

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

June 28, 2018

9:20 a.m. - 9:59 a.m.

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MEMBERS PRESENT:

Ellen Cooper, Esq. - Department of Sanitation (DSNY)
Shamonda Graham - Department of Buildings (DOB)
Elizabeth Knauer, Esq. - Appointed Member
Jorge Martinez, Esq. - Department of Health & Mental
Hygiene
(DOHMH)
Russell Pecunies, Esq. - Department of Environmental
Protection (DEP)
Debra Scotto - Appointed Member
Matthew Smith, Esq. - New York City Police Department
(NYPD)
Douglas Swann - Appointed Member
Abayomi Whint, Esq. - NYC Fire Department (FDNY)

ALSO PRESENT:

Rachel Amar - Special Assistant to the Commissioner, OATH
Quiana Battle - Computer Service Technician
Kelly Corso, Esq. - Assistant Commissioner for Hearings
Division, OATH
Svetlana Goryacheva - Business Integrity Commission (BIC)
Timothy Jones, Esq. - Assistant General Counsel, OATH
Susan Kassapian, Esq. - Deputy Commissioner/Appeals, OATH
Richard J. LaPlant - Office of Management and Budget
(OMB)
Tynia Richard, Esq. - Deputy Commissioner/General Counsel,
OATH
Simone Salloum, Esq. - Senior Counsel, OATH
Peter Schulman, Esq. - Assistant Director for Appeals,
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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(The board meeting commenced at 9:20 a.m.)

MS. AMY SLIFKA, DEPUTY

COMMISSIONER/HEARINGS DIVISION, OATH: Okay. So I'm going to call the meeting to order. Is there a motion to adopt the minutes for the April 26, 2018 meeting? Okay. Also, did anyone have any corrections? No abstentions? Good morning.

MS. WHINT: Good morning.

MS. SLIFKA: We're in session. Okay. Okay. Alright. We'll go forward on the next thing. Simone Salloum is going to introduce OATH ECB proposed rule dealing with several penalty schedules. So let's start in order with the air asbestos penalty schedule.

MS. SIMONE SALLOUM: Good morning. My name is Simone Salloum with the Office of General Counsel. It's been a few months since you've seen some of these, but as you can tell from the agenda, there's been an uptick in activity. Just a reminder, these are part of the mayor's retrospective rule review. They worked with all of the agencies to, to look at whether there's

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rules that could be repealed or moved around, and they identified OATH to complete penalty schedules as, a set of those, that could be repealed with the enforcement agency's implementing their own penalty schedules. So this is another set of those. So the first one is a repeal of the air asbestos penalty schedule. This schedule is in Section 3-101 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York. It contains penalties for summonses issued by the Department of Environmental Protection and DEP is also proposing, and maybe they've already proposed, an air asbestos penalty schedule in, in their rules. I handed out -- initially in the materials that were circulated, we hadn't received the certifications from Law and Ops, and we received those yesterday. So that's what's in front of you, the same rule proposal, just the additional certifications. Does anyone have any questions?

MS. SHAMONDA GRAHAM, DEPARTMENT OF BUILDINGS: Just one. Shamonda Graham, Department of Buildings. So have you guys

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coordinated the time, the timelines so that that way by the time this is repealed, yours will be -

MR. RUSSELL PECUNIES, ESQ., DEPARTMENT OF ENVIRONMENTAL PROTECTION: It'll be simultaneous.

MS. GRAHAM: Okay.

MR. PECUNIES: We, we haven't had the public hearing yet on the, the penalty schedule, so it will obviously, the repeal will not take place until the same day that the new --

MS. GRAHAM: Okay.

MR. PECUNIES: -- schedule is going to come into effect.

MS. GRAHAM: Okay.

MS. ELIZABETH KNAUER, ESQ., APPOINTED MEMBER: I have another, Elizabeth Knauer, appointed member, question for Russ. Are you -- are the penalties that DEP is proposing, are they the same as currently exist or are you changing?

MR. PECUNIES: The penalties that we're proposing are exactly the same as in the existing schedule, except that because the rules are being revised and there are new sections being added to

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the rules, there will be infractions in the new penalty schedule in DEP's rules that don't exist in the current penalty schedule because they're not in effect yet. So the new rules, the new penalty schedule, and the repeal of the existing one will all be simultaneous.

