

NEW YORK CITY
OFFICE OF ADMINISTRATIVE TRIALS AND HEARINGS
ENVIRONMENTAL CONTROL BOARD

BOARD MEETING

Training Room 143, 12th Floor
100 Church Street, New York, New York

December 13, 2018

9:33 A.M. - 10:13 A.M.

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MEMBERS PRESENT:

Alexandra Fisher, Esq. - Department of Buildings (DOB)
Joseph Gregory, Esq. - NYC Fire Department (FDNY)
Elizabeth Knauer, Esq. - Appointed Member
Madelynn Liguori, Esq. - Department of Sanitation (DSNY)
**Russell Pecunies, Esq. - Department of Environmental
Protection (DEP)**
Matthew Smith, Esq. - New York City Police Department
(NYPD)
Douglas Swann - Appointed Member
Michele Defreitas Within, Esq. - Department of Health &
Mental Hygiene (DOHMH)

ALSO PRESENT:

Timothy Jones, Esq. - Assistant General Counsel, OATH
Susan Kassapian, Esq. - Deputy Commissioner/Appeals, OATH
Ashford Morgan - Computer Service Technician, OATH
**Tynia Richard, Esq. - Deputy Commissioner/General Counsel,
OATH**
Simone Salloum, Esq. - Senior Counsel, OATH
Peter Schulman, Esq. - Asst. Director for Appeals, OATH
Frances Shine - Secretary to the Board, OATH
**Amy Slifka, Esq. - Deputy Commissioner/Hearings Division,
OATH**
Olga Statz - Deputy General Counsel, OATH
Noah Goldberg - Member of the Public

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2 (The board meeting commenced at 9:33
3 A.M.)

4 TYNIA RICHARD, ESQ., DEPUTY
5 COMMISSIONER/GENERAL COUNSEL, OATH: My name is
6 Tynia Richard. I'm designated to chair today's
7 meeting. So, is there a motion to adopt the
8 minutes for the October 25, 2018, meeting? Okay.
9 There's a motion. And all in favor? One, two,
10 three, four, five, six, seven, eight. Okay,
11 thank you. Alright. So our second item on the
12 agenda, Introduction of OATH ECB's Proposed Rule.

13 SIMONE SALLOUM, ESQ., SENIOR COUNSEL,
14 OATH: Okay, good morning. Simone Salloum,
15 Senior Counsel. So the first rule that we're
16 going to discuss is a proposed rule amending
17 sections 3-15(a) and (b) of OATH's Procedural
18 Rule. So we, we brought this to you a few
19 meetings ago and, during the meeting, we
20 discussed some changes to the language and,
21 specifically, the changes were that, to clarify
22 that a superseding appeals decision will not
23 extend or toll the limitations period for seeking
24 judicial review of the initial appeals decision.

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2 When we went back and discussed this
3 more internally, we realized that this could be
4 really putting respondents at a disadvantage,
5 because they would have to file an Article 78
6 petition on the underlying appeals decision
7 before getting a response on their superseding
8 appeals decision.

9 So what we put forth -- and we
10 circulated this memo after the last Board Meeting
11 which sort of describes the thought process that
12 this went through -- is to really just clarify
13 that a decision denying the request for a
14 superseding appeal decision or a decision
15 granting a request for a superseding appeals
16 decision is the actual final determination, which
17 will then start the clock for filing an Article
18 78 petition.

19 And we tried to make it really clear by
20 explaining that a decision granting a request
21 actually vacates the underlying appeals decision
22 and a decision denying the request incorporates
23 by reference the underlying appeals decision, so
24 that everything is contained in the final

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2 superseding appeals decision. That had been the
3 policy in the past and, and we thought that,
4 moving forward, that would be beneficial to
5 respondents to make it easy for them to know when
6 the clock starts.

7 We also added in just some additional
8 language that the request for a superseding
9 appeals decision must be served upon the non-
10 requesting party. Before, the Rules didn't
11 really contain any details about, about that
12 process. So this, we think this proposal makes
13 very clear that there are not two final
14 determinations; there is only one, the
15 superseding appeals decision.

16 ELIZABETH KNAUER, ESQ., APPOINTED
17 MEMBER: Well, right. So I just want to clarify
18 something. So the supers- -- in the case where
19 somebody has -- I'm sorry. This is Elizabeth
20 Knauer, ECB Board Member. In the case where
21 somebody has requested a superseding appeal
22 decision or made a -- I don't know what the
23 phraseology is -- then they, then the final
24 determination would either be the, the denial or

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2 the granting of that, right?

