

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, April 7, 2022 at 12:30 pm.

Present were members: **Chairman Mr. Kevin Rollin**, Attorney Appointee; **Dr. Norman Meyer**, Medical Doctor Appointee; **Mr. Patrick Walther**, Engineer Appointee; **Dr. Richard Baker** and **Ms. Anna Kirkland**, Members-at-Large.

Also, present were IRC staff members: Susan Prado, IRC Assistant County Attorney; Jennifer Peshke, Attorney for the Board; IRC Environmental Control Officer: Julianne Price; Charles Vogt, Environmental Health; IRC Department of Health Environmental Specialist: Heather Waters; and Recording Secretary, Lisa Plesnarski, Commissioner Assistant.

Call to Order

Chairman Kevin Rollin called the meeting to order at 12:30 pm.

Roll Call by Secretary

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

Consideration of February 3, 2022 Minutes

Approval of the February 3, 2022 minutes was continued to the next meeting.

ON MOTION BY Kevin Rollin, SECONDED BY Richard Baker, the members voted unanimously (5-0) to move consideration of the February 3, 2022 meeting minutes to the next scheduled meeting.

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.

Attorney's Overview of Board Purpose and Procedures

Chairman Kevin Rollin gave a brief overview of the Board's procedures and purpose.

HEARINGS

Mr. Marine Boatworks, LLC Case #589-21

This case was granted a continuance to the next scheduled meeting.

Dallas Yates and Jane Yates (or) Their Estates Case #565-18

Assistant County Attorney Susan Prado explained this case was last before the Board to determine compliance with the prior Order. IRC Environmental Control Officer Julianne Price explained that she received photos from Ms. Yates on March 7, 2022 showing the properties windows had been boarded up and the outside areas maintained. Ms. Price visited the property on April 5, 2022 and verified the properties are still being maintained and are in compliance. Chairman Rollin asked if the department is recommending the case be closed. Ms. Prado responded that the property is in compliance with this specific Order and if the property were to come out of compliance the case could be heard as a new case for repeat violation. Ms. Prado noted there is still an open Code Enforcement Board case which is being monitored and that their Order is more extensive.

Ms. Prado explained the February 12, 2021 Order imposed a fine in the amount of \$200.00 per day, beginning February 22, 2021, until the property was brought into compliance which was March 7, 2022. Ms. Prado noted the only item outstanding from the Order is that respondents were required to pay an outstanding fine in the amount of \$10,554.63 payable to the Indian River Board of County Commissioners for the prior cleanup work done on the properties. Ms. Prado noted this has been leaned against the property. The property was out of compliance for 378 days with a fine imposed in the amount of \$200.00 per day totaling a fine in the amount of \$75,600.00.

Representative of the estate Ms. Dallasteen Yates spoke and said that the buyer of the subject property, Mr. Fritz, is with her today. Ms. Yates requested waiver or reduction of the fine and explained there were many factors including financial limitations which caused the delay. Chairman Rollin explained there was a previous Order determining the fine amount of \$10,554.63 for the property cleanup and that will stand. Mr. Rollin explained the existing Order of \$200.00 per day now totals \$75,600.00 and asked Mr. Fritz if he had a proposal for the Board. Mr. Fritz said he is going to be closing on the property and taking on any fines and liens and requested a reduction to 10% of the total fine.

Board attorney Jennifer Peshke explained that reductions are usually considered as 10% of the total fine amount or administrative costs. Ms. Peshke noted the fine in the amount of \$10,554.63 for cleanup of the property did not include staff labor or administrative time which was greater than average. Ms. Peshke suggested consideration of these costs when determining the fine amount.

Ms. Prado clarified the amount of \$10,554.63 was for the cleanup cost of actual removal and did not include the cost of labor and staff time.

Chairman Rollin proposed a minimum of \$7,560.00 due to the expenditure of staff time. Mr. Rollin explained that the fine in the amount of \$10,554.63 being previously ordered February 8, 2019 remains in effect. Mr. Rollin made a motion to reduce the fine to the amount of \$17,560.00.

ON MOTION BY Kevin Rollin, SECONDED BY Norman Meyer and Anna Kirkland. Patrick Walther and Richard Baker OPPOSED. The members voted (3-2) to reduce the fine to the amount of \$17,560.00.

ON MOTION BY Kevin Rollin, SECONDED BY Anna Kirkland, the members voted unanimously (5-0) that the fine could have been set at \$75,560.00 but the Board voted (3-2) to order a reduced fine in the amount of \$17,560.00 to be paid into the county general fund within 10 days of the date of the Order. The amount of \$10,554.63 previously ordered on February 8, 2019 remains in full effect.

It is noted for the record that the respondent, Ms. Yates was present for the hearing.

Brian Davis Septic & Backhoe Services Case #590-22

Assistant County Attorney Susan Prado explained this case came in with a report from a utilities staff member regarding incomplete, inconsistent or inaccurate reporting on manifest logs that are required to be provided as per FL Administrative Code Rule 62-6.022 subsections 1K and 1L. Ms. Prado explained that persons registered under this rule whom are contracted for this work are required to appropriately report the amount of waste being pumped out and dumped from septic systems. In this case there were at least two instances in which Mr. Davis provided inconsistent information regarding dumping amounts. Ms. Prado noted this contractor has previously come before the Board and showed an Order dated June 20, 2018 for a similar violation that the utilities department reported in 2017.

