took no action to clean up this spill.



This picture shows the wooden lathe and pink flagging denoting the boundary between Mr. Kingsford's property (on the right) and church property (on the left). The blacken soil in the lower left hand part of the picture resulted from Mr. Kingsford's operations with his fuel tank (just out of the picture to the right). It was not cleaned up by Mr. Kingsford resulting in the church cleaning it up.



This picture shows an enlarged view of the previous picture. The wooden stakes with pink surveyors flagging denote the property line. Note the blue hose in the top of picture leading from the fuel tanks spill containment reservoir under the tanks onto church property. Mr. Kingsford was cleaning out this reservoir onto church property and the liquid coming from the hose contained petroleum products. In addition, note the amount of petroleum products spilled on the ground by the fuel tanks on Mr. Kingsford's property.



This picture shows the end of the hose which was draining the spill containment reservoir from Mr. Kingsford's tanks. Also note the creosote timber from Mr. Kingsford's operations that was discarded onto church property. All this was cleaned up by the church rather than by Mr. Kingsford.

Kenai Peninsula Borough Assembly**RE: Ordinance 2800-25 , Moose Pass School Encroachment****Objection:**

I object to the sale of one square inch of Kenai Peninsula Borough property used by the Moose Pass School to anyone, at anytime for any price.

One characteristic of the United States which has made it into a great country is indisputably its pledge and follow through to educate all of its children. All children...irregardless of race, economic means or population size where they live are entitled to an education. It is a sad day when the integrity of the small property set aside to educate the children of Moose Pass is dismissed.

The reasons against the sale of this property are infinite. A few are as follows:

Fire:

From the Borough web site <http://www.borough.kenai.ak.us/sbb/pages/faq.html> . "The WUI is commonly described as the zone where structures and other features of human development meet and intermix with undeveloped wildland or vegetative fuels. Wildland fire within the WUI is one of the most dangerous and complicated situations firefighters face." Would it be reasonable to say the Moose Pass school would be characterized as WUI and need all the fire buffer space possible to protect the property, students and staff. Would selling part of that buffer zone which has already been utilized to store fuel and firewood be a prudent decision?

From the Borough web site <http://www.borough.kenai.ak.us/sbb/pages/assistance.html> , there is a diagram indicating that firewood and fuel should be stored at least thirty feet away from a residence. Is this firewood shed encroachment thirty feet from the school building? Is the reasonable distance for this type of storage greater than thirty feet since the occupants of the building are minor children and may require assistance to evacuate the building in the case of an emergency?

Looking at the ASBuilt Certification, the layout and configuration of fuel storage tanks could change in the future at the discretion of the current landowners or future landowners if the 2,000 square feet is sold. The Kenai Peninsula Borough would not have the same enforcement power to require a private landowner to move the fuel storage containers and firewood sheds as it does now as the legal owner of the 2000 square feet.

Evacuation:

The Moose Pass School gym has three emergency exits. The exit through the kitchen is not immediately visible unless you enter the kitchen. The exit at the side/back of the gym next to the boys restroom faces these encroaching cabins. Does the outside area of this exit meet the requirements of the school evacuation plan? Would it still meet them if the property were sold? Even if the square footage requirements are met, is it reasonable to leave some extra space to further ensure a safe evacuation of the Moose Pass School Students, Staff and Visitors?

Leaving the emergency door at the back of the Moose Pass School gym and turning left toward Depot

Street, there are no building obstructions. Leaving the emergency door at the back of the Moose Pass School gym and turning right toward the lake, the encroaching buildings are blocking the path. Is it reasonable to assume that Kindergarten students as young as five who often forget the difference between left and right will be able to be directed safely toward the street and not toward a building blocked path? Is it reasonable to assume those with learning disabilities such as dyslexia will be directed toward the street and not toward the blocked lake path? Is it reasonable to assume that the safest direction out of the gym will always be toward the street and not toward the lake given the winter conditions of Moose Pass?