3 MS. SALLOUM: Yes.

4 MS. KNAUER: So, but in the case, I
5 guess it's, I think it's clear here that, if you
6 don't do that, then you can appeal directly from
7 it. There's no further exhaustion requirement.

8 MS. SALLOUM: Right.

9 MS. KNAUER: You can appeal directly
10 from the, or you can file an Article 78
11 challenging directly the final or --

12 MS. SALLOUM: Right. Yeah, if you look
13 at --

14 MS. KNAUER: -- the original appeal
15 decision.

16 MS. SALLOUM: -- if you look at (a) --

17 MS. KNAUER: Right.

18 MS. SALLOUM: -- it says that this will
19 become the final determination and, unless,
20 unless you get into (b), subsection (b) --

21 MS. KNAUER: Right, right.

22 MS. SALLOUM: -- when you file. So,
23 yeah, there's no requirement to file a
24 superseding appeal decision --

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2 MS. KNAUER: To exhaust.

3 MS. SALLOUM: -- to exhaust the
4 remedies. But, if you do, then you don't have to
5 deal with having kind of two different decisions
6 out there. Any more questions?

7 MS. RICHARD: Okay. Is there a motion
8 to approve? Okay, a motion and a vote. In
9 favor, all in favor? One, two, three, four,
10 five, six, seven in favor. Okay. Any oppose?

11 MR. DOUGLAS SWANN, APPOINTED MEMBER:
12 Abstain.

13 MS. RICHARD: One abstention. Okay.

14 MS. SALLOUM: Okay.

15 MR. RICHARD: Alright. And for the next
16 proposal?

17 MS. SALLOUM: So the next proposal is
18 similar to what you've been seeing us bring to
19 the Board Meetings. This is another final repeal
20 of the Landmarks Preservation Penalty Schedule.
21 This is currently in Section 3-114 of Subchapter
22 G of Chapter 3 of Title 48 of the Rules of the
23 City of New York.

24 So we propose this rule repeal and

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2 published -- you voted on it a while ago and we
3 published it in The City Record on February 1,
4 2018. A public hearing was held on March 28,
5 2018. We didn't receive any public comment. No
6 one attended the public, the public hearing. And
7 this Landmarks Preservation Commission is moving
8 forward with the promulgation of, literally, of
9 the identical penalty schedule. The reason for
10 the delay was that they were also changing more
11 of their rules that, that house the penalty
12 schedule as well, so it took some time. They
13 have, it's like a 125-page proposal of new rules,
14 but the penalty schedule itself is identical.
15 They didn't change any penalty amounts. They
16 didn't change any violation descriptions.
17 They've just moved it over. Does anyone have any
18 questions on this one?

19 MS. RICHARD: Okay. Motion to approve?
20 And all in favor? One, two, three, four, five,
21 six. Any oppose? Two. Okay, so it's seven in
22 favor, two oppose.

23 MS. SALLOUM: That's all I got. Thanks.

24 MS. RICHARD: Okay, thank you. And next

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2 on the agenda is review of the Board panel
3 composition question. So those of you who were
4 here will remember, we had this discussion at the
5 to- October meeting, and Commissioner Fisher was
6 not here, but what we discussed was the compet-
7 composition of the panels, the individual panels
8 that review the appeals. And what's been going
9 on is because there are only three appointed
10 members currently on the Board who review the
11 appeals, and the composition has been two of the
12 appointed members plus one ex officio on each
13 panel.

14 The workload of reviewing all those
15 appeals had gotten quite substantial. And, so, I
16 raised it as a question and the Board voted to
17 temporarily change the composition to one
18 appointed member and one ex officio on each panel
19 for the time being. And, so, and we said we
20 would raise it again at this next meeting. And,
21 so, here's the -- the question is -- these are
22 all, except for Shamonda was here instead of the
23 Commissioner -- I think we are all the same
24 people who were here last time. How do you --

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2 would you like to continue in this vein or what
3 do you want to do?

4 MR. SWANN: Doug Swann, Citizen Member.
5 I think one of the reasons we tabled it was
6 because Tom Shpetner wasn't here, for him to
7 weigh in.

