

## **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, December 2, 2010, at 12:30 p.m.

Present were members: Chairman Steve Snoberger, Engineer Appointee; Dr. Matthew Zoffer, Medical Doctor Appointee (arrived 12:45 p.m.); Cynthia Hall, Attorney Appointee; and Dr. Richard Baker and Richard Cahoy, Members-at-Large.

Also present was Florida Department of Health and Environmental Services (Health Department) staff: Suzanne Vitunac, Legal Counsel; Cheryl Dunn, Manager; Julianne Price, Environmental Specialist; and Recording Secretary, Misty L. Pursel, Commissioner Assistant, District 1.

### **Call to Order**

Chairman Snoberger 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 October Minutes**

Chairman Snoberger had corrections to page eight, wherein the last motion, under Case #477-10 – Vero Club Partners Ltd., indicating the unanimous vote of 5-0, be corrected to show the unanimous vote of 4-0.

**ON MOTION BY Dr. Baker, SECONDED BY Mrs. Hall,  
the members voted unanimously (4-0) to approve the  
minutes of October 7, 2010, as amended. (12:32)**

### **Additions-Deletions to Agenda**

Attorney Vitunac advised due to the presence of only one respondent at this meeting; the Board may wish to move II.A.3, Case No. 472-10 – K & M Properties of Florida, LLC to be heard first, followed by II.A.1, Case No. 466-09 – Ronald McMillan, et al to be heard second, followed by 11.A.2, Case No. 482-10 –Gifford Gardens, LLC to be heard last.

Chairman Snoberger commented he would like to pull item II.B.2 for discussion.

The agenda was approved with the stated changes.

### **Swearing In of Those Who Intend to Testify**

The secretary administered the testimonial oath to those present who wished to testify at the meeting.

### **HEARINGS**

#### **Case #472-10 – K&M Properties of Florida, LLC**

Attorney Vitunac referred to Page 9 of the agenda backup passed out today and reminded the Board this case involved demolition activities which occurred in a mobile home park without required permits and abandonments of onsite sewage treatment and disposal system; wherein the Board had adopted the Stipulation of \$3,000; the Stipulation had been signed, with payment of \$1,500 of the said civil penalty having already been paid, with the remaining \$1,500 due by December 3, 2010. She advised Mr. Pagano, on behalf of K&M Properties of Florida, LLC was present and wished to have his comments heard.

Mr. Pagano stated he was a licensed contractor in the State of Florida, employed by K&M Properties of Florida, LLC and did not realize a permit was required for an abandoned, empty septic system at a mobile home park. He asked for leniency for the remainder of the \$1,500 fine.

Chairman Snowberger explained the breakdown of the \$3,000 civil penalty.

Ms. Julianne Price of the Health Department testified inspections were made to units at the mobile home park, indicative of occupancy in the early months of 2010.

Dr. Zoffer arrived at 12:43 p.m.

(12:45 p.m.)

**ON MOTION BY Mrs. Hall, SECONDED BY Dr. Baker, the members voted unanimously (4-0) to accept the civil penalty of \$3,000 provided in the Stipulation executed on October 7, 2010, as affirmed by the Order entered on October 19, 2010. Dr. Zoffer abstained, given he was not present for testimony.**

**Case #466-09 – Ronald McMillan, et al.**

Attorney Vitunac advised this case was on the agenda at the request of the Water Management District (WMD) and provided the background of the case to include an Order entered on December 8, 2009, regarding the respondent's failure to file well completion reports on 83 wells. She further indicated the WMD would like language in all future orders as indicated on page 5 of the agenda backup; paragraph 4 of the Motion for Amendment to Clarify Order.

Attorney Vitunac said Mr. McMillan had been served a Notice of this Hearing and the Motion for Amendment to Clarify Order on November 1, 2010, with evidence of same on page 3 of the agenda backup.

(12:53 p.m.)

**ON MOTION BY Mrs. Hall, SECONDED BY Dr. Zoffer, the members voted unanimously (5-0) to amend the Order entered December 8, 2009, to include the language included in the Motion for Amendment as provided on page 5 of the Agenda backup.**

**Case #482-10 – Gifford Gardens, LLC**

Attorney Vitunac reported this case involved another property belonging to Gifford Gardens, LLC, located at 3061 44<sup>th</sup> Road, and entered into evidence the certified return receipts for the Notice of Hearing and Request for Judicial Notice, dated November 12, 2010.

Attorney Vitunac referred to a Motion to Amend in this case on the originally filed Notice of Non-Compliance, page 9 of the preliminary Agenda backup and the Notice to Correct Violation, page 15 of the preliminary Agenda backup.

Ms. Julianne Price gave testimony this complaint originated from Indian River County Code Enforcement Board with concerns the property was dilapidated and in a state of extreme disrepair, open to the elements, both by non-existing exterior doors and broken out windows, as well as evidence the property had been occupied by transient population given the large amounts of solid waste and accumulated debris, such as mattresses and broken furniture inside the structure. She further testified upon her investigation conducted on October 13, 2010, she found evidence of a sanitary nuisance injurious to public health and a threat to public safety, with no water or sewer hookup, and entered into evidence three (3) photographs depicting conditions of the property.

