

## 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, 1801 27<sup>th</sup> Street, Vero Beach, Florida on Thursday, November 20, 2008, at 12:30 p.m.

Present were members: **Chairman Alan Polackwich**, Attorney Appointee; Vice Chairman **Steve Snoberger**, Engineer Appointee; **Dr. Matthew Zoffer**, Medical Doctor Appointee (arrived at 12:46 p.m.); **Clete Deller** and **Richard Cahoy**, Members-at-Large.

Also present was IRC Environmental Health Department (Health Department) staff: Suzanne Vitunac, Legal Counsel; Cheryl Dunn, Manager; and Reta Smith, Recording Secretary.

### Call to Order (12:41:32)

Chairman Polackwich called the meeting to order at 12:30 p.m.

### Roll Call by Secretary

The secretary called the roll and advised the Board a quorum was present.

### Consideration of September Minutes

12:41:54

**ON MOTION BY Mr. Cahoy, SECONDED BY Mr. Deller, the members voted unanimously (4-0) to approve the minutes of September 11, 2008, as presented.**

### Approval of 2009 ECHB Meeting Schedule

12:42:47

**ON MOTION BY Mr. Snoberger, SECONDED BY Mr. Cahoy, the members voted unanimously (4-0) to approve the 2009 ECHB meeting schedule.**

### Additions-Deletions to Agenda (12:42:56)

Attorney Vitunac requested the Board hear Item II A.2, Frederick D. Mensing III, et al first at today's meeting. She advised Item II A.3, Richard T. Tallman had

been settled and asked the matter be placed as Item II B.2 under Stipulations.

The agenda was approved with the stated changes.

## **HEARINGS**

### **Case #431-08 – Frederick D. Mensing III, et al** (12:43:32)

Attorney Vitunac recapped this case involved a septic system that was altered to the extent it required reapproval of the system, and reviewed the information contained in the backup on file in the Commission Office.

The Respondent distributed backup information which is on file in the Commission Office. He explained his attorney had erroneously filed for Chapter 7 bankruptcy on his behalf and the Respondent was in the process of getting the matter expunged and having the fees refunded. The Respondent advised he was anticipating receiving a loan to move forward with the septic system around December 11, 2008 once his credit report had been corrected.

Dr. Matthew Zoffer arrived at the meeting at 12:46 p.m.

Discussion followed about how long it would take to do the work once funding was available.

Chairman Polackwich stressed to the Respondent it was important he kept the Health Department informed of all developments. Attorney Vitunac asked the Board to make the findings that the Respondent had stipulated on the record there was a violation that needed to be corrected, and set a continuance until February 5, 2009.

1:05:57

**ON MOTION BY Mr. Snoberger, SECONDED BY Mr. Cahoy, the members voted unanimously (5-0) to find a violation and directed the process for replacement of the septic system proceed with reasonable diligence, and otherwise set a hearing for February 5, 2009 to monitor the progress.**

### **Case #433-08 - Park Condo Property, LLC** (1:06:32)

Attorney Vitunac recapped the Respondent, Mr. Kenny Holmes, was cited for failure to permanently close an unmaintained underground petroleum storage system within 90 days of discovery and failure to perform an assessment. She advised the Respondent had entered into a Stipulation that provided for him to pay a

\$500 flat fee and civil penalty, with a \$10,000 civil penalty suspended and purgeable contingent upon compliance.

Attorney Vitunac confirmed the Respondent had hired a qualified pollutant specialty contractor and had completed abandonment; however he was required to retain an environment consultant to conduct closure assessment and complete it in accordance with the requirements, which he had not done. She continued it was also a requirement in the event contamination was discovered the Respondent conduct remediation activities in accordance with Florida law, and it was unknown at this point if there was contamination. Attorney Vitunac and Health Department Manager Ms. Cheryl Dunn both confirmed the Respondent was not present today and neither one of them had heard from him.

Discussion ensued.

Mr. Cahoy mentioned he was personally involved in a similar environmental situation that had been going on for around 11 years, and the expense of this type of thing was enormous. He suggested rather than impose a fine it would be better to get the Respondent's attention another way, because if there was contamination \$10,000 could be a drop in the bucket to the overall liability. Mr. Snoberger recommended sending the Respondent a letter with a reasonable time to respond, and if not then impose a \$500 fine. Chairman Polackwich said he would have no objection to continuing the case and suggested Attorney Vitunac follow up the letter with a phone call to the Respondent stressing the importance of his attendance at the next meeting.

1:23:55

**ON MOTION BY Mr. Cahoy, SECONDED BY Dr. Zoffer, the members voted unanimously (5-0) to continue this case until the February 5, 2009 meeting, and the Respondent be notified by both certified mail and telephone of his violation of missing the October, 2008 compliance date, and the \$10,000 fine would remain suspended at this time.**

## **STIPULATIONS**

### **Case #447-08 – Richard T. Tallman** (1:26:30)

Attorney Vitunac reviewed the Stipulation, a copy of which is on file in the Commission Office.

**Case #446-08 – Island Tan of Vero, Inc. et al (1:32:31)**

Chairman Polackwich asked the members if they had any comments on either of the Stipulations, and if not asked for a motion to approve.

1:33:21

**ON MOTION BY Mr. Snoberger, SECONDED BY Dr. Zoffer, the members voted unanimously (5-0) to approve the Stipulations for cases #447-08 and #446-08.**

**CONTINUANCES**

**Case #439-08 - Shore Restaurants – Vero Beach, LLC D/B/A Mulligan’s Beach House Bar & Grille, et al (1:33:36)**

Attorney Vitunac noted she had distributed an updated cover sheet, which is on file in the Commission Office, because there may be issues with the owner’s cooperation.

**Case #437-08 – CCAT 2 Limited Partnership D/B/A Isles of Vero Beach, et al (1:34:46)**

Chairman Polackwich asked the members if they would like to pull either case for further discussion, and if not he asked for a motion to approve.

1:35:36

**ON MOTION BY Mr. Deller, SECONDED BY Mr. Snoberger, the members voted unanimously (5-0) to approve the Continuances for cases #439-08 and #437-08.**

There being no further business, the meeting was adjourned at 1:25 p.m.