

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, February 1, 2018 at 12:30 p.m.

Present were members: **Chairperson Dr. Philip Glade**, Medical Doctor Appointee; **Mr. Kevin Rollin**, Attorney Appointee; **Mr. Patrick Walther**, Engineer Appointee; **Dr. Richard Baker** and **Mr. Christopher Murphy**, Members-at-Large.

Also present was Ms. Jennifer Peshke, Attorney for the Board; Ms. Kate Pingolt Cotner, IRC Assistant County Attorney; IRC Environmental Health (the Department) staff: Ms. Cheryl Dunn, Environmental Health Manager; Mr. Ian Moore, Environmental Specialist II; and Ms. Lisa Carlson, Recording Secretary.

Call to Order

Acting Chairperson Glade called the meeting to order at 12:30 p.m.

Introduction of Mr. Christopher Murphy

Ms. Cheryl Dunn, Environmental Health Manager, introduced new Board member Mr. Christopher Murphy and he proceeded to provide a short summary of his professional background.

It is noted for the record that Ms. Jennifer Peshke, Attorney for the Board, arrived late to the meeting at approximately 12:34 p.m.

Roll Call by Secretary

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

Election of Officers for 2018

ON MOTION BY Mr. Walther, SECONDED BY Mr. Rollin, the members voted unanimously (5-0) to elect Dr. Philip Glade as Chairperson for 2018.

ON MOTION BY Mr. Walther, SECONDED BY Dr. Baker, the members voted unanimously (5-0) to elect Mr. Kevin Rollin as Vice Chairperson for 2018.

Memo Meeting Dates 2018

Ms. Cheryl Dunn pointed out a clerical error on the 2018 meeting date calendar that was approved at the previous meeting.

Consideration of December 7, 2017 Minutes

ON MOTION BY Mr. Rollin, SECONDED BY Dr. Baker, the members voted unanimously (5-0) to approve the minutes of December 7, 2017 as presented.

Additions-Deletions to Agenda

Chairperson Glade advised that at the end of the meeting, he wished to discuss honoring former Chairperson Mr. Richard Cahoy for his service to the Board. He also requested a change in the order that the cases would be heard, moving Case 561-17 from second to third.

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 #560-17 – Johnny Johnson

Ms. Kate Pingolt Cotner, Assistant County Attorney, provided a brief overview of information contained in the backup relating to a structure on the Subject Property being occupied with no apparent means for permanent sewage treatment and the septic tank for the main house that was located underneath a weight bearing structure. A September 19, 2017 Amended Notice of Violation directed the Respondent to cease use of the occupied structure on the Subject Property, have a state certified contractor pump and abandon the septic tank and then connect the main house to public sewer within sixty days of receipt of the letter. At the December 7, 2017 hearing, the Respondent was given an additional ninety days to connect to public sewer. Subsequently, the Respondent confirmed with the IRC Utility Department that the Subject Property was already connected to public sewer and that the county's database was inaccurate.

Mr. Ian Moore, Environmental Specialist II, explained that on January 26, 2018, he met with the IRC Utilities Department at the Subject Property and it was

confirmed that the main house was already connected to public sewer, the septic tank had been abandoned and the utilities map was inaccurate. He added that the secondary structure on the Subject Property remains unoccupied and is scheduled for demolition.

Ms. Cheryl Dunn asked that the case be dismissed and apologized to Ms. Lashounda Judon, Attorney-In-Fact for the Respondent, for the ordeal.

Mr. Kevin Rollin commended the Respondent for her dignity and professionalism toward the Board throughout the proceedings.

ON MOTION BY Mr. Walther, SECONDED BY Dr. Baker, the members voted unanimously (5-0) to adopt the proposed Order as written.

It is noted for the record that a Representative for the Respondent was present for this hearing.

Case #557-17 – Gladys Bryant aka Gladys Lamb

Ms. Kate Pingolt Cotner provided a brief summary of information contained in the backup relating to violations by the Respondent for sanitary nuisance issues caused by two onsite sewage treatment and disposal systems, one of which was exposed. She stated that at the August 3, 2017 meeting, the Respondent was ordered to obtain an approved septic tank lid on the used septic tank, abandon the unused tank and either vacate the Subject Property or connect to public sewer. At the October 5, 2017 meeting, the Respondent was given until January 19, 2018 to connect the Subject Property to public sewer. The Respondent has since connected the Subject Property to public sewer as ordered but has not yet abandoned the septic tank.