Current Use:

It has been said, it is only 2000 square feet at issue in this proposal...it is insignificant. If it is indeed insignificant, perhaps the property owner who is encroaching would consider trading 2000 square feet of their street front property to add to the front of the Moose Pass School property to use for parking or as added buffer around the school well. Land swaps are often used to "remedy" property issues in Alaska. Since the lake front property is arguably more desirable than the street front property a larger portion of street front property might be in order.

Studying the ASBuilt Certification copy provided at the Moose Pass Advisory Meeting, a current use for this 2000 square feet could be moving the Moose Pass School storage sheds to the same 2000 square feet and using the space they are occupying for the Moose Pass School Dumpster. This would keep bears attracted to the dumpster at the back of the building where the school children are not usually entering and exiting the school building. It would also add to the aesthetic appearance of the school not to have the dumpster in the front. It might also aid in snow removal for this parking lot.

Another current use for the 2000 square feet would be to reconfigure the back of the school property utilizing this space so that some staff parking could be added. Even without the large school bus parked in front of the school, failure to arrive early for a school event quickly demonstrates how inadequate the parking lot is.

Future Use:

Again, it is only 2000 square feet which is not currently being used is a poor argument for selling the property. The Moose Pass School is already shortchanged in property square footage in comparison to other schools in Alaska. Twenty years ago, it is doubtful, anyone could have predicted the need for individual computers and the accompanying phone lines and electrical outlets in elementary schools. Who can say with certainty, that the next twenty years will not reveal a compelling need for this 2000 square feet of space?

The Moose Pass School already faces a huge challenge in terms of water. Most people cannot recall when the water was in compliance. A detailed explanation of the DEC requirements and importance of compliance to the minimum standards for separation of waste and well water could be a huge factor in the decision not to sell this parcel. The well and source of sewage for the Moose Pass School are only 89 feet apart requiring a waiver from the DEC which is currently still unresolved. Future water problems may require relocation of the well, sewer or both, making this 2000 square feet of property not only desirable but necessary for safe water for the school. It was not apparent from the Moose Pass Advisory Meeting why the Moose Pass School does not have to meet the higher minimum requirements for commercial property. Also, as lake front property, future federal and state requirements could be more stringent for disposal of waste, again making the argument greater for

retaining the 2,000 square feet.

One comment at the Moose Pass Advisory Meeting, stated that 2,000 square feet is the size of a personal residence and therefore insignificant. Currently, entities within twenty miles of the Moose Pass School such as Trail Lake Hatchery, Alaska State Troopers and the Chugach National Forest Service offer housing as compensation for employees. The lack of property in this area is well documented. Perhaps, in the future, the Kenai Peninsula School District could utilize some of this space for a residence with a view of Trail Lake and surrounding mountains to attract or retain a highly qualified principal, coach or teacher for the Moose Pass School.

The Moose Pass School does not have a Music Program, Art Program or Cafeteria comparable to other schools in the Kenai Peninsula School District. The Library is very small. Perhaps, part of this 2,000 square feet could house one of those functions in the future.

The Moose Pass School does not have a full size gym. Looking at the ASBuilt, it would be "reasonable" to assume that the best placement for a full size gym would be parallel to the property line at issue and would necessitate the retention of the 2,000 square feet.

Given the record tax collection by the State of Alaska due to high oil prices, it is possible one of these projects could find funding in the near future.

Undue Haste:

At the Moose Pass Advisory Meeting, it was stated that since the Garbage Disposal Project will be in place for fifty years the Mayor would like to proceed with more public meetings and comments. The Garbage Disposal Project has been given adequate public comment and notification, along with a survey mailed to residences, etc. and it will be given even more time. This proposed action will have consequences reaching beyond fifty years, yet has not received adequate time for public notification and comment. A special meeting for the Moose Pass Advisory Council was hastily called and advertised so that a few could be given an opportunity to comment. The reason for this undue haste for one action versus another is not apparent.

It was stated that the notice of this sale was advertised in the Seward Phoenix Log and Peninsula Clarion newspapers. These newspapers are not sold or delivered in Moose Pass, the area most impacted by this decision.

