



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
Patty Burley, Deputy Borough Attorney PB

DATE: October 1, 2020

RE: Litigation Status Report – Quarter Ending 09/30/20

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 of limitations bars plaintiffs' cases and the other requests a ruling that the district may not be held vicariously liable for plaintiffs' claimed damages. The trial date of

Page -2-
October 1, 2020
Re: Litigation Status Report

November 2, 2020 has been vacated on mutual agreement of the parties and a trial setting conference has been scheduled for October 23, 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. The trial date of January 18, 2021 has been vacated and the court has scheduled a pretrial scheduling conference for October 5, 2020, to reset the pretrial deadlines and the trial date. 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 has filed a Partial Motion to Dismiss which was denied. Numerous other motions are pending. A trial setting conference is scheduled for October 22, 2021 and trial 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. The parties are awaiting the court's order scheduling a pretrial conference at which time the parties will address pretrial deadlines and schedule a trial date. Discovery is continuing.
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

Page -3-
October 1, 2020
Re: Litigation Status Report

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.

6. Bilben, et al. v. KPB PC, Beachcomber LLC, et al., Case No. 3KN-20-34CI. 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. The Appellant's Brief in the matter was filed September 24, 2020.

B. Following are open or recently resolved administrative appeals from Planning Commission decisions:

1. Case No. 2020-02-PCA. This is the appellant's second appeal to the assembly regarding the planning commission's decision approving the vacation of a drainage easement on Lot24-A, AA Mattox Peggi's Addition, KPB file no. 2019-048V. There is a pending motion to dismiss the appeal filed by the Applicant, AnnaLisa Cox, and a pending request for summary disposition of due process claims filed by the KPB.
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. The hearing scheduled for September 23, 2020 was vacated as the parties await a stay decision by the hearing officer. The Office of Administrative Hearings is the hearing officer for this case and the assigned administrative law requested briefing on whether this case should be stayed pending outcome of Case No. 3KN-20-34CI, discussed above at (A)(6).