



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 CP

FROM: Colette Thompson, Borough Attorney CT
Sean Kelley, Deputy Borough Attorney SK
Patty Burley, Deputy Borough Attorney PB

DATE: January 7, 2021

RE: Litigation Status Report – Quarter Ending 12/31/20

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. John Does 1-3 v. Kenai Peninsula Borough School District et al., Case No. 3KN-18-00155CI. Three former students sued 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. Mediations were held individually with each plaintiff on March 25, 26 and 27, 2020. Doe 1 settled at mediation and has been dismissed from the lawsuit. Mediation attempts with Does 2 and 3 were unsuccessful. The School District has filed two summary judgment motions which are pending. One seeks a ruling that the statute of limitations bars plaintiffs' cases and the other requests a ruling that the district may not be held vicariously liable for plaintiffs' claimed damages. Oral argument on the

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motions is scheduled for
January 19, 2021.

Defendant Kenai Peninsula Hockey Association was dismissed from this lawsuit by order of the court entered on November 6, 2020.

The trial is scheduled for the week of November 8, 2021. Discovery is continuing.

2. 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 district has filed an answer and discovery is in process. The district also filed a motion for summary judgment against the plaintiff's claims for punitive damages against the district which was granted by the court. This means plaintiff may not seek punitive damages from the district. Trial is scheduled for the week of October 18, 2021. Discovery is continuing.
3. Kenai Peninsula Borough School District v. Fischer, Case No. 3KN-19-00185CI. This case was filed against a school district employee for the reimbursement of substantial health care costs paid by the health care plan ("Plan"). The Plan requires that employees who receive medical care paid by the Plan, for injuries caused by a third party, must reimburse the Plan out of any recovery received from the party at fault. Reimbursement is owed because the employee received enough insurance funds from the party who caused the injuries to fully reimburse the Plan for its costs. Defendant has failed to pay the amount owed. Defendant filed a Partial Motion to Dismiss which was denied. Numerous other motions are pending. Trial is scheduled for the week of November 1, 2021.
4. Fischer v. KPBSD, Case No. 3KN-20-00495CI. This case was filed on July 14, 2020 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. The district filed its answer to plaintiffs' complaint on August 18, 2020. Trial is scheduled for the week of February 14, 2022. Discovery is continuing.

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5. Nelson v. KPB, Case No. 3AN-20-07408CI. This case was filed on August 26, 2020 by Mark Nelson against a laundry list of defendants including the borough. The complaint seeks quiet title to a parcel of land in Seward, Alaska. The crux of the complaint is that Mr. Nelson purchased land only to discover that the land has a number of liens for unpaid monies owed by the previous owner. Mr. Nelson wants to have those liens extinguished without having to pay for them. The borough has timely filed an answer and affirmative defenses. As discovery has not commenced due to the early stages of this case, no meaningful evaluation can be made at this time. Discovery has not yet commenced in this case due to Covid related delays.
 6. Bilben, et al. v. KPB PC, Beachcomber LLC, et al., Case No. 3KN-20-00034CI. This case involves an appeal of a planning commission conditional land use permit (CLUP) approval. The borough is currently not participating in this appeal due to the fact that only private interests are at stake. The superior court issued an order staying all activity on the CLUP until further order. Briefing has been completed and the parties are awaiting further court order.
- B. Following are open or recently resolved administrative appeals from Planning Commission decisions:
1. Case No. 2020-02-PCA. The assembly sitting as hearing officer in this case issued a unanimous decision on December 30, 2020 affirming Resolution 2020-16, the planning commission's vacation approval resolution, vacating a 10-foot-wide drainage easement on Lot 24-A, AA Mattox Peggi's Addition (Plat HM 99-64). A party to this case may appeal this decision within 30 days of the date of distribution of the decision (December 30, 2020).
 2. Case No. 2020-01 PCA. Appellant appealed a planning commission's decision which granted a modification of a conditional land use permit. The borough filed a notice of non-participated in the matter and is not a party to the appeal. This case is stayed until a decision is issued in Case No. 3KN-20-34CI, discussed above at (A)(6).
 3. Case No. 2020-03 PCA. Appellant appealed a planning commission's decision approving a conditional land use material site permit in the Soldotna/Sterling area on a parcel off of Pine Street. Interested parties will have 15 days to file an entry of appearance once a notice of appeal is sent by the clerk to all parties of record. It appears this case only involves

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private interests and therefore it is anticipated that the borough will not enter an appearance in this case.