

## **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, April 5, 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. John Kelly, Environmental Specialist I; Mr. Ian Moore, Environmental Specialist II; and Ms. Lisa Carlson, Recording Secretary.

### **Call to Order**

Chairperson Glade 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.

### **Approval of Proclamation for Mr. Richard Cahoy**

**ON MOTION BY Mr. Rollin, SECONDED BY Dr. Baker, the members voted unanimously (5-0) to approve the proclamation as presented.**

Ms. Cheryl Dunn, Environmental Health Manager, agreed to inform the Board members of the date the proclamation will be read at the IRC Board of County Commissioners (BCC) meeting.

### **Consideration of February 1, 2018 Minutes**

**ON MOTION BY Dr. Baker, SECONDED BY Mr. Rollin, the members voted unanimously (5-0) to approve the minutes of February 1, 2018 with the correction of one minor clerical error.**

## **Additions-Deletions to Agenda**

There were none

## **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 #557-17 – Gladys Bryant aka Gladys Lamb**

Ms. Kate Pingolt Cotner, IRC Assistant County Attorney, 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 continued that the Respondent connected the Subject Property to public sewer within the timeframe allowed and was ordered to pay a \$1000 suspended penalty if the septic tank was not properly abandoned by March 13, 2018. She concluded that while the Respondent has abandoned the septic tank on the Subject Property, it was not completed within the timeframe set forth in the Third Amended Order due to a misunderstanding with the contractor.

The secretary administered the testimonial oath to Mr. Gregory Wesley, Representative for the Respondent, as he arrived after the beginning of the meeting. Mr. Wesley proceeded to explain in detail the reason for the delay in abandoning the tank as ordered and stressed that he stayed in contact with Ms. Dunn throughout the ordeal.

The Board discussed the proposed Fourth Amended Order that concluded that the \$1000 suspended penalty would be purged, and the case would be closed.

**ON MOTION BY Dr. Glade, SECONDED BY Mr. Rollin, the members voted unanimously (5-0) to adopt the proposed Fourth 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 #564-18 – Tina Cox-Spivey**

Ms. Kate Pingolt Cotner reviewed information contained in the backup relating to a failing onsite sewage treatment and disposal system (OSTDS) at a single-family residence. She stated that a March 1, 2018 Notice of Violation was sent to the Respondent detailing corrective actions to be taken within seven days of receipt and that the Respondent is working diligently toward remediating the sanitary nuisance.

Ms. Cheryl Dunn explained that the Respondent could not attend the meeting due to her work schedule and went on to provide additional information regarding funding of the repairs and the timeline provided to her by the septic tank contractor.

Mr. John Kelly, Environmental Specialist I, entered several photographs into evidence depicting the exposed septic tank and pooled effluent that he observed during his visits to the Subject Property on February 15, 2018 and April 4, 2018. He provided details of his communication with the Respondent as well as with the septic tank contractor.

Ms. Cheryl Dunn voiced her concerns that in general there appears to be miscommunication between the this and other Respondents and local septic contractors. The Board proceeded to revise a proposed Order indicating that the Respondent would employ a state-certified septic contractor to pump out, evaluate and repair the failing septic tank while continuing to routinely pump out the system in the interim to alleviate future sanitary nuisances.

**ON MOTION BY Mr. Rollin, SECONDED BY Mr. Murphy, 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 not 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 a single-family residence. A November 17, 2017 Notice of Violation 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. 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. At the February meeting, the Board received mixed evidence as to whether the septic tanks had in fact been pumped every three days while the Subject Property was occupied through December 29, 2017 and the Respondent was ordered in part to provide official pump out records for that timeframe or pay a penalty of \$5500. She concluded that the Respondent has not provided the pump out records in accordance with the Amended Order dated February 14, 2018 and that the septic tank has not yet been abandoned.

Mr. Ian Moore, IRC Environmental Specialist II, reminded the Board that the Subject Property was ordered to be connected to sewer by March 18, 2018 and reported that the connection had not yet begun. He was told by the septic contractor on March 6, 2018 that it would take two months for the lift station to be constructed and that it had been ordered in the past ten days. The septic contractor also told him that the reason for the December 2017 gap in pump out records may be due to a system they use that comingles sewage from several pump outs into a DEP approved waste hauler that is dumped in West Palm Beach without tracking records. He continued that the septic tank has not yet been abandoned and that the permit will expire on April 26, 2018 but that an extension could be issued. He reiterated that he received no pump out records since the last meeting and that the IRC Utilities department pump out receipts of December 4, 7 and 29 coincided with the those that had been previously provided by Reliable Septic.

