

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 27th Street, Vero Beach, Florida on Thursday, October 1, 2009, at 12:30 p.m.

Present were members: Chairman Alan Polackwich, Attorney Appointee; Dr. Matthew Zoffer, Medical Doctor Appointee (left at 1:47 p.m.); Dr. Richard Baker and Richard Cahoy, Members-at-Large.

Absent was Vice Chairman Steve Snoberger, Engineer Appointee.

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

Call to Order (11:55:45)

Chairman Polackwich called the meeting to order at 12:35 p.m.

Roll Call by Secretary

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

Consideration of August Minutes

11:56:41

ON MOTION BY Mr. Cahoy, SECONDED BY Dr. Zoffer, the members voted unanimously (4-0) to approve the minutes of August 6, 2009, as presented.

Additions-Deletions to Agenda (11:56:49)

Attorney Vitunac recommended Items II.A (3) and (4) involving Ronald McMillan be continued until the December 3, 2009 ECHB meeting, due to the illness of one of the witnesses. She stated there was a Stipulation for Item II.A (5), GEC FLORIDA, LLC, and requested this case be heard first. Attorney Vitunac asked to move Item II.A (8), William Buchanan et al, to Continuances because of possible problems with service.

The agenda was approved with the stated changes.

HEARINGS

Case #457-09 – GEC FLORIDA LLC (11:58:32)

Attorney Vitunac reviewed the information contained in the backup, which is on file in the Commission office. She advised all the violations had been corrected except for a problem with two of the sumps and because of the cost involved to rectify the situation, the Respondent planned to close the station completely in April, 2010. Attorney Vitunac reviewed the Stipulation and recommended approval by the Board.

Mr. Charles Vogt, IRC Environmental Specialist (12:03:44), explained the situation and stated he felt comfortable with Attorney Vitunac's recommendation.

Respondent Hector Venius (12:06:23), related his company owned the property and presently had a tenant operating the station. He testified monitoring would be done by both the tenant and the owner until the lease was up in April, 2010, at which time it would be closed down.

12:07:39

ON MOTION BY Dr. Zoffer, SECONDED BY Dr. Baker, the members voted unanimously (4-0) to approve the Stipulation for Case #457-09.

Case #431-08 – Fredrick D. Mensing III, et al (12:10:49)

Attorney Vitunac recapped the case for the Board and reviewed the backup on file in the Commission office. She recommended the members issue an Order requiring the Respondent to have his new septic system installed prior to its next meeting on December 3, 2009.

Discussion followed about the length of time this case had been dragging on. Mr. Cahoy stressed the Order should include the need for connection as well as installation, or the Respondent would be subject to a fine.

12:16:55

ON MOTION BY Dr. Baker, SECONDED BY Mr. Cahoy, the members voted unanimously (4-0) to approve staff's recommendation and include the need for connection as well as installation, or the Respondent would be subject to a fine.

Case #434-08 – Shelby Homes at Oslo, Inc.

Attorney Vitunac reviewed the information contained in the backup, which is on file in the Commission office, and confirmed the Respondent had done nothing to comply with the Board's latest Order and no fines had been paid.

Ms. Cheryl Dunn, IRC Environmental Manager (12:27:12), explained the only thing different was the Respondent had hired Blue Dolphin Pool Service as a pool maintenance company at Bradford Place to check the chemical content of the pool. She related the Health Department had made up and posted permanent Pool Closed signs but had difficulty in getting notice to residents about the pool closure, and she was not sure how to let everyone know what was going on at the facility. Ms. Dunn observed the pool was not secured and access was not being controlled, and even though it was supposed to be closed it was still being used by residents.

Attorney Vitunac added she could find no listing for the Bradford Place property owners association; however Mr. Bruce Massia's property management company had been hired by them and she assumed the pool service maintenance cost was probably being passed on to the unit owners.

Discussion ensued about the financial condition of the Respondent.

Attorney Vitunac reviewed a proposed Order finding the Respondent had failed to comply with the requirements of the August 11, 2009 Order, as contained in the backup on file in the Commission Office.

