



Legal Department

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Charlie Pierce
Borough Mayor

LITIGATION STATUS REPORT

TO: Brent Hibbert, Assembly President
Zen Kelly, President, Board of Education
Members, Kenai Peninsula Borough Assembly
Members, Kenai Peninsula Borough School District

THRU: Charlie Pierce, Mayor *JCB*

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

DATE: April 8, 2021

RE: Litigation Status Report – Quarter Ending 03/31/21

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. 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. Mediations were held individually with each plaintiff on March 25, 26 and 27, 2020. Doe 1 settled at mediation and has been dismissed from the lawsuit. Mediation attempts with Does 2 and 3 were unsuccessful. The School District has filed two summary judgment motions that are pending. One seeks a ruling that the statute of limitations bars plaintiffs' cases and the other requests a ruling that the district may not be held vicariously liable for plaintiffs' claimed damages. Oral argument on the

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statute of limitations motion was held on January 19, 2021 and the court issued a confidential order. The trial is scheduled for the week of November 8, 2021. Discovery is continuing.

2. 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 filed a motion for summary judgment against the plaintiff's claims for punitive damages against the district that was granted by the court. This means plaintiff may not seek punitive damages from the district. Trial is scheduled for the week of October 18, 2021. Discovery is continuing.
3. 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. Defendant filed a Partial Motion to Dismiss which was denied. Numerous other motions are pending. On March 9, 2021, this case was referred to mediation. Trial is scheduled for the week of November 1, 2021.
4. Fischer v. KPBSD, Case No. 3KN-20-00495CI. This case was filed on July 14, 2020 by Matthew Fischer on behalf of his minor child. The complaint alleges the minor sustained damages while using the pull-up bars at Skyview Middle School on November 13, 2015. The district filed its answer to plaintiffs' complaint on August 18, 2020. Trial is scheduled for the week of February 14, 2022. Discovery is continuing.
5. Nelson v. KPB, Case No. 3AN-20-07408CI. Mark Nelson filed this case on August 26, 2020 against a laundry list of defendants including the borough. The complaint seeks quiet title to a parcel of land in Seward, Alaska. The crux of the complaint is that Mr. Nelson purchased land only to discover that the land has a number of liens for unpaid monies owed by the

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previous owner. Mr. Nelson wants to have those liens extinguished without having to pay for them. The borough has timely filed an answer and affirmative defenses. As discovery has not commenced due to the early stages of this case, no meaningful evaluation can be made at this time. Discovery has not yet commenced in this case due to Covid related delays.

6. Bilben, et al. v. KPB PC, Beachcomber LLC, et al., Case No. 3KN-20-00034CI. This case involves an appeal of a planning commission conditional land use permit (CLUP) approval. The borough is currently not participating in this appeal because only private interests are at stake. Briefing has been completed and oral argument was held on March 1, 2021. The court has taken the matter under advisement and will issue a written decision in due course.

B. Following are open or recently resolved administrative appeals from Planning Commission decisions:

1. Case No. 2020-01 PCA. Neighboring property owners appealed a planning commission's decision approving a modification of a conditional land use permit. The borough filed a notice of non-participation in the matter and is not a party to the appeal. This case is stayed until a decision is issued in Case No. 3KN-20-34CI, discussed above at (A)(6).
2. Case No. 2020-03 PCA. A neighboring property owner appealed a planning commission's decision approving a conditional land use material site permit in the Soldotna/Sterling area on a parcel off Pine Street. The hearing officer granted the Applicant's Motion to Dismiss on March 15, 2021, citing the Appellant's failure to submit an opening statement as required by KPB 21.20.280(A), and dismissed the case. This case is currently within the 30-day period in which a party could appeal the hearing officer's decision to superior court.