



Groundwater and Natural Resources Protection Board

Meeting Minutes – May 20, 2021

I. CALL TO ORDER

The meeting was called to order by Ms. Rappaport at 1:30 p.m.

A. MEETING CHAIR

Both the chair and vice chair were absent for this meeting. Therefore, a motion to nominate Beth Rappaport to serve as chair of the meeting was made by Ms. McNeill, second by Ms. Said, and unanimously passed by the Board.

Mr. Medellin was welcomed as a new board member.

B. ROLL CALL

MEMBERS PRESENT

Ann McNeill
Donald Medellin
Beth Rappaport
Winifred Said

MEMBER(S) ABSENT

Terrence Bailey
David Levy

PRESENT

Aleah Ardelean, Environmental Resources Management
Anastacia DeFilippo, Environmental Resources Management
Kimberley Esau, Environmental Resources Management
Bonnie Finneran, Environmental Resources Management
Brian Gentry, Environmental Resources Management
Teal Kawana, Environmental Resources Management
Veronica Leverette, Environmental Resources Management
Matt Mitchell, Environmental Resources Management
Samantha Pucci, Environmental Resources Management
Te'Chaunta Richardson, Environmental Resources Management
Thomas Steinhoff, Environmental Resources Management
Patrick Wille, Environmental Resources Management

PALM BEACH COUNTY ATTORNEY'S OFFICE

Anne Helfant, Assistant County Attorney
Scott Stone, Assistant County Attorney

OTHER(S) PRESENT

Hermann Zingg, InterRelated Construction Corp.

C. ADDITIONS/DELETIONS TO AGENDA/APPROVAL OF AGENDA

There were no additions or deletions to the agenda. Therefore, a motion to approve the agenda by Ms. McNeill, second by Mr. Medellin, second by Ms. Said, and unanimously passed by the Board.

D. APPROVAL OF MINUTES – February 18, 2021

Motion for approval of minutes was made by Ms. McNeill, second by Ms. Said, and unanimously passed by the Board.

II. NEW COUNTY ORDINANCE ON QUORUMS

Mr. Stone stated that this new ordinance will reduce the amount of people that will be needed to physically in attendance at a hearing. The overall quorum will remain the same, but will only need to require 25% of appointed members present. The remainder of the quorum can be made up of people participating virtually.

Ms. Helfant clarified that one can appear virtually as long as a determination has been made that there is an extra-ordinary circumstance as to why you are appearing virtually.

III. CASE

Prior to the start of the case, Ms. Finneran asked Mr. Gentry to provide a brief summary on the Excavation Code and go over what the process will be in these cases.

A. EXCAVATION

1. *Boynton Golf Estates*

The Respondent was not present and was running late. Ms. Finneran left it up to the Board to determine how long they were willing to wait for the Respondent to appear or if they would prefer to hear the case in his absence.

Ms. McNeill asked that staff proceed with the case. The Board agreed.

Ms. Ardelean and Mr. Gentry were sworn in for testimony in this case. Ms. Ardelean provided copies of County Exhibits to the Chair, Board, County Attorneys, and staff.

Ms. Ardelean provided the following details concerning the case:

This case involved an 8.16 acre parcel that is located in unincorporated Palm Beach County and is known as Boynton Golf Estates.

In July 2018, Ms. Ardelean made contact, via email, with the owner, Hermann Zingg and provided him with an excavation application packet that included a Notice of Intent to Construct (NIC). Through email correspondence with Mr. Zingg, Gary Bloom of GGB Engineering and Don Hearing of Cotleur & Hearing,

they confirmed that the proposed lake would be a minimum of 12 feet deep and therefore would require a Type 2 excavation approval.

In August 2020, Ms. Ardelean conducted a site inspection and confirmed that an unapproved lake had been excavated on the subject parcel. A Notice of Violation was sent out with a deadline of 30 days to resolve the violation. Two months later, ERM received a letter from the owner's consultant, Mr. Hearing, requesting an Administrative Waiver for the Type 2 Excavation. Three months after that, ERM received a check in the amount of \$175.00 for the Administrative Waiver application fee. The check was submitted by Mr. Hearing on behalf of the owner.

