

Kenai Peninsula Borough

Legal Department

LITIGATION STATUS REPORT

TO: Brent Johnson, Assembly President
Members, KPB Assembly
Zen Kelly, KPBSD Board of Education President
Members, KPBSD Board of Education

THRU: Peter A. Micciche, KPB Mayor *PM*
Clayton Holland, KPBSD Superintendent *CH*

FROM: Sean Kelley, Borough Attorney *SK*

DATE: July 25, 2024

RE: Litigation Status Report – Quarter Ending 6/30/24

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, which name the KPB and/or School District as parties for the quarter ending March 31, 2024.

- A. Alaska Superior Court cases. This list does not include the real property tax foreclosures and numerous standard tax collection cases pursued by the KPB:
1. *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. A non-jury trial was held the week of July 24, 2023. The court issued its decision on May 16, 2024, denying Furie's appeal and upholding the State of Alaska, Department of Revenue's tax assessment. Currently pending before the Superior Court are motions for prevailing party attorney fees and costs filed on behalf of KPB and the State. Furie has appealed the case to the Supreme Court. Currently, the KPB does not intend to participate in the case before the Supreme Court.
 2. *Martin v. Thompson, KPB, Case No. 3KN-22-00644CI.* This is a complaint for automobile-related personal injury. Farley & Graves was lead counsel in this matter. Mediation was held on May 2, 2024, which resulted in settlement, release and full dismissal of this matter.
 3. *Kenai Peninsula Borough v. David Yragui, 3KN-23-00527CI.* On July 14, 2023, KPB filed suit in Kenai Superior Court seeking to enjoin Defendant from conducting unpermitted activities on KPB-owned land and within KPB rights-of-way. KPB's Complaint sought declaratory relief, a permanent injunction, and potential damages and penalties. In April, the

Page -2-

July 25, 2024

Re: Litigation Status Report

Court issued a summary judgment decision in favor of the KPB granting KPB's request for declaratory relief and a permanent injunction. Mr. Yragui subsequently requested a permit from the KPB to fill in the unpermitted trench in or across KPB rights-of-way. KPB approved the permit. With the unpermitted trenches filled in and summary judgment entered in favor of KPB on Count I, the primary aspects of the case had been resolved in KPB's favor and therefore an offer of judgment was made to resolve the case in its entirety. Defendant accepted the offer of judgment, and has since offered payment to satisfy the judgment. This case will now resolve, without trial, in favor of KPB.

4. David Yragui v. Kenai Peninsula Borough, Board of Equalization, 3KN-23-00501CI. On June 30, 2023, David Yragui filed an appeal of the decision of the Board of Equalization regarding his property tax assessments. Briefing has been completed and the matter is ripe for a final ruling from the Court.
5. Jennifer Harvey-Kindred, et al. v. Kenai Peninsula Borough, Kenai Peninsula Borough School District, 3AN-23-08723CI. This matter involves a lawsuit against KPB and KPBSD alleging that Plaintiffs' various medical ailments were caused by alleged exposure to toxic mold in KPBSD schools from 2004-2020. Discovery is ongoing. Trial is currently scheduled for the Week of April 1, 2025, before Anchorage Superior Court Judge Crosby.
6. Nicholas Conner vs. Kenai Peninsula Borough, 3KN-24-00049CI. This is an appeal filed by Mr. Conner of a partial administrative denial of his public records request. The court issued its decision denying Mr. Conner's appeal after consideration of the parties' briefings. The court upheld the KPB's partial denial of Mr. Conner's request for the last names of public safety dispatch employees. Mr. Conner did not appeal the decision. The case is closed.
7. David and Mary Jeanne Yragui, v. Kenai Peninsula Borough, 3KN-24-00123CI. The Yraguis have filed suit for damages to property and for defamation related to their unpermitted activities within KPB rights-of-way. A Pretrial Hearing is scheduled for July 24, 2024, at which time the court will issue an order setting the trial date and discovery deadlines.

B. Administrative Appeals. 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 KPB filed a notice of non-participation in the matter and is not a party to the appeal. This case is currently stayed.

Page -3-

July 25, 2024

Re: Litigation Status Report

C. Alaska Supreme Court cases.

1. *Kenai Peninsula Borough School District v. Fischer*, Case No. S-18687 (Trial Court Case No. 3KN-19-00185CI). This appeal to the Alaska Supreme Court arises from a subrogation case filed against a School District employee to recover substantial health care costs paid by the health care plan. The Supreme Court upheld summary judgment in favor of the School District on breach of contract grounds but determined a genuine dispute of material fact remained regarding damages and therefore remanded this case to the Superior Court on the limited issue of determining if some of the costs included in the damages determination were not subject to subrogation.
2. *Beachcomber v. Kenai Peninsula Borough Planning Commission*, Case Nos. S-19091 & S-19092 (Consolidated) (Trial Court Case Nos. 3KN-20-00034CI & 3KN-23-00004CI). This is an appeal of the April 4, 2024, decision issued by Superior Court Judge Joanis affirming OAH's decision in Case No. 2022-04 PCA, *Bilben, et al. v. KPB PC, Beachcomber LLC, et al.*, which upheld the KPB Planning Commission's denial of Beachcomber, LLC's CLU. and dismissing Beachcomber's appeal. Judge Joanis's April 4, 2024, decision also constituted a final decision in case 3KN-20-00034CI that was before Judge Gist. The Supreme Court issued an order on July 8, 2024, consolidating Beachcomber's appeals for the purposes of briefing, consideration and decision. Due to claims of constitutional defects in the process, KPB will participate in this appeal to defend the Planning Commission's process.