

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

December 22, 2016

Page 3

INDEX

| | Page |
|--------------------------|------|
| Fidel F. Del Valle, Esq. | 4 |
| Simone Salloum, Esq. | 4 |
| Ernest Cavallo | 5 |
| Shamonda Graham | 6 |
| Russell Pecunies, Esq. | 8 |
| Kelly Corso, Esq. | 12 |

1 December 22, 2016

2 (The Board Meeting commenced at 9:21
3 A.M.)

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

7 ALL: Good morning.

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

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

20 MS. SIMONE SALLOUM: I'm Simone Salloum,
21 Assistant General Counsel. And there's not much
22 to say about it. We're proposing the repeal of
23 the Buildings penalty schedule, which is found in
24 Section 3-103 of Subchapter G of Title 48 of the

1 December 22, 2016

2 Rules of the City of New York. It contains
3 penalties for violations issued by the Department
4 of Buildings for violations of Title 1, 27 and
5 28; one of RCNY 27 and 28 of the Administrative
6 Code.

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10 that, so the rules will be repealed at the same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

18 MR. ERNEST CAVALLO: Ernest Cavallo,
19 Citizen Member. I continue to oppose this
20 wholesale repeal of the rules that this Board
21 voted on and having the agencies themselves
22 promulgate their own rules without a layer of
23 scrutiny that having citizen members review the
24 various proposals. It's less transparency. It's

1 December 22, 2016
2 not more. It's a bad government initiative. It
3 will remain a bad government initiative. It fixes
4 a problem that does not exist. An extra month in
5 putting a rule schedule into effect is not
6 justification for this wholesale change in the
7 way we have done business for years. That's all I
8 have to say.

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

11 MS. SHAMONDA GRAHAM: Should I abstain?

12 MR. DEL VALLE: You don't have to but
13 you can.

14 MR. DEL VALLE: There's a motion. Is
15 there a vote?

16 MS. GRAHAM: I'll abstain.

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

19 MR. CAVALLO: Opposed.

20 MR. DEL VALLE: One opposed. Any
21 abstentions?

22 MS. GRAHAM: One.

23 MR. DEL VALLE: And one abstention --
24 and three abstentions. Thank you. Simone?

1 December 22, 2016

2 MS. SALLOUM: Okay. The next proposal
3 that we have for your consideration is the repeal
4 of the Noise Code penalty schedule. This schedule
5 is found in Section 3-115 of Subchapter G of
6 Chapter 3 of Title 48 in the Rules of the City of
7 New York and contains penalties for notices of
8 violation issued by DEP for violations of Title
9 15 of the RCNY, Title 10 and 24 of the
10 Administrative Code. And similarly DEP is
11 proposing a companion rule adding the Noise Code
12 penalty schedule to Title 15 of the RCNY.

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

22 MR. CAVALLO: Ernest Cavallo, Citizen
23 Member. I oppose it for the same reasons I
24 opposed the previous proposal.

1 December 22, 2016

2 MR. DEL VALLE: Any other questions? Is
3 there a motion? All those in favor? One, two,
4 three, four, five, six, seven in favor. All
5 opposed? One opposed. Abstentions? Two
6 abstentions. Thank you.

7 MS. SALLOUM: Thank you.

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

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

23 After a series of inspections showed
24 that respondent had still not complied with

1 December 22, 2016

2 Commissioner's Orders to come into compliance
3 with the code, the Bureau of Wastewater Treatment
4 determined that a request for a cease and desist
5 order would be appropriate and that respondent
6 should be required to appear and establish that
7 they have installed and are properly maintaining
8 appropriately-sized grease interceptors at this
9 location. So based on that, DEP is asking the
10 Board to approve an order to cease and desist.

