

## Lawsuit

### Continued from A1

They contend that the recall petitions Husk filed for six councilors, and that Henshaw has supported by gathering signatures, contain “a false statement of material fact,” a violation of Oregon elections law.

The lawsuit cites the statement, common to each recall petition, that the councilors have “directly sanctioned the dissolution of the professional fire department in Baker City, destroying the network of public safety that has been in place for more than 100 years.”

The plaintiffs’ claim about Henshaw is that a comment she posted on Facebook, in response to a question about the recall effort, contains a false statement.

Henshaw’s comment, in part: “In a tiny nutshell, our city council and mayor allowed our city manager to dissolve our city ran gold-standard fire department and ambulance service. We no longer have enough firefighters on shift to enter a burning building, and instead of the excellently dually trained EMT/Firefighters, we now have an ambulance service who’s (sic) staff rotates out. ...”

Each of the three plaintiffs is asking for \$5,000 in damages — \$2,500 each from Husk and Henshaw. The plaintiffs are represented by attorney Vance Day.

Husk and Henshaw stand by the statements in the recall petitions.

Husk, in an earlier interview, deemed the lawsuit “bogus.”

Henshaw called the lawsuit “immature and childish” and said she was concerned that the complaint could discourage people from signing the recall petitions.

### McQuisten no longer subject to recall

Of the three plaintiffs, McQuisten is no longer subject to potential recall because she has resigned as a councilor. Her final meeting was Nov. 22. She resigned her position because she is moving outside the city limits and is no longer eligible, per the city charter, to serve as a councilor.

Dixon and Waggoner remain as councilors and are subject to potential recall by city voters.

Husk was prompted to seek a recall election for six of the seven councilors after the council agreed earlier this year to eliminate ambulance service from the fire department’s list of duties.

A private company, Metro West, now operates ambulances in the city and in much of Baker County.

Husk resigned from the Baker City Fire Department due to the council’s decision. He now works as a firefighter/paramedic in Umatilla County.

Husk said he continues to gather signatures. He believes he has enough signatures, if they’re verified, to force a recall election for at least some of councilors.

In addition to Dixon and Waggoner, councilors Dean Guyer, Shane Alderson and Jason Spriet could face a recall election if Husk submits enough verified signatures — 680 signatures are required for each councilor (voters can sign multiple petitions).

Alderson will also be leaving the council at the end of the year, as he was elected Nov. 8 as chairman of the Baker County Board of Commissioners, a job he’ll start in January.

Husk did not file a recall petition for the other councilor,

Kenyon Damschen, because Damschen hadn’t yet served as a councilor for six months and thus was exempt from recall when Husk began his campaign.

Damschen has since passed the six-month mark.

### Defendants’ attorneys cite First Amendment protection

In the motion seeking to dismiss the lawsuit, Husk and Henshaw’s attorneys write that “The First Amendment does not permit plaintiffs to use the civil litigation process to silence their political critics.”

The motion also notes that an Oregon law, ORS 31.150, “gives teeth to this constitutional commitment, safeguarding those who speak out on matters of public interest from attempts to silence them through litigation.”

That law outlines the situations in which defendants can seek dismissal of a civil lawsuit.

Husk and Henshaw’s motion also quotes ORS 31.152, which states that 31.150 is “to be liberally construed in favor of the exercise of the rights of expression.”

Husk and Henshaw’s attorneys argue in the motion that their clients are entitled to a dismissal of the lawsuit, and attorney’s fees, because the plaintiffs will not be able to prove, in court, that either Husk’s or Henshaw’s statements are false and that they made the statements “with knowledge or reckless disregard that it was false.”

The attorneys cite a ruling by the Oregon Supreme Court that statements are not “false” based on state law, “if any reasonable inference can be drawn from the evidence that the statement is factually correct or that the statement is merely an expression of opinion.”

With regard to Husk’s statement in the recall petitions, the attorneys argue that the statement isn’t an “assertion of objective fact” in part because Husk used “hyperbolic language” including the statement that the council’s decision to end ambulance service constituted the “dissolution” of the fire department and was “destroying” the public safety network.

But even if Husk’s statement is construed as a statement of objective fact, his lawyers argue, “it can reasonably be inferred to be factually correct” because the council did agree to end ambulance service.

