



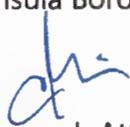
Legal Department

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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 

FROM: Colette Thompson, Borough Attorney 
Holly Montague, Deputy Borough Attorney 

DATE: July 5, 2018

RE: Litigation Status Report – Quarter Ending 6/30/18

This report includes brief descriptions of pending non-routine court cases 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 ask the court to declare the borough assembly's invocation policy violates the Alaska Constitution. They also seek a declaration that the plaintiffs are public interest litigants and request 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. On April 11, 2018, the court held oral argument on the parties' summary judgment motions. Following oral

argument, Judge Peterson took the matter under consideration. The court has six months to issue its ruling on the motions for summary judgment.

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. The case has been assigned to Judge Anna Moran. The school district has filed an answer to the complaint and requested a trial by jury. 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 the alleged sexual abuse of minors, alleged negligent hiring and alleged vicarious liability. The district's answer was filed on March 30, 2018 and a status hearing is scheduled for July 17, 2018.

4. Anderson/Haney v. Kenai Peninsula Borough Planning Commission, et al. – Case No. 3KN-18-00447CI. An appeal to the superior court has been 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. The record on appeal has been prepared by the clerk's office. A briefing schedule will be issued by the court upon acceptance of the filing of the record on appeal.

- 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.

2. Case Nos. 2017-04, 2017-05, 2017-06, 2017-08 & 2017-09. A general contractor and subcontractor were charged with dumping riprap within the anadromous habitat protection district and floodway on two lots on Dow Island. An order for a removal plan subject to the KPB Planning Department's approval was issued. The general contractor was fined \$34,800 for two violations on two lots. The subcontractor was fined \$17,400 for two violations on one lot. \$10,000 of the general contractor's fine was suspended and forgiven for full compliance pursuant to the hearing officer's order. The contractor has complied with the removal plan and paid \$42,000 in assessed fines.