



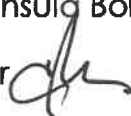
Legal Department

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Charlie Pierce
Borough Mayor

LITIGATION STATUS REPORT

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 

FROM: Colette Thompson, Borough Attorney 
Holly Montague, Deputy Borough Attorney 

DATE: February 7, 2019

RE: Litigation Status Report – Quarter Ending 12/31/18

This report includes brief descriptions of pending non-routine court cases, as well as administrative appeals 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. 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. Discovery is in process and trial call is scheduled for March 13, 2019.
2. John Does 1–3 v. Kenai Peninsula Borough School District – Case No. 3KN-18-00155CI. Three former students sued the school district, the Kenai Peninsula Hockey Association and former coach Bradley Elliott for

damages stemming from alleged sexual abuse of minors, alleged negligent hiring and alleged vicarious liability. In April, 2018, the court granted an unopposed motion for a protective order filed by Mr. Elliott. Following court approval of a discovery stipulation, discovery is in process. Trial is currently scheduled to begin the week of April 6, 2020.

3. Halstead v. Jeremy T. Anderson and Kenai Peninsula School District, Case No. 3KN-18-00744CI. Plaintiff has sued Mr. Anderson and the Kenai Peninsula Borough School District for damages relating to Mr. Anderson's alleged sexual abuse of her as a minor. The complaint against the school district claims it failed to protect her from Mr. Anderson and seeks damages and actual attorney fees. The district has filed an answer and discovery is in process. Trial has not yet been scheduled.

4. Kinneen v. Kenai Peninsula Borough, Case No. 3HO-18-00243CI. Kinneen filed a lawsuit to invalidate a counter permit issued by the planning department for a material site. He also requested injunctive relief to prohibit operations in the pit by permittee, Beachcomber, LLC. The borough has filed an answer and motion for summary judgment. Oral argument on the motion for summary judgment has been requested.

5. Sandra Brown v. Kenai Peninsula Borough and Charlie Pierce, 3KN-19-00067CI. Ms. Brown recently filed a lawsuit against the borough and Mayor Pierce for damages relating to alleged employment discrimination and other employment-related claims. The borough will file an answer shortly.

6. Kane County, Utah v. The United States of America, Case Nos. 17-739C; 17-1991C. This is a class action lawsuit for the underpayment of PILT funds for fiscal years 2015-2017, in which the borough is a party. The court entered judgment for the plaintiffs in the amount of \$16,322,574 on November 16, 2018 and allocated a total of \$112,175 to the borough for underpayment of PILT monies for the years of 2015 and 2016 and \$6,294 for 2017. The U.S. has filed notices of appeals of the court's judgments.

- B. 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 in violation of KPB 21.25 and 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. The party has made substantial progress in remediation and a material site permit has been authorized but not issued. The hearing date of June 22, 2018, was postponed to allow the party to replat his property to support its use as a material site at which point the permit may be issued and the case dismissed. The final plat has been approved. KPB is proceeding with dismissal of the case.

2. Case No. 2018-19. A material site was operated in violation of its material site permit by destroying the required buffer area of the pit. An enforcement agreement was entered. Time has passed for compliance with the enforcement agreement and further enforcement action is being pursued.

- C. Following are open administrative appeals from Planning Commission decisions:

1. Case Nos. 2018-01 and 2018-03, Consolidated. Two appeals were filed from the approval of a material site permit. One appeal was filed by a special interest group. The borough filed a motion to dismiss the special interest group for lack of standing because it is not an aggrieved property owner. The special interest group withdrew its appeal. The case has been briefed and heard. The hearing officer upheld the approval of the material site. A motion for reconsideration was denied by the hearing officer. The 30-day appeal period to the superior court has not expired.

2. Case No. 2018-02. An applicant filed an appeal from the Planning Commission's denial of a material site. The case has been briefed and

heard and the hearing officer remanded the case to the Planning Commission. Two motions for reconsideration were filed with the hearing officer which were denied.

3. Case No. 2018-04. *An appeal of an approved plat was filed. The hearing is set for March 1, 2019 before the hearing officer. Briefing is in process.*