



Legal Department

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Peter A. Micciche
Borough Mayor

LITIGATION STATUS REPORT

TO: Assembly President
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: October 12, 2023

RE: Litigation Status Report – Quarter Ending 09/30/23

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.

- 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. The mediation held on June 27, 2023, before the Honorable Dana Fabe, was successful and the case was dismissed by the Court on August 30, 2023.
 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. Briefing in the Supreme Court has been completed and oral argument scheduled for November 7, 2023.

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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 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.
4. *Martin v. KPB*, Case No. 3KN-22-00644CI. This is a complaint for automobile-related personal injury.. The Borough has engaged Farley & Graves to act as lead counsel in this matter. Trial is set for the week of February 5, 2024. Discovery is ongoing.
5. *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. 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 and KPB has responded. The Appellant's Reply Brief is due October 12, 2023. The matter may then be set for oral argument on the completion of briefing.
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 Appellant's Opening Brief is currently due on October 30, 2023.
8. *Kenai Peninsula Borough v. David Yragui*, 3KN-23-00527CI. On July 14, 2023, the Borough filed suit in Kenai Superior Court seeking, on an expedited basis, a temporary restraining order and preliminary injunction to prohibit Defendant David Yragui from conducting unauthorized and unpermitted activities within Borough rights-of-way. The Borough also seeks declaratory relief, a permanent injunction, and potential damages and penalties.
9. *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 record on appeal has been prepared and filed with the court. The court's notice of briefing schedule has not yet been received.

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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.
2. Case No. 2022-06 PCA, Taylor. The Planning Commission conditionally approved a building setback encroachment permit. Neighboring property owners appealed to OAH. Following motion practice and initial OAH decisions, OAH ultimately, on reconsideration, remanded the matter to the Planning Commission. The Applicants for the building setback encroachment permit subsequently appealed the remand decision to the Kenai Superior Court, see 3KN-23-00446CI, above. The Applicants did not request a stay of the remand and the Planning Commission considered the matter on remand at its regularly-scheduled meeting on October 9, 2023.