

## **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, October 4, 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; **Mr. Christopher Murphy** and **Dr. Richard Baker**, 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; Ms. Lauren Broom, 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.

### **Presentation to Mr. Cahoy**

Chairperson Glade read a Proclamation signed by the County Commissioners honoring former Chairperson Mr. Richard Cahoy and thanked him for his many years of volunteer service to Indian River County and this Board.

### **Consideration of August 2, 2018 Minutes**

**ON MOTION BY Mr. Rollin, SECONDED BY Mr. Walther, the members voted unanimously (5-0) to approve the minutes of August 2, 2018 as presented.**

### **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 #572-18 – Juan and Marian Zamarripa

Ms. Cheryl Dunn, Environmental Health Manager, informed the Board that a translator would be assisting the Respondent and asked that the members to speak slowly to better accommodate him. Translator Mr. Carlos Rivera clarified that the Respondent wished to participate in English as much as possible and only ask for help when needed.

Ms. Kate Pingolt Cotner, IRC Assistant County Attorney, reviewed information contained in the backup relating to illegal alterations of an onsite sewage treatment and disposal system (OSTDS) at a single-family residence. An August 15, 2018 Notice of Violation ordered the Respondent to reverse the septic tank alterations and have it pumped and certified by a state-certified septic contractor, submitting a repair permit application to the Environmental Health Office at the Florida Department of Health in Indian River County within seven days, if necessary. A September 14, 2018 reinspection confirmed that the sanitary nuisance still existed, and that the Respondent had not taken steps to correct the underlying matter.

Mr. Ian Moore, IRC Environmental Specialist II, described his visits to the Subject Property on September 12, 2018 and September 19, 2018 and entered several photographs into evidence depicting the exposed septic tank. He detailed the repairs that would be required for compliance and voiced his frustration with the Respondent's lack of communication with his office. He added that Angel with Best Septic has informed him that he is willing to certify the septic tank, allowing the repair permit application to be submitted and the permit to be issued.

With the help of the interpreter, Respondent Mr. Juan Zamarripa apologized to the Board for his actions and admitted that he was unaware that he had been causing harm to the city. He stated that he has applied for the repair permit and intended to correct the situation within two weeks.

The Board thanked the Respondent for his cooperative attitude and proceeded to revise an Order that concluded in part that the Respondent would either vacate the Subject Property or have the septic tank pumped out as needed by a state-certified septic contractor until such time that the sanitary nuisance is

remediated. In addition, repairs must be completed within two weeks, there is to be weekly communication with the Health Department and a \$5,000 suspended penalty was imposed for future violations. The Order will be translated to Spanish.

**ON MOTION BY Mr. Rollin, SECONDED BY Chairman Glade, 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.

**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 failing OSTDS at a single-family residence. The Respondent had been ordered to, by September 24, 2018, determine whether she would replace the OSTDS or properly abandon the septic tank and leave the property vacant. She went on to say 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. Ian Moore, IRC Environmental Specialist II, spoke on behalf of his colleague Mr. John Kelly, Environmental Specialist I. He explained that the Respondent has contracted with Reliable Septic to replace the OSTDS, but financial struggles have delayed the process.

Representative for the Respondent, Mr. Clemons Cobb, provided an update on the progress of the Subject Property and explained that his family continues to explore funding options to replace the OSTDS.

The Board discussed the proposed Amended Order that concluded that the OSTDS would either be replaced by a state-certified septic contractor or properly abandoned. In addition, the Subject Property would remain unoccupied until violations are corrected, and monthly updates will be provided to the Health Department.

**ON MOTION BY Chairman Glade, 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 a Representative for the Respondent was present for this hearing.

**Case #567-18 – Bruce T. McCullers and Allied Diversified of Vero Beach LLC**

Ms. Kate Pingolt Cotner reviewed information contained in the backup relating to untreated drainfield spoils unlawfully buried near a recent drainfield installation at a single-family residence. Although the Respondent removed the drainfield spoils from the Subject Property immediately after receiving a complaint by the property owner, a sanitary nuisance existed for four days.

Mr. Ian Moore, IRC Environmental Specialist II, explained that after his April 10, 2018 inspection of the drainfield installation, he gave approval for the Respondent to cover the drainfield. However, an April 12, 2018 complaint from the property owner revealed the burial of drainfield spoils on the Subject Property. He entered several photographs into evidence portraying the violation.

Respondent, Mr. George McCullers, Owner of Reliable Septic, testified that he was out of town at the time of the incident, but that he terminated the operator's employment and had the drainfield spoils removed immediately after the violation was discovered.

The Board discussed the proposed Order that included a fine of \$1,000 and that the Board retain jurisdiction in order to enter such further Orders as may be appropriate.

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

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

**Case #571-18 – Walking Tree Brewery, LLC**

Ms. Kate Pingolt Cotner provided a brief summary of information contained in the backup relating to repeat violations at a licensed bar involving doors open to the outside with no screening or other measure to close the opening and prevent vermin from entering the facility.

