



Legal Department

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Charlie Pierce
Borough Mayor

LITIGATION STATUS REPORT

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

THRU: Charlie Pierce, Mayor *chi*

FROM: Colette Thompson, Borough Attorney *CT*
Holly Montague, Deputy Borough Attorney *HM*

DATE: October 11, 2018

RE: Litigation Status Report – Quarter Ending 9/30/18

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. Hunt v. Kenai Peninsula Borough — Case No. 3AN-16-10652CI. In this lawsuit the plaintiffs asked the court to declare the borough assembly's invocation policy violates the Alaska Constitution. They also sought a declaration that the plaintiffs are public interest litigants and requested an award of full and reasonable attorneys' fees and costs as well as nominal damages. Both parties filed motions for summary judgment, oppositions and replies. Judge Peterson issued a decision on October 9, 2018, holding that the borough's policy excludes minority faiths and therefore violates Alaska's Establishment Clause.

2. Walden v. Kenai Peninsula Borough School District – Case No. 3KN-17-00741CI. 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. Discovery is in process and trial call is scheduled for March 13, 2019.
3. John Does 1–3 v. Kenai Peninsula Borough School District – Case No. 3KN-18-00155CI. Three former students have brought suit against 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. In April, 2018, the court granted an unopposed motion for a protective order filed by Mr. Elliott. Following court approval of a discovery stipulation discovery is now in process.
4. Anderson/Haney v. Kenai Peninsula Borough Planning Commission, et al. – Case No. 3KN-18-00447CI. An appeal to the superior court was filed by property owners Carol Anderson and Henry Haney. This is an appeal of the hearing officer's decision and order upholding the Planning Commission's decision to approve a material site conditional land use permit for a gravel pit located in Nikiski. Appellants' withdrew their appeal on September 25, 2018, prior to the filing of briefs.
5. 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 school district's answer to the complaint and initial discovery requests are due on October 15, 2018.
6. Kinneen v. Kenai Peninsula Borough, Case No. 3HO-18-00243CI. Kinneen filed a lawsuit to invalidate a counter permit issued by the planning department for a material site. He also requested injunctive relief to prohibit operations in the pit by permittee, Beachcomber, LLC. The borough has filed an answer and motion for summary judgment.

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. 2016-19. A material site was being operated without a permit and encroached both on adjacent property and a borough right-of-way in violation of KPB 21.25 and 21.29. An enforcement agreement was executed wherein the operator agreed to remediate the damage to adjacent property and the borough right-of-way, and that a material site permit would be pursued. The party has made substantial progress in remediation and a material site permit has been authorized but not issued. The hearing date of June 22, 2018, was postponed to allow the party to replat his property to support its use as a material site at which point the permit may be issued and the case dismissed. The preliminary plat was approved and the final plat has been submitted to the planning department for review.

2. Case No. 2018-19. A material site operated in violation of its material site permit by destroying the required buffer area of the pit. An enforcement hearing is set for October 26, 2018.

3. Case Nos. 2018-01 and 2018-03, Consolidated. Two appeals were filed from the approval of a material site permit. One appeal was filed by a special interest group. The borough filed a motion to dismiss the special interest group for lack of standing because it is not an aggrieved property owner. Opening briefs are currently due on October 25, 2018, and a hearing is set on for December 6, 2018.

4. Case No. 2018-02. An applicant filed an appeal from the planning commission's denial of a material site. Opening arguments are due on October 25, 2018, and the hearing before the hearing officer is scheduled for December 6, 2018.