

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

BOARD MEETING

VIA VIDEO CONFERENCE

100 Church Street, New York, New York

February 10, 2022

9:34 a.m. to 10:32 a.m.

February 10, 2022

MEMBERS PRESENT:

Joni Kletter, Esq. - Commissioner/Chief Administrative Law Judge, OATH, Chair/Executive Director, OATH ECB
Shamonda Graham - Department of Buildings (DOB)
Jose Marquez (for Joseph Gregory, Esq.) - New York City Fire Department (FDNY)
Elizabeth Knauer, Esq. - Appointed Member (Water)
Madelynn Liguori, Esq. - Department of Sanitation (DSNY)
Jorge Martinez, Esq. - Department of Health & Mental Hygiene (DOHMH)
Russell Pecunies, Esq. - Department of Environmental Protection (DEP)
Matthew Schneid, Esq. - Appointed Member (Real Estate)
Matthew Smith, Esq. - New York City Police Department (NYPD)
Jarrod Whittington - Appointed Member (Noise)

ALSO PRESENT:

John Castelli, Esq. - Deputy Commissioner for Legislative Affairs, OATH
Kelly Corso, Esq. - Assistant Commissioner for Hearings Division Adjudications, OATH
Brian Gatens - Member of Public
Svetlana Iosilevich, Esq. - Executive Agency Counsel, Business Integrity Commission (BIC)
Catherine Jakubik, Esq. - Assistant General Counsel, OATH
Timothy Jones, Esq. - Senior Counsel, OATH
Richard J. LaPlant - Office of Management and Budget (OMB)
Peter Schulman, Esq. - Assistant Commissioner for Appeals, OATH
Frances Shine - Secretary to the Board, OATH
Amy Slifka, Esq. - Deputy Commissioner/Hearings Division, OATH
Samuel Solomon, Esq. - Chief of Staff/Special Counsel, OATH
Thomas Southwick, Esq. - Supervising Attorney for Appeals, OATH
Olga Statz, Esq. - Deputy Commissioner/General Counsel, OATH
Maria Stojanovic - Legal Intern, Department of Sanitation (DSNY)
Joy A. Thompson, Esq. - Assistant General Counsel, OATH

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2 (The board meeting commenced at 9:34
3 a.m.)

4 JONI KLETTER, ESQ., CHAIR, EXECUTIVE
5 DIRECTOR, OATH ECB, COMMISSIONER/CHIEF
6 ADMINISTRATIVE LAW JUDGE, OATH: Alright. Good
7 morning. I'm calling the meeting to order. I'm
8 going to ask Joy Thompson for roll call to verify
9 quorum.

10 JOY A. THOMPSON, ESQ., ASSISTANT GENERAL
11 COUNSEL, OATH: Thank you, Commissioner. At this
12 time I'm going to ask you to say, if you're here,
13 you're here. I'm going to start with
14 Commissioner Kletter.

15 MS. KLETTER: Here.

16 MS. THOMPSON: Shamonda Graham?

17 SHAMONDA GRAHAM, DEPARTMENT OF
18 BUILDINGS: Here.

19 MS. THOMPSON: Jose Marquez?

20 JOSE MARQUEZ, ON BEHALF OF JOSEPH
21 GREGORY, ESQ., NEW YORK CITY FIRE DEPARTMENT:
22 Present.

23 MS. THOMPSON: Thank you. Madelynn
24 Liguori?

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2 MADELYNN LIGUORI, ESQ., Department of
3 Sanitation: Here.

4 MS. THOMPSON: Elizabeth Knauer?

5 ELIZABETH KNAUER, ESQ., APPOINTED MEMBER
6 (WATER): Here.

7 MS. THOMPSON: Russ Pecunies?

8 RUSSELL PECUNIES, ESQ., DEPARTMENT OF
9 ENVIRONMENTAL PROTECTION: Here.

10 MS. THOMPSON: Matthew Schneid?

11 MATTHEW SCHNEID, ESQ., APPOINTED MEMBER
12 (REAL ESTATE): Present.

13 MS. THOMPSON: Douglas Swann? Jarod
14 Whittington?

15 JARROD WHITTINGTON, APPOINTED MEMBER
16 (NOISE): Here.

17 MS. THOMPSON: Going up to Mr. Jos-
18 Jorge Martinez? I believe that Tom Shpetner will
19 not be joining us today, but we do have a quorum
20 with nine members.

21 MS. KLETTER: Okay, great. Thank you.
22 I think, you know, you're all aware that Ku-
23 Susan Kassapian, the head of our Appeals
24 Division, has retired. We had a wonderful send-

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2 off for her, which was a roast that was very, it
3 was amusing. It was very sweet and, and really
4 nice. And we'll miss her. And we are happy that
5 Peter Schulman is going to be the interim
6 division head while we conduct hiring for the
7 role. And we know that the Appeals Division is
8 in excellent hands with Peter, and I have the
9 utmost fac- faith in him, so we're lucky to have
10 him in that role.

