



## Legal Department

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Peter A. Micciche  
Borough Mayor

### LITIGATION STATUS REPORT

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**TO:** Brent Johnson, Assembly President  
Debbie Cary, President, Board of Education  
Members, Kenai Peninsula Borough Assembly  
Members, Kenai Peninsula Borough School District

**THRU:** Peter A. Micciche, Mayor *PM*

**FROM:** Sean Kelley, Borough Attorney *SK*

**DATE:** July 20, 2023

**RE:** Litigation Status Report – Quarter Ending 06/30/23

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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.

- A. The following is a summary of the non-routine litigation which name the Borough and/or School District as parties. This list does not include the real property tax foreclosures and numerous standard tax collection cases pursued by the Borough:
1. *Halstead v. Anderson and Kenai Peninsula School District*, Case No. 3KN-18-00744CI. Plaintiff has sued Mr. Anderson and the Kenai Peninsula Borough School District for damages relating to Mr. Anderson's sexual abuse of her as a minor. The complaint against the school district claims the school district failed to protect her from Mr. Anderson and seeks damages and actual attorney fees. The mediation held on June 27, 2023, before the Honorable Dana Fabe, was successful and the case will soon be dismissed by the Court.
  2. *Kenai Peninsula Borough School District v. Fischer*, Case No. 3KN-19-00185CI. This is a subrogation case that was filed against a School District employee to recover substantial health care costs paid by the health care plan ("Plan"). The school district engaged the services of Jermain, Dunnagan & Owens to serve as counsel in this matter. The trial set for September 26, 2022, was vacated due to summary judgment entered in favor of plaintiff. Judgment was entered in favor of plaintiff on October 20, 2022. The defendant has appealed the judgment to the Alaska Supreme Court.

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3. *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 borough entered an appearance in this matter and has engaged Jessica Dillon, a partner at the firm Dillon & Findley in Anchorage, 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 is currently scheduled in this matter for the week of July 24, 2023.
  4. *Martin v. KPB, Case No. 3KN-22-00644CI.* This is a complaint for automobile-related personal injury filed on behalf of plaintiff, Ms. Martin. The Borough has entered an appearance in this matter and answered the complaint. At the informal pretrial scheduling conference held on January 10, 2023, the court established pretrial and trial deadlines, and set trial for the week of February 5, 2024. Discovery is ongoing.
  5. *Moody v. Kenai Peninsula Borough, Case No. 3AN-23-04282 CI.* Former service area volunteer employee brought suit against the Borough alleging that she was fired in January 2021 in retaliation for reporting sexual harassment by a former service area deputy fire chief. Plaintiff is seeking actual and compensatory damages and costs of litigation. Trial is set for the week of April 8, 2024. Discovery is ongoing.
  6. *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 Borough Planning Commission's denial of Beachcomber, LLC's CLUP. Appellant has filed the Opening Brief. KPB's reply to Appellant's Opening Brief is currently due on August 9, 2023.
  7. *ITMO: Building Setback Encroachment Permit, KPB Resolution 2022-46, GL Holier Street, Case No. 3KN-23-0046CI.* 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 record presently is being prepared, and the Borough will enter a limited appearance in the matter.
- B. 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 Borough filed a notice of non-participation in the matter and is not a party to the appeal. This case is currently stayed.

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2. Case No. 2022-05 PCA, Kossler. This is an appeal of the Planning Commission's decision to uphold the June 23, 2022, Plat Committee's conditional preliminary approval of East Oyster Cove Subdivision Preliminary Plat as requested by applicant, Alaska Mental Health Trust Authority. The appeal hearing was held April 4, 2023. ALJ Sullivan requested the Borough to supplement the record. On April 18, 2023, OAH issued a decision upholding the Planning Commission's decision. The matter was not appealed to superior court, and it is now closed.
  
3. Case No. 2022-06 PCA, Taylor. The Planning Commission conditionally approved a building setback encroachment permit. Neighboring property owners appealed to OAH. The Borough filed a Motion to Dismiss, which OAH denied. OAH held the appeal hearing for February 23, 2023. ALJ Sullivan subsequently requested the parties supplement the record. ALJ Sullivan recently issued a decision reversing the Planning Commission's decision. The Borough moved for reconsideration, asking for remand to the Planning Commission instead. OAH granted the Borough's motion. The Applicants for the building setback encroachment permit subsequently appealed the remand decision to the Kenai Superior Court, see 3KN-23-00446CI, above.