

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

January 25, 2018

9:25 A.M. to 9:45 A.M.

January 25, 2018

MEMBERS PRESENT:

Fidel F. Del Valle, Esq. - Chair, Chief Administrative Law  
Judge, Commissioner, OATH  
Shamonda Graham - Department of Buildings (DOB)  
Joseph Gregory, Esq. - Fire Department (FDNY)  
Elizabeth Knauer, Esq. - Appointed Member  
Madelynn Liguori, Esq. - Department of Sanitation (DSNY)  
**Russell Pecunies, Esq. - Department of Environmental  
Protection (DEP)**  
Jorge Martinez, Esq. - Department of Health and Mental  
Hygiene (DOHMH)  
Kenneth Rice - NYC Police Department (NYPD)  
Debra Scotto - Appointed Member  
Thomas Shpetner, Esq. - Appointed Member  
Douglas Swann - Appointed Member

ALSO PRESENT:

Rachel Amar - Special Assistant to the Commissioner  
John Castelli - Assistant Commissioner for Legislative  
Affairs, OATH  
**Kelly Corso, Esq. - Assistant Director of Adjudications,  
Hearings Division, OATH**  
Svetlana Goryacheva - Business Integrity Commission (BIC)  
Diana Haines, Esq. - Assistant General Counsel, OATH  
Maria Marchiano, Esq. - Deputy Commissioner/Chief Clerk,  
OATH  
Maggie Nieves - Public Affairs Associate, OATH  
**Simone Salloum, Esq. - Senior Counsel, OATH**  
Peter Schulman, Esq. - Assistant Director of  
Adjudications, Hearings Division, OATH  
Frances Shine - Secretary to the Board, OATH  
Amy Slifka, Esq. - Deputy Commissioner/Hearings Division,  
OATH  
Olga Statz, Esq. - Deputy General Counsel, OATH

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2 (The board meeting commenced at 9:25  
3 A.M.)

4 FIDEL DEL VALLE, ESQ., CHAIR, CHIEF  
5 ADMINISTRATIVE LAW JUDGE, COMMISSIONER, OATH: A  
6 wintry day. Is there a motion to accept the  
7 minutes of the last meeting? I believe that's --  
8 that's it. We're good. Okay, cool. We're,  
9 we're going to shuffle a couple of things around,  
10 because a lot of this, today, hangs on Russell  
11 Pecunies. They said he should be here in, in  
12 about eight minutes, so put on your stopwatches.

13 MR. DOUGLAS SWANN, APPOINTED MEMBER:  
14 Shpetner is downstairs. He's gotten --

15 [CROSSTALK]

16 MR. DEL VALLE: He, he's in line? Oh,  
17 okay.

18 MR. SWANN: So, just --

19 [OFF MIC CONVERSATION]

20 MR. DEL VALLE: Since we're waiting for  
21 Russell, can you start with the pre-sealing water  
22 requests?

23 [CROSSTALK]

24 MS. CORSO: Hey, everyone. I'm Kelly

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2 Corso, Assistant Director for Adjudications for  
3 the Hearings Division. Fortunately, this is  
4 short, so I'll try to go slowly. We have 15 pre-  
5 sealing reports for today's Board. Fourteen of  
6 them involve backflow violations and one involves  
7 a Noise Code violation.

8 I will start with the backflow  
9 violations. So, there's 14 of these. In eight  
10 of those cases, the hearing officers recommend  
11 that there be no sealing or other action based on  
12 the respondents' evidence of compliance that was  
13 presented at the hearings. And, in six of those  
14 cases, the hearing officers agreed with DEP's  
15 recommendation to discontinue the C&D proceedings  
16 because a record review by DEP indicates that  
17 backflow devices have been installed at the  
18 premises.

19 And for the noise, the Noise Code pre-  
20 sealing report, there's one of those. This case  
21 involved noise from the respondent's air  
22 conditioner, and the respondent presented  
23 evidence at the hearing of work done to bring the  
24 equipment into compliance with the Noise Code.

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2 And the hearing officer at the hearing agreed  
3 with DEP's recommendation that the equipment  
4 remain unsealed, provided that DEP's initial re-  
5 inspection and further re-inspections for a  
6 period of 180 days show no violations.

7 That's all.

8 MR. DEL VALLE: Is there a motion? The  
9 vote is unanimous of all present. I understand  
10 Russell is downstairs? Douglas?