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

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

23 MR. DEL VALLE: Questions? Motion?
24 Again, it's unanimous with one abstention.

1 December 22, 2016

2 MR. PECUNIES: Okay. The next one under
3 the Noise Code is 515 Madison Group, located at
4 515 Madison Avenue. This location has been cited
5 on three occasions this year since March for
6 noise from the kitchen exhaust. Due to the
7 continuing violations and continuing failure to
8 comply, DEP is asking the Board to issue an order
9 to cease and desist.

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

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

20 MR. DEL VALLE: Questions? Motion? It's
21 unanimous with one abstention.

22 MR. PECUNIES: And finally, we have one
23 that's not a kitchen exhaust. This is Bedford
24 Auto Repair LLC, located at 1232 Bedford Avenue

1 December 22, 2016

2 in Brooklyn. This location has been cited on
3 three occasions since May of this year from noise
4 for the generator. We do understand that the
5 landlord is attempting to evict this tenant.
6 However, since that has not happened yet, because
7 of the repeated violations and continuing failure
8 to comply, DEP is asking the Board to issue an
9 order to cease and desist.

10 MR. DEL VALLE: Questions? Motion? It's
11 unanimous with one abstention.

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

23 And I would just note that there was
24 actually this past week a real life case of a

1 December 22, 2016

2 backflow incident in Corpus Christi, Texas. A
3 chemical was introduced due to a faulty backflow
4 prevention device from a company that makes
5 asphalt. And the tap water was off limits in
6 Corpus Christi for two days because of that
7 incident. So, every once in a blue moon there is
8 an actual event which occurs and it does
9 illustrate why we do enforce this. And so
10 although it's rare, it does happen.

11 MR. DEL VALLE: Questions? Motion?

12 Unanimous with one abstention.

13 MR. PECUNIES: Thank you.

14 MR. DEL VALLE: Pre-sealing orders?

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

22 Eighteen of the pre-sealing reports
23 involve backflow violations and in all of these
24 cases, the hearing officers recommend no sealing

1 December 22, 2016

2 or other action based on respondents' evidence of
3 compliance that was presented at the hearings.
4 For the Air Code case, the respondent did not
5 appear for the pre-sealing hearing. However, DEP
6 recommended that the C&D order be discontinued
7 because DEP had a recent inspection of the
8 premises, showing that the cited equipment had
9 been removed. So, the hearing officer in that
10 case agrees with DEP's recommendation that the
11 C&D order be discontinued.

12 In the noise case, the respondent's
13 representative came to the pre-sealing hearing
14 and presented evidence of work done on the
15 elevator door. This was a parking garage, which
16 had an elevator door which was -- the elevator
17 door unit which was causing the noise. They
18 showed that the equipment had come into
19 compliance at the hearing. And the hearing
20 officer is recommending that DEP re-inspect the
21 equipment forthwith and that the equipment remain
22 unsealed if that initial re-inspection and
23 further re-inspections for a period of 180 days
24 show no violation.

1 December 22, 2016

2 And finally, in the two Sewer Code
3 cases, the respondents did not appear for the
4 pre-sealing hearings. But DEP has recommended
5 that the C&D orders be discontinued because the
6 respondents have come into compliance with the
7 Sewer Code. And the hearing officers in both
8 cases agree with DEP's recommendation and
9 recommend that the C&D orders be discontinued in
10 both cases. And that's it.

11 MR. DEL VALLE: Questions? Motion?
12 Unanimous. Is there a motion to go into Executive
13 Session for the judicial report? Unanimous.

14 [OFF THE RECORD]

15 [ON THE RECORD]

16 MR. DEL VALLE: Thank you. I just want
17 to bring up one thing before we adjourn. The next
18 meeting had been scheduled for January 27 but it
19 turns out there is a major time conflict on that
20 date. We are going to see if we can hold folks to
21 reschedule it either later in the day or the
22 following Monday, the 30th, and we'll reach out to
23 you guys and sort it out. And we'll figure it out
24 and we'll let everybody know. Thank you. We're

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December 22, 2016
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



Fei Deng

Date: January 4, 2017

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