The Moose Pass Sportsmen Club was not contacted about the proposed sale which historically in recent times has been a source of information for the community.

Unintentional:

What basis has the Borough used to establish that this is "unintentional" vs "intentional" land use? Are the procedures different for "unintentional" vs "intentional"? Someone suggested at the Moose Pass Advisory Meeting that tree lines have been historically used as property lines. The gentlemen would be correct if this were 17th Century England. In current times, would not a "reasonable" business land owner verify a property line before constructing a series of buildings?

If memory serves, the Moose Pass School has been paying for snow removal and snow storage all the way to the correct property line past the well on the corner of the front parking lot next to Depot Street.

Would it not occur to a "reasonable" business person that the Moose Pass School was trespassing by removal or storage of the snow if indeed the property line was the location suggested by the private land owner?

The fence which is not on the property line was suggested as a possible reason for this encroachment. If the entire school property were enclosed by fencing with the exception of the 2,000 square feet perhaps this could be a viable argument. Looking at the ASBuilt, a "reasonable" person would assume the Borough chose to pay only for the amount of fencing deemed necessary due to initial cost and maintenance costs. Is it "reasonable" for adjoining property owners to assume that any area not enclosed by fencing is not owned by the neighbor?

"Remedy":

The "remedy" for this encroachment should be the prompt and complete removal of the encroachments at the trespassers expense. This proposed "remedy", Ordinance 2800-25, deprives the Moose Pass School of safety, defense of its legal boundaries, current and future use of the 2,000 square feet.

Mr Navarre and Mr Peterson both commented at the Moose Pass Advisory Meeting that the Borough often negotiates sales of Borough Property in this manner to "remedy" these types of encroachments. If this were truly 2,000 square feet of land without a current use, perhaps it would be "reasonable" to proceed in this manner. Given that this is school property which is currently being used as a school, this argument seems invalid. Given that education is a fundamental right of children in the United States this seems akin to selling a birthright.

Conclusion:

Please weigh the negative impact of this proposal to exchange this land set aside for education for a survey, fence and a few thousand dollars carefully. The current and future generations of Moose Pass children are counting on you.

Thank you for taking the time to read and consider this letter.

Sincerely,

Melissa Guernsey
41658 Seward Hwy (Mile 36)
Moose Pass, Alaska

Blankenship, Johni

From: Stauble's [stauble@arctic.net]
Sent: Tuesday, August 19, 2008 12:58 PM
To: Assembly/Clerk, Office
Subject: ordinance 2008-25

Dear Assembly Clerk,
Attached are my views on Ordinance 2008-25.
Thank You for getting these concerns where they need to be.
Best Regards,
Katy Toth-Stauble

Agenda Item 10.4.
Committee Lands
Page Number 60

I am **not** in favor is selling borough land on which our school is built to private property owners Vern and Laura Ann Kingsford for the following reasons:

- I feel it is important to maintain a healthy buffer zone between the actual school building and the Kingsford's property. The main and only visible emergency exit in the gym is already in very close proximity to the property line at this time. It would be an even lesser amount if the property was sold to Mr. and Mrs. Kingsford. This emergency exit door which faces the Kingsford's is the only one available when the school kitchen door is locked). In this scenario, it would become more of a safety concern than it already is; because emergency access to the building or evacuation in an emergency situation would be more difficult (currently, emergency access is already limited).
- Future ownership/use of the Kingsford's property may have not been considered or discussed. When the Kingsford's decide to sell the property; what will the new owners choose to do with the land or build on the property? Perhaps a four story building right on the property line. Is that what we want next to our school?
- This is clearly a property boundary issue. It should be a black and white situation. **He has encroached on Borough property.** A good business person when purchasing property would make certain of property boundaries and not **assume** anything. Mr. Kingsford admitted in his testimony at the Borough Assembly meeting when asked by Commissioner McClure if the property was surveyed when he bought the land. Mr. Kingsford's reply was "no."