MS. SLIFKA: Any further questions?

Okay, is there a motion to approve? Okay. And how many approve? One, two, three, four, five, six, okay. How many against?

MS. KNAUER: I'm against.

MS. SLIFKA: Any abstentions? I can count only the people here.

MS. SALLOUM: Okay. The next rule is very similar, so I'll keep it short. It's the repeal of the public wholesale markets, the Fulton Fish Market, and other public markets penalty schedules, essentially the penalty schedules that BIC, the Business Integrity Commission, issues summonses under, and so that schedule is currently found in Section 3-108 of Subchapter G of Chapter 3 of Title 48, and they are also, they have also proposed -- I know that

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their public hearing has happened, but they proposed in the city record their penalty schedule, and just - in case you have that same question. We do review their penalty schedules, and most of the penalties didn't change. They did add -- I don't know if there's anyone from BIC in attendance that can speak further, but they did add some new penalty schedule, or some new penalties based on some additional violations that they wanted to pursue. But other than that, no, they're [unintelligible] in the penalty schedule.

MS. SLIFKA: Any other questions?

MS. SCOTTO: Yeah, I have an overall question for, for all of these, I guess. Like Russ mentioned, you know, they're going to be, now that the regulatory agencies are taking a second look, they're going to fill in where they see gaps and there are going to be other violations that can happen as a result of that. Are people who work in these industries going to be notified in any way that the rules have changed?

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MS. SALLOUM: Well, under CAPA, pursuant to CAPA I think it's required when they propose a rule to publish it in the City Record, publish it in NYC Rules, send emails to community board members, the media.

MS. SCOTTO: But what about like people who are licensed or work for a permitted --

MS. SALLOUM: Right.

MS. SCOTTO: -- or work in these industries. Is there any way for them to find out that all of a sudden the penalties and the schedules are not what they were, and now there's added ones? Or do they just have to get them before they figure it out?

MS. SALLOUM: Right. I can't speak as to what kind of outreach BIC does. I don't know if any of the other agencies present have knowledge of how they --

MS. GRAHAM: Yeah

MS. SALLOUM: Go ahead.

MS. GRAHAM: I can't speak specifically for BIC but --

MS. SLIFKA: Shamonda Graham.

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MS. GRAHAM: Shamonda Graham, Department of Buildings. But I can speak for City Agencies. We rely on the type of process. Just like, you know, OATH, we're relying on that process and I believe all agencies do so. Some agencies do have notices on their web and things like that in addition to the New York City Rules.

MS. SCOTTO: Like DOB has a newsletter and stuff like that.

MS. GRAHAM: Yes.

MS. SCOTTO: But what about these other

--

MS. GRAHAM: So, I don't know.

MS. SCOTTO: -- agencies? Yeah.

[CROSSTALK]

MS. SLIFKA: We can't speak for what the other agencies do.

MS. SCOTTO: Well, we can ask Russ, do you want to take...

MR. PECUNIES: No, I mean, yeah, Russ, Russ Pecunies, DEP Legal. I mean, the reason that we're doing this is because there are changes being made to the asbestos rules.

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MS. SCOTTO: Right.

MR. PECUNIES: Which require changes to be made to the penalty schedule, in terms of adding penalties for the new rules. So at that point we're now taking it into our rules and they're appealing it from their rules.

MS. SCOTTO: Right.

MR. PECUNIES: The outreach that was done for the changes to the rules was that it was emailed to every asbestos abatement contractor --

MS. SCOTTO: That's what I thought you'd done.

MR. PECUNIES: -- in the city.

MS. SCOTTO: Yeah, that's great.

MR. PECUNIES: Yeah, so 50 people showed up for the public hearing and --

MS. SCOTTO: Yeah, you're right, yeah, okay. So there was notice given to

MS. ELLEN COOPER, ESQ., DEPARTMENT OF SANITATION: Ellen Cooper, Department of Sanitation. There's a requirement in CAPA that if you send -- when you send an email to the community board members, the city council

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members, that you send it to interested parties.

MS. SCOTTO: Yeah. That's, that's the part I wanted to know.

MS. COOPER: So technically, you know, for BIC, it would likely be --

MS. SCOTTO: And forward to the license or the permit or whatever.

MS. COOPER: -- you know, licensed carters or whatever.

MS. SCOTTO: Okay, great. Thank you.

