

ENVIRONMENTAL CONTROL HEARING BOARD

The Indian River County (IRC) Environmental Control Hearing Board (the Board) held a meeting at the County Administration Building, Commission Chambers, 1840 25th Street, Vero Beach, Florida on Thursday, November 16, 2006, at 12:30 p.m.

Present were members: Chairman Alan Polackwich, Attorney Appointee; Steve Snoberger, Engineer Appointee; Clete Deller and Richard Cahoy, Members-at-Large; and Dr. John McDonald (12:37 p.m.), Medical Doctor Appointee.

Also present were IRC Environmental Health Department (Health Department) staff: Suzanne Vitunac, Legal Counsel; and Cheryl Dunn, Manager; and IRC staff: Victoria Phillips, Staff Assistant IV.

Call to Order

Chairman Polackwich called the meeting to order, and welcomed everyone in attendance.

Roll Call by Secretary

The Secretary called the roll and after having done so, a quorum was declared present.

Consideration of the August 3, 2006 Minutes

Chairman Polackwich asked if there were any corrections, deletions or additions to the minutes of August 3, 2006. There were none.

ON MOTION by Mr. Cahoy, SECONDED by Mr. Snoberger, the members voted unanimously (4-0) to approve the minutes of the August 3, 2006 meeting as submitted.

Additions-Deletions to the Agenda

Attorney Polackwich asked if there were any additions or deletions to the agenda. There were none.

Hearings

La Petite Academy, Case NO. 418-06

Attorney Vitunac advised Dawn Gerry, District Manager, Daniel Klausing, and Aaron Bowles, Engineer, were present on behalf of Respondent La Petite Academy, Inc. and understood Respondent Coastal Business Partnership did not have anyone representing them at the hearing, but had been served on October 26, 2006. She explained the Board would be asked for a limited hearing today, and to keep it along the lines of a temporary emergency injunction to protect the health, safety and welfare of the children being cared for at La Petite Academy Child Care Facility.

Attorney Vitunac explained the property was owned by Coastal Business Partnership and operated by La Petite Academy, who had been licensed to serve 163 children. She noted the facility was being served by an onsite sewage treatment disposal system on each side of the building, both of which failed on or before November 1, 2005, at which time the Respondent made the decision to connect to the City of Vero Beach sewer system. Attorney Vitunac pointed out the sewer connection required an easement across private property.

Attorney Vitunac stated the Notice to Correct Violations had given Respondent 60 days to connect to public sewer, and the tanks needed to be pumped. She explained on August 24, 2006, the Respondent had entered into an agreement with Meeks Plumbing (Meeks) to pump out the tanks every two weeks; however, Inspector Pressley had been advised on September 13, 2006 the tanks needed more pumping than that.

Attorney Vitunac continued on October 5, 2006, a child had been saturated with sewage at the property and Inspector Lori Hoffman of the Health Department confirmed two children had gotten sewage on them, and at that time Ms. Hoffman had been informed by La Petite Academy both tanks were being pumped weekly by Meeks.

Attorney Vitunac summarized on November 6, 2006, the Health Department had been informed the necessary easement had been obtained and \$72,000 set aside to pay for the connection to public sewer; therefore, it appeared the pieces were now in place for the connection, which was the real solution to the problem.

Attorney Vitunac proceeded to review the proposed Order with the members and mentioned Mr. Joe Hernandez, the Licensing and Compliance Manager for the Corporation, was agreeable with all those provisions.

Dr. John McDonald arrived at 12:37 p.m.,

Chairman Polackwich asked what would be the best estimate to have everything completed. Mr. Bowles informed him it would more than likely be one and a half months. Attorney Vitunac interjected the Health Department had made telephone calls to the Department of Environmental Protection (DEP) and they would be expediting their permitting. Ms. Cheryl Dunn, Manager, Environmental Health, added the City of Vero Beach had done their transmittal sign-off, so that it would be ready to be picked up and transmitted to DEP.