11 And, yeah, okay. So I'm going to ask
12 for a motion to adopt the minutes of the December
13 9, 2021 meeting.

14 MS. KNAUER: Motion.

15 MS. KLETTER: Thank you. Does anyone
16 have any corrections? Okay. Seeing none, Joy,
17 I'm going to ask that you call a vote, for a vote
18 to approve the minutes as presented.

19 MS. THOMPSON: Thank you, Commissioner.
20 At this time, I will ask for any objections to
21 the approval of the minutes from the February 10
22 [sic] ECB Board Meeting. Seeing and hearing
23 none, those minutes are approved.

24 MS. KLETTER: Great, thank you. I'm now

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2 going to hand it over to Olga Statz and allow her
3 to introduce OATH's proposed rule regarding
4 appearances and representation at OATH Hearings.

5 OLGA STATZ, ESQ., DEPUTY

6 COMMISSIONER/GENERAL COUNSEL, OATH: Good
7 morning, everybody. I'm very sorry. We're going
8 to actually have to pull this. Our, the eagle
9 eyes of our staff have caught a phrase that was
10 supposed to be in this proposed rule that did not
11 show up in the proposed version, so we'll be
12 pulling this and, and treating you to another
13 review of it for the next meeting.

14 MS. KLETTER: Okay. Do you want to just
15 summarize what it is for the next meeting, what
16 we're doing?

17 MS. STATZ: Yeah, absolutely. So, over
18 the course of this period of time, Amy's team and
19 Maria's team have come up with a lot of protocols
20 that are very helpful for processing the matters
21 in terms of bringing informa-, bringing lists of
22 summonses to the, to the tribunal early and
23 putting in certain representations and, and
24 organizing things in a certain way. And, right,

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2 now, we're trying to, to solidify those, those
3 protocols in a rule so that, now, it's just,
4 everybody knows that this is the way it's going
5 to be proceeding formally, at this point. So
6 we're basically formalizing actions that were
7 taken and that showed themselves to be very
8 efficient earlier. So that, that's what we're
9 doing right now.

10 MS. KLETTER: Great. Okay, we look
11 forward to seeing those at the next meeting.

12 MS. STATZ: Thank you.

13 MS. KLETTER: Now, I'm going to ask Olga
14 to introduce OATH's proposed rule regarding
15 motions to vacate defaults.

16 MS. STATZ: Yes, thank you,
17 Commissioner. This also is, has arisen and came,
18 came out of our experience during the pandemic.
19 We found that the, giving, that giving
20 respondents 75 days worked just fine. It's
21 something that's good for the tribunal, it's
22 something that's good for the respondents, so we
23 also wanted to formalize that in a rule, as well.
24 And we want to give respondents 75 days, a, a

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2 freebie to re-, if they miss a hearing, to reopen
3 within 75 days without making a showing of, of
4 reasonableness or anything like that. And if, if
5 --

6 MS. KLETTER: Okay, I just want to note
7 Jorge Martinez has now joined us. Is, are you
8 there, Jorge? You're on mute.

9 JORGE MARTINEZ, ESQ., DEPARTMENT OF
10 HEALTH & MENTAL HYGIENE: Yes.

11 MS. KLETTER: Great. Thank you.

12 MS. THOMPSON: Thank you.

13 MS. KLETTER: Olga, did you want to turn
14 it over to questions now? Okay.

15 MS. STATZ: Yes. Does anyone have any
16 questions? I guess not. Thank you very much.

17 MS. KLETTER: Great. Thank you. I'm
18 going to ask for a motion to approve this rule.

19 MS. KNAUER: Motion.

20 MR. SCHNEID: Motion.

21 MS. KLETTER: Thank you, Elizabeth.

22 Yeah, I'm going to ask Joy to call for a vote.

23 MS. THOMPSON: Thank you, Commissioner.

24 At this time, I'm going to ask if there are any

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2 objections to the approval of the proposed rule
3 regarding motions to vacate defaults. Seeing and
4 hearing none, this rule is approved. Thank you,
5 Commissioner.

6 MS. KLETTER: Great, thank you. I'm
7 going to ask for a motion to go into Executive
8 Session so we can discuss new decisions in the
9 cases that are listed in the judicial report.

10 MS. LIGUORI: Motion.

11 MS. KLETTER: Great. Thank you,
12 Madelynn.

13 PETER SCHULMAN, ESQ., ASSISTANT
14 COMMISSIONER FOR APPEALS, OATH: If you are not
15 an employee of OATH or the Board, if you want to
16 exit, that's fine. If not, I will move you to a
17 waiting room and we'll bring you back once
18 Executive Session is done. So I'll give you a
19 minute to see if you leave. Otherwise, I'll move
20 you over. Maria Stojanovic is not an OATH
21 employee, right? Is that, is that the intern?
22 Okay.