8 MS. RICHARD: Yeah, I was expecting to
9 see him today.

10 MR. SWANN: Yeah, I was hoping he would
11 come, but until he comes I think we need to table
12 it so we can have a full --

13 MS. RICHARD: Mm-hmm.

14 MR. SWANN: -- discussion of all the
15 Citizen Members.

16 MS. KNAUER: I'll make my take, just
17 voice my view about it. I feel like it's really
18 helpful to have two Citizen Members on the panel
19 to have, you know, different viewpoints, you
20 know, along with the Agency Representative.
21 However, it was really becoming unsustainable for
22 me to, to fulfill that, to have --

23 MS. RICHARD: What is the caseload per
24 panel meeting now?

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2 MS. KNAUER: Well, it has reduced
3 somewhat from what was happening a while back
4 where -- I mean I, I was on one panel where we
5 had 90 appeals. So it hasn't, in more recent
6 times, it hasn't -- I, I don't know if, Peter,
7 you would have a better sense, and I don't count
8 them. But maybe --

9 PETER SCHULMAN, ESQ., ASSISTANT DIRECTOR
10 FOR APPEALS: Yesterday was a bit shy of 60.

11 MS. KNAUER: Okay.

12 MR. SCHULMAN: But it's been anywhere
13 between that and probably 70 or 80.

14 MS. KNAUER: But with only three of us,
15 if two members are on it, it's really, you're
16 pretty much doing it twice most months.

17 MS. RICHARD: Alright.

18 MS. KNAUER: You know, so, you're --
19 but, so it, it --

20 MS. RICHARD: Right.

21 MS. KNAUER: -- to me, I mean, and it
22 takes me about four hours, usually, to review.
23 If it's 90, it's more, because you want to
24 actually review it carefully and not just gloss

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2 over things. So I, I felt like it was becoming
3 unsustainable, but I felt like I was in a
4 position where I couldn't resign, because that
5 would leave --

6 [LAUGHTER]

7 MS. KNAUER: And I didn't want to, but
8 only for the reason that it was just too much
9 time, you know. So I, I would prefer at least,
10 moving forward, subject to the next meeting, if
11 Tom comes and he has, wants to express other
12 views. But at least moving forward to the next
13 meeting, I would request that we continue in this
14 vein, because it's really the only way I can
15 manage things, personally.

16 MR. SWANN: I, I totally agree 100
17 percent with everything you just said, so I'm not
18 going to repeat it. But, what I will say is that
19 Tom definitely needs to weigh in.

20 MR. KNAUER: Right, right, I agree.

21 MR. SWANN: Yeah.

22 MS. KNAUER: It's unfortunate that he's
23 not here today. I also, you know, would hope
24 that the Administration will appoint new people.

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2 I think that's, that would be the best thing that
3 could happen.

4 MR. SWANN: Yeah.

5 MS. KNAUER: So that we have a full
6 slate of Appointed Members that can participate
7 and that we can maybe go back to having two
8 people, but in a more realistic case --

9 MS. RICHARD: Okay.

10 MS. KNAUER: -- for ev-, for everyone,
11 as individually.

12 MS. RICHARD: Alright. So anyone else
13 have any comments they'd like to add?

14 RUSSELL PECUNIES, ESQ., DEPARTMENT OF
15 ENVIRONMENTAL PROTECTION: The only thing I --
16 Russ Pecunies with DEP. In terms of getting a
17 Noise member, which I think is one of the vacant
18 --

19 MS. KNAUER: Correct.

20 MR. PECUNIES: -- spots.

21 MS. RICHARD: Yes.

22 MR. PECUNIES: We have a list of
23 approved noise consultants, and these are people
24 who submit their professional qualifications to

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2 us to be reviewed and we add them to a list of
3 approved noise consultants. So I, I'm, I'm
4 certain that that has their contact information,
5 e-mail, I'm sure. I don't know if it would be
6 appropriate to, for us to reach out to the people
7 who were appropri-, who were approved noise
8 consultants. But I could see if we could share
9 that list with you guys and then maybe you guys
10 could reach out to the people on that list.

11 MS. RICHARD: I think it's the,
12 officially, I think it's the Appointments.

13 MR. PECUNIES: Or, or the, or City Hall
14 could.

15 MS. RICHARD: Yeah, I think it's the
16 Appointments.

17 MR. PECUNIES: So...

18 MS. SALLOUM: Mayor's Office of
19 Appointments.

20 MS. RICHARD: Yeah, Mayor's Office of
21 Appointments. We can, we can make contact.

22 MR. PECUNIES: I, I asked and I think a
23 few months ago we did make some inquiries,
24 because either you guys or City Hall had asked

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2 and we weren't able to locate anyone. But we
3 didn't go to everyone --

4 MS. RICHARD: On the list.

5 MR. PECUNIES: -- on this list. It's,
6 it's a reasonably long list. There's about, I
7 think at least 50 or 60 --

8 MS. RICHARD: Okay.

9 MR. PECUNIES: -- people on it.

10 MS. RICHARD: So, if we wanted to find
11 that list, who would we contact?

12 MR. PECUNIES: I can, in fact, I can --
13 it may even be posted online.

14 MS. RICHARD: Okay.

15 MR. PECUNIES: But I don't know if the
16 contact information --

17 MS. RICHARD: Can you just send me an e-
18 mail?

19 MR. PECUNIES: -- is posted online in
20 terms of an e-mail address. I can find that out
21 and let you know.

22 MS. RICHARD: That'd be great.

23

24 MS. RICHARD: Thank you.

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2 MS. KNAUER: And then the other -- can
3 you just remind us of the other seats that are
4 open?