At that same meeting, Mr. Kingsford also stated that he **assumed** the tree line which was perpendicular to the street was his property line. Ignorance of the law (as well as property boundaries) does not justify or make it ok to encroach on properties that you did not purchase and on land that belong to others. This behavior should not rewarded by selling the land to the Kingsford's.

- As and Natural Resource Education Specialist I have worked closely with the teachers and students of Moose Pass School on a regular basis involved with long and short term science projects and investigations or our local habitat. That undeveloped strip of land lends itself to being an outdoor science lab and a place for schoolyard habitat studies.
- Finally, I would like to address how Mr. Kingsford continually remarks and refers to how his business is an economic asset to the community of Moose Pass. These repetitive statements have nothing to do/no bearing with the issue of Ordinance 2008-25.

Thank You for your time and consideration of my views.

Sincerely, Kathleen Toth-Stauble

Kathleen Toth-Stauble
PO Box 156
Moose Pass, AK 99631

Blankenship, Johni

From: Molly Birnbaum [powderpass@yahoo.com]
Sent: Tuesday, August 19, 2008 12:51 PM
To: Assembly/Clerk, Office
Cc: rlms@ptialaska.net; psprague@acsalaska.net; bsmith@xyz.net; akjfischer@hotmail.com; pa12gary@hotmail.com; gsuperman@gci.net; mbgilman@gci.net
Subject: Kenai Peninsula Borough Ordinance 2008-25

Please ensure my comments are a part of the public record for tonight's hearing pertaining to the matter of trespass and sale of property to Vern Kingsford in Moose Pass. I provided these comments to the Planning Commission earlier.

I am working in the field and am unable to attend to present public comment. Thanks.

Marianne Profita
a Moose Pass resident

Marianne Profita
Property: Baneberry Ridge Rd.
Moose Pass, AK 99631
Mail: 6413 Colgate Dr.,
Anchorage, AK 99504
Email: powderpass@yahoo.com

John J. Williams, Mayor
Kenai Peninsula Borough
144 North Binkley
Soldotna, Alaska 99669
jwilliams@borough.kenai.ak.us

and,

Tim Navarre, Chief of Staff
tnavarre@borough.kenai.ak.us

RE: Kenai Peninsula Borough Ordinance 2008-25

John J. Williams:

Thank you for the opportunity to provide comments in regards to this ordinance. I am a local resident who has lived in the Moose Pass area for close to 30 years and have seen certain issues become a great concern to the residents of Moose Pass. In the case of this land deposition to Vern Kingsford, this issue has raised many a concern of which I will briefly present in letter.

1. Ethical Precedence

It is my general view that while the sale of 2,010 square feet of Borough land to a local resident seems small in size, the implications are rather large and significant. The precedence that this action makes, quite simply is that if a resident wants to develop beyond their lot line, it is acceptable with out planning commission or coastal management review to build as you want and ask for the land later. More particularly, my concerns follow:

2. Soil and Groundwater contaminants

Section 2.5.3 of the KPB Coastal Management Plan addresses sewage on lake and ocean borders. The Kingsford's built housing for customers on their site and there is no evidence of a septic system permit that was obtained from the Alaska Department of Environmental Conservation. The particular ordinance requires the Kingsfords to pay for the re-staking of the land, but there is no mention of testing for groundwater contamination and excessive fecal coliform effects in the adjacent Trail Lake. Mr. Kingsford should be required to obtain valid hydrology samples to establish a baseline for future impacts on the Moose Pass School's drinking water. ADEC should not have to pay for this at a future date.

The **Section 12.0 of the KPB Coastal Management Plan** addresses Air, Land and Water Quality. The subheading "Groundwater Pollution" states that "In some areas of the borough groundwater has been contaminated by leaking underground oil and gas tanks, pipeline leaks,

disposal of industrial waste, public landfills, inadequate lot size and improper design of on-site septic systems.” Also, this section states that “Storage of Pollutants - Accidental spills, improper storage, or unexpected floods could introduce oil, improperly stored roadway deicing materials, or toxic chemicals into water bodies, if such chemicals or materials are stored in floodplains or adjacent to water bodies without adequate berming”.....