Discussion followed about what additional course of action should be taken.

Chairman Polackwich noted there were basically four parties involved: the Respondent owner, who was nonresponsive; the bank who had refinanced the property; the property owners association; and Blue Dolphin Pool Service. He noted the property owners association had contracted with the pool service, and by doing so it appeared they were responsible for operating the pool in a manner consistent with all the requirements. He thought the bank and the property owners association would be the key to a solution.

1:01:30

ON MOTION BY Dr. Zoffer, SECONDED BY Mr. Cahoy, the members voted unanimously (4-0) to place a lien on the property with all previous entered Orders remaining in full force and effect, along with an additional \$1,000 fine, for a total fine of \$6,500; plus a \$100 per day fine beginning August 31, 2009 that would keep running until compliance with written notice of compliance provided to the Health Department.

Case #463-09 – Carl L. Darrisaw, et al

Attorney Vitunac reviewed the information contained in the backup, which is on file in the Commission office. She recalled the Respondent had entered into a Stipulation adopted by the Board at its meeting of August 6, 2009 but he had failed to pay the \$100 fine, and although he had done some basic stuccoing of windows and doors he had not sealed the roof. She submitted a photograph into evidence, which is on file in the Commission office, and related the Respondent had now decided to demolish the building.

Attorney Vitunac recommended the Board levy the \$5,000 suspended fine, but allow the Respondent one additional opportunity to purge the \$5,000 fine by paying his \$100 civil penalty, securing all necessary permits and completing demolition of the structure in accordance with such permits by October 21, 2009.

1:05:44

ON MOTION BY Dr. Zoffer, SECONDED BY Dr. Baker, the members voted unanimously (4-0) to approve staff's recommendation.

Dr. Zoffer left the meeting at 1:47 p.m.

Case #465-09 – Gifford Gardens LLC

Ms. Julianne Price, IRC Health Department, submitted photographs and notice of service into evidence, which are on file in the Commission Office. She related this case concerned an abandoned dilapidated home and described rodent droppings and transient use of the property by vagrants for illegal purposes. Ms. Price testified the property was a sanitary nuisance and the Respondent had been issued a Notice to Correct; however nothing had been done.

Attorney Vitunac recommended the Board make a finding the violations

constituted a public health threat and the Respondent had failed to comply with the notice. She also recommended the members enter a \$1,000 fine, plus a \$5,000 fine to be purgable provided the structure was demolished or repaired by October 31, 2009, after which date a \$100 per day fine would be levied if not complied.

Discussion ensued.

1:16:47

ON MOTION BY Mr. Cahoy, SECONDED BY Dr. Baker, the members voted unanimously (3-0) to approve staff's recommendation.

STIPULATIONS (1:16:59)

Case #455-09 – CWS Communities, LP, et al; Case #467-09 – Richard Costanzo

Attorney Vitunac advised Case #455-09, CWS Communities, LP, et al, was supposed to have provided the signed Stipulation to the Health Department today; however it had not been received. She asked the Board to approve the Stipulation contingent upon receipt of the signed Stipulation by October 11, 2009.

1:17:30

ON MOTION BY Dr. Baker, SECONDED BY Mr. Cahoy, the members voted unanimously (3-0) to approve the Stipulation for Case #467-09; and approve the Stipulation for Case #455-09, with the condition the signed Stipulation be provided to the Health Department by October 11, 2009 by CWS Communities, LP, et al.

CONTINUANCES (1:18:17)

Case #456-09 – Brian Davis Septic Land Mine, Inc., et al; Cases #440-08 & 466-09 – Ronald G. McMillan et al

None of the members wished to discuss any of these cases.

1:18:32

ON MOTION BY Dr. Baker, SECONDED BY Mr. Cahoy, the members voted unanimously (3-0) to approve the Continuances for Cases #456-09, #440-08 and #466-09.

There being no further business, the meeting was adjourned at 1:58 p.m.