

IN THE CIRCUIT COURT OF THE NINETEENTH JUDICIAL CIRCUIT  
IN AND FOR INDIAN RIVER COUNTY, FLORIDA

INDIAN RIVER COUNTY  
a political subdivision of the State of Florida

Plaintiff,

v.

Case No:

Judge:

ANGELA PISCITELLI

Defendant.

\_\_\_\_\_ /

**COMPLAINT FOR INJUNCTIVE RELIEF**

The Plaintiff, Indian River County (the “County”), by and through its undersigned attorney, and pursuant to Rule 1.610, Florida Rules of Civil Procedure, requests that this Court enter an order granting this Complaint for Injunctive Relief against the Defendant, Angela Piscitelli, (hereinafter “Defendant” or “Respondent”) concerning the property located at 1916 79<sup>th</sup> Avenue, Vero Beach, Florida, Indian River County, Florida, and in support states as follows:

**Jurisdiction and Venue**

1. This is an action for injunctive relief that is within the subject matter jurisdiction of this Court.
2. Venue is proper because the County’s principal address is in Indian River County, Florida, and the Defendant’s residential address is in Indian River County, Florida.

**Parties**

3. The County is a political subdivision of the State of Florida, with the power to sue for injunctive relief to enforce its duly enacted regulations.

4. Angela Piscitelli is the listed owner of the following described property since 1991:  
  
Lot 19, Greenbrier Unit One, according to the Plat thereof recorded in Plat Book 6, Page 56, Public Records of Indian River County, Florida.

A copy of the deed to the property is attached to this complaint as “exhibit 1”, and incorporated by reference herein (“Subject Property”).

#### **Statement of the Facts**

5. The Subject Property is zoned residential single-family use and has a single-family residence served by a septic tank. Please see “exhibit 2.”

6. The Subject Property is currently occupied by the owner and her adult son Paul Piscitelli.

7. On December 9, 2020, the Florida Health Department of Indian River County (“DOH”) inspected the Subject Property after it received a complaint about a sanitary nuisance. During this inspection, DOH confirmed that the septic tank system servicing the single-family residence on the Subject Property is failing.

8. Subsequently on January 4, 2021, February 17, 2021, and March 30, 2021, representatives from DOH re-inspected the Subject Property and the failed septic system at the Subject Property and found that the owner of the Subject Property has failed to maintain and repair the septic system allowing septage effluent (raw human sewage) to pond on the surface of the ground.

9. The exposure of untreated human waste is a violation of Sections 386.041(1)(a), Florida Statutes.

10. The improperly built or maintained septic tank is a violation of Section 386.041(1)(b), Florida Statutes.

11. Under Florida Statutes Section 386.041(2), the DOH, is authorized to investigate any condition or alleged nuisance, and if such condition is determined to constitute a sanitary nuisance, they may take such action to abate the said nuisance condition in accordance with the provisions of Chapter 386 of the Florida Statutes.

12. The conditions on the Subject Property constitute the creation and maintenance of a condition capable of breeding flies, mosquitoes, or other arthropods capable of transmitting diseases, directly or indirectly to humans in violation of Section 386.041(1)(e), Florida Statutes.

13. On January 7, 2021, DOH sent a Notice of Violation to the listed owner of the Subject Property via certified mail. DOH also hand delivered the Notice of Violation on February 17, 2021 and April 19, 2021. Please see “exhibit 3.”

14. On May 18, 2021, the DOH issued a Notice of Non Compliance and Notice of Hearing for the Respondent to appear at the June 3, 2021 Environmental Control Hearing Board (hereinafter “ECHB”) via process server. Please see “exhibit 4.”

15. On June 3, 2021, the ECHB met and the Respondent and her son, Paul Piscitelli, failed to appear.

16. At the June 3, 2021 ECHB Hearing, after hearing testimony and evidence, the ECHB found that the Respondent was in violation of Sections 386.041(1)(a), (b), and (e), Florida Statute. The ECHB ordered the Respondent to obtain an emergency permit for the repairs required to be made to the septic tank within seven (7) calendar days of the issuance of the order; to have the septic tank pumped out every ten (10) days to prevent further sanitary nuisance or vacate the premises; and

to have the system completely repaired within thirty (30) calendar days. The ECHB further ordered that the County look into seeking an injunction should Respondents not comply with the order. Please see order attached hereto as “exhibit 5” and incorporated herein by reference.

