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 22, 2016
9:21 A.M. to 9:57 A.M.
December 22, 2016

MEMBERS PRESENT:

Ernest J. Cavallo – Appointed Member
Fidel F. Del Valle, Esq. – Chair, OATH
Shamonda Graham – Department of Buildings
Joseph Gregory, Esq. – Fire Department
Elizabeth Knauer – Appointed Member
Madelynn Liguori, Esq. – Department of Sanitation
Jorge Martinez, Esq. – Department of Health and Mental Hygiene
Russell Pecunies, Esq. – Dept. of Environmental Protection
Indi Savitala – Appointed Member
Matthew Smith – Police Department

ALSO PRESENT:

Rachel Amar – Special Assistant to Commissioner
Kelly Corso, Esq. – Assist. Director of Adjudications, OATH
David Goldin, Esq. – Administrative Justice Coordinator, Mayor’s Office
Johnathan Jacobs – Business Integrity Commission
Diana Haines, Esq. – Assistant General Counsel, OATH
Susan Kassapian, Esq. – Deputy Commissioner/Hearings Division, OATH
Maria Marchiano, Esq. – Deputy Commissioner & Chief Clerk, OATH
Ashford Morgan – Computer Service Technician, OATH
Maggie Nieves – Public Affairs Associate, OATH
Simone Salloum, Esq. – Assistant General Counsel, OATH
Peter Schulman, Esq., Esq. – Assistant Director of Adjudications, OATH
Frances Shine – Secretary to the Board, OATH
Amy Slifka, Esq. – Deputy Commissioner/Hearings Division, OATH
Thomas Southwick, Esq. – Supervising Attorney, Appeals, OATH
Doris Stewart – Department of Transportation
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(The Board Meeting commenced at 9:21 A.M.)

MR. FIDEL F. DEL VALLE, ESQ.,
CHAIRPERSON, COMMISSIONER & CHIEF ADMINISTRATIVE LAW JUDGE, OATH: Good morning everyone.

ALL: Good morning.

MR. DEL VALLE: I don’t know how smart it was to have this meeting three days before Christmas and Hanukkah. But be that as it may, is there a motion to accept the minutes of the last meeting? It’s unanimous with the abstention of the Health Department. And Hari.

MR. DEL VALLE: I’m going to ask Simone Salloum to introduce a proposed rulemaking regarding repeal of the Department of Buildings penalty schedule from one set of rules in anticipation of the Buildings Department adopting its penalty schedules within their rules.

MS. SIMONE SALLOUM: I’m Simone Salloum, Assistant General Counsel. And there’s not much to say about it. We’re proposing the repeal of the Buildings penalty schedule, which is found in Section 3-103 of Subchapter G of Title 48 of the
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Rules of the City of New York. It contains penalties for violations issued by the Department of Buildings for violations of Title 1, 27 and 28; one of RCNY 27 and 28 of the Administrative Code.

DOB is proposing their own penalty schedule in their own rules and we’re coordinating to make sure that there’s no lag in that, so the rules will be repealed at the same time that the new penalty schedule goes into effect. This is part of the retrospective rule review that we’re working with the Mayor’s Office on to repeal the legacy penalty schedules out of our rules and have new penalty schedules promulgated by the enforcement agencies. So if anyone has any questions? Yes.

MR. ERNEST CAVALLO: Ernest Cavallo, Citizen Member. I continue to oppose this wholesale repeal of the rules that this Board voted on and having the agencies themselves promulgate their own rules without a layer of scrutiny that having citizen members review the various proposals. It’s less transparency. It’s
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not more. It’s a bad government initiative. It will remain a bad government initiative. It fixes a problem that does not exist. An extra month in putting a rule schedule into effect is not justification for this wholesale change in the way we have done business for years. That’s all I have to say.

MR. DEL VALLE: Any other questions? Is there a motion?

MS. SHAMONDA GRAHAM: Should I abstain?