Respondent Mr. Mark Titone reminded the Board of the letter he entered into evidence at the February meeting from Mr. Bruce T. McCullers, Owner/President of Reliable Septic & Services, that states that the septic tank was pumped every three days from October 31, 2017 until January 5, 2018. He proceeded to present additional documentation into evidence to prove that he paid for and received pump outs for the septic tank on the Subject Property between December 7, 2017 and December 29, 2017.

Extensive discussion followed regarding whether there was sufficient evidence that the tank was pumped as ordered while the property was occupied through January 2, 2018.

The Board proceeded to revise a proposed Second Amended Order that concluded that the Respondent did not comply with the Amended Order dated February 14, 2018 and that the \$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 Second Amended 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.

**Case #561-18 – Titone Properties LLC**

Ms. Kate Pingolt Cotner summarized information contained in the backup relating to unpermitted drainfield alterations, untreated drainfield spoils, and unsanitary conditions that create vermin harborage at the same Subject Property as the previously heard case. A Notice of Violation ordered the Respondent to cease modifications of the drainfield, to remove debris and drainfield spoils, to apply hydrated lime to stabilize exposed sewage, and to hire a licensed pest control operator to inspect and control the vermin on the Subject Property to include the residential structure.

Mr. Ian Moore testified about the drainfield part of the violation, beginning with his December 29, 2017 visit to the Subject Property at which time he spoke to the tenant who was in the process of moving out. The tenant alleged that he had recently observed Titone Properties LLC employees digging in the drainfield area and placing a “black junction box and styrofoam tubing” into the ground. Mr. Moore felt that these products were consistent with a distribution box and styrofoam drainfield materials which are accessible at many local hardware stores. When he returned to the Subject Property on January 2, 2018, he noted evidence of drainfield disturbances and in fact found no buried drainfield products at all. He did locate drainfield spoils in the back of the property as well as remnants of drainfield products similar to those described to him by the former tenant.

Mr. Ian Moore next discussed the vermin section of the violation. He displayed several photographs of the dilapidated property that depicted shredded walls, nesting material, and rodent fecal matter as well as overgrown vegetation and large amounts of debris. He stated that on his December 29, 2017 visit to the Subject Property, the tenant reported to him that there was a great deal of rats in and around the property. He added that, to date, he had received no vermin remediation updates from Mr. Titone and had not observed any apparent efforts to remove debris or control vermin on the Subject Property.

Respondent Mr. Mark Titone denied any tampering of the drainfield and insisted that his former tenant had returned to the Subject Property at least twice after moving out on January 29, 2017 to sabotage the property. He contended that despite his requests to the contrary, the tenant had been breeding rats as nourishment for his snakes, attracting additional rats the Subject Property. He provided evidence that he had contracted a licensed pest control operator that is providing rodent surveillance and eradication.

Mr. Carl Suck, former employee of Titone Properties LLC, entered one photograph into evidence and testified that he applied hydrated lime to the property on January 31, 2018 at which time he observed the former tenant dumping debris on the Subject Property. Ms. Dunn responded that there may be some confusion as to where the lime was to be applied.

The Board proceeded to revise a proposed Order concluding that the Respondent would pay a \$1000 penalty for failure to comply with the Notice to Correct, would remove drainfield spoils and treat the surrounding area with hydrated lime, would remove all solid waste piles and overgrown vegetation, and provide pest control receipts to Ms. Cheryl Dunn.

**ON MOTION BY Mr. Rollin, SECONDED BY Mr. Walther, the members voted unanimously (5-0) to adopt the proposed Second Amended 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.

Chairman Glade called a five-minute recess at 3:45 p.m.

### **Board Information**

Ms. Cheryl Dunn informed the Board of an emergency injunction taken for a Subject Property owned by Dallas and Jane Yates and the Yates Group LLC. She described four structures on the Subject Property as well as several septic tanks that are causing a sanitary nuisance.

### **Presentation**

Ms. Jennifer Peshke, Attorney for the Board, provided an overview of the Indian River County Environmental Control Hearing Board and gave a PowerPoint presentation, copies of which are on file in the Board of County Commissioners

(BCC) Office. She thanked the members of the Board for their service and answered questions about the presentation.

### **Adjournment**

There being no further business, the meeting was adjourned at 4:28 p.m.