11 MR. SWANN: No, it was Tom.

12 MR. DEL VALLE: Oh, oh. Okay.

13 THOMAS SHPETNER, ESQ., APPOINTED MEMBER:  
14 So, I missed the adoption of the minutes,  
15 apparently, but I'd like to just record that I  
16 abstain, just for the record.

17 MR. DEL VALLE: Oh, alright. Thank you.

18 [CROSSTALK]

19 MR. DEL VALLE: Might as, we might as  
20 well go to -- since we're still waiting for Mr.  
21 Pecunies. He's due in four minutes. Is there a  
22 motion to do -- this is really totally out of  
23 order, but going to Executive Session for  
24 judicial review as we wait for DEP to arrive on

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2 the scene? We are in Executive Session. I'll  
3 pick up the agenda where we left off before.  
4 But, right after [unintelligible]. Simone  
5 Salloum will introduce a proposal regarding  
6 Landmarks Preservation penalty schedule.

7 SIMONE SALLOUM, ESQ. -- SENIOR COUNSEL,  
8 OATH: Okay, good morning. Simone Salloum,  
9 Senior Counsel. So, it's been a few months since  
10 we've had one of these, but we're continuing to  
11 work with the enforcement agencies to repeal the  
12 penalty schedules out of OATH's rules in  
13 Subchapter G and into the enforcement agencies'  
14 rules. This is part of a retrospective rule  
15 review by the Mayor's Office, and so, the Mayor's  
16 Office is actually putting some pressure to, to  
17 get this done this year. And, so, we've repealed  
18 the DOB penalty schedule, the DOT penalty  
19 schedule, the FDNY penalty schedule, portions of  
20 the DEP penalty schedule, portions of DSNY.

21 So, this is the proposal to repeal the  
22 Landmarks Preservation penalty schedule. It's a  
23 pretty small penalty schedule. It's found in  
24 Section 3-114 of Subchapter G of Chapter 3 and

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2 Title 48 of the Rules, and the Landmarks  
3 Preservation Commission is working to -- they  
4 have a proposal ready to promulgate a penalty  
5 schedule into their rules under, I think an  
6 appendix of their rules. And, so, we're asking  
7 that you vote to, to submit -- to allow us to  
8 submit this to the City record and move forward  
9 with a Public Hearing.

10 Is there any questions?

11 MR. DEL VALLE: Any questions? Is there  
12 a motion? All in favor? That's one, two, three,  
13 four, five, six, seven, eight. Did I count you?

14 MS. SHAMONDA GRAHAM, DEPARTMENT OF  
15 BUILDINGS: [unintelligible]

16 MR. DEL VALLE: Okay. Opposed? Two  
17 opposed. Any abstentions? One abstention. The  
18 motion carries. Thank you.

19 MS. SALLOUM: Thank you.

20 MR. DEL VALLE: Now, what I've been  
21 anxiously waiting for.

22 RUSSELL PECUNIES, ESQ., DEPARTMENT OF  
23 ENVIRONMENTAL PROTECTION: I'm sure.

24 MR. DEL VALLE: A cease and des- -- why

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2 don't you read that first? The cease and desist.

3 MR. PECUNIES: Good morning. I'm  
4 Russell Pecunies with the Bureau of Legal Affairs  
5 at the Department of Environmental Protection. I  
6 have a short presentation this morning. The  
7 Department is requesting 31 cease and desist  
8 orders for failure to comply with backflow  
9 prevention requirements. In each of these cases,  
10 the property owner has been ordered to comply and  
11 been issued a summons for their failure to do so.  
12 And, in each of these cases, the summons has been  
13 adjudicated in violation and the respondent is  
14 still not in compliance with backflow prevention  
15 requirements. So, in each of these cases, the  
16 Department is requesting that the Board issue an  
17 Order to Cease and Desist.

18 MR. DEL VALLE: Any questions? Is there  
19 is a motion in favor? It's unanimous.

20 MR. PECUNIES: Thank you.

21 MR. DEL VALLE: That's all you got  
22 today?

23 MR. PECUNIES: That's it.

24 MR. DEL VALLE: Okay. Is there a motion

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to adjourn? We are adjourned. Thank you.

(The board meeting concluded at 9:45  
A.M.)

Environmental Control Board, 1/25/18

CERTIFICATE OF ACCURACY

I, Fei Deng, certify that the foregoing transcript of Board Meeting of the Environmental Control Board on January 25, 2018, was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Certified By

A handwritten signature in black ink, appearing to read "Fei Deng", written over a horizontal line.

Date: February 5, 2018

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