As for Henshaw’s comment on Facebook, her attorneys argue in the motion that the comment is not a “material” statement, under Oregon law, because it is not directly affiliated with the recall and was made in response to a question posted by someone who doesn’t live in Baker City, isn’t eligible to vote in a recall election and thus couldn’t influence a potential voter.

The attorneys also contend in the motion to dismiss that even if Husk and Henshaw’s statements were both false and material, the plaintiffs “cannot present substantial evidence to show it was probable that Mr. Husk and Ms. Henshaw knew or recklessly disregarded the truth when causing the statement to be published.”

“Both Mr. Husk and Ms. Henshaw have submitted declarations with this motion attesting that each believed their statements true at the time they were made. Plaintiffs will be unable to rebut these declarations with substantial evidence from which a factfinder could find that Mr. Husk and Ms. Henshaw knew the statements at issue were false at the time they were made.”

## Weather

### Continued from A1

The three Novembers with a lower average high:

- 1985 — 32.8 degrees
- 1995 — 37.9 degrees
- 1994 — 38.2 degrees

This November’s average low temperature ranks as the fourth-coldest, at 16.8 degrees.

The top three (or, rather, bottom three):

- 1985 — 14.3 degrees
- 1993 — 14.8 degrees
- 1952 — 15.1 degrees

This November didn’t set any daily low temperature records. The month’s coldest days, both with a low of 4, were the 19th and 28th. Despite the long dry spell, this was the dampest November at the airport in 15 years.

The monthly total, through Wednesday morning, Nov. 30, was 0.73 inches. That’s the most in November since 2007, when the total was 1.16 inches.



Jayson Jacoby/Baker City Herald

**Deciduous trees on the east side of the Baker County Courthouse have held most of their leaves despite recent wintry weather.**

## Leaves

### Continued from A1

And never during that period has Hayes seen so many trees holding on to so many leaves so late in the year.

“This year it seems like the leaves have hung on and on,” Hayes said on Tuesday morning, Nov. 29.

Kris Younger, the public works department’s facilities maintenance specialist, agreed.

“We’ve all noticed it,” Younger said. So has Lyle Kuchenbecker, who is chairman of the Baker City Tree Board.

Kuchenbecker said certain trees, such as oaks, seem to have particularly thick complements of leaves even as Christmas approaches and snow covers the ground.

City workers have hauled plenty of leaves this fall, to be sure.

Younger said certain neighborhoods with large numbers of older maples and other deciduous trees, including sections of Second, Third and Fourth streets on both sides of Campbell, have dropped quite a lot of leaves.

City crews use the street sweepers to gather the leaves, which are hauled by dump truck to Baker Sanitary Service’s landfill, where they’re spread over garbage before it’s buried in dirt, Younger said.

(He said the leaves can’t be composted, since they’re mixed with gravel and other street debris the sweepers collect.)

Anthony Constantine, with Oregon Trail Landscape and Nursery in Baker City, has also noticed the unusual abun-

dance of leafy trees even as the holiday season is underway.

“In some places it doesn’t even look like fall hit,” Constantine said.

### Why haven’t leaves fallen?

Constantine figures weather is responsible for the abnormal prevalence of late leaves, and in particular a cold snap in late October and early November when temperatures slid into the upper teens or low 20s on several nights.

Cold weather, of course, starts the autumn progression for deciduous trees.

That process begins when trees, preparing for winter dormancy, curb their production of chlorophyll, the substance that lends leaves their spring and summer shade of green.

Without chlorophyll, other pigments in the leaves (which were there during spring and summer, but not visible) are revealed, resulting in the annual photogenic alteration to yellow, orange and red.

But a sudden, unseasonable spate of frigid weather can interrupt the next step of the process — the creation of abscission cells.

Those cells cause leaves to fall as well as heal the junction of stem and branch.

A cold spell can kill leaves so quickly that the tree doesn’t produce the abscission cells. The leaves tend to turn from green to a uniform brown, and, without the abscission cells, the leaves don’t fall, according to the Alpine Nature Center website.

Jay Pscheidt, a plant pathologist and professor at Oregon State University, said that although he hasn’t examined any trees in Baker City, the theory that the

cold snap interrupted, or prevented, the abscission process is plausible.