MS. COOPER: Yep.

MR. MARTINEZ: It's the same thing for Department of Health.

MS. KNAUER: But I, I mean, just, Elizabeth Knauer, appointed member, I just want to note that, yes, for asbestos abatement, there is a limited pool of people there. They have to have a license. A lot of rules apply to the general public and there is not a defined group of people to email the proposal to --

MS. SCOTTO: That's where it gets tricky.

MS. KNAUER: -- so, and most people

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don't read the City Record on a regular basis,
so.

MS. SCOTTO: Yeah.

MS. KNAUER: I mean, you know, I've said it many times on the record that as long as this Board exists, it exists, there's a reason for having our members of the public appointed to it as representatives of the people that don't usually participate in the CAPA process. So my view is that, you know, we had at least some oversight on behalf of the public of the penalty schedules, and that's why I oppose repealing them, but, you know, I see both sides of it, but I, I think I'm balanced, that's my position, as long as this Board exists, which may not be for very much longer, but there's a res- -- there was at least in some point in time, there was a reason for it to exist, so --

MS. SCOTTO: Yeah, and my, my concern is that outreach. Not so much that the regulatory agencies are making changes, it's the outreach that is my concern.

MS. GRAHAM: Shamonda Graham, Department

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of Buildings. But I just want to point out that because we send it to the community board, the opportunity for outreach exists. The community boards have access to their constituents, their addresses, so they could if they wanted reach out to all the constituents and say, hey, because they have that access, wherein we really don't.

MS. SCOTTO: Yeah, but it's targeted audiences. The community board has their set email list that they automatically dispatch information out on, but if you're not part of that list, they don't do general public. They only do various not-for-profits or community groups or people who have specifically asked to be included in that. So it is a limited audience. It's the general public that's really the issue. You know, because depending on what it is, like Elizabeth said, it can affect people in the general public, and they have absolutely no idea. So that's the concern, is the outreach.

MS. SLIFKA: Any other questions, comments? Okay. Is there a motion to approve? Okay. How many for? One, two, three, four,

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five, six, seven. How many against? Two. Okay, Simone?

MS. SALLOUM: Okay. The next rule repeal, proposed repeal is for the general vendor penalty schedule. This rule is found in Section 3-109 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York. These rules are -- or the summonses under this penalty schedule are actually issued predominantly by the Police Department but also by DCA in some cases, but DCA is the agency that has authority over this penalty schedule. So we worked with them and they are proposing a penalty schedule within their own rules. We also collaborated with the NYPD on getting that penalty schedule promulgated. And again, that penalty schedule has very few changes. It's for your additional information. DCA did add another violation that related to people who are continuously violating the general vendor penalty schedule, but other than that, it's essentially the same.

MS. SLIFKA: Any questions? Okay. Is there a motion to approve? Okay. And how many

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for? -- six, seven. How many against?

MS. SALLOUM: Okay. The last rule repeal, proposed rule repeal is for the food vendor penalty schedule, the Health Code and miscellaneous food vendor violations penalty schedule, the Health Code lead abatement penalty schedule, and the public health law penalty schedule rules. These are essentially all of the penalty schedules that DOHMH issues summonses under and they're currently found in Sections 3-107, 3-110, 3-112, 3-117 of Subchapter G of Chapter 3 of Title 48 of the Rules of the City of New York. And DOHMH is actually proposing this in two different rules. They have created a new mobile food vendor rule. They had some legislation that is making there -- that penalty schedule be more similar to like the restaurant grading system and so they had to redo it to adhere to the local laws that passed. And then they're putting all the rest of the penalties in, in just a general penalty schedule.

MS. SCOTTO: And they added more or?

MS. SALLOUM: For the mobile food

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vending health schedule, I would say it probably looks completely different because now it has these grading systems that didn't exist previously. As to whether the penalty amounts changed, I don't think they did.

MS. SCOTTO: But the actual violations?

MS. SALLOUM: Right. Oh, that, that I don't know if I have enough information to --

MS. SLIFKA: For the most part, I think the actual violations stayed the same, but it will impact like they'll get grades similar to restaurants so.

MS. SLIFKA: Any other questions? Okay. Is there a motion to approve the new schedules? Any how many for? Six. One abstention. How many against? Two against. Six for, one abstention, two against. Okay. Okay, thank you.

