



Legal Department

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Mike Navarre
Borough Mayor

LITIGATION STATUS REPORT

TO: Brent Johnson, Assembly President
Debbie Cary, President, Board of Education
Members, Kenai Peninsula Borough Assembly
Members, Kenai Peninsula Borough School District

THRU: Mike Navarre, Mayor *MN*

FROM: Sean Kelley, Borough Attorney *SK*

DATE: January 5, 2023

RE: Litigation Status Report – Quarter Ending 12/31/22

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. The following is a summary of the non-routine litigation which name the Borough and/or School District as parties. This list does not include the real property tax foreclosures and numerous standard tax collection cases pursued by the Borough:
1. *Halstead v. 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 sexual abuse of her as a minor. The complaint against the school district claims the school district failed to protect her from Mr. Anderson and seeks damages and actual attorney fees. Trial has been scheduled for the week of September 18, 2023. Discovery is ongoing.
 2. *Kenai Peninsula Borough School District v. Fischer*, Case No. 3KN-19-00185CI. This is a subrogation case that was filed against a School District employee to recover substantial health care costs paid by the health care plan ("Plan"). The school district engaged the services of Jermain, Dunnagan & Owens to

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serve as counsel in this matter. The trial set for September 26, 2022, was vacated due to summary judgment entered in favor of plaintiff. Judgment was entered in favor of plaintiff on October 20, 2022. Post-judgment motion litigation is continuing.

3. *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. This appeal has been consolidated with the taxpayer's 2022 tax assessment appeal. A non-jury trial is currently scheduled in this matter for the week of July 24, 2023.
4. *Smith v. CES, Case No. 3KN-22-00444CI.* This is a complaint for medical malpractice filed by the plaintiffs against CPGH, various doctors, nurses and CES for actions taken in response to a medical situation and subsequent treatments rendered. KPB filed a motion to dismiss CES and its employees from this action which is being briefed by the parties prior to the court's ruling. CES is not a separate entity from the Borough and, at a minimum, the complaint will need to be corrected prior to the Borough answering the complaint in this matter.
5. *Martin v. KPB, Case No. 3KN-22-00644CI.* This is a complaint for automobile-related personal injury filed on behalf of plaintiff, Ms. Martin. The Borough has entered an appearance in this matter and answered the complaint. An informal conference has been scheduled for January 10, 2023, to establish the pretrial deadlines and trial date.
6. *Wastell v. KPB, Pierce, Case No. 3KN-22-00765CI.* This is a complaint filed on behalf of the plaintiff for damages stemming from alleged sexual harassment and other acts committed by former Borough Mayor Pierce. The plaintiff alleges the Borough is liable for damages due to the fact that the Borough Mayor should be considered an employee of the Borough, and alleging that the Borough failed to adequately protect the Plaintiff who was also an employee of the Borough at the time of the alleged wrongful acts. KPB's motion to dismiss Plaintiff's claims for punitive damages has been briefed by the parties and is pending the court's ruling. An answer to the complaint will

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be filed once the court rules on the motion to dismiss. A pretrial scheduling conference will then be held to establish pretrial and trial deadlines. No trial date has been set.

B. The following is a summary of open or recently resolved administrative appeals from Planning Commission decisions:

1. Case No. 2020-01 PCA, Beachcomber. 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 currently.
2. Case No. 2022-04 PCA, Bilben, et al. v. KPB PC, Beachcomber LLC, et al. This case involves a second appeal to the Office of Administrative Hearings ("OAH") of the Planning Commission's approval of a conditional land use permit ("CLUP") after the matter was remanded from the superior court. The Borough did not participate in the superior court appeal because only private interests were at stake. The superior court issued its decision remanding the matter to the Planning Commission for additional findings. Subsequently, Beachcomber, LLC filed an appeal to the Alaska Supreme Court. The Supreme Court denied the petition for review and the matter went before the Planning Commission on remand. In January 2022, the Planning Commission determined not to reopen the record for new evidence or public comment, and to deliberate in adjudicative session. On April 11, 2022, the Planning Commission voted to deny the CLUP on remand. Beachcomber, LLC appealed to OAH. After briefing and a hearing, OAH released its Decision on December 6, 2022, upholding the Planning Commission's denial of the CLUP.
3. Case No. 2022-05 PCA, Kossler. This is an appeal of the Planning Commission's decision to uphold the June 23, 2022, Plat Committee's conditional preliminary approval of East Oyster Cove Subdivision Preliminary Plat as requested by applicant, Alaska Mental Health Trust Authority. The OAH has issued the pre-hearing briefing schedule and tentatively scheduled the hearing for February 9, 2023.
4. Case No. 2022-06 PCA, Taylor. The Planning Commission conditionally approved a building setback encroachment permit. Neighboring property owners appealed to OAH. The Borough filed a Motion to Dismiss, which

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OAH denied. OAH issued the pre-hearing briefing schedule and tentatively scheduled the hearing for February 23, 2023.

C. Settlements executed on behalf of the Borough in the quarter ending 12/31/22.

1. None