



## Legal Department

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Charlie Pierce  
Borough Mayor

### LITIGATION STATUS REPORT

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**TO:** Wayne Ogle Assembly President  
Penny Vadla, President, Board of Education  
Members, Kenai Peninsula Borough Assembly  
Members, Kenai Peninsula Borough School District

**THRU:** Charlie Pierce, Mayor *CP*

**FROM:** *CT* Colette Thompson, Borough Attorney  
*HM* Holly Montague, Deputy Borough Attorney

**DATE:** April 5, 2018

**RE:** Litigation Status Report – Quarter Ending 3/31/18

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This report includes brief descriptions of pending non-routine court cases, appeals from Planning Commission decisions, and code compliance enforcement actions set for hearing before the administrative hearing officer.

- A. Following is a summary of the non-routine litigation in which the borough and school district are involved. This list does not include the real property tax foreclosures and numerous standard tax collection cases pursued by the borough.

1. *Hunt v. Kenai Peninsula Borough* — Case No. 3AN-16-10652CI. In this lawsuit the plaintiffs ask the court to declare the borough assembly's invocation policy violates the Alaska Constitution. They also seek a declaration that the plaintiffs are public interest litigants and request an award of full and reasonable attorneys' fees and costs as well as nominal damages. Both parties have filed motions for summary judgment, oppositions and replies. The court has

scheduled oral argument on the parties' summary judgment motions for April 11, 2018. The case was recently reassigned to Judge Peterson.

2. Interior Telephone Co. v. Kenai Peninsula Borough - Case No. U-17-11; and, Matanuska Telephone Assn. v. Kenai Peninsula Borough - Case No. U-17-12. MTA and ITC filed formal complaints and requests for declaratory rulings against the Kenai Peninsula Borough before the Regulatory Commission of Alaska ("RCA"). They sought a ruling that the Kenai Peninsula Borough is responsible to pay third-party costs associated with delivering their customers' calls from their telecommunication service areas to the Kenai Peninsula Borough's selective routers in Soldotna and Kenai. The borough filed answers and motions to dismiss in both cases. On April 18, 2017, the RCA published notice that it was dismissing the utilities' formal complaints and requests for declaratory rulings against the borough as they lack jurisdiction to resolve the complaints. The notice further stated that a formal investigation would not be opened by the RCA and a written order would follow. The RCA has since issued written orders dismissing both cases.

3. Walden v. Kenai Peninsula Borough School District – Case No. 3KN-17-00741CI. A former student, Trevor Walden, brought suit against the school district for personal injuries allegedly suffered during a weightlifting class at Soldotna High School on February 25, 2015. The case has been assigned to Judge Anna Moran. The school district has filed an answer to the complaint and requested a trial by jury. The court has not yet scheduled a pretrial conference at which time the trial date, discovery and motion schedule will be determined. Discovery is in process and trial call is scheduled for March 13, 2019.

4. Benjamin v. Kenai Peninsula Borough – Case No. 3SW-18-00001SC. Ms. Benjamin brought a small claims suit against the borough for minor damage to her vehicle which she alleges occurred when an unsecured gate at the Crown Point transfer station was caught by the wind and struck the exterior of her vehicle as she proceeding through the gate opening. Settlement negotiations were successful. The parties stipulated to dismiss the lawsuit and the court closed this matter on March 27, 2018.

5. John Does 1 – 3 v. Kenai Peninsula Borough School District – Case No. 3KN-18-00155CI. Three former students have brought suit against the school district, the Kenai Peninsula Hockey Association and former coach Bradley Elliott for damages stemming from the alleged sexual abuse of minors, alleged negligent hiring and alleged vicarious liability. The district's answer was filed on March 30, 2018.
- B. Following are appeals from the Planning Commission to the administrative hearing officer pursuant to KPB 21.20.
1. Case 2017-05. This is a material site appeal for a gravel pit located in Nikiski. The Planning Commission's written notice of decision was dated November 29, 2017. Appeals were filed with the borough clerk by two property owners pursuant to KPB 21.20 on December 14, 2017. Appellant No. 1 is seeking reversal of the Planning Commission's decision. Appellant No. 2 seeks a remand of this matter to the Planning Commission. This matter is set for hearing on April 5, 2018, with a ruling expected within 15 days after completion of the hearing.
- C. Following are recently resolved or open cases for matters enforced pursuant to KPB 21.50, Violations and Enforcement, which were set for hearing before an administrative hearing officer.
1. Case No. 2016-19. A material site was being operated without a permit and encroached both on adjacent property and a borough right-of-way. (KPB 21.25, 21.29.) An enforcement agreement was executed wherein the operator agreed to remediate the damage to adjacent property and the borough right-of-way, and that a material site permit would be pursued. Progress has been made toward compliance. Hearing date is currently scheduled for June 22, 2018.

2. Case No. 2018-02. Floodplain violation in Seward. (KPB 21.06.) The violation has been corrected and the property owner has signed a non-conversion agreement.

3. Case Nos. 2017-04, 2017-05, 2017-06, 2017-08 & 2017-09. A general contractor and subcontractor were charged with dumping riprap within the anadromous habitat protection district and floodway on two lots on Dow Island. (KPB 21.06, 21.18.) An order for a removal plan subject to the KPB Planning Department's approval was issued. The general contractor was fined \$34,800 for two violations (KPB 21.18 and 21.06) on two lots. The subcontractor was fined \$17,400 for two violations (KPB 21.18 and 21.06) on one lot. The fines are due April 24, 2018. \$10,000 of the general contractor's fine is suspended and will be forgiven if full compliance is gained by a date certain.