



KENAI PENINSULA BOROUGH

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DAVE CAREY
BOROUGH MAYOR

MEMORANDUM

TO: Milli Martin, Assembly President
Members, Kenai Peninsula Borough Assembly

THRU: *McLary* David R. Carey, Borough Mayor

FROM: *CT* Colette Thompson, Borough Attorney

DATE: April 23, 2009

SUBJECT: Ordinance 2009- 28, authorizing use of funds appropriated for outside counsel in the Nikiski Beach access case to also be used for outside counsel to advise the board of equalization and board of adjustment

After oral arguments in the Nikiski Beach access case were held April 13, 2009, the judge postponed trial until the week of July 27, 2009, which is in the next fiscal year. The FY2010 budget includes additional funds for contractual services which, if the budget is approved, will be available if needed to pay outside counsel in the OSK case during FY 2010.

Ordinance 2008-19-42 specifically appropriated \$60,000 for outside counsel in the OSK case because the FY09 funds were insufficient to hire outside counsel for the case through trial. When that ordinance was enacted, trial was scheduled for May of 2009, which is in the current fiscal year. This delay is expected to reduce the funds needed for the OSK case in this fiscal year.

Due to unusually high expenses incurred this fiscal year for outside counsel to advise the boards of adjustment and of equalization, insufficient funds remain in the legal department budget for outside counsel to advise the board of equalization for the May hearings. Accordingly, the legal department respectfully requests that the funds appropriated in Ordinance 2008-19-42 also be available to pay for the services of outside counsel to advise the Board of Equalization to the extent needed. A Board of Adjustment hearing is scheduled for early in FY 2010, and some funds may be needed for an attorney to provide advice in FY 2009 to that board as well.

Shortened hearing is requested as the board of equalization hearings will be held in late May, and the next regularly scheduled assembly meeting is June 2, which is after the legal services would have been rendered.

Your consideration of this ordinance is appreciated.