

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, December 6, 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. 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; Ms. Heather Waters, Environmental Specialist I; and Ms. Lisa Carlson, Recording Secretary.

Call to Order

Chairperson Dr. Philip Glade called the meeting to order at 12:35 p.m.

Roll Call by Secretary

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

Consideration of October 4, 2018 Minutes

ON MOTION BY Mr. Christopher Murphy, SECONDED BY Mr. Patrick Walther, the members voted unanimously (4-0) to approve the minutes of October 4, 2018 as presented. Mr. Kevin Rollin had not arrived at the meeting.

Approval of 2019 Meeting Schedule

ON MOTION BY Mr. Patrick Walther, SECONDED BY Mr. Christopher Murphy, the members voted unanimously (4-0) to approve the 2019 meeting schedule as presented. Mr. Kevin Rollin had not yet arrived at the meeting.

Ms. Cheryl Dunn, Environmental Health Manager, thanked all of the Board

members that renewed their terms for the next year.

It is noted for the record that Mr. Kevin Rollin, Attorney Appointee, arrived late to the meeting at approximately 12:37 p.m.

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

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 #570-18 – Indian River Investment Realty, Inc.

Ms. Kate Pingolt Cotner, IRC Assistant County Attorney, reviewed information contained in the backup relating to an improperly maintained onsite sewage disposal and treatment system (OSDTS) that allowed untreated sewage to be spilled onto the surface of the ground, causing a sanitary nuisance. She noted that the Subject Property is currently vacant, and that public sewer is available.

Ms. Heather Waters, IRC Environmental Specialist I, began by describing the Subject Property and her observations during her August 7, 2018 inspection as well as her discussion with the tenants at that time. She entered three photographs into evidence depicting spilled sewage near the OSDTS as well as a June 11, 2018 pump-out receipt from Best Septic that included a notation that the septic tank and drainfield needed to be replaced. An August 8, 2018 Notice of Violation directed the Respondent to have the septic tank pumped out by a licensed septic contractor, to treat areas exposed to sewage with hydrated lime, and to connect to public sewer within ninety days. The Respondent responded with a letter and a copy of a lease stating that the tenant was responsible for the maintenance of the septic tank, that it would be pumped and inspected by a licensed septic contractor after the tenant vacates the Subject Property on August 31, 2018, and that failure of the system was due to too many people living in the house, a violation of the lease agreement.

Ms. Heather Waters provided a document from the City of Vero Beach Utilities Department showing that the average water usage for the past nine months at the Subject Property was within the normal range for the number of people residing on the property. She proceeded to describe her August 29, 2018 inspection and entered two photographs into evidence depicting the escalating condition of sewage pooling on the ground near the OSDTS, noting that there had not been any corrective actions taken since the Notice of Violation. She described a conversation with the Respondent that day when he indicated that he didn't see any corrective actions in the Notice of Violation and that in any case the tenants were responsible to deal with issues at the property, citing the lease agreement. She reminded him that the property owner is responsible for compliance and it was his responsibility to hold tenants accountable for terms of the lease.

Ms. Heather Waters testified that during a September 20, 2018 phone conversation with the Respondent, he stated that the distribution box had been clogged with a diaper, causing the malfunction of the OSTDS. She proceeded to show a diagram illustrating the operation of an OSDTS for the Board's reference. She concluded that during subsequent visits to the Subject Property, the house appeared to be unoccupied and the OSDTS area appeared to be dry.

Respondent Mr. Anders Nyquist, owner of Indian River Investment Realty, entered one photograph (Exhibit 1) into evidence and explained that the Treasure Coast Homeless Society inspected the Subject Property before the tenants signed the lease on November 2, 2017. He went on to say that the violations began when the tenants stopped paying rent and were threatened with eviction at which time, they began sabotaging the property in retaliation and that according to his licensed septic contractor, the septic tank malfunctioned because a diaper was blocking the distribution box. He was unable to produce an invoice from the septic contractor. He confirmed that the Subject Property is currently vacant and that the ground where the sanitary nuisance occurred had been cleaned with hydrated lime. During his testimony, he cross examined Ms. Heather Waters and Ms. Cheryl Dunn regarding several key points.

Board Attorney Ms. Cynthia VanDeVoorde Hall reminded the Board that the Respondent had the right to cross examine witnesses and present whatever evidence he wished, including his sworn testimony, and that the Board would then decide what was relevant and admissible. She suggested that due to the Respondent's objections to some of the documents presented, that staff clarify which documents will be submitted into evidence.

The Petitioner presented the following evidence to support its case: (1) three photos dated August 7, 2018 and two photographs dated August 29, 2018; (2) the

complaint investigation record; (3) a letter from the Respondent dated August 16, 2018; (4) an invoice from Best Septic regarding the Subject Property dated June 11, 2018; (5) a letter from the City of Vero Beach to the Respondent regarding the Septic Tank Effluent Pumping (STEP) program; and (6) a demonstrative diagram of a septic tank and drainfield.

The Board proceeded to revise an Order that concluded in part that the Respondent would properly abandon the septic tank on the Subject Property, keep it vacant until it is connected to public sewer, and pay a fine of \$1,000. In addition, the Respondent was ordered to pay an additional \$5,000 fine that would be purged if the septic tank is abandoned within thirty days.

ON MOTION BY Mr. Kevin Rollin, SECONDED BY Mr. Patrick 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.

Chairman Philip Glade called a five-minute break at 1:55 p.m.

Case #573-18 – Lindsay Charles Frederick Jr. and Andre Marie

Ms. Cheryl Dunn informed the Board that Ms. Fredrick had to leave the meeting before her case was called due to work commitments but that in any case the Respondent was improperly noticed, the work is scheduled to be performed within a week and the case will likely not be coming back to the Board.

Board Information

Case #571-18 – Walking Tree Brewery, LLC. The Board reviewed the draft letter from Board to the Florida Bureau of Environmental Health Division of Disease Control and Health Protection regarding concerns over Rule 64E-11.03 of the Florida Administrative Code.

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 2:39 p.m.