MR. DEL VALLE: You don’t have to but you can.

MR. DEL VALLE: There’s a motion. Is there a vote?

MS. GRAHAM: I’ll abstain.

MR. DEL VALLE: Okay. One, two, three, four, five, six.

MR. CAVALLO: Opposed.

MR. DEL VALLE: One opposed. Any abstentions?

MS. GRAHAM: One.

MR. DEL VALLE: And one abstention -- and three abstentions. Thank you. Simone?
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MS. SALLOUM: Okay. The next proposal that we have for your consideration is the repeal of the Noise Code penalty schedule. This schedule is found in Section 3-115 of Subchapter G of Chapter 3 of Title 48 in the Rules of the City of New York and contains penalties for notices of violation issued by DEP for violations of Title 15 of the RCNY, Title 10 and 24 of the Administrative Code. And similarly DEP is proposing a companion rule adding the Noise Code penalty schedule to Title 15 of the RCNY.

Again, this is part of the retrospective rule review but it’s also part of the Criminal Justice Reform Act. The local law was passed that changes the penalty amounts for some of the noise code violations and so that goes into effect in March, which is why we’re bringing the repeal to you now, so that DEP can get their new Noise Code penalty schedule in effect by that date. Any questions?

MR. CAVALLO: Ernest Cavallo, Citizen Member. I oppose it for the same reasons I opposed the previous proposal.
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MR. DEL VALLE: Any other questions? Is there a motion? All those in favor? One, two, three, four, five, six, seven in favor. All opposed? One opposed. Abstentions? Two abstentions. Thank you.

MS. SALLOUM: Thank you.

MR. DEL VALLE: DEP has a request for cease and desist orders. Russell please.

MR. RUSSELL PECUNIES: Good morning. I’m Russell Pecunies with DEP’s Bureau of Legal Affairs. This morning DEP is asking the Board to approve a cease and desist order under the Sewer Code. The respondent is Brunch NY Inc. at 161 Division Avenue in Brooklyn. This is a nonresidential establishment where food is prepared. An inspection determined that the respondent needed to install a variety of grease interceptors on various sinks and drains. Subsequent inspections determined that on existing grease interceptors, they were severely overloaded.

After a series of inspections showed that respondent had still not complied with
Commissioner’s Orders to come into compliance with the code, the Bureau of Wastewater Treatment determined that a request for a cease and desist order would be appropriate and that respondent should be required to appear and establish that they have installed and are properly maintaining appropriately-sized grease interceptors at this location. So based on that, DEP is asking the Board to approve an order to cease and desist.

MR. DEL VALLE: Any questions? Motion? I think it’s unanimous with one abstention?

MR. PECUNIES: Yup. DEP also has four requests for cease and desist orders this month under the Noise Code. The first is Hillview Specialty Foods at 2787 Broadway in Manhattan. This location has been cited on five occasions, one last year and four this year for noise from the kitchen exhaust. Based on the continuing violations and continuing failure to come into compliance, DEP is asking the Board to issue an order to cease and desist.

MR. DEL VALLE: Questions? Motion? Again, it’s unanimous with one abstention.
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MR. PECUNIES: Okay. The next one under the Noise Code is 515 Madison Group, located at 515 Madison Avenue. This location has been cited on three occasions this year since March for noise from the kitchen exhaust. Due to the continuing violations and continuing failure to comply, DEP is asking the Board to issue an order to cease and desist.

MR. DEL VALLE: Questions? Motion? And again it’s unanimous with one abstention.

MR. PECUNIES: Okay. The third one is Birds & Bubbles LLC at 100B Forsyth Street in Manhattan. This is a restaurant. There have been five violations cited, three last year and two this year for noise from the kitchen exhaust. Due to the continuing violations and failure to come into compliance, DEP is asking the Board to issue an order to cease and desist.

MR. DEL VALLE: Questions? Motion? It’s unanimous with one abstention.

