



Legal Department

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Charlie Pierce
Borough Mayor

LITIGATION STATUS REPORT

TO: Kelly Cooper, Assembly President
Penny Vadla, President, Board of Education
Members, Kenai Peninsula Borough Assembly
Members, Kenai Peninsula Borough School District

THRU: Charlie Pierce, Mayor *ch*

FROM: Colette Thompson, Borough Attorney *CT*
Sean Kelley, Deputy Borough Attorney *SK*

DATE: January 9, 2020

RE: Litigation Status Report – Quarter Ending 12/31/19

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-17-00741Cl. 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. This case was settled through mediation conducted in November, 2019.
2. John Does 1–3 v. Kenai Peninsula Borough School District et al– Case No. 3KN-18-00155Cl. 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. Discovery is in process. Discovery is continuing. The parties have filed cross-motions for summary judgment on the question of which statute of limitations governs the claims against the school district and hockey association for vicarious liability for Mr. Elliott's criminal actions. The Superior Court recently issued an order granting the school district's and hockey association's motions. Trial is currently scheduled to begin the week of November 2, 2020. The parties have tentatively agreed to attempt to resolve the case through mediation.

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 district also recently filed a motion for summary judgment against the plaintiff's claims for punitive damages against the district. Trial call is currently scheduled for July 8, 2020 and trial for the week of July 20, 2020.

4. *Kinneen v. Kenai Peninsula Borough*, Case No. 3HO-18-00243CI. The borough was dismissed with prejudice from this case on October 30, 2019.

5. *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 was to be reduced by the borough's share of costs and attorney fees. Payment to the borough in the amount of \$78,795 was received on October 21, 2019 and the case is closed.

6. *Diamond Willow Homeowner's Association v. Kenai Peninsula Borough and Consolidated Development & Management, LLC*, Case No. 3KN-19-00355CI. 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. Briefing has been completed by all parties. The court's decision is now pending.

7. Kenai Peninsula Borough School District v. Fischer, Case No. 3KN-19-00185CI. 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 out of 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 costs. Defendant has failed to pay the amount owed. Discovery is in process, Plaintiff filed a motion to compel defendant to provide disclosures which the court granted, and awarded Plaintiff's attorneys' fees relating to that motion. Defendant has filed a Partial Motion to Dismiss, and numerous other motions and oppositions have been filed. The scheduled trial week is currently July 6, 2020.

8. Back v. Kenai Peninsula Borough and Charlie Pierce, Case No. 3KN-19-00385CI. This is an administrative appeal to the superior court of the assessor's determination that Mr. Back's property is taxable. The court granted the borough's motion to dismiss, awarded attorney's fees to the borough, and entered an order applying the bond on appeal to the award of attorney's fees.

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 or recently resolved administrative appeals from Planning Commission decisions:
1. Case No. 2019-01-PCA. Appellant appealed a planning commission decision approving applicant's material site conditional land use permit. Following the hearing in the case, the hearing officer issued a decision upholding the planning commission's decision. The Appellant filed a motion for reconsideration which the hearing officer denied in a decision dated December 12, 2019.
 2. Case No. 2019-02-PCA. Appellant appealed a planning commission decision approving the vacation of a drainage easement on Lot24-A, AA Mattox Peggi's Addition, KPB file no. 2019-048V. A hearing before the assembly is currently scheduled for February 25, 2020 at 10:00 a.m. However, a motion has been filed by the Appellant to continue the hearing to April 7, 2020.