

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

February 25, 2016

9:18 A.M. to 9:43 A.M.

February 25, 2016

MEMBERS PRESENT:

Lt. Dan Albano, Esq. - Police Department
Fidel F. Del Valle, Esq. - Chair, OATH
Ernest J. Cavallo - Citizen Member
Shamonda Graham - Department of Buildings
Joseph Gregory, Esq. - Fire Department
Elizabeth Knauer, Esq. - Citizen Member
Madelynn Liguori, Esq. - Department of Sanitation
Jorge Martinez, Esq. - Dept. of Health and Mental Hygiene
Russell Pecunies, Esq. - Dept. of Environmental Protection
Thomas D. Shpetner - Citizen Member
Douglas Swann - Citizen Member

ALSO PRESENT:

Frances Shine - Secretary to the Board, OATH/ECB

Rachel Amar - Special Assistant to the Commissioner, OATH
Helaine Balsam, Esq. - Deputy General Counsel, OATH
Ann Biebel, Esq. - Staff Attorney, Appeals, OATH ECB
Denis Brogan - Assistant General Counsel, OATH
John Burns - First Deputy Commissioner, OATH
Robert Carver, Esq. - Public
Vanessa Caughman - OATH
Kelly Corso, Esq. - Assist. Director for Adjudications,
OATH ECB
Fana Garrick - Public Affairs Assistant, OATH
David Goldin, Esq. - Administrative Justice Coordinator,
Mayor's Office
Diana Haines - Assistant General Counsel, OATH/GC
Vivienne Kahng - Deputy Supervising Attorney, Appeals,
OATH ECB
Kevin Lawner, Esq. - Staff Attorney, Appeals, OATH ECB
Mark H. Leeds, Esq. - Special Senior Counsel, OATH ECB
Nancy Lin - Office of Management & Budget
Carol Moran - Deputy Commissioner, OATH/H&R Hearings
Douglas Parker, Esq. - Staff Attorney, Appeals, OATH ECB
Tynia Richard, Esq. - Dept. Commissioner, General Counsel
Doris Stewart - Department of Transportation
Peter Schulman, Esq. - Assist. Director for Adjudications,
OATH ECB
Thomas Southwick, Esq. - Supervising Attorney, Appeals,
OATH ECB
Ari Wax, Esq. - Assistant Commissioner, Department of
Buildings

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2 (The Board Meeting commenced at 9:18
3 A.M.)

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

7 MR. ERNEST J. CAVALLO, CITIZEN MEMBER:
8 Good morning.

9 ALL: Good morning.

10 MR. DEL VALLE: The first order of
11 business as usual is adopting the minutes of the
12 last meeting. Does anyone have any comments or
13 corrections to make before we adopt them? Is
14 there a motion to adopt? It's unanimous and
15 they're adopted.

16 Department of Buildings has -- as
17 everybody knows there was this little incident a
18 couple of blocks north of here not too long ago
19 when this monster crane came down and created a
20 big mess. The mess was at New York Law School,
21 where it damaged the front of the building; and
22 unfortunately two people were injured and one
23 person was killed. And as part of an initiative
24 as a result of that, the Buildings Department is

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2 making some fast track changes to some of its
3 penalty schedule things. And in order to avoid
4 complications, we are fast tracking it as much as
5 we can. And I believe the Buildings Department is
6 ready to tell us what they're up to; what they're
7 asking us to do.

8 MS. SHAMONDA GRAHAM, EXECUTIVE DIRECTOR,
9 DEPARTMENT OF BUILDINGS, ADMINISTRATIVE
10 ENFORCEMENT UNIT: Good morning, ladies and
11 gentlemen of the Board and also audience members.
12 My name is Shamonda Graham and I'm the Executive
13 Director of the Department of Buildings,
14 Administrative Enforcement Unit. Today, the
15 Department is asking that the Environmental
16 Control Board approve increases to three of our
17 fines and to add two new fines to our DOB Penalty
18 Schedule.