MR. PECUNIES: And finally, we have one that’s not a kitchen exhaust. This is Bedford Auto Repair LLC, located at 1232 Bedford Avenue
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in Brooklyn. This location has been cited on three occasions since May of this year from noise for the generator. We do understand that the landlord is attempting to evict this tenant. However, since that has not happened yet, because of the repeated violations and continuing failure to comply, DEP is asking the Board to issue an order to cease and desist.

MR. DEL VALLE: Questions? Motion? It’s unanimous with one abstention.

MR. PECUNIES: Okay. And finally we have the 28 requests for cease and desist orders relating to failure to install backflow prevention devices. In each of these cases, the building owner has been ordered to install appropriate backflow prevention devices. They have failed to comply. They’ve been issued a summons, which has been adjudicated in violation. They’re still not in compliance. Based on that, DEP is asking the Board to issue an order to cease and desist in each of these cases.

And I would just note that there was actually this past week a real life case of a
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backflow incident in Corpus Christi, Texas. A chemical was introduced due to a faulty backflow prevention device from a company that makes asphalt. And the tap water was off limits in Corpus Christi for two days because of that incident. So, every once in a blue moon there is an actual event which occurs and it does illustrate why we do enforce this. And so although it’s rare, it does happen.

MR. DEL VALLE: Questions? Motion?

Unanimous with one abstention.

MR. PECUNIES: Thank you.

MR. DEL VALLE: Pre-sealing orders?

MS. KELLY CORSO: Good morning. I’m Kelly Corso, Assistant Director for Adjudications for OATH Hearings Division. And this morning we have 22 pre-sealing reports; 18 of these involve backflow violations and one involves an Air Code violation and one involves a Noise Code violation and two involve Sewer Code violations.

Eighteen of the pre-sealing reports involve backflow violations and in all of these cases, the hearing officers recommend no sealing
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or other action based on respondents’ evidence of compliance that was presented at the hearings.

For the Air Code case, the respondent did not appear for the pre-sealing hearing. However, DEP recommended that the C&D order be discontinued because DEP had a recent inspection of the premises, showing that the cited equipment had been removed. So, the hearing officer in that case agrees with DEP’s recommendation that the C&D order be discontinued.

In the noise case, the respondent’s representative came to the pre-sealing hearing and presented evidence of work done on the elevator door. This was a parking garage, which had an elevator door which was -- the elevator door unit which was causing the noise. They showed that the equipment had come into compliance at the hearing. And the hearing officer is recommending that DEP re-inspect the equipment forthwith and that the equipment remain unsealed if that initial re-inspection and further re-inspections for a period of 180 days show no violation.
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And finally, in the two Sewer Code cases, the respondents did not appear for the pre-sealing hearings. But DEP has recommended that the C&D orders be discontinued because the respondents have come into compliance with the Sewer Code. And the hearing officers in both cases agree with DEP’s recommendation and recommend that the C&D orders be discontinued in both cases. And that’s it.

MR. DEL VALLE: Questions? Motion?

Unanimous. Is there a motion to go into Executive Session for the judicial report? Unanimous.

[OFF THE RECORD]

[ON THE RECORD]

MR. DEL VALLE: Thank you. I just want to bring up one thing before we adjourn. The next meeting had been scheduled for January 27 but it turns out there is a major time conflict on that date. We are going to see if we can hold folks to reschedule it either later in the day or the following Monday, the 30\(^{th}\), and we’ll reach out to you guys and sort it out. And we’ll figure it out and we’ll let everybody know. Thank you. We’re
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adjourned. I assume everyone is in concurrence
that we are adjourned. And happy holidays and see
you next year.

(The Board Meeting concluded at
approximately 9:57 A.M.)
CERTIFICATE OF ACCURACY

I, Fei Deng, certify that the foregoing transcript of Environmental Control Board on December 22, 2016 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Certified By

[Signature]

Date: January 4, 2017

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