

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, June 7, 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; and **Mr. Christopher Murphy**, Member-at-Large.

Dr. Richard Baker, Member-at-Large, was absent.

Also present was Ms. Cynthia VanDeVoorde Hall, Substitute 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.

Welcome to Cynthia VanDeVoorde Hall

Chairperson Glade welcomed former member of the Board, Ms. Cynthia VanDeVoorde Hall, who was filling in for vacationing Ms. Jennifer Peshke, Attorney for the Board.

Roll Call by Secretary

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

Consideration of March 5, 2018 Minutes

ON MOTION BY Mr. Walther, SECONDED BY Mr. Murphy, the members voted unanimously (4-0) to approve the minutes of March 5, 2018 as presented.

Reminder – Financial Disclosures

Chairperson Glade reminded the members of the Board that financial

disclosures for 2017 are due before July 2, 2018.

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 #561-17 – Titone Properties LLC

Ms. Kate Pingolt Cotner, IRC Assistant County Attorney, 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 7, 2017 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 1, 2018 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 \$5,500. At the April 5, 2018 meeting, the Board determined that there was insufficient evidence to show that the septic tank was pumped every three days as ordered while the Subject Property was occupied through December 29, 2017 and the Respondent was ordered to pay a penalty of \$5,500.

Mr. Ian Moore, IRC Environmental Specialist II, stated that the lift station has been installed on the Subject Property but has not yet been connected to the IRC sewerage system due to wet weather conditions. He continued that the septic tank has not yet been abandoned or filled with dirt, creating a safety hazard. He acknowledged that the Subject Property remains uninhabited.

Respondent Mr. Mark Titone updated the Board regarding his progress towards connecting the Subject Property to public sewer and abandoning the septic tank. He asserted that the septic tank remains open for the convenience of the contractor to more easily connect to sewer.

Extensive discussion followed regarding timeframes that coerce the Respondent to come into compliance and to pay the accrued fines in order to avoid the placement of liens against the Subject Property.

The Board proceeded to revise a proposed Third Amended Order that concluded in part that the Respondent did not properly abandon the septic tank within the timeframe ordered, resulting in a \$1000 penalty in addition to the \$5500 penalty imposed at the previous meeting. In addition, the Respondent was given ten days to complete the septic tank abandonment and forty-five days to complete the connection to public sewer in order to avoid additional penalties.

ON MOTION BY Mr. Walther, SECONDED BY Mr. Rollin, the members voted unanimously (4-0) 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 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 January 22, 2018 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. At the April 5, 2018 meeting, the Respondent was ordered to pay a penalty of \$1000 for failure to comply and given ten business days to come into compliance to avoid further penalties.

Mr. Ian Moore testified that his April 18, 2018 inspection of the Subject Property showed evidence that a great deal of work had been performed. He concluded that compliance has been achieved and he provided evidence of continued pest control efforts on the Subject Property.

Respondent Mr. Mark Titone agreed with Mr. Ian Moore's findings.

The Board proceeded to revise a proposed Amended Order concluding that compliance has been achieved and that the \$1000 penalty ordered on April 18,

2018 should be paid within ten business days in order to avoid a lien on the Subject Property.

ON MOTION BY Mr. Rollin, SECONDED BY Chairman Glade, the members voted unanimously (4-0) to adopt the proposed 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.

The secretary administered the testimonial oath to those who wished to testify but had arrived after the beginning of the meeting.

Case #568-18 – Gladys Bryant aka Gladys Lamb

Ms. Kate Pingolt Cotner provided a brief summary of information contained in the backup relating to a concrete lid on a septic tank that does not fit securely, causing it to not be water tight, resulting in standing liquid. A Second Amended Notice of Violation dated April 16, 2018 directed the Respondent to immediately have the septic system evaluated by a state-certified septic contractor and replaced if necessary. She added that the Subject Property remains vacant and therefore the septic system is not being used and no humans are being exposed to untreated sewage.

Mr. John Kelly, Environmental Specialist I, described his visits to the Subject Property on February 2, 2018, February 23, 2018 and March 6, 2018 and entered several photographs into evidence depicting the exposed septic tank.

Representative for the Respondent, Mr. Gregory Wesley, proceeded to explain that he is exploring funding options to replace the OSTDS.

The Board discussed the proposed Order that concluded that the OSTDS would be repaired or replaced by a state-certified septic contractor or properly abandoned within ninety days in order to avoid penalties. In addition, the Subject Property would remain unoccupied until violations are corrected.

ON MOTION BY Mr. Murphy, SECONDED BY Mr. Walther, the members voted unanimously (4-0) to adopt the proposed 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.

Chairman Glade called a ten-minute recess at 2:04 p.m.

Case #555-17 – Brian Davis Septic and Backhoe

Ms. Kate Pingolt Cotner reviewed information contained in the backup relating to multiple violations by the Respondent's septic business as they relate to inaccurate septage pump-out records and the Respondent's reluctance to provide hauling logs to the Petitioner for review. On October 19, 2017, the Hearing Board ordered the Respondent to provide monthly documentation of septage collection and disposal for the next twenty-four months or pay suspended penalties of up to \$500 per day for any further violations of appropriate record keeping. She noted that the Respondent had not provided the ordered documentation despite numerous reminders.

Ms. Cheryl Dunn, Environmental Health Manager, reported that after the Respondent received the May 22, 2018 Notice of Hearing, she received logs for the past five months of the requested information. She added that the Respondent was recently sent a Notice of Violation for septic waste collected from the Micco area, which is in Brevard County, and taken to the IRC landfill.

Respondent Mr. Brian K Davis, owner of Brian Davis Septic & Backhoe Inc., contended that the lack of required documentation was due to a software problem and that going forward he would extract the data manually until such time that the issue is resolved. As for the septic waste collected from the Micco area and dumped in the IRC landfill, he cited a mistake by his driver due to the name of the collection location being Sebastian River Marina.

The Board discussed the proposed Order that would conclude that the Respondent pay a fine of \$1000 which is \$200 per month for the five months that the requested monthly documentation of septage collection and disposal was turned in late.

ON MOTION BY Mr. Rollin, SECONDED BY Chairman Glade, the members voted unanimously (4-0) 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.

Case #541-16 – Inez Playerz Club

Ms. Cheryl Dunn reviewed information contained in the backup relating to an April 12, 2016 Order whereby a \$500 suspended penalty was imposed if the Respondent failed to obtain an annual sanitation permit on or before its due date of September 30 of each year. When the Respondent failed to pay for the certificate before the September 30, 2017 deadline, she was sent a Notice to Appear dated May 22, 2018. On May 25, 2018, the Respondent contacted Ms. Dunn, alleging that she did pay for the certificate online on March 1, 2018. Ms. Dunn confirmed that there was a glitch in the online program and it had not registered the payment, albeit late.

The Board declined to impose penalties for the current violation and drafted an Amended Order for a suspended penalty of \$500 for future violations.

ON MOTION BY Chairman Glade, SECONDED BY Mr. Rollin, the members voted unanimously (4-0) to adopt the proposed Amended 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.

Continuance

Ms. Cheryl Dunn informed the Board of an Order of Continuance for the 567-18 Bruce McCullers and Allied Diversified of Vero Beach, LLC case.

Board Information

Ms. Kate Pingolt Cotner updated the Board on the emergency injunction taken for a Subject Property owned by Dallas and Jane Yates and the Yates Group LLC as discussed at the April 5, 2018 meeting.

Adjournment

There being no further business, the meeting was adjourned at 2:40 p.m.