5 MS. RICHARD: General.

6 MS. KNAUER: General.

7 MS. RICHARD: Real estate.

8 AMY SLIFKA, ESQ., DEPUTY
9 COMMISSIONER/HEARINGS DIVISION, OATH: Real
10 estate.

11 MS. KNAUER: Real estate. I mean,
12 there's got to be lots of people in that, that
13 would fall into that category. Should we be
14 asking our contacts if they have any interest?
15 Or is that --

16 MS. RICHARD: Sure, you always can.
17 Yeah, it cannot hurt. Yeah. And we can pass
18 that onto the Mayor's Office of Appointments. Or
19 you can send it yourself there. Alright. Okay.
20 So, on this matter, then I guess what we'll do is
21 we'll put it back on the agenda for the next
22 meeting. Also assuming and anticipating that Tom
23 will make it.

24 MS. SALLOUM: If, if you do want -- this

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2 is Simone Salloum, Senior Counsel. If you do
3 want to continue, though, with the one-on-one, I
4 think we need to have a vote.

5 MS. RICHARD: We have to vote again.

6 MS. SALLOUM: To continue it until the
7 next --

8 MS. RICHARD: Okay, that's right.

9 MS. SALLOUM: -- until the next Board
10 Meeting.

11 MS. RICHARD: We said -- that's right,
12 that's right. We said it would be temporary
13 until this meeting.

14 MS. KNAUER: Right.

15 MS. RICHARD: Okay. So, is there a
16 motion, then, to continue our re-constitution,
17 temporary re-constitution of the panel to one
18 appointed member and one ex officio member for
19 each panel until the next Board Meeting? Okay,
20 there's a motion and there -- all in favor? One,
21 two, three, four, five, six. Okay, so that's a
22 unanimous vote. Alright, thank you all.

23 And, also, what we will discuss at the
24 end of the meeting -- I'm going to move on to

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2 Russ -- but are dates for the next Board Meetings
3 so we can, hopefully, pull out your calendars for
4 that.

5 Okay. So next on the agenda is DEP,
6 request for cease and desists.

7 MR. PECUNIES: Okay. My name is Russell
8 Pecunies. I'm with the Bureau of Legal Affairs
9 at the Department of Environmental Protection.
10 For this meeting, DEP is requesting one cease and
11 desist order under the Air Pollution Control
12 Code. This is in the matter of Nur Bepary Auto
13 Repair and Body Shop, located at 35-44 61st
14 Street in Queens. This location has been the
15 subject of repeated complaints from the
16 neighborhood pertaining to fumes from auto
17 painting.

18 They have an auto spray booth, which is
19 required to have a certificate of operation from
20 DEP, that does not have such a certificate. They
21 have been cited three times for not having such a
22 certificate, most recently on October 18th.
23 We're continuing to receive complaints regarding
24 this location from the surrounding area. And,

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2 based on their continuing failure to comply with
3 the requirement to get a C of O, DEP is asking
4 the Board to issue an order to cease and desist.

5 MS. RICHARD: Okay, is there a motion to
6 approve? All in favor? Okay, that's nine in
7 favor.

8 MR. PECUNIES: Okay. And we have three
9 requests under the Noise Control Code, which I
10 can submit separately.

11 The first one relates to the Gillen
12 Brewer School, located at 410 East 92nd Street in
13 Manhattan. The school has been cited three times
14 for excessive noise from the air conditioning
15 unit, most recently in September. And due to
16 their continuing failure to comply by reducing
17 the noise from the air conditioning unit, which
18 was 62 decibels at the most recent inspection,
19 DEP is asking the Board to issue an order to
20 cease and desist.

21 MS. RICHARD: Okay, motion to approve?
22 And all in favor? Okay, we have nine in favor.

23 MR. PECUNIES: Alright. The next one is
24 for an establishment, which is, the corporate

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2 name is My Image Studios. It does business,
3 apparently, as Madiba Harlem, located at 46 West
4 116th Street in Manhattan. They have been cited
5 for excessively loud music on three occasions
6 this year, most recently on November 30th.
7 Again, we generally do not bring cease and desist
8 requests be-, for music, because it's very easy
9 to just change the equipment. And since the
10 cease and desist goes with the equipment, they're
11 basically addressing it by just changing the
12 equipment.