23 MS. THOMPSON: She's the intern.

24 MR. SCHULMAN: Okay.

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2 MS. LIGUORI: Yes, the Sanitation
3 intern.

4 MR. SCHULMAN: Okay.

5 [OFF THE RECORD]

6 [ON THE RECORD]

7 MS. KLETTER: Are we good?

8 SAMUEL SOLOMON, ESQ., CHIEF OF
9 STAFF/SPECIAL COUNSEL, OATH: Just, as we're --

10 MR. SCHULMAN: I'm going to let the --

11 MR. SOLOMON: -- as, Peter, as we're
12 going back, I got a message from one person who
13 said that they timed out of the Public Meeting.

14 MR. SCHULMAN: Oh, yeah. Everybody,
15 everybody is gone.

16 MR. SOLOMON: Yeah, I think we, if
17 anybody is in touch with folks who may have been
18 in there, you may want to just give them a quick
19 call or e-mail and let them know that we're
20 returning to Public Session.

21 MS. KLETTER: I think it was just two
22 people, right, or three?

23 MR. SCHULMAN: It was initially two, and
24 then Richard LePlant joined during Executive

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2 Session.

3 MR. SOLOMON: I just sent a message to
4 Mr. Gatens, who had joined. I think he's back
5 now.

6 MR. SCHULMAN: Okay. I sent an e-mail
7 to Svetlana from BIC.

8 MS. KLETTER: Okay. Should I continue?
9 Yeah. So the next Board Meeting is going to be
10 April 7th or April 14th. Does anyone have a
11 preference?

12 MS. GRAHAM: The 14th?

13 MS. KLETTER: The 14th? I'm just
14 looking what day of the week is it. That's a
15 Thursday.

16 MS. THOMPSON: Those are both on
17 Thursdays.

18 MR. SCHNEID: I actually have a
19 preference for April 7th, if that's possible.
20 The 15th is the start of a Jewish holiday and
21 I'll be leaving early. So I'm going to have a
22 busier day on --

23 MS. GRAHAM: The 7th is fine for me,
24 guys.

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2 MS. KLETTER: Yeah. It's also the
3 beginning of like a vacation week, right?

4 MR. SCHNEID: Yeah.

5 MS. LIGUORI: Yeah, I have a preference
6 for the 7th, as well.

7 MS. KLETTER: Yep. Okay, great. Thank
8 you all. I'm going to ask for a motion to
9 adjourn the meeting. Thank you.

10 MR. SCHULMAN: I'm sor-, I'm sorry.
11 Brian Gatens had a public comment.

12 MS. KLETTER: Oh, okay. Sorry. I'll
13 take any comments. Brian?

14 MR. BRIAN GATENS, MEMBER OF PUBLIC:
15 Yes, good morning. Thanks for the opportunity.
16 I just wanted to bring to the Board's attention
17 Mayor Adams's Executive Order No. 6, which the
18 Members may have seen, or may not. It was
19 executed earlier this week, on February 7th, and
20 it primarily deals with transparency in City
21 government and the dissemination of information
22 by City agencies and making that information more
23 available to members of the public.

24 Among other things, the, the order says

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2 that agencies shall "provide detailed information
3 about its policies, practices and activities in
4 publicly accessible ways." And I know that OATH
5 considers itself very transparent and, in many
6 ways, I would agree with that. But I think there
7 is room for improvement. And, you know, the
8 Mayor thought there was room for improvement in
9 every agency. And I think that, if OATH looked,
10 it could find some room for improvement in, for
11 transparency in its own organization and the ECB,
12 as well.

13 And especially, not so much that things
14 aren't transparent. You know, everything, I
15 think everything is dis-, everything can be
16 obtained from OATH. I think OATH, you know,
17 doesn't hide anything or withhold anything. But
18 I think that the way the information and, and
19 materials from the Agency are accessible to the
20 public can be improved and the, the efficiency of
21 dissemination of that information can be greatly
22 improved.

23 For example, currently, when a member of
24 the public requests a document or a record from,

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2 from OATH, they're almost always told to file a
3 FOIL request. And, and I'm talking about members
4 of the public, not necessarily respondents or
5 agencies, but members of the, general members of
6 the public. They're al-, virtually always
7 directed to file a FOIL request. This Executive
8 Order seems to make clear that it shouldn't be
9 necessary for a citizen to file a FOIL request
10 for every routine document request.

