



## Legal Department

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Charlie Pierce  
Borough Mayor

### LITIGATION STATUS REPORT

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**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*

**DATE:** September 29, 2022

**RE:** Litigation Status Report – Quarter Ending 09/30/22

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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 name the Borough and/or School District as parties. This list does not include the real property tax foreclosures and numerous standard tax collection cases pursued by the Borough:
1. Halstead v. 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 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 scheduled for the week of October 17, 2022, was vacated. A conference has been set for October 24, 2022, to schedule a new trial date. Discovery is ongoing.
  2. Kenai Peninsula Borough School District v. Fischer, Case No. 3KN-19-00185CI. This is a subrogation case that was filed against a School District employee to recover substantial health care costs paid by the health care plan ("Plan"). The trial set for September 26, 2022, was vacated due to summary judgment

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entered in favor of plaintiff. Currently pending before the court is a request from the defendant seeking an extension of time to file a motion of reconsideration of the court's order on summary judgment.

3. *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. This appeal has been consolidated with the taxpayer's 2022 tax assessment appeal. A non-jury trial is currently scheduled in this matter for the week of July 24, 2023.

- 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. 2022-04 PCA, Bilben, et al. v. KPB PC, Beachcomber LLC, et al.*, This case involves a second appeal to the Office of Administrative Hearings ("OAH") of a planning commission conditional land use permit (CLUP) approval after the matter was remanded from the superior court. The Borough did not participate in the superior court 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. Opening statements were filed with the OAH on Wednesday, September 21, 2022. The hearing is set for November 7.

3. Case No. 2022-02 PCA and 2022-03 PCA, Rosenberg & Schiefelbein 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. Mr. Rosenberg's case was subsequently dismissed on lack of standing grounds. The hearing on the Schiefelbien appeal was held on July 27, 2022. Thirty days later, the OAH issued its decision upholding the planning commission's decision. OAH's decision was not timely appealed to the superior court. This matter is resolved and closed.
  
4. Case No. 2022-05 PCA, Kossler. This is an appeal of the planning commission's decision to uphold the June 23, 2022 Plat Committee's conditional preliminary approval of East Oyster Cove Subdivision Preliminary Plat as requested by applicant, Alaska Mental Health Trust Authority. This appeal has just recently been referred to the OAH which will establish the pre-hearing and hearing schedule.