Ms. Price stated her last inspection of the property was conducted on December 1, 2010, wherein there was no change in the conditions of the property, except for an increased amount of solid waste accumulation. She further stated she had also had conversations with Mr. Joshua Perez on October 14, 2010, immediately after sending out the citation on October 13<sup>th</sup>, wherein he advised her he did not have the funds to cure the citation and would contact the bank holding the mortgage.

Attorney Vitunac reiterated the Notice to Correct Violation required correction within 15 days, which time period has elapsed since service on November 12, 2010. She attempted to clarify some confusion in regard to Gifford Gardens Apartment Complex of 55 units in the Gifford community managed by A to Z Management, which had been brought before the Board of County Commission for demolition, not being related to the four single family properties of Gifford Gardens, LLC cases brought before this Board to date.

(1:15 p.m.)

**ON MOTION BY Mr. Cahoy, SECONDED BY Dr. Zoffer, the members voted unanimously (5-0) to adopt the Motion of the Petitioners for Leave to Amend the Notice of Non-Compliance to include the paragraph concerning violation of the Notice to Correct violation; to make the Findings of Fact and Conclusions of Law as set out in the Amended Notice of Non-Compliance as of October 13, 2010; and to impose an Order requiring corrective action set out in the Notice to Correct to wit: removal of accumulated debris and solid waste, secure the structure so as to not allow entry by rodents, secure the structure to prevent transients from occupying the dwelling or in the alternative, demolition of the structure within fifteen (15) days of the Board's Order; to impose a set fine of \$1,500 for the violations which have occurred to date and an additional \$100 per day civil penalty which would begin to accrue if the Order for Corrective Action is violated.**

## **CONTINUANCES**

### **Case #474-10 – George McCullers, Jr., et al**

Attorney Vitunac recapped Counts I and IV had been heard in this case on October 7, 2010, reserving jurisdiction and continued on Count II in order to prepare and possibly negotiate a settlement or depositions having been scheduled for December 8, 2010. Additional time was needed to prepare properly for a hearing if settlement was not reached. She advised she had communicated with Respondents' Attorney, who did not have any objection to the continuance.

(1:20 p.m.)

**ON MOTION BY Mrs. Hall, SECONDED BY Dr. Zoffer, the members voted unanimously (5-0) to continue the case.**

### **Case #481-10 – Alfred Lee Washington**

Chairman Snoberger pointed out he pulled this case because it appeared very similar to the Gifford Gardens LLC, Joshua Perez case, wherein the continuance was based upon the petitioner's request and not at Mr. Washington's request.

Attorney Vitunac advised of activity in the case since the Motion for Continuance was filed, wherein an addendum was filed to the Notice to Correct because Mr. Washington has cooperated regarding the septic system on the property (a bottomless tank). She noted the property was vacant at this time and not in use, so not creating a sanitary hazard at this time.

Attorney Vitunac mentioned yet one more addendum would be filed to the Notice to Correct in this case; wherein further action was required regarding replacement of the septic system before the property would be able to be reoccupied. She said it was then planned to enter into a settlement with Mr. Washington and brought back to this Board regarding keeping the property vacant and binding future owners of the property to keep the property vacant until an appropriate septic system had been installed or connected to sanitary sewer.

(1:23 p.m.)

**ON MOTION BY Dr. Zoffer, SECONDED BY Dr. Baker, the members voted unanimously (5-0) to continue the case.**

## **Adoption of Proposed Meeting Schedule for 2011**

(1:24 p.m.)

**ON MOTION BY Mr. Cahoy, SECONDED BY Dr. Baker, the members voted unanimously (5-0) to approve the proposed 2011 Meeting Schedule for the Indian River County Environmental Control Hearing Board.**

## **Election of Chairman**

(1:25 p.m.)

**ON MOTION BY Chairman Snowberger, SECONDED BY Dr. Baker, the Board voted unanimously (5-0) to elect Mrs. Hall as Chairman of the Environmental Control Hearing Board for 2011.**

## **Election of Vice Chairman**

(1:26 p.m.)

**ON MOTION BY Mr. Cahoy, SECONDED BY Dr. Zoffer, the Committee voted unanimously (5-0) to elect Mr. Snoberger as Vice Chairman of the Environmental Control Hearing Board for 2011.**

## **Other Matters**

Mr. Cahoy distributed a copy of a newspaper article from the Scripp's Treasure Coast Newspaper dated Sunday, November 14, 2010, entitled "Pensacola Septic tanks law worth the price?", a copy of which is on file in the Commission Offices, and requested comment from the Health Department.

Mrs. Cheryl Dunn advised this article had to do with Senate Bill 550, brought forward by Senator Constantine, changing our statutes and the rules supposedly to be written and implemented by January 1, 2011, wherein every existing septic system in the State of Florida had to be inspected and pumped out every five years.

She said it started out being a function of the County Utilities Department and then the rule changed allowing septic tank contractors to do the work, but not allowing the employees of the contractor to certify the system.

Mrs. Dunn mentioned House Bill 13 was to repeal all of Senate Bill 550, with no rules in place for the implementation, with the Department of Health having been told to do nothing at this time.

There being no further business, the meeting was adjourned at 1:37 p.m.