



## Legal Department

144 N. Binkley Street, Soldotna, Alaska 99669 • (907) 714-2120 • (907) 714-2379 Fax

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 *CR*

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

**DATE:** September 30, 2021

**RE:** Litigation Status Report – Quarter Ending 09/30/21

---

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. The 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. Halstead v. Jeremy T. Anderson and Kenai Peninsula School District, Case No. 3KN-18-00744C1. 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. Previously the parties filed a motion to continue the tentative October 2021 trial date due to Covid related discovery delays. While the request was granted, the court has left the October 6 trial call date on the docket as a status.

Page -2-

September 30, 2021

Re: Litigation Status Report

---

2. *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 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 was set for September 21, 2021. After some continuances, the evidentiary hearing is currently set for October 21, 2021 with trial call set for the following day and a scheduled trial week of November 1, 2021. The court has referred this case to mediation.
3. *Fischer v. KPBSD*, Case No. 3KN-20-00495CI. This case was filed 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.
4. *Bilben, et al. v. KPB PC, Beachcomber LLC, et al.*, Case No. 3KN-20-00034CI. This case involved an appeal to the Superior Court of a planning commission conditional land use permit (CLUP) approval. The borough did not participate in this appeal because only private interests were at stake. The superior court recently issued its decision remanding the matter back to the planning commission for additional findings. Subsequently, Beachcomber, LLC filed an appeal to the Alaska Supreme Court. This process can take a year or more so it is unknown when the matter will return to the planning commission. The superior court's remand decision is available upon request.
5. *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. The borough served its initial mandatory disclosure documents and information on the parties to this case. Discovery is on ongoing. There are no pending motions or upcoming hearings at this time. A non-jury trial is currently scheduled in this matter for the week of October 10, 2022.

Page -3-  
September 30, 2021  
Re: Litigation Status Report

---

- 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 until a decision is issued in the recently filed Alaska supreme court case, discussed above at (A)(6).
  2. Case No. 2021-01 PCA, River Resources, LLC. 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 a localized dewatering exception. The hearing officer issued orders remanding this case to the planning commission for more adequate findings. On September 27, 2021, the planning commission met at its regularly scheduled meeting and voted to set the remand hearing for October 18, 2021 at 6:30 p.m. The planning commission also voted to not reopen public testimony and/or accept any new evidence in the matter.
  3. Case No. 2021-02 PCA, TRL Adventures. 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 borough's planning department has entered an appearance in this matter. The appeal hearing is currently scheduled for October 26, 2021.
  4. Case No. 2021-03 PCA, Rosenberg v CIRI. Neighboring property owners appealed the planning commission's decision approving a modification of a conditional land use permit. The borough filed a limited entry of appearance notifying the parties of its intent not to participate in the matter but only to monitor what is happening in the proceedings.