On March 23, 2021, Ms. Ardelean made contact with Mr. Hearing via telephone to discuss the status of the Administrative Waiver as the contribution amount of \$8,860.00 had not yet been provided. Mr. Hearing stated that he was no longer involved with the project. A Notice of Violation was then sent via Certified Mail on March 31, 2021 and the return receipt was received on April 12, 2021. Mr. Zingg responded to the Notice of Violation and agreed to an informal conference via Zoom that took place on April 15, 2021. During the Zoom meeting, Mr. Zingg asked for an extension to come into compliance. He asked that the extension be extended until the project completes plat recordation. ERM did not support this request as the time frame for plat recordation was unknown and the Department had already expended an extensive amount of time to resolve the violation.

A Notice of Hearing was discussed in the informal conference and was subsequently sent on April 16, 2021. To date, a NIC has not been received. Therefore, no approval has been issued.

The Board agreed that in the absence of the Respondent, they would like to proceed with hearing staff's recommendation. Therefore, Ms. Ardelean stated the following as staff's recommendation:

- a. Find the Respondent in violation of ULDC Article 4.B.10, Excavation Uses, for failure to submit a Notice of Intent to Construction for Excavations for a Type 2 excavation to ERM prior to excavation of the lake.
- b. No later than June 17, 2021, respondent is to remit \$356.90 to the Palm Beach County General Fund. This amount represents County costs.
- c. No later than June 17, 2021, the Respondent is to remit \$3,220.00 to the Palm Beach County General Fund. This amount represents the quadruple fee for excavating a lake without an approval.
- d. No later than June 17, 2021, the Respondent is to satisfy the violation by: 1) providing a completed NIC or 2) providing the Administrative Waiver buyout in the amount of \$8,860.00 to the Palm Beach County Pollution Recovery Trust Fund, to waive the littoral planting and slope criteria.

- e. In the event the Respondent fails to comply with paragraph b. and/or paragraph c. and/or paragraph d., there shall be a fine imposed against the Respondent in the amount of \$50.00 per day civil penalty for each day the violation continues to exist past the compliance date.
- f. On December 17, 2021, in the event that the Respondent fails to correct the cited violations, stop the accrual of civil penalties from paragraph e. above.
- g. No later than December 17, 2021, in the event that the Respondent fails to comply with this Order by the compliance dates set forth, and upon receipt of an Affidavit of Non-Compliance from the appropriate ERM staff (which is not timely contested by respondent), the Chair of the GNRPB is authorized to execute an Order Imposing Fine/Lien to include the County costs, quadruple fees, and the \$50.00 per day civil penalty accrued through that date. The Order Imposing Fine/Lien shall be recorded in the public records of Palm Beach County, Florida, and shall thereafter constitute a lien against any real or personal property owned by the Respondent.

The Respondent, Mr. Hermann Zingg, appeared at the hearing at 2:40 p.m. and was given an opportunity to speak after being sworn in for testimony.

Mr. Zingg stated that there had been some miscommunication between his team of professionals and ERM. He stated that they did not think that they had incurred a violation at the time that they proceeded to do the work and thereafter. He stated that he believed that they were following the direction they were given and was in total compliance and had conformed to their permits and approval. He stated that it later came to light that there was a misinterpretation by someone on his team which caused him to be fined. He stated that he did not object to the fine, but would ask the Board to allow him, as a condition, until the time of plat recording to pay the fine.

After discussion between the Board members, staff, and the Respondent, the Board agreed to move forward with staff's recommendation as stated above.

To clarify with Mr. Zingg, the following was stated: If the Respondent was out of compliance with any other items on June 17, 2021, the fine would accrue at \$50 per day and would cease on December 17, 2021. No earlier than December 17, 2021, ERM would move forward with a lien after notifying the Respondent with a Affidavit of Non-compliance.

Motion to accept staff's recommendation based upon the evidence presented was made by Ms. Said, second by Ms. McNeill, and unanimously passed by the Board.

IV. DISCUSSION - BOARD

A. *Future Hearing Dates*

The following hearing dates were accepted by staff and the Board: July 15, 2021; September 23, 2021; and January 20, 2022.

Ms. Finneran stated that staff was unable to schedule a hearing room for a November hearing. If a case were to come up at that time, a hearing will be scheduled between September and January.

V. PUBLIC COMMENTS

None

VI. STAFF COMMENTS

A. *Seat No. 2*

The Seat No. 2 position will need to be filled. ERM staff will be reaching out to the Palm Beach Bar Association for a nomination.

VII. BOARD COMMENTS

None

VIII. ADJOURNMENT

The meeting was adjourned at 2:40 p.m.