Ms. Lauren Broom, IRC Environmental Specialist II, entered several Department of Health inspection reports into evidence, all of which include

violations relating to doors open to the outside at the Subject Property.

Ms. Cheryl Dunn clarified some of the differences in regulations between bars licensed by the Department of Health which has no provisions for outdoor bars and those licensed by the Department of Business and Professional Regulation, Division of Hotels and Restaurants, that do allow for open-air bars.

Respondent Mr. Alan Dritenbas apologized for the violations and assured the Board that current staff training includes strict guidelines for keeping the doors closed unless the screens are down.

Mr. Patrick Walther recused himself from this case due to his friendship and working relationship with the Respondent and his family. He submitted a Form 8B, Memorandum of Voting Conflict to the Recording Secretary.

Lengthy discussion ensued as the Board debated solutions to abate the violation including the possibility of requesting a variance of the Health Department's rules. Attorney Ms. Jennifer Peshke reminded the Board that by bringing forth this case, Staff is merely doing their job by enforcing current laws and codes.

**ON MOTION BY Chairman Glade, SECONDED BY Mr. Rollin, the members voted (2-2) to adopt the proposed Order as amended in cooperation with the Health Department at this meeting that imposes a fine of \$250 and retains jurisdiction in this case. Mr. Murphy and Dr. Baker were the opposing votes. This motion failed and was recalled.**

**ON MOTION BY Mr. Murphy, to adopt the proposed Order as written. There was no second to this motion and it failed.**

**ON MOTION BY Chairman Glade, SECONDED BY Dr. Baker, the members voted (3-1) to adopt the proposed Order as amended in cooperation with the Health Department at this meeting that imposes a fine of \$250, encourages the Respondent to apply for a variance and retains jurisdiction in this case. Mr. Murphy was the opposing vote. This motion passed.**

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

## **Case #545-17 – M'ink House Tattoo Company**

Ms. Kate Pingolt Cotner reviewed information contained in the backup relating to a variety of violations including the Respondent's failure to keep quarterly spore test results for its onsite autoclave which resulted in a February 6, 2017 Order for a suspended penalty if another violation occurs within twelve months. A March 5, 2018 inspection revealed repeat violations as well as some additional violations relating to the underlying business. She noted that the Respondent has complied with correcting all of the violations with the exception of the spore results that were missing between October 2017 and December 2017.

Ms. Cheryl Dunn explained that normally the suspended penalty would be administered as ordered and the Board would not hear the case. However, she brought it forward due to financial issues by the Respondent

Ms. Lauren Broom, IRC Environmental Specialist II, confirmed that the repeat violation regarding spore testing did occur.

Respondent Ms. Amanda Tyner spoke of a challenging time in her life revolving around a legal battle that impacted her personally and financially during the timeframe in question. During that time, she did not operate the piercing portion of her business and unintentionally neglected to conduct the spore testing in a timely matter. She added that no customers were in danger as no piercings were being performed during that time and proceeded to present 2017 and 2018 spore test results into evidence. She reported that she is now back in her business full-time and continues to take her job very seriously.

Discussion followed regarding the Respondent's hardship situation and agreed to reduce the penalty to \$50 per violation for a total of \$350 for seven violations and allow 120 days for payment.

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

## **Continuance**

Ms. Kate Pingolt Cotner informed the Board of an Order of Continuance for the 570-18 Indian River Investment Realty, Inc. case.

## **Rehearing Request - Case #546-17 – Uncle Sams Brau Hause LLC**

Ms. Kate Pingolt Cotner summarized information contained in the backup relating to repeat violations of food items as well as food utensils and equipment stored on the premises of the Subject Property outside of permitted temporary food event dates. The Respondent was not present at the August 2, 2018 meeting and was fined a total of \$1,000 for eight violations.

Respondent Mr. Randall Dehmer apologized for missing the August 2, 2018 hearing due to a scheduling error and provided explanations for some of the violations. He contended that he now complies with all regulations and asked for reconsideration of the fine.

Ms. Lauren Broom, IRC Environmental Specialist II, commented that her recent visit to the Subject Property revealed no violations.

The Board proceeded to propose an Amended Order that reduces the fine from \$1,000 to \$400 for eight violations to be paid within 120 days with a suspended penalty of \$1000 for future violations.

**ON MOTION BY Chairman Glade, SECONDED BY Mr. Murphy, the members voted unanimously (5-0) to adopt the Amended Order as written in cooperation with the Health Department at this meeting.**

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

## **Board Information**

Case #565-18 – Dallas & Jane Yates and The Yates Group LLC. Ms. Kate Pingolt Cotner updated the Board on the emergency injunction taken for this Subject Property as discussed at previous meetings.

## **Adjournment**

There being no further business, the meeting was adjourned at 3:17 p.m.