

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 *AM*
Clayton Holland, KPBSD Superintendent *CH*

FROM: Sean Kelley, Borough Attorney *SK*

DATE: January 25, 2024

RE: Litigation Status Report – Quarter Ending 12/31/23

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 12/31/2023.

- 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. The KPB engaged Dillon & Findley 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 was held the week of July 24, 2023. The matter is now under advisement and the parties await a decision from the judge.
 2. *Martin v. KPB, Case No. 3KN-22-00644CI.* This is a complaint for automobile-related personal injury. The KPB has engaged Farley & Graves to act as lead counsel in this matter. Discovery is ongoing. Trial is set for the week of July 8, 2024.
 3. *Moody v. Kenai Peninsula Borough, Case No. 3AN-23-04282 CI.* This is a wrongful termination case filed by a former temporary employee and volunteer with Kachemak Emergency Service Area. The parties resolved this matter out-of-court and stipulated to dismissal of the case with prejudice, agreeing that each party is to bear their own costs and fees.

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4. *Beachcomber, LLC, v. Kenai Peninsula Borough, Case No. 3KN-23-00004CI*. This is an appeal to the Kenai Superior Court of OAH's final decision in Case No. 2022-04 PCA, *Bilben, et al. v. KPB PC, Beachcomber LLC, et al* (see below), which upheld the KPB Planning Commission's denial of Beachcomber, LLC's CLUP. The parties have completed briefing of the issues. Oral argument has not been set, and the parties await the judge's decision.
 5. *ITMO: Building Setback Encroachment Permit, KPB Resolution 2022-46, GL Holier Street, Case No. 3KN-23-00446CI*. This is an appeal to the Kenai Superior Court of OAH's remand decision after reconsideration in Case No. 2022-06 PCA, *Taylor* (see below). The Appellant filed an Unopposed Motion for Voluntary Dismissal which was granted by the Court on December 7, 2023.
 6. *Kenai Peninsula Borough v. David Yragui, 3KN-23-00527CI*. On July 14, 2023, the KPB filed suit in Kenai Superior Court seeking to enjoin Defendant David Yragui from conducting unpermitted activities within The KPB rights-of-way. The KPB's Complaint seeks declaratory relief, a permanent injunction, and potential damages and penalties. On January 16, 2024, oral argument was held on various motions filed by the KPB, with the court taking all matters under advisement. Trial is set for the week of May 6, 2024.
 7. *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. The Appellant and the KPB have filed initial briefing. The appellant's Reply Brief is currently due on February 18, 2024, at which time the matter may be scheduled for oral argument.
 8. *Jennifer Harvey-Kinred, 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. The Anchorage Superior Court denied the KPB's motion to change venue to Kenai Superior Court. Discovery is ongoing.
- 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.
 2. *Case No. 23-0712-MUN, Frison & Pyle*. The Planning Commission denied a building Applicants' application for a building setback encroachment permit. Applicants appealed

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the denial to the Office of Administrative Hearings (OAH). Opening statements have been filed. Reply statements are due on February 6, 2024. The hearing before OAH is tentatively scheduled for February 27, 2024.

C. Alaska Supreme Court cases.

1. *Kenai Peninsula Borough School District v. Fischer*, Case No. 3KN-19-00185CI; Appellate Court Case No. S-18687. This appeal to the Alaska Supreme Court arises from subrogation case filed against a School District employee to recover substantial health care costs paid by the health care plan. The School District engaged the services of Jermain, Dunnagan & Owens to serve as counsel in this matter. The defendant appealed the judgment entered by the Superior Court to the Alaska Supreme Court. Briefing in the Supreme Court has been completed and the appeal is now ripe for a ruling.