



Legal Department

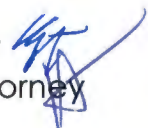
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Charlie Pierce
Borough Mayor

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: June 20, 2019

RE: Litigation Status Report – Quarter Ending 6/3/19

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. Trial call is set for November 6, 2019 with trial scheduled for the week of November 18, 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. The parties have filed cross-motions for summary judgment on the question of the applicable statute of limitations. 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. The parties filed a joint notice of available trial dates requesting the court set trial for the week of May 18—22, 2020, or later, based on the court's availability. A pretrial scheduling conference is scheduled for June 25, 2019.

4. Kinneen v. Kenai Peninsula Borough, Case No. 3HO-18-00243CI. Mr. 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. Brown v. Kenai Peninsula Borough and Charlie Pierce, 3KN-19-00067CI. Ms. Brown filed a lawsuit against the borough and Mayor Pierce for damages relating to alleged employment discrimination and other employment-related claims. The parties agreed to mediation with Justice Dana Fabe which was held on May 10, 2019. Settlement was reached at the mediation and this matter has now been dismissed.

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. This amount will be reduced by the borough's share of attorney fees. The U.S. has filed notices of appeals of the court's judgments. The US filed for a 59-day time extension to May 17 in which to file its opening briefs. The Court of Appeals granted the government's motion on March 26, 2019. On June 10, 2019, we received notice that the court judgments officially became final. The borough submitted a payment request and payments are expected by mid-September, 2019.

7. Diamond Willow Homeowner's Association v. Kenai Peninsula Borough and Consolidated Development & Management, LLC, Case No. 3KN-19-00355Cl. An appeal of an approved plat was filed and a hearing held before the administrative hearing officer on March 1, 2019. On March 20, 2019 the hearing officer issued a decision upholding the plat approval. Appellant, Diamond Willow Homeowner's Association, filed an appeal of the hearing officer's decision on April 18, 2019, in the Kenai Superior Court. Appellee, Consolidated Development & Management LLC filed a motion to dismiss the appeal which appellant opposed. The borough did not oppose the motion to dismiss. The agency record has been filed and a briefing schedule has been issued by the court. Appellant's opening brief is currently due on July 15, 2019 and appellees' briefs are due 30 days after service of appellant's brief.

8. Kenai Peninsula Borough School District v. Fischer, Case No. 3KN-19-00185Cl. This case was filed against a school district employee for the reimbursement of substantial health care costs paid by the health care plan ("Plan"). The Plan requires that employees who receive medical care paid by the Plan, for injuries caused by a third party, must reimburse the Plan for any recovery received from the party at fault. Reimbursement is owed because the employee received enough insurance funds from the party who caused the injuries to fully reimburse the Plan for its cost. Mr. Fischer has failed to pay the amount owed.

9. Back v. Kenai Peninsula Borough and Charlie Pierce, Case No. 3KN-19-00385Cl. This is an administrative appeal to the superior court of the assessor's determination that Mr. Back's property is taxable. Mr. Back's motion for reconsideration of the court's denial of his motion to waive cost

bond is currently before the court. The appeal briefing schedule has not been set by the court to date.

- 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. 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 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. The matter was heard at the March 25th Planning Commission meeting and the hearing was continued until the June 10, 2019 Planning Commission meeting. A hearing was held and the matter was continued for findings and a final decision to the June 24, 2019 Planning Commission meeting.