13 However, this place has defaulted on the
14 first two tickets. And since it's a continuing
15 problem, we felt that asking the Board for a
16 cease and desist order might get some action out
17 of them. So we're asking the Board for a cease
18 and desist order on this one.

19 MS. RICHARD: Okay, any questions?

20 MS. KNAUER: I, I'm, I don't -- I mean,
21 I, it's fine to issue the cease and desist order.
22 As a practical matter, is it just a higher
23 penalty that you think will induce action?

24 MR. PECUNIES: The, the second offense

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2 penalty, which would be imposed. But if they're
3 defaulting on them, they're getting the maximum
4 penalty anyway, .

5 MS. KNAUER: So, I mean?

6 MR. PECUNIES: And they're not paying
7 the penalty, I believe. That they haven't paid.

8 MS. KNAUER: Right.

9 MR. PECUNIES: They've been fined
10 \$9,600.00 --

11 MS. KNAUER: So --

12 MR. PECUNIES: -- twice and haven't paid
13 either one, so.

14 MS. KNAUER: -- in terms of execution of
15 a cease and desist, would that involve
16 confiscating their stereo equipment?

17 MR. PECUNIES: Sealing.

18 MS. KNAUER: Sealing the stereo?

19 MR. PECUNIES: Not, not confiscating,
20 but sealing.

21 MS. KNAUER: Okay, okay.

22 MR. PECUNIES: Again, that's one of the
23 problems with trying to do this with music, is
24 that if you seal the sound system, which these

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2 days usually consists of a laptop or somebody's
3 iPhone plugged into it, they just bring in
4 another laptop and it's different equipment.
5 Then, if we seal the, the speakers or the
6 amplifier, they just bring in a different one.

7 MS. KNAUER: Right.

8 MR. PECUNIES: But given that we're
9 still getting complaints and that they've
10 defaulted on the first two tickets, we felt that
11 --

12 MS. KNAUER: It's at least a statement.
13 Okay.

14 MR. PECUNIES: -- we, we can hopefully
15 get some action out of them by doing it.

16 MR. SWANN: And you're saying this case
17 is rare with respect to music? There are no
18 other locations around the City that have similar
19 situations where they defaulted?

20 MR. PECUNIES: No. Well, first of all,
21 because this is a, this is a type of violation
22 where it can be mitigated to zero if you correct
23 it, most of the violations that we issue for
24 music are corrected and reduced to zero and a

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2 noise consultant puts a limiter on the equipment
3 so it can't be turned up past a certain level and
4 the problem is usually resolved. It's not -- the
5 music ones usually are not repeat offenders. But
6 this one is now on its third ticket and they've
7 defaulted on the first two, so. Yeah?

8 ALEXANDRA FISHER, ESQ., DEPARTMENT OF
9 BUILDINGS Just a question about the defaults.
10 Where -- how was service made on those?

11 MR. PECUNIES: Service, since it's an
12 LLC, service would have been made through the
13 Secretary of State and by mail.

14 MS. FISHER Thanks.

15 MS. RICHARD: Alright. Is there a
16 motion to approve? Okay, all in favor? Alright,
17 that's nine in favor.

18 MR. PECUNIES: And the last one under
19 the Noise Code is for Concerned Management, which
20 is the managing agent of 7152 252nd Street in
21 Queens. Under the Noise Code, managing agents
22 are included in the definition of owner. And,
23 since we've been, been issuing the tickets to the
24 managing agent, we're asking for the cease and

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2 desist in the name of the managing agent.

3 This -- they've been cited four times,
4 most recently on November 29th, for noise from
5 the boiler. And this is a little bit unusual in
6 the sense that we usually don't have noise
7 violations issued to boilers, but this boiler is
8 apparently, according to the description on the
9 most recent ticket that was issued, located
10 directly underneath the complainant's first floor
11 apartment. And they're getting 55 decibels in
12 the apartment with the boiler running. So while
13 the source here is a little bit unusual, they
14 have been cited four times. They defaulted on
15 one and stipulated to the other two. And the
16 condition has not been corrected, so DEP is
17 asking for a cease and desist order.

18 MS. RICHARD: Questions?

19 MS. KNAUER So is this the boiler that
20 is servicing the building in which the
21 complainant resides?

22 MR. PECUNIES: Apparently, yes.
23 Apparently, thi- thi- this, it's in the basement
24 and this is the occupant of the apartment

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2 directly above it.

