



Legal Department

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Charlie Pierce
Borough Mayor

LITIGATION STATUS REPORT

TO: Kelly Cooper, Assembly President
Penny Vadla, 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

DATE: July 23, 2020

RE: Litigation Status Report – Quarter Ending 06/30/20

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

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of limitations bars plaintiffs' cases and the other requests a ruling that the district may not be held vicariously liable for plaintiffs' claimed damages. Trial is currently scheduled for the week of November 2, 2020. 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 currently scheduled for the week of January 18, 2021.
3. Diamond Willow Homeowner's Association v. Kenai Peninsula Borough and Consolidated Development & Management, LLC, Case No. 3KN-19-00335CI. An appeal of an approved plat was filed and a hearing held before the administrative hearing officer on March 1, 2019. At a hearing held on March 10, 2020, Diamond Willow and Consolidated Development indicated that they were going to submit a proposed settlement for this case and a companion case (3KN-19-00319CI) by April 1, 2020. Due to Covid-19, the court extended the date it expects to receive the settlement to May 6, 2020. This appeal was dismissed by stipulation and closed on May 20, 2020.
4. 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.

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Defendant has failed to pay the amount owed. Defendant has filed a Partial Motion to Dismiss which was denied. A trial setting conference is scheduled for September 22, 2020.

- B. Following are open or recently resolved administrative appeals from Planning Commission decisions:
1. Case No. 2019-02-PCA. Appellant appealed a planning commission decision approving the vacation of a drainage easement on Lot 24-A, AA Mattox Peggi's Addition, KPB file no. 2019-048V. A hearing before the assembly was held on May 6, 2020. The assembly reversed and remanded the matter back to the planning commission with a directive to hold a public hearing. On July 13, 2020, the planning commission held a public hearing and unanimously voted to approve the vacation.
 2. Case No. 2020-01 PCA. Appellant appealed a planning commission's decision which granted a modification of a conditional land use permit. A hearing is scheduled for September 23, 2020. The borough filed a notice of non-participation in the matter and is not a party to the appeal.