



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 *CP*

FROM: Patty Burley, Acting Borough Attorney *PB*
Sean Kelley, Deputy Borough Attorney *SK*

DATE: August 5, 2021

RE: Litigation Status Report – Quarter Ending 06/30/21

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-18-00155Cl. 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. 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. Settlement negotiations continued and a settlement was reached with the remaining plaintiffs on July 12, 2021. The lawsuit was dismissed by stipulation with each party agreeing to bear their own costs and fees. **The court entered an order dismissing this case in its entirety, with prejudice, on July 28, 2021.**

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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 KPBSD filed a motion for leave to take defendant Anderson's deposition which has been granted. Depositions of the plaintiff and Mr. Anderson are pending the court's release of documents submitted for in-camera review. Also pending before the court is a joint motion filed by plaintiff and KPBSD to continue the trial date of October 18, 2021. This continuance was requested due to a delay in the discovery process resulting from the Covid-19 pandemic
3. Kenai Peninsula Borough School District v. Fischer, Case No. 3KN-19-00185CI. This case was filed against a school district employee to recovery substantial health care costs paid by the health care plan ("Plan"). The Plan requires that employees reimburse the Plan for Plan-paid medical costs incurred for treatment of injuries caused by a third-party when the employee receives reimbursement from the at-fault party. Defendant failed to pay the amount when he was reimbursed by the third-party's insurer. Plaintiff has filed a motion for an evidentiary hearing on the issue of whether this suit was filed after the expiration of the statute of limitations. The evidentiary hearing is scheduled for August 10, 2021. The court has referred this case to mediation, which is pending at this time. Trial remains scheduled for the week of November 1, 2021.
4. Fischer v. KPBSD, Case No. 3KN-20-00495CI. This case was 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. Discovery is ongoing and trial is scheduled for the week of February 14, 2022.
5. Nelson v. KP, 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 previous owner. Mr. Nelson wants to have those liens extinguished without having to pay for them. The borough has timely filed an answer and

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affirmative defenses. Mr. Nelson was able to successfully eliminate a number of the liens that were on the property in error and was able to eliminate a few of the liens when the named defendants failed to answer. Two defendants, the Borough and the State of Alaska, Office of Child Support Enforcement, agreed to allow Mr. Nelson to dismiss the claim against them provided the liens remain in place. This means that whenever the property is sold, the liens will need to be paid off.

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.

 7. *Furie Operating Alaska, LLC. v. State of Alaska, Department of Revenue, and State Assessment Review Board*, Case No. 3AN-21-06462CI. The owner of oil and gas production property appealed the State Assessment Review Board's decision upholding the tax assessment of the property performed by the State of Alaska, Department of Revenue pursuant to AS 43.56. The borough entered an appearance in this matter and has engaged Jessica Dillon a partner at the firm Dillon & Findley in Anchorage to act as lead counsel in this matter. There are no pending motions, upcoming hearings, or discovery items at this time. It is anticipated that a scheduling hearing will be set at some point in the near future.
- 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 use material site 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).

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2. Case No. 2021-01 PCA. The owner/operator of a material site permit appealed the planning commission's decision denying the request to modify a conditional land use permit to allow excavation below groundwater as well as denying the Applicant's request for localized dewatering. Neighboring property owners have entered appearances in support of the planning commission decision. The borough entered an appearance for the purpose of requesting the matter be remanded to the planning commission for more definitive findings of fact and conclusions of law. The motion for remand back to the planning commission is currently pending review by the administrative hearing officer.

3. Case No. 2021-02 PCA. The owner of a bed and breakfast located in a local option zoning district (LOZD) appealed the planning commission's decision reversing and modifying the planning director's reconsideration decision on the owner/applicant's nonconforming use application. The matter has been forwarded to the Office of Administrative Hearings and is awaiting assignment to a judicial officer. The borough's planning department has entered an appearance in this matter.