The goals and stated in Section 12 is to “To achieve and sustain a high standard of air, land and water quality in the Borough. In that the objectives included herein are as follows:

- Objective 12.1.1: To coordinate with the State of Alaska and federal government regarding monitoring and sampling programs and other protective measures to assure air, land and water quality.
- Objective 12.1.2: To encourage local recognition of the need for protection of domestic and public water supplies from groundwater through planning decisions, educational materials, and industry cooperation.

Neither does this land sale conveyance meet the KPB CMP goal to protect groundwater protection but it essentially alleviates any obligation to sampling effects of previous misuse. While Mr. Kingsford presently has a double-walled tank for his bulk fuel storage, previously there were 55 gallon drums with no secondary containment and it is likely that leakages did occur. Groudnn water sampling and monitoring should come at Mr. Kingsford’s expense and not the KPB and taxpayer’s expense.

Additionally, while the size of bulk fuel storage does not exceed the state requirements prompting and oil spill prevention and contingency plan, the Environmental Protection Agency requires a Spill Prevention Control and Countermeasures Plan (SPCC) for petroleum product storage with a containment capacity of over 1320 gallons and as such, Mr. Kingsford’s operations may require an SPCC plan. Likewise the EPA has additional facility requirements if a facility has had previous discharges.

Ordinance Condition #7 requires Kingsford to move the fuel tank but no requirement is made to ensure that Mr. Kingsford is held responsible for any contamination. My concern is that petroleum products have likely been accidentally discharged on this property and may have resulted in a plume of groundwater and soil contamination into the school’s property and into Trail Lake itself. Mr. Kingsford should also be required to test the soil and groundwater for baseline and any petroleum contaminants before any conveyance is granted. The Borough and its tax payers should not have to pay for this in the future.

3. Proceeds of the Sale

It is my understanding of government accounting is that any proceeds of this sale would go to the KPB general fund. While the State routinely discusses closing the Moose Pass School, any proceeds from this sale should benefit the school and the community.

4. Fair Market Value vs. Real Market Value

While the KPB assesses FMV, everyone knows who pays taxes is that FMV is often much less than if a person was to purchase this land on the real market. This also sets a precend that if you want to expand your lot size, it is acceptable to build over the boundaries into

Borough land and you can expand your present acreage for cheap. I don't think the Borough really wants this message out to the public.

5. The Moose Pass Comprehensive Plan

While this plan was written in 1993 and seriously needs to be updated, this plan still remains in force and is to be utilized by the KPB Comprehensive Plan.

A. Section C addresses Land Ownership and Use. I pay particular notice to the following:

The community will support actions that will, in order of importance:

b) enhance the friendly atmosphere

Mr. Kingsford's actions do not enhance friendly atmosphere.

i) restrict large commercial development – The Moose Pass comprehensive plan further states that “Proposals to transfer public lands for economic purposes should be reviewed by the community well ahead of the actions. After several public meetings in Moose Pass, the responsible agencies should give the votes and opinions of the community their full, heavy weight in decision making”

While I commend the KPB in allowing one public meeting in Moose Pass concerning this matter, the timing was of short notice and I have been in working in the field and unable to attend. I appreciate the opportunity to comment in this capacity. I hope that the KPB gives full weight to this MP condition in further evaluation and decision making of this resolution.

j) enhance solitude – Mr. Kingsford's commercial operation has affected everyone in the Moose Pass region during the tourist season. He has a very noisy and unpopular operation that inflicts on every Moose Pass resident. Any increase in his commercial operations should be limited and must undergo a full and open planning commission review. The KPB should look into the noise levels further and the effects on operating a commercial float plan business in the middle of a residential community.

