

**MIKE LITMAN & JEFF FARVOUR LAWSUIT AGAINST
CITY AND BOROUGH OF SITKA & SITKA MUNICIPAL CLERK**

Mike Litman and Jeff Favour are suing Sitka for rejecting an initiative about Sawmill Cove Industrial Park ("SCIP") property, site of the former pulp mill. Sitkans for Responsible Government ("SRG") was long ago dismissed from this lawsuit. It is not a legal party able to bring any lawsuit.

The initiative not only seeks an automatic public vote before any sale or lease of SCIP property over a certain value, \$500,000 for sales and \$750,000 for lease, but repeals Sitka General Code ("SGC") provisions about how to lease or sell ANY SCIP property, such as:

- Repeals unique procedures created for SCIP land disposal and operations, such as being able to sell and lease SCIP at less than competitive bid in order to stimulate jobs and business;
- Restricts or conflicts with powers of SCIP Board, that was specifically created to operate SCIP like a private industry board, expediting property sales and leases. Ordinances will now be required to approve any sale or lease of SCIP property, meaning at least 2 Assembly meetings, rather than current procedures of:
 - Month-to-month leases (13 current leases) simply approved by Board;
 - Long term leases (5 current leases) approved by motion (1 Assembly meeting); and
 - Sales approved by resolution (1 Assembly meeting).

Sitka Superior Court issued a decision in 2008 only concerning the procedures and the initiative language concerning the automatic public vote. It pointed out that the automatic vote procedures conflict with Sitka Charter requiring any public vote not authorized by the Assembly be based on timely gathering a certain number of voter signatures. It also held that the initiative was misleading and confusing by not stating the Charter was being amended. Because resolving these 2 issues were sufficient to reject the initiative, it did not reach the other issues raised by Sitka.

The AK Supreme Court rejected the Sitka Court's rulings on these two issues. It recognized the conflict between Sitka's Charter and its code, but pointing out there was another SGC section approved by the Assembly allowing for an automatic vote for sale or lease of non-SCIP property above a certain value. It instructed Sitka to correct this conflict in its laws. It also held that the initiative language was clear enough, not requiring specific reference to amending the Charter, particularly based on the initiative rules in SGC. It sent the case back to the Superior Court to decide the issues not previously addressed.

The following are the issues now before the Sitka Superior Court:

1. Unlawful appropriation. AK Constitution at Art. XI § 7 prohibits an initiative from involving an appropriation. An appropriation means municipal assets, including municipal money, real property, personal property, etc. Sitka Superior Court had ruled it was premature to address this issue until an actual vote occurred. However, this same

argument was rejected by the recent AK Supreme Court decision in *Alliance of Concerned Taxpayers, Inc. v. Kenai Peninsula Borough*. This is because the AK Supreme Ct. held an initiative requiring a public vote before using municipal assets can deter an Assembly from even proposing such actions, and therefore was an unlawful appropriation, and rejected the initiative. That decision is directly applicable to this case.

2. Conflicts with Sitka Comprehensive Plan. Proposed initiative repeals SCIP operating procedures and leasing/selling property criteria listed in the Sitka Comprehensive Plan, a plan required of municipalities by State law, and by Sitka Charter. In *Griswold v. City of Homer* in 2008, the AK Supreme Court rejected an initiative as well as an Assembly passed ordinance changing big box store zoning laws that conflicted with the Homer Comprehensive Plan because the changes were not first submitted to the Homer Planning Commission. No such submission occurred in this case either.
3. Involves administrative matters not subject to initiative/referendum. The proposed initiative, which is a referendum in part because it repeals SGC provisions, addresses administrative matters about SCIP operation and land disposal, which is an unlawful subject for an initiative/referendum.
4. Impermissible referendum. AK Constitution at Art. XI § 7 requires stricter rules for referendums than initiatives, especially if repealing public peace, health & safety laws, which includes land-use control (e.g. lease and sale procedures). The proposed initiative that contains referendum provisions about land disposal, does not meet those rules.
5. Initiative conflicts with other SGC provisions, and is misleading and confusing. Sitka Superior Court specifically stated in its decision that it was not addressing all of Sitka's argument about the initiative conflicting with other SGC provisions, only about the automatic public vote issue. These other conflicts not addressed include:
 - Initiative repeals SGC 2.38.080 and makes all "land transactions" governed by Title 18, but does not repeal numerous SGC 2.38 conflicting provisions regarding SMCP Board authority;
 - Sitka Charter at Art. 11.14 only allows the Assembly to pass ordinances governing property disposal.

Sitka has filed its brief. Litman and Farvour are scheduled to file their brief on August 8, with Sitka's reply brief filed 15 days later. Oral argument is likely, and a decision issued afterwards.