Mr. Gregory Wesley, Representative for the Respondent, indicated that he was unaware of the tank abandonment issue and assured the Board that he would take care of it right away.

Ms. Cheryl Dunn recommended a thirty-day extension for the Respondent to properly abandon the septic tank on the Subject Property.

The Board discussed the proposed Third Amended Order that concluded that the Respondent will abandon the septic tank on the Subject Property within thirty days or pay a \$1,000 suspended penalty.

ON MOTION BY Mr. Rollin, SECONDED BY Mr. Walther, the members voted unanimously (5-0) to adopt the proposed Third Amended Order as amended in cooperation with the Health Department at this meeting.

It is noted for the record that a Representative for the Respondent was present for this hearing.

Case #561-17 – Titone Properties LLC

Ms. Kate Pingolt Cotner reviewed information contained in the backup relating to a failing onsite sewage treatment and disposal system (OSTDS) at single family residence. A November 17, 2017 Notice of Violation from the IRC Department of Health directed the Respondent to pump out the septic tank every three days until such time that the residence is properly connected to the IRC sewerage system. At the December 7, 2017 meeting, the Respondent was ordered to keep the Subject Property vacant once the current tenant was evicted until the sewer connection is completed and was given ninety days to connect to public sewer. After the December meeting, the Respondent failed to provide the Petitioner with pump out documentation as ordered, and a December 29, 2017 inspection of the Subject Property confirmed that a sanitary nuisance remained.

Mr. Ian Moore reported that as pump out receipts had ceased to be provided, he requested a Customer Quick Report document from Reliable Septic & Services on December 28, 2017 which indicated that no pump outs had been performed on the Subject Property since December 8, 2017. He proceeded to visit the Subject Property on December 29, 2017 at which time he observed the tenants in the process of moving out and raw sewage ponding in the rear yard above the drainfield areas and partially exposed septic tank. The tenants asserted that they had not observed any pump out trucks on the Subject Property for two or three weeks. As Mr. Moore was unable to reach the Respondent, he contacted Reliable Septic who performed a pump out that day with the office manager's assurance that the records he had been given the day before were accurate. He returned to the now vacant Subject Property on January 2, 2018 and observed the lid back on the septic tank, which had been pumped, and a dry drain field.

Ms. Cheryl Dunn stated that her office had received a tank abandonment application on January 25, 2018 and issued the permit the same day. Ms. Dunn reminded the Board that the Respondent was given until March 18, 2018 to complete the connection to county sewer.

Respondent Mr. Mark Titone detailed the active steps he has taken towards connecting the Subject Property to public sewer thus far. He admitted that he had misunderstood the requirement to provide documentation to the Health Department for pump outs but produced a letter from Mr. Bruce T. McCullers, Owner/President of Reliable Septic & Services (Exhibit 1), that states that the septic tank was pumped every three days from October 31, 2017 until January 5, 2018. He also submitted a copy of a December 10, 2017 check written to Reliable Septic in the amount of five thousand dollars (Exhibit 2) for deposit on the sewer connection.

Mr. George McCullers, Owner of Reliable Septic, testified that the septic tank on the Subject Property had been pumped out every three days from October 31, 2017 to January 5, 2018.

Extensive discussion followed regarding whether or not the Respondent pumped the tank as ordered while the property was occupied through January 2, 2018 and specific penalties if it was not. Explanations for the raw sewage such as tenant sabotage and groundwater conditions were deliberated as well as whether a sanction based on administrative infractions rather than environmental hazards was appropriate. They agreed that there is no current sanitary nuisance and that steps are being taken towards a permanent solution.

The Board proceeded to revise a proposed Order that concluded in part that the Respondent would provide official pump records that are given to the IRC landfill pursuant to Rule 64E-6.010, Florida Administrative Code, within ten days of this Amended Order that indicate that the septic tank on the Subject Property was pumped every three days while it was being occupied or a \$5500 penalty for noncompliance would be imposed.

ON MOTION BY Mr. Rollin, SECONDED BY Mr. Walther, the members voted unanimously (5-0) to adopt the proposed Order as amended in cooperation with the Health Department at this meeting.

It is noted for the record that the Respondent was present for this hearing.

Board Business

Chairperson Glade welcomed Mr. Walther back to the Board after his recent surgery. He went on to propose that staff petition the IRC Board of County

Commissioners to issue a proclamation honoring former Chairperson Mr. Richard Cahoy for his many years of volunteer service to the County.

Adjournment

There being no further business, the meeting was adjourned at 2:12 p.m.