3 MS. KNAUER : So if, if --

4 MR. PECUNIES: So I don't know whether
5 they would have to install soundproofing --

6 MS. KNAUER : Right.

7 MR. PECUNIES: -- in the ceiling or
8 what.

9 MS. KNAUER : But if the cease and
10 disorder-, cease and desist order, if they don't,
11 if they don't correct --

12 MR. PECUNIES: Yeah, I, I see where
13 you're going. You seal the boiler and then the,
14 the complainant --

15 MS. KNAUER : And then that person has
16 no heat.

17 MR. PECUNIES: -- would lose their heat
18 and hot water.

19 MS. KNAUER : Well, as -- along with
20 other people, presumably, that may reside in that
21 building.

22 MR. PECUNIES: And as well as the rest
23 of the building. Yeah, I, I see where you're
24 going. Right now, I would say, hopefully, it

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2 won't come to that and we won't have to cross
3 that bridge. But, in the meantime, they've been
4 cited four times and they haven't addressed the
5 problem. So, obviously, what we're hoping is
6 that this will get them to address the problem.
7 If they were to default on it, it would be a
8 situation similar, I think, to the residential
9 locations with the backflow and turning off the
10 water to a residential building.

11 I don't think we would turn off the
12 boiler, although they, you know, maybe, you know,
13 then, then they have to get a temporary boiler if
14 this boiler is mechanically having some kind of
15 problem that's making it ex- excessively noisy.
16 Maybe it either has to be repaired or it has to
17 be replaced. Kind of speculation at this point.

18 MS. RICHARD: Question? Another
19 question?

20 MICHELE DEFREITAS WITHIM, ESQ.,
21 DEPARTMENT OF HEALTH & MENTAL HYGIENE : So DEP
22 went into the complainant's apartment --

23 MR. PECUNIES: Yes.

24 MS. DEFREITAS WITHIM: -- and, and

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2 measured the sound?

3 MR. PECUNIES: Yes, with the boiler on
4 and with the boiler off.

5 MS. DEFREITAS WITHIM : And the --

6 MR. PECUNIES: So it was 55 decibels in
7 the apartment with the boiler on and 3- 39 with
8 the boiler off. Sixteen decibels is almost 10
9 times as loud with the boiler on as with the
10 boiler off. So this would be something, when the
11 boiler is going on and off, this is clearly loud
12 and audible in this person's apartment.

13 MS. DEFREITAS WITHIM : And she's the
14 only one on the first floor above the boiler?

15 MR. PECUNIES: I don't know if they're a
16 rental or an owner. I did a complainant and --
17 but I don't know if we go that far to identify
18 whether they own or rent the apartment. The
19 owner of the building is Floral Park Owners
20 Incorporated.

21 AMY SLIFKA ESQ., DEPUTY

22 COMMISSIONER/HEARINGS DIVISION: That sounds like
23 a co-op.

24 MR. PECUNIES: I don't know whether

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2 that's a condo or a co-op.

3 MS. SLIFKA : A co-op, yeah.

4 MS. DEFREITAS WITHIM : And they didn't
5 change, I guess, management agents. That's the
6 one that they had since they haven't responded,
7 you said, about three times?

8 MR. PECUNIES: Well, they've been
9 respond-, they've been stipulating to the
10 violations, so they've been receiving them and
11 responding to them and, I believe, paying the
12 penalties. They've paid \$4,000.00 so far, but
13 they haven't fixed the problem.

14 MS. SLIFKA: I know, but if they, if you
15 approve this, basically, they're just notifying
16 them and they still come in for a hearing, if
17 they come in for a hearing. So it's not sealed
18 right away.

19 MS. KNAUER : And they have been
20 responding. They, they --

21 MR. PECUNIES: They, they, they did
22 default on the first ticket, but they stipulated
23 to the second and third tickets. So they --

24 MS. KNAUER: And they, so they came,

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2 then they came in?

3 MR. PECUNIES: Somebody's been getting
4 them and responding to them, yes.

5 MS. RICHARD: And if it's a co-op, it's
6 not an individual owner who doesn't know how to
7 fix the problem. I mean it's, the co-op should
8 be equipped with --

9 MR. PECUNIES: No, it's, it's the
10 building's boiler.

11 MS. RICHARD: -- knowing how to -- yeah.

12 MS. KNAUER: I mean, yeah, my suspicion
13 is that it will require some structural --

14 MR. PECUNIES: I, I mean, and, and we
15 did.

16 MS. KNAUER: -- intervention.

17 MS. RICHARD: Nobody wants to open their
18 floors

19 MR. PECUNIES: Because this is a very
20 unusual source of noise.

21 MS. RICHARD: -- to put, yeah, the
22 soundproofing and all that.

23 MS. KNAUER: Well, they could do it from
24 the base-, they should be able to do it from the

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2 basement, but.