### Potential trouble for trees

Although the leaves will eventually fall — if not from winter winds then next spring, when the new leaves will in effect push off the old, dead ones — trees that carry a lot of leaves into winter could be unusually vulnerable to damage for the next few months, Constantine said.

The combination of snow and leaves could prove too heavy for limbs, he said. “That’s a lot of weight and wind resistance,” he said.

The effect of snow accumulating on leaf-laden trees was obvious in early November, when a storm brought a few inches of heavy, wet snow that snapped limbs on many deciduous trees in Baker City, Constantine said.

The leftover leaves can also lead to ice dams in trees, he said. When a deciduous tree loses all or most of its leaves, snow that sticks to limbs has little to impede it when it melts.

But in a tree with a lot of leaves, those leaves can prevent some of the meltwater from dripping to the ground, and given the likelihood of temperatures falling below freezing at night, ice dams can form, adding to the weight load on the limb.

### Spring cleaning

With snow on the streets, Hayes can no longer use the street sweeper to gather leaves. He figures this coming spring will be unusual, with a lot more leaves to collect than usual.

“It’s going to be an interesting spring,” he said.

## Local Briefing

### Baker County Garden Club meets Dec. 7

The Baker County Garden Club will meet Wednesday, Dec. 7, at 11 a.m. for a luncheon and meeting at the Loennig home, 1638 Broadway St. in Baker City. If you wish, bring your favorite dish or snack. New members are always welcome.

### LDS Christmas devotional broadcast Dec. 4

The First Presidency of The

Church of Jesus Christ of Latter-day Saints invites members, their families and friends to participate in the First Presidency’s annual Christmas devotional broadcast on Sunday, Dec. 4 at 5 p.m. PST. Music will be provided by

The Tabernacle Choir and Orchestra at Temple Square. This Sunday, Dec. 5, will be Fast Sunday for December, so please help the less fortunate by making a generous donation and help your spiritual self by fasting, sharing testimonies and focusing on the

great gifts we have received from our Heavenly Father. Sunday School classes will be held during the second hour of services.

The “Come, Follow Me” lesson for the week of Dec. 5 will be based on the Old Testament books of Haggai and se-

lect chapters of Zechariah at a time when a group of Israelites were allowed to return to Jerusalem and rebuild the temple. During this special time of year, seek to show kindness and help one another. Visit [www.lighttheworld.org](http://www.lighttheworld.org) for ideas.

### Kenneth Burl Swiger

June 20, 1941 - November 22, 2022

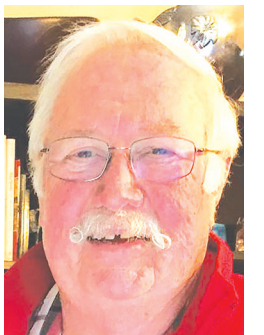
A former Baker resident, Kenneth Burl Swiger, passed away November 22, 2022, at St. Vincent’s Hospital in Beaverton, Oregon. Burl, as he was known, was born in Carson, Oregon, on June 20, 1941, to Ehrman and Esther Lee Swiger.

His early life was spent in Northern California, Richland, Halfway and on Little Lookout in Baker County. The family moved to Baker in 1952 and Burl finished school in 1959 as a Baker High graduate. Burl attended college at Pacific University and Portland State. He was a member of the early Baker Elks Drug and Bugle Corps, which he loved.

Burl worked for Eastern Oregon Lumber after school and during the summer throughout high school. He had saw milling in his blood and worked in several mills throughout the Northwest. Burl became a saw filer and traveled around the world as a consultant to many sawmills. After he retired, he started his own company, Triple S, where he kept his hands in his love of saw filing.

Burl married Kathy Thompson in 1961. From that marriage they had three children, MaryDee, Christopher and Michael. In 1987, Burl married Lorraine Haydock Rouse, a friend from high school. Lorraine has two daughters, Linette and Garnette. Burl is survived by his wife, Lorraine, his daughter, MaryDee (Jeff), sons Christopher (Leah) and Michael, grandchildren, Christine, Kenneth, Casey and Cierra, and several great-grandchildren, stepdaughters, Garnette Rouse (Don) and Linette Dressel, and his brother, Lee (Lorna).

Burl will be laid to rest in June at Pine Haven Cemetery in Halfway, Oregon.



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