B. Section D Environmental Quality. As stated in this section, protection of groundwater is of great concern to Moose Pass residents. I previously lived in a house with diesel contaminated ground water and can assure you that the cost of laundering and hauling all water is a large expense. This condition requested that the KPB adhere to adequate standards for water and septic systems when it considers subdivisions and development. Has the Borough ever looked at whether the Kingsford's expansion is supported by an adequate septic system? I can find no evidence on the ADEC website that indicates that the Kingsford operation ever acquired adequate approval. As stated above under the KPB Coastal Management Plan, any mishaps created by Mr. Kingsford should not affect the community school or adjacent landowners.

Both subsection 1 Water Quality and 2. Toxic and Hazardous substances need to be adhered to and commercial use should be restricted when needed to protect groundwater. Once a drinking water source is impaired, remediation and monitoring is costly. It should not be the KPB's taxpayers to shoulder the burden of Mr. Kingsford's commercial operations.

C. Section II Goals, Objectives and Policies include goal #2 states that "Moose Pass should encourage economic growth and tourism in a manner that will enhance, not threaten the citizen's lifestyle." I believe that Mr. Kingsford's operations should be held to this standard. One aspect of the Moose Pass lifestyle is to have adequate drinking water.

I have a great concern about the impacts of this commercial operation on the school's operations in water quality preservation and in the continual noise that the resident school children and town residents are subjected to. It seems absurd to sell this land to Mr. Kingsford without full and open consideration of the full impacts on the commercial operation impacts on this community. I believe that the school lands should be kept intact and left undisturbed for the benefit of the entire community and my recommendation is to not pass this ordinance. Furthermore, additional examination should be made as to whether this operation has the permits required to protect land and water quality and that if contamination has occurred, that proper remediation takes place.

Thank you for allowing me the opportunity to comment.

Sincerely,
Marianne Profita

AUGUST 19, 2008

Ordinance 2008-25

Kenai Peninsula Borough Assembly

Assembly members,

I am writing you about ordinance 2008-25.

I ask you to give this issue a little thought, and request Mr. kingsford to remove all encroachments from the Moose Pass School property.

Any reasonable person would have surveyed his property before building structures such as temporary cabins, not to mention a hazardous fuel tank next to the school.

We don't want to start chopping up our school property to accommodate Mr. Kingsford's ignorance.

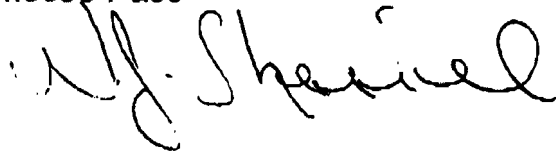
We should put our school children first, without any question.

Please do the will of the people and children of Moose Pass.

No moneys would be enough for this encroachment.

Sincerely,

Wes Sherrill
Moose Pass



Agenda Item N 4

Committee Lands

Page Number 60

To: Ron Long
Kenai Peninsula Borough Assembly member

August 18th 2008

Dear Ron Long,

This deals with Ordinance 2008-25.

I am Dennis Owens, an Alaskan since 1949, raised in Seward and a Moose Pass resident since 1970.

When I learned of the situation concerning Vern Kingsford's attempt to acquire the piece of Moose Pass School property that he has trespassed on for all of these years, it brought up a red flag.

He uses the excuse that because of historical use by him, the trespasser, and historical lack of use by the school, that he should be given the right to purchase the land in question. The other excuse he uses is he thought the land was actually his all of this time because of a row of trees and an old corner marker. It seems to me that Mr. Kingsford never had a survey done in order to confirm his legal property boundaries.

The historical lack of use by the school? It seems to me that if Mr. Kingsford and the previous owners of his property had established the true corners by survey, and not planted trees, erected sheds, decks and put in a fuel tank, that just possibly, knowing kids, having kids and having been one, this "historical lack of use" assertion would be hard to justify. The small gravel area between the row of trees and the school gym leading to a gate in a chain link fence is well traveled by children and is only mere feet away from the temporary cabins that Mr. Kingsford has erected. There is simply not enough of a buffer as it is.

I assert that the only historical fact to be considered here is the long existing property boundary and it should not be played with except by children.