3 MS. RICHARD: Yeah, you never know.

4 MR. PECUNIES: You would think that
5 soundproofing in the ceiling, maybe, or.

6 MS. KNAUER: I mean, I think the issue
7 is that they'll have to get -- whatever they
8 would have to do would require a building permit.
9 And then, if there's other issues.

10 MR. PECUNIES: Right. And, and they
11 would come in and explain that to the hearing
12 officer and be given adequate time to --

13 MS. KNAUER: Right. Some time.

14 MR. PECUNIES: -- to do that.

15 MS. RICHARD: Time to comply. Okay.
16 Alright. Is there a motion? And all in favor?
17 Okay, so we have nine in favor. Okay.

18 MR. PECUNIES: Alright. And, finally,
19 this, for this meeting, DEP has 38 requests to
20 issue cease and desist orders to building owners
21 who have failed to comply with backflow
22 prevention requirements. In each of these cases,
23 the building owner has been ordered to install
24 backflow prevention devices. After failing to

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2 comply, they've been issued with a summons, which
3 has been adjudicated in violation. And in each
4 of these situations, the building owner still has
5 not complied, so the Department is asking for
6 cease and desist orders.

7 MS. RICHARD: Alright, any questions?
8 Okay. A motion to approve? All in favor?
9 Alright.

10 MR. PECUNIES: Okay. And, finally, just
11 for the Board's information, we have started, we
12 started with 10 purely commercial locations
13 issuing shut-off warning notices for people who
14 were in default on cease and desist orders for
15 backflow. Nine of those 10 property owners have
16 rescheduled with OATH and are now back in front
17 of an OATH hearing officer. So we have a 90
18 percent success rate on the first group. Whether
19 we're going to shut the water off on the tenth
20 property has still not been decided. So we're
21 going to start with another group of 10 and,
22 hopefully, work our way through the ones that are
23 in default with a similar success rate .

24 MS. RICHARD: Great.

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2 MS. KNAUER: And, and the form of notice
3 being provided is?

4 MR. PECUNIES: Excuse me?

5 MS. KNAUER: It's a mailing, or?

6 MR. PECUNIES: No, we're sending
7 inspectors.

8 MS. KNAUER: Okay.

9 MR. PECUNIES: We're sending peop-,
10 we're sending people to inspect the plumbing,
11 first of all.

12 MS. KNAUER: Uh-huh.

13 MR. PECUNIES: And then to serve them
14 with a, a very strongly worded warning that
15 they're in danger of having the water to the
16 property turned off and directing them to e-mail
17 OATH to reschedule the hearing and immediately
18 start the process of getting into compliance.

19 MS. KNAUER: Okay.

20 MR. PECUNIES: Thank you.

21 MS. RICHARD: Okay, thank you very much.
22 Alright. So the next agenda item are pre-sealing
23 reports, Kelly Corso.

24 MS. SLIFKA: Yes, Kelly's out.

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2 MS. RICHARD: Oh, Amy Slifka. Alright.

3 MS. SLIFKA: Good morning. I'm Amy
4 Slifka, Deputy Commissioner of the OATH Hearings
5 Division. Kelly is out today. For today's
6 meeting, we have 13 pre-sealing reports. Ten of
7 the reports involve backflow cases and three of
8 the reports involve Noise Code cases.

9 First, the backflow cases. In all 10 of
10 the backflow cases, the hearing officers
11 recommend no sealing or other action based on
12 respondent's evidence of compliance presented at
13 the hearing. Okay?

14 MS. RICHARD: Alright, any questions?
15 Alright. So there's a motion to approve? All in
16 favor? That's nine. Okay.

17 MS. SLIFKA: Okay. In two of the Noise
18 Code cases, the hearing officers agreed with
19 DEP's recommendations that the proceedings be
20 discontinued and no further action be taken
21 because the respondents presented evidence that
22 the cited equipment was removed from the
23 premises.

24 MS. RICHARD: Alright.

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2 MS. KNAUER: So I, I need to recuse
3 myself from one of them, so I don't know if you
4 want me to just recuse on, on --

5 MS. RICHARD: Okay.

6 MS. SLIFKA: On both of them?

7 MR. RICHARD: Amy, do you want to name
8 the two?

9 MS. SLIFKA: No. Just recuse on both of
10 them.

11 MS. KNAUER: Okay.

12 MS. RICHARD: Oh, okay. Okay.

13 MS. SLIFKA: It'd be easier for me
14 today.

15 MS. RICHARD: Okay. Alright. Any other
16 questions? Any questions? Okay, so a motion to
17 approve the, on the noise cases? There are,
18 okay, eight in favor and one abstention. Okay.

