

Kenai Peninsula Borough

Legal Department

LITIGATION STATUS REPORT

TO: Peter Ribbens, KPB Assembly President
Members, KPB Assembly
Zen Kelly, KPBSD Board of Education President
Members, KPBSD Board of Education

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

FROM: Sean Kelley, Borough Attorney *SK*

DATE: December 19, 2024

RE: Litigation Status Report – Quarter Ending 12/31/24

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.

- A. 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.
- B. Alaska District Court Cases
1. Conner v. KPB and Kenai River Center, Case No. 3KN-24-00920CI. Plaintiff, Nicholas Conner, filed a complaint in district court seeking equitable relief and \$50,000 for "emotional distress, inconvenience, and harm resulting from" allegations that making the Kenai River Center a by-appointment-only facility and having restrooms that are not open to general public use violates state law. After filing the case, Plaintiff requested that the court change venue to Anchorage, alleging that he cannot get a fair trial on the Kenai Peninsula due to an incident at the courthouse involving judicial services, social media, and other platforms where Plaintiff believes his case is being discussed. KPB filed a motion to dismiss the claim due to lack of subject matter jurisdiction and failure to state a claim upon which relief can be granted. KPB also opposed the request to change venue. The respective motions are pending before the court. No other dates have been set in this matter.

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- C. 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. The KPB filed a notice of non-participation in the Supreme Court case.
 2. *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 December 1, 2025, before Anchorage Superior Court Judge Crosby.
 3. *David and Mary Jeanne Yragui, v. Kenai Peninsula Borough, 3KN-24-00123CI*. The Yraguis filed suit for damages to property and for defamation related to their unpermitted activities within KPB rights-of-way. Subsequently, Plaintiff Mary Jeanne Yragui was dismissed from the case. Trial is scheduled for the week of November 3, 2025. Discovery is ongoing. Plaintiff filed for declaratory judgment. The KPB opposed and filed a cross motion for summary judgment. Plaintiff has not timely responded to KPB's motion for summary judgment. The respective motions are pending before the Court.
 4. *David Yragui v. Kenai Peninsula Borough, Case No. 3KN-24-00788CI*. Plaintiff David Yragui filed a quiet title action requesting that the court to find that Eastway Road public right-of-way, a thirty-three-foot strip of land abutting KPB property in the Yragui Tract Subdivision near Kalifonsky Beach Road, is Mr. Yragui's property in fee simple. KPB has filed its *Answer* and a counterclaim seeking declaratory judgment that the Eastway Road right-of-way is a public right-of-way dedicated to public use. KPB has also filed a third-party complaint for the same relief against the other holders of interests in the land adjacent to the Eastway Road public right-of-way—Mary Jeanne Yragui, Hay Ground, LLC, the David N. Yragui Qualified Personal Residence Trust, and the Mary Jeanne Yragui Qualified Personal Residence Trust. KPB filed a motion for judgment on the pleadings on its counterclaim and a separate motion for judgment on the pleadings on its third-party complaint asserting that the public right-of-way at issue was dedicated in 2010 when the plat was approved and recorded.
 5. *Jonathan Teates v. Kenai Peninsula Borough* (Case No. 3KN-14-00749CI), Consolidated w/, *Jonathan Teates v. Central Peninsula Hospital, Inc.* (Case No. 3KN-24-650CI). Consolidated Case Nos. 3KN-24-00749. This consolidated case relates to a slip-and-fall injury lawsuit against KPB and CPGH, Inc. Per the operating agreement with CPGH, Inc.,

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CPGH will defend and indemnify KPB against the claims alleged in this action. Trial week is scheduled for the week of June 22, 2026. Discovery is ongoing.

6. *Furie Operating Alaska, LLC. v. State of Alaska, Department of Revenue, and State Assessment Review Board*, Case No. 3AN-24-066722CI. 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. KPB has filed a notice of non-participation in this appeal.
7. *2FishAlaska v. Kenai Peninsula Borough*, 3KN-24-00905CI. This owner of real property appealed the denial of charitable purpose exemption application. The agency record has been transmitted to the Court and the KPB awaits further direction from the Court.
8. *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 remanded this case to the Superior Court on the limited issue of determining if some of the costs included in the damage determination were not subject to subrogation. There are respective motions pending before the Superior Court on remand. Trial is scheduled for the week of April 7, 2025.
9. *Haybeck v. KPBSD; Peninsula Art Guild*, Case No. 3KN-14-00951CI. This case relates to an alleged slip-and-fall injury at Kenai Central High School during the annual Winter Arts & Crafts fair hosted by the Peninsula Art Guild. This is an insurance defense claim and KPBSD is represented by the Farley & Graves law firm. No dates have been set.

D. Alaska Supreme Court cases.

1. *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 CLUP 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 is participating on appeal and timely filed its brief in this matter. Beachcomber's reply brief is due on December 26, 2024.