Ms. Prado called Rich Meckes, wastewater superintendent with Indian River County Utilities. Mr. Meckes explained that septic haulers are required to produce a log of information (manifest sheet) of what they are dumping including the location of pick up, date, type of waste, and approximate amount of volume. Mr. Meckes noted inconsistencies with the amounts delivered by Mr. Davis. Mr. Meckes talked about ways in which he follows up on inconsistencies, including researching the weight of volume delivered and the size of the tank from which the

waste was obtained. Mr. Meckes explained this was not the first time this situation occurred with Mr. Davis, noting his business's ability to dump at the county facility was recently suspended on January 12, 2022 due to manifest inconsistency. The problem in this instance was that the manifest listed an address in Melbourne as a pump out site, and that the Indian River County waste plant does not accept out of county waste. Mr. Meckes explained Mr. Davis was suspended because this was the third time he was attempting to dump waste collected outside of the county and that he contacted the Health Department shortly thereafter to report the issue of the manifest inconsistencies.

Ms. Prado clarified that the issue of dumping out of county waste has been dealt with by suspending the company from dumping at the facility and that the present issue is the inconsistency in reporting. Mr. Baker asked how many times the respondent had been in violation. Ms. Prado explained the respondent was in front of the Board in 2018, therefore, he is aware of the requirements and that this would be a second or repeat violation with the Control Board. Multiple separate violations with the Utilities Department were noted.

Indian River County Environmental Control Officer Julianne Price explained that much time was spent reviewing the suspicious manifest records. Ms. Price discussed some of the examples which were included in the information packet provided to the Board. Mr. Davis was provided the Notice of Violation sent via certified mail, copies of which Ms. Price included in the informational packet along with copies of email correspondence. Ms. Price said she spoke with Mr. Davis on the phone and at that time he contended he had provided sufficient evidence and shouldn't have to come before the Board. Ms. Price said she was provided a long list of concerns by Mr. Meckes and that she included only some of the more egregious violations as examples.

Ms. Prado reviewed the information presented and explained that Mr. Davis has been prevented from dumping at the county plant by the Utilities Department as a result of multiple violations. Ms. Prado clarified that due to the intentional or unintentional false or misleading records provided, it is requested that a fine be imposed at today's hearing. As a preventative measure, it is also requested that respondent be required to provide monthly documentation to IRC Environmental Control Officer Julianne Price so that his activity can be monitored if and when he is allowed to dump again in Indian River County.

Ms. Prado also noted that under FL State Administrative Code the state can revoke a repeat violator's license if reported to the DEP by the Health Department. Ms. Prado informed the Board that if the Board chooses, they can recommend the state revoke respondent's license. Ms. Price explained that she sent all pertinent information regarding this case to the DEP's licensing enforcement unit and that this is being considered as a repeat violation. Ms. Price explained they will also be sent information from today's ruling. Mr. Walther asked about the type of license held by the respondent, and could he still do septic work aside from pump outs if his license were revoked. IRC Department of Health Environmental Specialist

Heather Waters clarified that the respondent has a septic tank contracting license and that he is a master septic contractor. Ms. Waters explained that if his septic license were to be revoked, he would not be allowed to pump out or install drain fields in the state of Florida. A few of the Board members expressed reluctance to negate someone's way of earning a living. There was discussion about how the seriousness of the penalties currently imposed should send a clear message. Ms. Prado explained that under the State Administrative Code, recommendation of a 90 day suspension is also an option.

Ms. Price said that Mr. Davis told her he hired Reliable Septic to do his pump outs being that he is currently suspended from dumping. Ms. Price expressed concern about this because Mr. Davis would need to have his staff on site when Reliable is doing the pump outs because the aerobic treatment units used require certification for their maintenance. Ms. Price asked Mr. Davis if he had his staff on site for every pump out to which he responded yes.

Chairman Rollin proposed a motion to adopt the proposed Order as amended. That the respondent be ordered to pay a fine in the amount of \$1,930.00 for two repeat violations and administrative costs payable within ten days of the date of the Order. The respondent is ordered to provide monthly documentation of septage collection and disposal by the 10th of each month for the next 24 months to Julianne Price with the Florida Department of Health in Indian River County. The respondent be ordered to pay a penalty up to \$500.00 per violation for subsequent violations of appropriate record keeping. The hearing Board shall retain jurisdiction in this cause to enter further Orders as may be appropriate including those with fines.

ON MOTION BY Mr. Rollin, SECONDED BY Patrick Walther, the members voted unanimously (5-0) to adopt the proposed Order as amended.

It is noted for the record that the respondent, Mr. Davis was not present for the hearing.

Board Matters/Discussion

There were none.

Adjournment

There being no further business, the meeting was adjourned at 1:55pm.