MS. SLIFKA: Okay. Russell Pecunies, you may now present.

MR. PECUNIES: Good morning. I'm Russell Pecunies with the Bureau of Legal Affairs at the Department of Environmental Protection.

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For this Board Meeting, DEP has one request for a cease and desist order pursuant to the noise control code. This is for the Jehovah's Witnesses' Kingdom Hall at 409 Central Park West. The HVAC unit at that location has been cited for violating Section 24-227 of the Noise Code on four occasions in roughly the last year, most recently, on the 2nd of this month. Due to the repeated violations and continuing failure to come into compliance, the Department is requesting that the Board issue an order to cease and desist.

MS. SLIFKA: Okay. Any questions? Okay. Is there a motion to move for? Okay. And how many for? It looks like everybody's unanimous and Russ, okay

MR. PECUNIES: The Department is also requesting that the Board issue a cease and desist order under the Sewer Code. This is for Gourmet Boutique LLC at 144-02 158th Street in Queens. So this is a location that was originally inspected back in September of 2016. And at that time, based on that inspection, the

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Department issued a Commissioner's Order to the respondent requiring them to install a minimum 2500 gallon per minute 5000 pound capacity grease interceptor. And after a series of subsequent orders and summonses, the respondent having still not complied was most recently in default as to a hearing scheduled for April 19th of this year, and since over a period of a year and a half, since the original order, the respondent has still not come into compliance with the requirement to install the grease interceptor. The Department is requesting that the Board issue an order to cease and desist.

MS. SLIFKA: Okay. Any questions? Is there a motion to approve? And how many for? Okay, it looks like it's unanimous again.

MR. PECUNIES: And lastly, the Department is requesting that the Board issue orders to cease and desist in 41 cases relating to the failure to install backflow prevention devices. In each of these cases, the building owner has been ordered to comply with the water code by installing the required backflow

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prevention devices, and in each of these cases, after the owner's failure to do so, the Department has issued a summons, which has been adjudicated in violation. These 41 building owners are still not in compliance with backflow prevention requirements, and each of these locations is therefore a continuing danger to the water supply and the Department is therefore requesting that the Board issue cease and desist orders to each of these 41 building owners.

MS. SLIFKA: Okay. Is there a motion to approve? And everybody approve? Yes, okay. That's it.

MR. PECUNIES: And just to update the Board on an issue from the last meeting with regard to water shutoffs. There has been a meeting scheduled, an internal meeting at DEP scheduled on this issue repeatedly over the last two months and it has been repeatedly postponed, partially due to some personnel changes in the Bureau of Water and Sewer Operations.

MS. SLIFKA: Just for clarification for the record, what was the address?

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MR. PECUNIES: I --

MS. SLIFKA: Kelly, do you, do you know?

MS. KELLY CORSO, ESQ., ASSISTANT

COMMISSIONER FOR HEARINGS DIVISION ADJUDICATIONS:

It's, it's Broadway 111 Street Condo.

MR. PECUNIES: Correct.

MS. SLIFKA: Okay.

MR. PECUNIES: So no action has been taken with regard to that building at this time. The whole issue of water shutoffs is something that needs to be discussed further internally at DEP, and particularly with regard to what we would do to address these situations at residential buildings. So for the time being, the issue is on hold and no action has been taken. So I believe that that was tabled at the last meeting, and I think it can be tabled again until the next meeting.

MS. SLIFKA: Okay. Any objections to him having it tabled? Okay.

MR. PECUNIES: And that's it. Thank you.

MS. SLIFKA: Okay. Kelly Corso is now

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going to present on the pre-sealing reports.

MS. CORSO: Good morning. Kelly Corso, Assistant Director for Adjudications for the Hearings Division, and we have 34 approved pre-sealing reports for the Board today. Fourteen in the reports involve Air Code violations. Two of them involve Noise Code violations. One of the reports involves a Sewer Code violation. And 17 of the reports involve backflow violations. One of the backflow reports does involve a water shutoff recommendation. I'll address that one last. For the Air Code cases, all of them involve the respondents' failures to obtain their operating certificates for their boiler/burners and in all the cases, the hearing officers agree with DEP's recommendations that no further action be taken because all of the respondents had obtained their operating certificates. For the Noise Code cases, there's two of these. These involve noise from the respondents' kitchen exhaust equipment and at the hearings, the respondents did present evidence that there had been work done to come into compliance with the

