



Legal Department

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Charlie Pierce
Borough Mayor

LITIGATION STATUS REPORT

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

THRU: Charlie Pierce, Mayor *CR for CP*

FROM: Sean Kelley, Borough Attorney *SK*

DATE: April 21, 2022

RE: Litigation Status Report – Quarter Ending 03/31/22

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 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-18-00744CI. 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. Trial is scheduled for the week of October 17, 2022. Discovery is ongoing.
2. Kenai Peninsula Borough School District v. Fischer, Case No. 3KN-19-00185CI. This case was filed against a school district employee to recover 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

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reimbursement from the at-fault party. Defendant failed to pay the amount when he was reimbursed by the third-party's insurer. Plaintiff filed for summary judgment on the issue of breach of contract and to preclude the defendant's use of the "made-whole" doctrine. The court entered an order on February 17, 2022, finding that Fischer breached the contract by failing to reimburse the plan, and further ruled that he may rely on the "made-whole" doctrine to reduce the District's claim. The court also found that the District filed its complaint timely as the appropriate statute of limitations is six years. Trial is rescheduled to the week of September 5, 2022. Discovery is continuing.

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. An offer of judgment was extended to the plaintiff. The plaintiff did not accept the offer. Defendant filed a motion to extend the unelapsed pretrial dates and to move the trial date. A status conference is set for May 4, 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 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. 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.
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.

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- 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. 3KN-22-00026CI, TLR Adventures v. Kenai Peninsula Borough. 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 planning commission's decision was upheld. The owners have now filed this appeal in the superior court. The appellant requested a routine extension of time to file its initial brief. The borough did not oppose. Assuming the court grants the appellant's request, the appellant's brief will be due May 2, 2022. The borough will then have thirty days to file its initial brief.
 3. Case No. 2022-02 PCA and 2022-03 PCA, Rosenberg & Schielbein v CIRI. Neighboring property owners appealed the planning commission's decision in 2021-03 PCA, Rosenberg v. CIRI, approving a modification of a conditional land use permit which was subsequently upheld by the planning commission. Mr. Rosenberg and Mr. Schiefelbien have now appealed the decision in 2021-03 PCA. Both appeals have been assigned to the Office of Administrative Hearings where they will be consolidated into one appeal. The parties are awaiting certification of the record and issuance of the briefing schedule.
 4. Case No. 2022-01 PCA, McBride v. River Resources, LLC. This appeal was filed on December 20, 2021, following the planning commission's decision on remand of the River Resources appeal. All briefs have been filed and the appeal hearing has been scheduled for May 4, 2022.