



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 *CP*

FROM: Sean Kelley, Borough Attorney *SK*

DATE: July 28, 2022

RE: Litigation Status Report – Quarter Ending 06/30/22

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. 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 is 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"). Trial is rescheduled to the week of September 12, 2022. Discovery is continuing.

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3. Fischer v. KPBSD, Case No. 3KN-20-00495CI. This case was filed by Matthew Fischer on behalf of his minor child. The parties agreed to participate in mediation and ultimately agreed to a resolution of the plaintiff's claims at mediation. The court subsequently entered an order dismissing this matter, with prejudice, on July 5, 2022.
 4. 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 October 10, 2022.
- 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 Tuesday, July 26, 2022.

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3. Case No. 3KN-22-00026CI, TLR Adventures v. Kenai Peninsula Borough. 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 planning commission's decision was upheld. The owners filed this appeal to the superior court. Subsequently, the appeal was dismissed on April 29, 2022, with each party to bear their own costs and fees.
4. Case No. 2022-02 PCA and 2022-03 PCA, Rosenberg & Schielbein 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, and the OAH will issue its decision within 30 days.
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. Following hearing on this matter, the hearing officer upheld the planning commission's decision. The deadline for appeal to the superior court has passed, and no such appeal has been filed. Thus, this matter has been closed, and the CLUP at issue was recorded by the Planning Department.