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Noise Code. Based on that evidence of compliance, the hearing officers in those cases agree with DEP's recommendations that the equipment remain unsealed provided that DEP's initial re-inspection - and further re-inspections for a period of 180 days show no violations. For the Sewer Code case, this case involves the respondent's failure to comply with the terms of his case for a discharge permit. The hearing officer in this case agrees with DEP's recommendation to discontinue the C&D order because the respondent has come into compliance. The backflow cases: in 13 of these cases, the hearing officers recommend that there be no sealing or other action based on the respondent's evidence of compliance presented at the hearing. For the water shutoff case, this case actually --

MS. SLIFKA: For the 33 cases not involving the Water Code cases, any questions? Okay, I'd like to take a vote on those separately. So is there a motion to approve the 33? Okay. And how many approve, for? And are for it, everyone, okay. That seems to be

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unanimous. Okay. And now we'll deal with the one water shutoff.

MS. CORSO: This case involves a, a hotel. The, the respondent is Bay Ridge Prince LLC, and the hotel is located at 315 93rd Street in Brooklyn. And this case began in February of 2016. The DEP issued a Commissioner's Order ordering the respondent to install a backflow prevention device. It's -- the order did warn the respondent that failure to comply could result in the water being shut off at the premises. In May of 2016, DEP issued a summons to the respondent because they had not complied with the Commissioner's Order. The respondent failed to appear for the hearing and a default decision was issued on that summons. About a year later, May of 2017, the Board issued a cease and desist order to respondent because the DEP record inspection had shown that the respondent still did not comply with the Commissioner's Order. The C&D order directed the respondent to appear at a special hearing to show why the water supply should not be shut off, and hearings were

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conducted between August 1, 2017, and April 25, 2018. At those hearings, the respondent's representative stated that there are outstanding Department of Building summonses for the premises that were preventing the respondent from obtaining a permit for installing the required device and approval of the plans. The case has been adjourned eight times since the first pre-sealing hearing in August of 2017. And respondent's representative was advised at the hearings that the water will be shut off if the respondent continued to ignore the order to comply. At the last hearing on April 25, 2018, the respondent's representative offered no evidence of any progress towards achieving compliance or any specific information as to what's being done to resolve the outstanding Buildings violations. The DEP recommended at the last hearing that the water service to the premises be terminated, and, based on the lengthy history of the case, the respondent's continued failure to comply with the Commissioner's Order or to provide any specific information as to what

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is being done to resolve the outstanding Buildings summonses against the premises, the hearing officer recommends that the water should be shut off to the premises.

MS. SLIFKA: Any questions?

MS. SCOTTO: Any residential people in there?

MS. KNAUER: Well, yeah, I mean, there are hotels and then there are hotels. So I don't -- what kind of hotel? Because some, some hotels are used effectively as homeless shelters or they can be long-term safe places for the people living in the --

MS. SCOTTO: The residents-

MS. CORSO: I don't have information about that.

MS. SCOTTO: Well, would this fall under your meetings --

MR. PECUNIES: I mean, this is a commercial --

MS. SCOTTO: -- or is

MR. PECUNIES: This is a commercial location.

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MS. SCOTTO: Well, that's what we're asking though. Is it truly a commercial location or are there residents above it or --

MR. PECUNIES: As, as, as far I know, I mean, I, I didn't like look it up on the internet or anything, but it is represented to be a hotel.

MS. KNAUER: Right, but some hotels have been used for many, for many years as homeless shelters because the city doesn't have adequate capacity --

MR. PECUNIES: What was the address?

MS. KNAUER: -- there are some with shelters that are extended--

MS. CORSO: 315 93rd Street, Brooklyn.

MR. PECUNIES: 316?

MS. SLIFKA: 315 93rd Street, Brooklyn.

MR. PECUNIES: 93rd Street?

MS. SLIFKA: Yes.

MR. PECUNIES: I don't know I mean, I think, I can- while we do other business I can find out if we have other business to do, I can find out exactly what the nature of the hotel is and we can come back to it if that's --

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MS. SLIFKA: Alright. So --

MR. PECUNIES: Do we have to do the judicial reports or I can step out during that and find out exactly what this location is and then we come back into public session, we can come back to this.