Mr. Snoberger brought up one of the items was the fence in the rainfall area and he wondered if we needed a fence around the septic tank because he assumed that was where the leakage would be. Ms. Dawn Gerry, Respondent, entered into evidence a diagram of the existing building, and gave an explanation about the location of the fencing. Mr. Snoberger wondered if the fencing would be in conflict with some of the construction and maybe it would have to be an issue which would have to be taken care of during construction, and some temporary fencing during the construction process might also be a good idea. Mr. Bowles responded it could be addressed during construction.

Ms. Gerry explained when she originally called Meeks, she had been under the impression every other week would have been enough and had never received information that it should have been pumped two to three times a week, and she had to accept the responsibility; however, a new contract was being drawn up, and every time the tanks were pumped, it would be in writing at the end of the day.

Mr. Cahoy inquired why the public sewage route had been chosen. Attorney Vitunac informed him they would have had to reduce the number of children which would basically reduce the size of the property and there would not be enough property for the septic system. Ms. Dunn added there had been some changes in the septic tank code with increased sizing and the Respondent already had in place anchored playground equipment which would have interfered with the drain field and major playground equipment in the central part of the facility would have had to be removed.

Mr. Cahoy asked if construction of a fence could be added as a requirement. Attorney Vitunac agreed it would be a good idea for adequate construction fencing to be installed as needed during the connection phase. Mr. Cahoy wondered once connection was made to public sewer, what would occur to the private systems, the drain fields and the tanks. Ms. Dunn informed him they would be pumped out and then abandoned and crushed, with the exception of the tank where the kitchen waste was going into which was going to be reserved, and instead of the plumbing going to the drain field, it would go to the sanitary sewer. She remarked the drain fields for the private systems would be left in place and since there was no sewer going into them, they were no longer a nuisance, and if there was a concern there was

discharge in the ground area, it would be treated with lime and it would stand for a period of time before the children would be allowed back on it.

Attorney Vitunac asked if Mr. Cahoy wanted to add a provision to keep the fencing in place until the Health Department has certified the land was safe for the children's access. Mr. Cahoy responded affirmatively.

ON MOTION by Mr. Cahoy, SECONDED by Mr. Snoberger, the members voted unanimously (5-0) to reserve jurisdiction on all issues including determination of fines; to order further corrective actions; both tanks be pumped out twice weekly or more often if necessary until the property connects to sewer; the Health Department receive pump out records, the Respondent keep both drain field areas fenced, locked and posted, and away from children's access, doors which opened to the areas be posted as emergency access only; the Board may wish to order alarms be put on those doors, and order connections to sewers be expedited to the maximum extent possible.

Written weekly status reports regarding the connections must be faxed to the Health Department, and the Health Department is to be notified within 60 minutes of any plumbing failures as to exposure or other sanitary hazard; the Health Department be provided with an acceptable clean up procedure for sewer backup and sewer ponding and that they be posted on the premises, as well as exposure procedures in the event another person was exposed to sewage on the property.

The Health Department would be ordered to set up for an emergency hearing in this matter in the event the connection is not proceeding in an orderly and timely fashion in the event there are any sanitary hazards on the site or there are violations of the Board's Order; it is further noted the fencing will be kept in place until the Health Department has certified the property would be safe for the children's access.

Mr. Cahoy asked if it was expected the matter would be completed by the next ECHB meeting taking place on January 18, 2007. Attorney Vitunac believed it would be.

River Club at Vero Beach, LLC, Case No. 393-05

Attorney Vitunac explained this matter pertained to a Motion for Finding of Violations and Sanctions of a Hearing Board Order Adopting Stipulation entered on June 6, 2005 which provided for future compliance with the swimming pool requirements. She said the maximum fine in these cases was \$500 per violation and there were basically six violations, chlorine and pH at three different pools; therefore, \$3,000 would be the maximum fine. Attorney Vitunac explained the Health Department would like to hear from the Respondent before making its recommendations to the Board, and if there were any mitigating circumstances they would like to provide.

Chairman Polackwich asked if Respondents had an explanation of the findings during the inspection on October 19, 2006 and how it happened.

