

INDIAN RIVER COUNTY
ENVIRONMENTAL CONTROL HEARING BOARD
VERO BEACH, FLORIDA

FLORIDA DEPARTMENT OF HEALTH)
IN INDIAN RIVER COUNTY AND INDIAN)
RIVER COUNTY ENVIRONMENTAL)
CONTROL OFFICER)

Petitioner)

vs.)

Damien H. Gilliams and)
Bonnie Fey)

Respondents)

CASE NO. 599-23

ORDER

This matter was heard before the Indian River County Environmental Control Hearing Board (hereinafter "Board") on December 7, 2023, pursuant to a Notice of Non-Compliance dated November 13, 2023, that was issued by the Florida Department of Health in Indian River County (hereinafter "Petitioner"). Damien Gilliams and Bonnie Fey, (hereinafter "Respondents") were properly served with a Notice of the Hearing dated November 14, 2023. The Respondent was present at the hearing, along with Respondent's attorney, and the Board, having heard testimony and argument, and being duly advised in the premises, HEREBY makes the following findings of fact and conclusions of law:

A. Findings of Fact:

The Respondents own and operate an establishment known as No Name Sports Bar, located at 490 US Highway 1, Sebastian, FL 32958 ("Subject Property").

The Respondent has created a sanitary nuisance pursuant to Sections 386.041(1)(a), (b), and (e), Florida Statutes.

The Respondent has used a failing septic system by continuing to run the business where patrons are served drinks and food when the septic system is improperly maintained pursuant to Section 386.041(1)(b), Florida Statutes.

The continued use of the water in the business located on the Subject Property in the preparation of food items and the washing of dishes is draining into the improperly maintained septic system perpetuating the sanitary nuisance by allowing the improperly treated human waste to seep out of the septic tank into the surrounding area. As well as create and maintain a condition capable of breeding flies, mosquitos or other arthropods

capable of transmitting diseases directly or indirectly to humans pursuant to Section 386.041(1)(a) and (e), Florida Statutes.

On March 24, 2023, in response to a complaint, a representative of the Plaintiff went out to the above-mentioned property and discovered a failing septic system and confirmed the alleged violation.

On April 18, 2023, the Petitioner issued the Respondents a Notice of Violation. The Notice of Violation specifically required that the Respondents immediately pump out the septic tank and lift station so as to maintain the effluent below a level that would perpetuate a sanitary nuisance and provide pump out receipts to the Petitioner. The Notice of Violation further required that the Respondents connect the Subject Property to the Indian River County centralized sewer system within 90 days in accordance with Florida Statute Section 381.00655. Then upon connection abandon the septic tank with a State licenses septic contractor consistent with Florida Administrative Code Section 62-6.011.

Respondents provided a response letter requesting an extension on July 11, 2023. Written request for extension.

On August 9, 2023, Plaintiff together with Indian River County Utilities issued a letter granting the one-time extension permitted under Florida Statute Section 381.0655(1)(b) of 90 days for Respondent to appropriately abandon the failing septic system and connect to sewer.

Respondents have failed to connect to sewer within the timeframe required under Florida Statute Section 381.0655(1)(b), and the Plaintiff may not grant anymore extensions.

The Respondents appeared and without admitting fault agreed to hookup to sewer in compliance with the code as stated in the Notice of Violation.

The Respondents agreed to appear at the next regularly scheduled board meeting of February 8, 2024 at 12:30pm in order to provide evidence of steps that have been taken to comply with order issued at the December 7, 2023 Board hearing as well as any evidence of additional steps that would need to be taken to timely comply with connection to the sewer system.


B. Conclusions of Law:


The Respondents have created a sanitary nuisance pursuant to Sections 386.041(1)(a), (b), and (e), Florida Statutes, Respondent has not taken any steps to remedy the creation of the aforementioned sanitary nuisance.

It is therefore ORDERED as follows:

1. Respondents shall immediately connect to sewer in compliance with the Notice of Violation.
2. Respondents shall perform monthly pump outs so long as the Respondents continue to mitigate all water use on the property and shall provide receipts of the pump outs to the Petitioner until connection to the sewer is achieved and verified by the Petitioner.
3. Respondents shall provide a temporary hand washing station next to the portalet restroom that is on site.
4. The Respondent shall pay \$500 per day from October 18, 2023 until February 1, 2024 which may be purged by timely connection to sewer in compliance with the Notice of Violation and remediation of any other existing violations in the Notice of Violation including but not limited to proper abandonment of the septic tank by a septic tank contractor.
5. The Board reserves the right to assess a \$500 per day sanction for violation of this order by failure to pump out or with other provisions of this order besides connection, including a sanction proportionate to staff time on this matter.
6. Upon verification of the premises connection to the Indian River County Public Sewer System, Respondent shall notify the Petitioner so that the case can be scheduled for a hearing in front of the board.
7. The Board retains jurisdiction in this cause to enter such further Orders as may be appropriate.
8. Respondent shall appear before the Board on February 8, 2024 at 12:30pm and shall provide evidence of compliance with this order.

DONE ORDERED this 27 day of December, 2023.


Kevin M. Rollin, Chairman


Internal Secretary to Indian River
County Environmental Control
Hearing Board

12/27/2023
Date


Recording Secretary to Indian River
County Environmental Control

12/27/2023
Date



Hearing Board

Copies furnished to:

Jennifer D. Peshke, Attorney for the Environmental Control Hearing Board

Susan Prado, Attorney for the Florida Department of Health in Indian River County staff

Damien Gilliams and Bonnie Fey via attorney Garland