MS. SLIFKA: Okay. Any objections to that? Okay. So we'll put this off while we go into private session and come back to it. So is there a motion to go into private session? Okay. I didn't vote on the adoption of the minutes and the proposed rules, the movement in the proposed rules. So I'm voting for everything that was presented, adoption of the minutes and everything that Simone presented and Kelly presented. Okay? And Russ presented. Okay. So for the record, that would be eight instead of seven for, okay? Alright. We're in recess. Russ was going to find out what the property was that Kelly was discussing and do you want to speak?

MR. PECUNIES: Okay. So what I was just able to find out in a few minutes is that the establishment is known as the Prince Hotel. It

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is in the Fort Hamilton neighborhood. It has apparently for years been a notorious location that is renowned for drug deals, prostitution and other unsavory activities taking place in it. It is still -- there was an article in the New York Times from two years ago which mentions the fact that the building apparently at that time had many thousands of dollars in unpaid fines and unresolved Buildings Department violations. There are current YELP reviews on for this hotel. Apparently, it is extremely cheap to stay in and it is frequented by people who are looking for extremely cheap hotel rooms.

MR. JORGE MARTINEZ, DEPARTMENT OF HEALTH AND MENTAL HYGIENE: Jorge Martinez, Department of Health. The article also mentions that as of 2016 when the article was published, there were long-term residents there. Some woman who had been there for 30 years. There were an undetermined number of people been there for a while as permanent residents, and it was not clear at that point what would happen to those folks. So, you know, it's some concern.

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MR. PECUNIES: That's-

MS. SCOTTO: That's a problem.

MS. SLIFKA: Alright. Any other questions? Okay. Alright. This is for just to be clear, this is for the water shutoff case at Bay Ridge Prince LLC, 315 93rd Street, Brooklyn, and so is there a motion to approve? This is -- is there a motion to vote? Let's do it that way, okay? A motion to take a vote on this? Okay. I got it. A motion, okay, alright. How many for?

MS. KNAUER: Can I make -- can I propose a suggestion? Could we table this? Could be there some investigation done to whether there actually are long-term residents there still?

MR. PECUNIES: Well, I mean, I, I think that we could certainly put this over for two months and, and send an inspector there and -- if, if the history that I just read briefly on the internet is true, this place is never coming into compliance. It's either going to be left open without complying or it's going to be have the water turned off. There, there seems to be no prospect. This place has been notorious for

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years that it doesn't respond to any violations.

MS. SLIFKA: I, I just want to --

MR. PECUNIES: But I, I mean, if, if we want to table it and, and --

MS. KNAUER: But I, but I think that --

MR. PECUNIES: -- and send an inspector, then --

MS. KNAUER: I think, I mean, but, but given that then it doesn't seem, I mean, even if the water is shut off, do you think they're going to --

MS. SLIFKA: There's two, there's an issue here though. You have to remember why they're asking for the water to be shut off. The water is being asked to be shut off, because there's no backflow prevention device there. I'm just pointing that out.

MS. KNAUER: Right.

MS. SLIFKA: So because there's no backflow prevention device there, there's crap going -- excuse my French -- there is bad stuff going into the water that, that people in the area are, are drinking or having, you know, so

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it's, it's polluting the water.

MS. KNAUER: No, it's not polluting drinking water.

MS. SLIFKA: Oh, no, well --

MS. KNAUER: Just to be clear,

MS. SLIFKA: It's polluting the-

MS. KNAUER: Our drinking water comes from upstate New York.

MS. SLIFKA: Okay.

MS. SLIFKA: Uh yes, it's polluting, polluting, yes, but it is pollution --

MS.KNAUER: But --

MS. SLIFKA: -- that's going into the system.

MS. SCOTTO: -- it is possible that it can backflow--

MS. SLIFKA: Just pointing that out.

MS. SCOTTO: The backflow prevention device is only to prevent a problem from happening. It's not like it's being continuously polluted. It doesn't work like that. So, you know -- that's not the case -- yeah. And, you know --

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MR. PECUNIES: Right, but, but this is -
-

MS SCOTTO: -- if there's residents, I don't want -- I'm, I'm not understanding what you said before. I can't reconcile it with this. I, I thought that there were internal meetings going on in DEP to try to figure out how you're going to handle situations that are residential to use a water shutoff-

MR. PECUNIES: But there was no indication that this is -- it's a, it's an operating functional hotel.