The existing boundary should remain, Mr. Kingsford should remove all of his encroaching items including a fuel tank that has obvious dangers containing aviation fuel, and a defining fence should be erected so that there will be no question as to what's mine and what's their's.

Sincerely,
Dennis Owens
P.O. Box 61
Moose Pass, AK 99631
zowens@gci.net



Blankenship, Johni

From: Ngcornett@aol.com
Sent: Tuesday, August 19, 2008 4:45 PM
To: Assembly/Clerk, Office; ronlong@borough.kenai.ak.us
Subject: Proposed transfer of Moose Pass School Land to Vern Kingsford

To Assemblyman Ron Long and to the Kenai Borough Assembly Clerk

First, a housekeeping matter to the Assembly Clerk: I do not know the email address for Ron Long, and have guessed at it here. It may not be correct. I would therefore appreciate it if your office would provide a copy of this email to Mr. Long.

Second, to Mr. Long on the issue itself: I oppose the Borough's proposal to turn Moose Pass School Land over to Mr. Kingsford and his business, Scenic Mountain Air and Alaska Float Ratings. I live in Cooper Landing. I do not know Mr. Kingsford, and feel no particular envy of him. My comments are based strictly on what is just. Mr. Kingsford clearly has a record of encroaching on others' land. If the Borough proceeds with the action, they will be confirming in Mr. Kingsford the idea that he can continue to behave in that way without impunity and in fact with gain to himself. Mr. Kingsford's characterization of those opposing him as 'little people' speaks volumes about his attitude toward his neighbors, setting aside his repeated encroachment and his actions against the church. The Borough ought not act as an enabler to a person with that pattern of behavior. I am particularly astonished that the Borough is not proposing that Mr. Kingsford pay anything for the land. In accordance with common law, and probably with the laws of Alaska, anything that Mr. Kingsford built on another owner's land is the property of that owner. Mr. Kingsford is lucky that he does not have to move the buildings, turn over the buildings to the school or, conversely, have to pay both the value of the land and the structures, since the school presumably owns them.

Sincerely,
Nina Cornett

It's only a deal if it's where *you* want to go. Find your travel deal [here](#).

Blankenship, Johni

From: Curtis&Nikki [funnyold@gmail.com]
Sent: Tuesday, August 19, 2008 5:26 PM
To: rlms@ptialaska.net
Cc: Assembly/Clerk, Office; mbgilman@gci.net; gsuperman@gci.net; psprague@acsalaska.net; millmon@xyz.net; merkes2@yahoo.com; pa12gary@hotmail.com; akjfischer@hotmail.com; bsmith@xyz.net
Subject: Opposed to moose pass school encroachment

Mr Long,

I am a resident of the Moose Pass area and have children in the Moose Pass School. It has come to my attention that there is a "dispute" over a proposed sale of a tract of land currently owned by the school. I am not writing this as an advocate for or against the alleged dispute, as much as I am to express my concern about tactics and shady practices. It eludes me how someone can build structures (permanent or otherwise) on land other than ones own and not have any compunction about encroachments or rights of others and the use of lands legally owned by them. I am certainly an advocate of right to own property and legal use of that property. But to "accidentally" build on someone else's land and then to have that remedied by "the legitimate purchase" after the encroachment, seems to me to encourage "accidental encroachments." Would it not be a much more reasonable solution to have the encroachments removed, especially in the case of moveable structures. I am confident the borough will do what they think best for its own purposes, but I am concerned about the message that will be sent if it is decided to sell the tract of land here in question. Thank you!

Curtis Berry

Note: This message will be copied to the other assembly members as well.

AUGUST 19, 2008

Ordinance 2008-25

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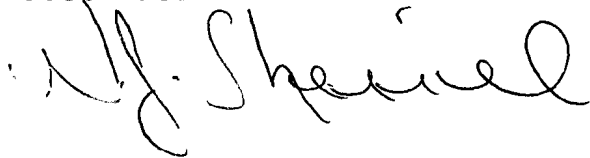
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Agenda Item N. 4.

Committee Lands

Page Number 60

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