

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 *PAM*
Clayton Holland, KPBSD Superintendent *CH*

FROM: Sean Kelley, Borough Attorney *SK*

DATE: April 3, 2025

RE: Litigation Status Report – Quarter Ending 03/31/25

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. OAH Case No. 25-0066. Diamond Willow Homeowners Association and Consolidated Development & Management, LLC. This is a consolidated appeal filed by a neighboring property developer and a local homeowners' association of a Planning Commission's decision to grant modification of a conditional land use permit for an existing gravel pit. Opening statements have been filed and reply statements are due April 7, 2025. The appeal hearing is scheduled to take place on April 30, 2025.
- B. Alaska District Court Cases.
1. Nicholas 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. 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. On March 26, 2025, the plaintiff filed a notice of voluntary dismissal without prejudice prior to the court ruling on the pending motions. *Will be removed from future reports.

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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:
2. *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.
 3. *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.
 4. *David Yragui, v. Kenai Peninsula Borough, 3KN-24-00123CI.* Plaintiff, David Yragui, filed suit for damages to property and for defamation related to his unpermitted activities within KPB rights-of-way (Mary Jeanne Yragui was originally included as a Plaintiff but was subsequently 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 recently amended his complaint and responded to KPB's motion for summary judgment.
 5. *David Yragui v. Kenai Peninsula Borough, Case No. 3KN-24-00788CI.* Plaintiff, David Yragui, filed a quiet title action requesting 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. This matter was subsequently resolved by the parties and a stipulated dismissal with prejudice was filed. *Will be removed from future reports.
 6. *Jonathan Teates v. Kenai Peninsula Borough* (Case No. 3KN-24-00749CI), 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., 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. *Will be removed from future reports.
 7. *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

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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. *Will be removed from future reports.

8. 2FishAlaska v. Kenai Peninsula Borough, 3KN-24-00905CI. This owner of real property appealed the denial of charitable purpose exemption application. The record on appeal has been certified and Appellant's opening brief is due on April 21, 2025.
9. 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. The court granted plaintiff's unopposed motion to continue the trial with a Trial Date Setting Conference currently scheduled for August 6, 2025.
10. Haybeck v. KPBSD; Peninsula Art Guild, Case No. 3KN-24-00951CI. 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. After a meeting of the parties, the court issued its order scheduling pretrial deadlines and setting trial call for January 7, 2026. Discovery is ongoing.

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. All parties have submitted briefs and await the Court's decision.

E. US District Court cases.

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1. *Nicholas Conner v. Kenai Peninsula Borough; Mayor Peter Micciche*, Case No. 3:35-cv-00054-HRH. Plaintiff filed this complaint on March 19, 2025, alleging his constitutional right to film public officials in public spaces was violated and asks the court to permanently enjoin application of KPB Ordinance 2024-27, and declare the ordinance unconstitutional, and for costs and attorney fees. KPB's answer is due April 10, 2025.