19 MS. SLIFKA: Okay. Alright, thanks. In
20 the third Noise Code case involves noise from the
21 respondent's air conditioning equipment. At the
22 hearing, there was a -- respondent presented
23 evidence of work done on the cited equipment to
24 bring the equipment into compliance with the

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2 Noise Code. Based on respondent's evidence of
3 compliance, the hearing officer agrees with DEP's
4 recommendation that the equipment remain unsealed
5 if DEP's initial re-inspection and further re-
6 inspections for a period of 180 days shows no
7 violation.

8 MS. KNAUER: Can you, can you just --
9 which one is that? I'm sorry.

10 MR. PECUNIES: That's NYU, I'm pretty
11 sure.

12 MS. KNAUER: Oh, okay. That's the one I
13 need to recuse myself on.

14 MS. SLIFKA: Oh, okay.

15 MS. KNAUER: I'm sorry. I'm sorry. I
16 got confused.

17 MS. SLIFKA: Well, we got enough votes.
18 We got enough votes for the other one.

19 MS. KNAUER: Okay.

20 MS. RICHARD: Alright, so that recusal
21 is on the NYU case, okay, or the abstention.

22 MS. SALLOUM: Are you going to remain
23 abstained on the other two?

24 MS. KNAUER: I'll, I'll be in favor on

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2 the other two.

3 MS. SALLOUM: Okay.

4 MS. KNAUER: Yeah, it doesn't really
5 matter, but. I, I thought --

6 MS. SLIFKA: Okay, so any further
7 questions on this third one, the NYU?

8 MS. RICHARD: Oh, okay. Alright. So
9 now we'll take the vote. All in favor? Alright,
10 so we have eight in favor and one abstention.

11 MS. SLIFKA: One abstention. Very good.
12 Thank you.

13 MS. RICHARD: Thank You. Alright, so
14 we'll go into -- is there a motion to go into
15 Executive Session to discuss judicial report and
16 new cases? Okay, there's a motion. Alright.

17 [OFF THE RECORD]

18 [ON THE RECORD]

19 MS. RICHARD: Alright. So we're back in
20 open session and I want to raise the question of
21 the scheduling of next year's meetings. And, so,
22 I have some dates to propose and to find out if
23 these are acceptable. February 28, April 25,
24 June 27 and Aug- August 22nd. They, like they're

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2 all at the, toward the end of the month.

3 MS. SALLOUM: Yeah, the only one that's
4 not -- this is Simone Salloum -- is the August
5 22nd. We moved up a week, because Labor Day was
6 going to be --

7 MS. RICHARD: The --

8 MS. SALLOUM: -- the Monday after the
9 last Thursday, if that makes sense.

10 MS. KNAUER: So, April 25th is during
11 the spring break from school. Just, I, I
12 personally --

13 MS. SLIFKA: So that would probably
14 affect mine, also.

15 MS. KNAUER: Yeah, I don't have any
16 plans yet, but, I, I mean, I would suggest, I
17 mean --

18 MS. RICHARD: Another week?

19 MS. KNAUER: -- since a number of us
20 have children.

21 MS. RICHARD: So we can move that one up
22 a week as well.

23 MS. SALLOUM: There's the 18th.

24 MS. RICHARD: How about the 18th?

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2 MS. KNAUER: That would be better.

3 MR. PECUNIES: That's the April one?

4 MS. RICHARD: Yeah.

5 MS. SLIFKA: And if we can also move the
6 June one back a week, because that's also right
7 after school ends, and it's the week between camp
8 starting, so most parents have to take off.

9 MS. SALLOUM: That would be --

10 MS. RICHARD: Is that the 20th?

11 MS. SALLOUM: -- June 20th, yeah.

12 MS. RICHARD: Okay, June 20. Alright.

13 So, again, February 28, April 18, June 20, August
14 22.

15 MS. SLIFKA: Okay.

16 MS. RICHARD: Alright.

17 MS. SLIFKA: Thank you.

18 MS. RICHARD: So those, those are set.

19 Thank you all. Any other business? Alright, so
20 we're adjourned. See you on February 28.

21 (The board meeting concluded at 10:13
22 A.M.)

23

24

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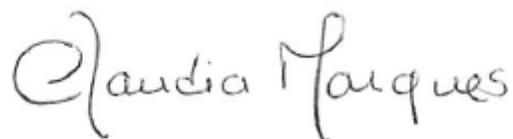
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Environmental Control Board, 12/13/2018

CERTIFICATE OF ACCURACY

I, Claudia Marques, certify that the foregoing transcript of Environmental Control Board, on December 13, 2018 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Certified By



Claudia Marques

Date: January 11, 2019

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