



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 *AK for CP*

FROM: Sean Kelley, Borough Attorney *SK SK*

DATE: January 6, 2022

RE: Litigation Status Report – Quarter Ending 12/31/21

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. The court granted the parties' joint motion to continue the October 18, 2021 trial date. Trial is now 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

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treatment of injuries caused by a third-party when the employee receives reimbursement from the at-fault party. Defendant failed to pay the amount when he was reimbursed by the third-party's insurer. Plaintiff filed a motion for an evidentiary hearing on the issue of whether this suit was filed after the expiration of the statute of limitations. The evidentiary hearing was held on October 21, 2021 and taken under advisement. Trial was rescheduled to the week of September 5, 2022.

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. Trial scheduled for the week of February 14, 2022 was continued to the week of May 2, 2022. Trial expert discovery is ongoing.
 4. Bilben, et al. v. KPBC, 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 recently 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 recently denied the petition for review and therefore the matter will go before the planning commission on remand. A scheduling discussion is set for the planning commission's January 10, 2022, meeting.
 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.
- B. The following is a summary of open or recently resolved administrative appeals from Planning Commission decisions:

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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 but it is anticipated that it will be reopened soon.
2. Case No. 2021-01 PCA, River Resources, LLC. The owner/operator of a material site permit appealed the planning commission's decision denying the request to modify a conditional land use permit to allow excavation below groundwater as well as denying the Applicant's request for a localized dewatering exception. The hearing officer issued orders remanding this case to the planning commission for more adequate findings. A remand hearing was held in this matter on December 13, 2021 wherein the planning commission granted the CLUP and entered additional findings of fact and conclusions of law. The planning commission's decision was subsequently appealed (see *McBride v. River Resources, LLC* below).
3. Case No. 2021-02 PCA, TRL Adventures. 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 borough's planning department has entered an appearance in this matter. The hearing officer has entered a decision in this case upholding the planning commission's decision. Subsequently, the hearing officer has denied TLR's request for reconsideration. The hearing officer's decision may be appealed to the superior court within 30 days of the December 13, 2021 Decision and Order issued in this case.
4. Case No. 2021-03 PCA, Rosenberg v CIRI. Neighboring property owners appealed the planning commission's decision approving a modification of a conditional land use permit. The borough filed a limited entry of appearance notifying the parties of its intent not to participate in the matter but only to monitor what is happening in the proceedings. The case has subsequently been remanded to the planning commission to augment their findings consistent with the superior court's decisions in *Bilben v. Beachcomber*, Case No. 3KN-20-00034CI.
5. 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 described in paragraph 2,

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above. Certification of the record is due on approximately February 18, 2022, with a briefing schedule to follow.