11 [Unintelligible] [10:27:59]] [00:11:59] a citizen
12 might choose to submit a FOIL, if they wanted to,
13 but it shouldn't be necessary if the document is
14 something routine. For example -- just --

15 MR. PECUNIES: I can't hear. I --

16 MS. KLETTER: Yeah, Shamonda, can you go
17 on mute, please? Thank you.

18 MR. GATENS: And ju- just by way of
19 example, you know, a routine hearing decision.
20 It should not nece- necessitate a FOIL request
21 from a member of the public. And this Executive
22 Order seems to contemplate that agencies make
23 materials available outside of the FOIL process
24 and more routinely and more, without, without so

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2 many barriers to obtaining that information.

3 Secondly, the Executive Order calls for
4 a review on a regular basis of, for each agency,
5 on the way that it disseminates information, and
6 I'm looking forward to hearing the results of
7 OATH's and ECB's review of those policies that I,
8 I'm sure will take place.

9 You know, besides, besides that, I just
10 wanted to maybe point out one more that happens
11 just during this meeting. Apparently, the, the
12 Board voted on a, a proposed rule, but other than
13 a vague description of it that has something to
14 do with defaults, there was no text of that rule
15 read during the public meeting. The text, as far
16 as I know, isn't available anywhere in minute, in
17 a, an agenda or anything that I, any member of
18 the public, myself included, could have looked to
19 see what the Board was voting on. And I know
20 that it will become available. It will be
21 posted, you know, wherever in the coming days.
22 But, if, if the Board is voting on something at a
23 public meeting, the public should be informed of,
24 of what they're voting on.

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2 And I know that, you know, perhaps I'm,
3 I'm the only member of the public that, that
4 comes to these meetings, but that's neither here
5 nor there. Whether, whether someone is here or
6 not, or whether it's one person or not, there is,
7 this is example of, of more room for improvement
8 in transparency. Thank you.

9 MS. STATZ: Thank you very much. Thank
10 you very much, Mr. Gatens, for your comments. We
11 looked at the Executive Order and we're happy
12 that the Mayor actually issued that Executive
13 Order. But one of the things that you have to
14 keep in mind is that FOIL is not designed to keep
15 things away from members of the public, it's
16 designed, actually, to, to, to allow both sides,
17 the members of the public and the agency, to
18 provide information in a proper fashion.

19 Another thing you have to keep in mind
20 is that we use FOIL as a way to examine. When we
21 put, put something through FOIL, we have an
22 opportunity to look at that document and, and
23 remove anything that is private information from,
24 that, that belongs to another individual before

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2 it's released to a member of the public. So it's
3 not as if we, we play fast and loose with the
4 documentation. So FOIL is a way to protect
5 members of the public and to organize the Agency,
6 as well. Because, when we disseminate the
7 information, FOIL allows us to keep a record of
8 the information that we're disseminating. And so
9 it's been a very useful tool for us and it's
10 something that we follow. And I think, and, and
11 I'm glad, and I appreciate the fact that you
12 recognize that we withhold nothing. It's just
13 that we do everything by the book in a very
14 organized fashion so that we know what we're
15 giving, to whom, and that we only provide those,
16 that, the information that we are supposed to
17 provide, that we do not release people's private
18 in- in- information to the public, willy-nilly.

19 With respect to reading the rules into
20 the record at the meeting, I think that's a good
21 idea. Thank you very much. I'll read the rules
22 when, be- before, before we propose them. But,
23 other than -- and I think, I think those were
24 mainly your two, your two comments.

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2 And the other thing you have to keep in
3 mind --

4 MS. KLETTER: The rule is published. It
5 is, it is published and it's on OATH's website
6 and it's distributed to the City Council, the
7 Community Boards and to the media.

8 MS. STATZ: Yeah.

9 MR. GATENS: Today? It's available
10 today? Or --

11 MS. STATZ: No, not --

12 MR. GATENS: -- it's available this
13 morning?

14 MS. STATZ: Oh.

15 MR. GATENS: Well, that's, that's kind
16 of, that's my point, that if the Board is voting
17 on anything, it should, the text of it should
18 have, should be either read or it should be
19 available for an attending member of the public.

20 MS. KLETTER: No, I'm sorry. We're not
21 -- this isn't a back and forth. I'm sorry. I
22 think you, you've got, we've got your comments.
23 Thank you. I just want to say, too, thank you
24 for mentioning the Executive Order. We, I will

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share that with the Members of the Board.

And are there any other, anyone else have any comments? Great. Thanks so much. So April 7th will be the next Board Meeting. Thank you.

MS. STATZ: Thank you.

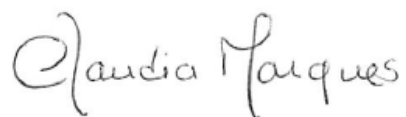
(The board meeting concluded at 10:32 a.m.)

Environmental Control Board, 2/10/2022

CERTIFICATE OF ACCURACY

I, Claudia Marques, certify that the foregoing transcript of Board Meeting of the Environmental Control Board on February 10, 2022, was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Certified By



Claudia Marques

Date: March 23, 2022

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