

# Kenai Peninsula Borough

## Legal Department

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### 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:** April 25, 2024

**RE:** Litigation Status Report – Quarter Ending 3/31/24

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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 parties anticipate a decision from the court any day now.
  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. The parties have agreed to mediation to take place on May 2, 2024. Trial is set for the week of July 8, 2024.
  3. *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. On April 4, 2024, Superior Court Judge Joanis issued an order affirming OAH's decision and dismissing Beachcomber's appeal. Judge Joanis' decision also constituted a final decision in case 3KN-20-00034CI that was before Judge Gist.

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4. *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 seeks declaratory relief, a permanent injunction, and potential damages and penalties. Trial is set for the week of May 6, 2024.
  5. *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.
  6. *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.
  7. *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. Appeal briefing is in progress.
- 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 the denial to the Office of Administrative Hearings (OAH). On April 16, 2024, OAH issued its decision upholding the Planning Commission's denial of the setback permit.
- 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. Briefing in the Supreme Court has been completed and the appeal is now ripe for a ruling.