Sam Smith, representing the Respondent informed him he had put chlorine in the pool and spa because there had been problems with algae, but neglected to put up the sign to indicate chlorine had been added so that the pools would be closed until the chlorine level had dropped. He indicated this occurred within two hours prior to the Health Department inspecting the pool.

Chairman Polackwich mentioned he was not sure we needed to have a hearing on that and asked Attorney Vitunac how she wanted to handle the matter. Attorney Vitunac informed him the policy the Health Department had adopted was that whenever there was a violation of a Court Order, the Health Department would not try to solve those cases, and would take the cases to the Board to decide.

Chairman Polackwich asked if anyone had been using any of these facilities when the Health Department did the inspection. Stacy Pressley, Health Inspector, responded negatively.

A discussion ensued pertaining to high range test kits being used now that the levels had gone to 10 parts per million.

Mr. Snoberger believed one of his associates had been retained by the River Club, and he would have to recuse himself from voting. A Voting Conflict Form was provided to Mr. Snoberger for completion, and is attached to the minutes of this meeting.

Chairman Polackwich summarized the matter before the Board was there was a violation and Respondent had admitted there was an infringement and the issue was whether or not to impose a fine.

Dr. MacDonald remarked he would be inclined not to impose a fine given the candor in which the problem had been addressed.

ON MOTION by Dr. MacDonald, SECONDED by Mr. Cahoy to consider imposing conditions if another violation took place.

UNDER DISCUSSION, Chairman Polackwich mentioned to keep in mind that there is an outstanding Order from June 6, 2005 stating if they did not comply in the future it could come back to the Board as a violation of that Order, and at that time it would take this event into consideration.

Chairman Polackwich explained in the past when those types of fines were initiated, although the Board imposed them; they were basically eliminated or purged if there were no further violations within a year. The motion was restated.

ON MOTION by Dr. MacDonald, SECONDED by Dr. Cahoy, the members voted unanimously (4-0) to levy a \$500 civil penalty fine which shall be suspended and purged upon Respondent's compliance with the Stipulation and Order for a period of one year from November 16, 2006. Mr. Snoberger abstained.

Stipulations

Etayem, LLC, Case No. 412-06

Attorney Vitunac reported this involved a petroleum storage facility and the violations involved failure to comply with leak detection and requirements for financial responsibility regarding proof of insurance to be posted on site. She advised as it turned out Respondent had proof of insurance, but it had not been posted on site and he hired a firm to do monthly visual inspections and completed his annual monitoring in a fairly prompt manner after receipt of the Notice of Hearing. Attorney Vitunac remarked the Health Department had been basically seeking its costs and a \$500 civil penalty and Respondents had stipulated to that and paid it.

ON MOTION by Mr. Snoberger, SECONDED by Dr. MacDonald, the members voted unanimously (5-0) to approve the Stipulation of Etayem, LLC, Case No. 412-06.

Continuances

Chairman Polackwich asked if anyone wanted to pull out the cases of Easy Global Investments, Inc., Case No. 409-06; Allied Diversified et al, Case No. 414-06; Allied Diversified et al, Case No. 416-06; and Allied Diversified et al, Case No. 419-06 for special discussion.

Attorney Vitunac advised negotiations had concluded on the Easy Global Investments, Inc. on the Stipulation and the paperwork just needed to be finished up on that and the three Allied Diversified et al cases, a Stipulation for continuances had been entered into on each of those cases identical to the one included in the additional backup.

ON MOTION by Mr. Snoberger, SECONDED by Mr. Cahoy, the members voted unanimously (5-0) to approve the continuances of Easy Global Investments, Inc., Case No. 409-06; Allied Diversified et al, Case No. 414-06; Allied Diversified et al, Case No. 416-06; and Allied Diversified et al, Case No. 419-06.

Schedule of Meetings for 2007

Chairman Polackwich asked if anyone knew if they had any problems with the 2007 meeting dates, a copy of which is on file in the Commission Office.

ON MOTION by Dr. MacDonald, SECONDED by Mr. Snoberger, the members voted unanimously (5-0) to approve the meeting dates for 2007.

Adjournment

The meeting adjourned at 1:22 p.m.