19 Since 2009, we've all noticed our City
20 changing: construction increasing and development
21 increasing. In fact, it's increased by 300
22 percent over the last six years; as a matter of
23 fact, a little more than that. In addition to
24 this increase in construction, we've also seen an

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2 increase in construction-related accidents; all
3 the way up to 98 percent.

4 As a result, the Department is asking
5 that the Board approve these changes because we'd
6 like to send a message of a zero tolerance policy
7 to those who choose to inadvertently or even
8 intentionally violate or abuse the regulations as
9 it relates to safety at construction sites. In
10 those cases they put the public, property, us and
11 everything in danger.

12 So because the Mayor did put out some
13 press releases back on February 12th and 7th,
14 we're also asking that this, as the Commissioner
15 noted, be promulgated with a finding of
16 substantial need for earlier implementation.
17 Attached to your presentations, you will find the
18 details of this request, which outlines the
19 penalties and the default penalties for the
20 request. Do you have any questions?

21 MR. DEL VALLE: Any questions? In sync
22 with that, I have asked that there be a draft
23 already prepared for our consideration to publish
24 and I'll ask Dennis Brogan to present that. Thank

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2 you.

3 MS. GRAHAM: Thank you.

4 MR. DEL VALLE: This is the fast track.
5 We're putting two things that are normally a
6 month apart and putting them together.

7 MR. DENNIS BROGAN, ESQ., ASSISTANT
8 GENERAL COUNSEL, OATH: Good morning everyone. My
9 name is Dennis Brogan. I'm the Assistant General
10 Counsel here at OATH, with the General Counsel's
11 Office. And as the Commissioner indicated, for
12 these proposed additions and changes, they are
13 being fast tracked. Just to follow up on
14 Shamonda's presentation, the Environmental
15 Control Board proposes to amend its DOB Penalty
16 Schedule, which is Section 3-103 of Subchapter G
17 of Chapter 3 of Title 48 of Rules of the City of
18 New York.

19 And in your packet you'll see the
20 proposal is to add two new sections in Section
21 28-201.1 of the New York City Administrative
22 Code, Class 1 and Class 2, and they're both
23 described as unlawful acts, failure to comply
24 with the law, rule or Commissioner's order

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2 involving construction and/or equipment safety
3 operations. And you have provided for penalties.
4 They are there in the chart.

5 The second section is going to amend --
6 the proposal is to amend three existing sections.
7 And these are Section 3-103, Subchapter G of
8 Chapter 3 of Title 48 of the Rules of the City of
9 New York. Specifically, there's three sections:
10 Building Code 3316.2 and Building Code 3319.1,
11 Class 1; Building Code 3301.2, Class 1 and
12 Building Code 3301.2, Class 2.

13 The first one, with respect to the first
14 one I mentioned, it's inadequate safety measures,
15 operation of crane, derrick, hoisting equipment
16 in an unsafe manner and the code penalties are
17 there underlined. And Class 1 of Building Code
18 3301.2 is failure to safeguard all persons and
19 property affected by construction operations. And
20 you can see in your chart the proposed penalties
21 there. And Class 2 is the same violation
22 description.

23 I should note these increases are within
24 the statutory authority of the Department of

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2 Buildings and there's a finding of substantial
3 need. And we received certification, which you
4 should have in your packets, from the Mayor's
5 Office of Operations and also the Law Department.
6 Are there any questions?

7 MS. ELIZABETH KNAUER, CITIZEN MEMBER:

8 Hi, Elizabeth Knauer, Citizen Member. I just --
9 just so I understand: What is the purpose of
10 adding the two new sections?

11 MS. GRAHAM: I can answer that.

12 MR. BROGAN: Shamonda, do you want to --
13 yeah, thank you.

14 MS. GRAHAM: Yes. The purpose of adding
15 the two new sections is to delineate safety
16 related violations. Meaning, we already have a
17 code that covers violating a Commissioner's
18 order. This in particular will be related to
19 safety related orders.