### **Count I: Injunctive Relief**

17. The County adopts and incorporates by reference paragraphs 1 through 16 as set forth herein.

18. Where the government seeks an injunction in order to enforce its police power, any alternative legal remedy is ignored and irreparable harm is presumed. Metropolitan Dade County v. O'Brien, 660 So. 2d 364, 365 (Fla. 3d DCA 1995). In doing so, any alternative legal remedy is ignored and irreparable harm is presumed. *Id.*; Rudge v. City of Stuart, 65 So. 3d 645, 647 (Fla. 4<sup>th</sup> DCA 2011).

19. The issuance of a temporary injunction requires a showing of four elements: (1) irreparable harm; (2) a clear legal right; (3) an inadequate remedy at law; and (4) the public interest will be served. Weinstein v. Aisenberg, 758 So.2d 705, 706 (Fla. 4th DCA 2000; Rudge at 647.

20. In the alternative, the issuance of a permanent injunction requires a showing of three elements: (1) the act or conduct to be enjoined violates a clear legal right; (2) there is no adequate remedy at law; and (3) injunctive relief is necessary to prevent an irreparable injury. Hollywood Towers Condominium Ass’n, Inc., v. Hampton, 40 So. 3d 784 (Fla. 4th DCA 2010).

21. Pursuant to Chapter 85-427, Laws of Florida, and the Amendment to Amended Rules of Conduct of Proceedings Before the Indian River County Environmental Control Hearing Board dated May 27, 1999, the Environmental Control Officer may enforce any violation of a county ordinance, all laws of the State of Florida, and all of the rules of state agencies, including the

Department of Environmental Protection and the Department of Health by filing a civil action in the name of Indian River County.

22. The Subject Property has a sanitary nuisance that could injure the owners, visitors, or the general public. These violations clearly violate the law and the County has a clear legal right to an injunction to stop the above-referenced violations of the laws, rules and regulations of the State of Florida.

23. As of the date of filing this complaint, the Subject Property has not been brought into compliance with the laws of the State of Florida. Photos of the Subject Property, which depict the conditions and the corresponding dates, are attached to the complaint as exhibit 6, and are incorporated by reference herein.

24. The use of an injunction is necessary to abate the ongoing sanitary nuisance because there is no adequate remedy of law. Defendant has indicated that it is too expensive to fix the safety and sanitary nuisances on the Subject Property.

25. It would serve the interests of the public as well as prevent irreparable injury to the tenants, visitors, and/or general public if this Court entered an injunction to: (1) require Defendant to hire a certified septic tank contractor to repair the existing septic tank on the Subject Property; (2) prohibit the Subject Property from being occupied while there continues to be a sanitary nuisance; and (3) prohibit the Subject Property from being occupied until a new septic tank is installed and the drainage field is repaired and/or replaced.

WHEREFORE, Plaintiff, INDIAN RIVER COUNTY, FLORIDA, respectfully requests that this Court:

- A. Enter a temporary or permanent injunction directing Defendant, Angela Piscitelli, to repair and or replace the existing septic system on the Subject Property.
- B. Enter a temporary or permanent injunction to enjoin the Subject Property from being occupied while there are exposed sanitary and safety nuisances related to the failed septic system.
- C. Enter a temporary or permanent injunction to enjoin the Subject Property from being occupied until the septic system serving the existing infrastructure is repaired or replaced by a certified septic contractor.
- D. Plaintiff also seeks all such other relief as the Court deems just and appropriate.

Respectfully submitted this \_\_\_\_\_ day of August, 2021.

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**CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing was furnished via U. S. Mail to: Angela Piscitelli, 1916 79<sup>th</sup> Avenue, Vero Beach, Florida, 32966, this \_\_\_\_ day of August, 2021.

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