MS SCOTTO: Well, I know but --

MR. PECUNIES: The fact that there may be people who have stayed in the same hotel room for ten years is not -- it doesn't make it residential. It's a hotel.

MS. SCOTTO: Well, it's like a hybrid, because if there are long-term residences there, they're obviously there because they have no money.

MR. PECUNIES: Well, but there are also long-term residents at the Waldorf Astoria, does

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that mean that when I have to turn off the water

--

MS. KNAUER: Yeah, but those people are-

-

MR. PECUNIES: -- to the Waldorf Astoria

MS. KNAUER: They're different, it's a different group of people-

MR. PECUNIES: I mean --

MS. SCOTTO: That's very different.

MS. SLIFKA: Alright. Do you want to table this until the next meeting and you'll do some more research and you'll send someone in there? Okay. So yes?

MR. SWANN: I'm sorry so Russ, you're saying that if you, if you table it and, you know, you send somebody out there and they find that there are long-term residents --

MR. PECUNIES: After this it's still going to be that -- it should be, because they're, they're never going to come into compliance, so, and there's no way to make them come into compliance without --I mean, either you're going to say there's long-term residents

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there and therefore, there's nothing that can ever be done to get them to come into compliance, because this place apparently doesn't care about fines and doesn't care about having unresolved violations. So --

MS. SCOTTO: The issue is safety.

MS. SLIFKA: Debra Scotto.

MS. SCOTTO: Debra Scotto, appointed member. The issue is safety, right? We're trying to protect people in, in this place. So how is shutting off the water protecting them? Maybe we need a mechanism like was discussed last time whereby DEP can install or have DOB --

MR. PECUNIES: No, I, I --

MS. SCOTTO: -- install a backflow device --

MR. PECUNIES: -- I've inquired --

MS. SCOTTO: -- and go through the --

MR. PECUNIES: -- and it's not going to happen.

MS. SCOTTO: -- Department of Finance and tax these people.

MR. PECUNIES: The City --

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MS. SCOTTO: If they don't pay their taxes, then they get foreclosed on.

MR. PECUNIES: The City is not going to pay for capital improvements for building owners' commercial properties, because they simply refuse to take care of those properties.

MS. SCOTTO: But they're doing it now with façades.

MR. PECUNIES: Hm?

MS. SCOTTO: They're doing it now with façades. There are -- Façade, the façades of buildings.

MS. KNAUER: That are in danger of --

MS. SCOTTO: Correct. They go in under emergency measures. They scaffold the building. They do what they need to do and they back bill the owner.

MS. KNAUER: To protect the public.

MS. SCOTTO: To protect the public.

MR. PECUNIES: And then, but with that, so you're going to --

MS. SCOTTO: So that's what I'm talking about --

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MR. PECUNIES: -- back bill this owner, I mean, if it's going to be uncollected until the end of time.

MS. SCOTTO: Not if you do it through the Department of Finance. Then they get foreclosed on.

MS. SLIFKA: Alright --

MR. PECUNIES: I mean, I think are certainly legitimate questions with regard to actual residential properties, but this is a hotel. As far as I can tell, it's a hotel. I'm certainly willing to send an inspector to confirm that it is a hotel, which there doesn't seem to be any doubt about, but if everybody wants us to reinspect, we'll reinspect it. But I cannot imagine that DEP is ultimately going to take any other position that, that this place's water should be shut off unless they comply. That's --

MS. SLIFKA: So do you want us to take a vote on this today or do you want us to table it?

MR. PECUNIES: I mean, we can certainly vote on it today and if the vote is to table it, then, then - table it.

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MS. SLIFKA: Well, that's a table, okay. So that's the issue, okay. So do we want to table this? Is there a motion to table this until the next meeting? Okay. Alright. How many are for tabling it?

MR. PECUNIES: Yeah, I mean I can't be sure.

MS. SLIFKA: And how many are against tabling it? Okay, so everybody's unanimous that we'll table it to the next meeting. Okay. Alright. Is there a motion to close this meeting?

MS. SLIFKA: Alright. This meeting is adjourned. Thank you.

(The board meeting concluded at 9:59 a.m.)

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CERTIFICATE OF ACCURACY

I, Fei Deng, certify that the foregoing transcript of the Board Meeting of the Environmental Control Board on June 28, 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: July 19, 2018

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