20 MS. KNAUER: So, it's a higher -- it's a
21 higher penalty for safety related?

22 MS. GRAHAM: It's a higher penalty. Yes,
23 absolutely.

24 MR. DEL VALLE: Which makes a lot of

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2 sense.

3 MS. GRAHAM: Yes.

4 MR. BROGAN: Any further questions?

5 Alright, thank you.

6 MR. DEL VALLE: Is there a motion?

7 LT. ALBANO: We have to accept.

8 MR. DEL VALLE: I think it's unanimous
9 with one abstention. Thank you. Russell isn't
10 here again. So, he's probably somewhere in the
11 glorious IRT, like that guy in Boston who got
12 stuck in the subways forever. So, I'll just move
13 his thing until towards the end and ask Kelly
14 Corso to give us the pre-sealing reports.

15 MS. CORSO: Good morning. I'm Kelly
16 Corso, Assistant Director for OATH/ECB. We have
17 12 pre-sealing reports this morning. We have six
18 that pertain to air code violations, and we have
19 five that pertain to backflow violations, and
20 just one pertaining to a noise code violation. In
21 all the air code cases, the hearing officers
22 recommend no further action or sealing, given the
23 respondents' proof of valid operating
24 certificates that were presented at the hearings.

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2 In the noise code case, the hearing
3 officer recommends that the C&D be discontinued,
4 based on DEP's finding that the respondent no
5 longer owned the property. In four of the five
6 backflow cases, the hearing officers recommend no
7 sealing or further action, based on the
8 respondents' evidence of compliance presented at
9 the hearings.

10 And in the remaining backflow case, the
11 hearing officer recommends no further sealing or
12 any other action based on a recent inspection by
13 DEP showing that the cited premises no longer
14 requires a backflow prevention device. That's it.
15 Any questions?

16 MR. DEL VALLE: A motion? Unanimous.
17 Thank you. Is there a motion to go into Executive
18 Session? We are going into Executive Session.

19 [OFF THE RECORD]

20 [ON THE RECORD]

21 MR. DEL VALLE: Is there a motion to
22 affirm the appeals decisions that we heard in
23 Executive Session? It's unanimous. Thank you.

24 And swinging back to item four on the

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2 agenda is the request for cease and desist orders
3 by DEP.

4 MR. RUSSELL PECUNIES, ESQ., DEPARTMENT
5 OF ENVIRONMENTAL PROTECTION: Okay. Okay, good
6 morning.

7 LT. ALBANO: Good morning.

8 MR. PECUNIES: This month, DEP is asking
9 the Board to issue one cease and desist order
10 under the noise code. This is for Empire Biscuit,
11 which is located at 198 Avenue A in Manhattan.
12 This is a restaurant. It has been cited three
13 times for noise from the kitchen exhaust. And due
14 to its continuing failure to come into compliance
15 with the noise code, DEP is asking the Board to
16 issue an order to cease and desist.

17 MR. DEL VALLE: Any questions? Is there
18 a motion? It's unanimous with one abstention.

19 MR. PECUNIES: Okay. DEP also has two
20 requests this month for cease and desist orders
21 under the sewer code. The first one is 7 Express
22 Restaurant Corp. at 135-42 Roosevelt Avenue in
23 Queens. On this one, the initial inspection found
24 that they had an improperly functioning grease

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2 interceptor due to a broken baffle. So they were
3 issued a violation and ordered to properly
4 maintain the grease interceptor. A subsequent
5 inspection a week later resulted in a
6 Commissioner's order directing them to replace
7 that grease interceptor.

8 They have failed to comply with, as you
9 can see, a long series of Commissioner's orders
10 and notices of violation over a period of several
11 months. And due to their continuing failure to
12 come into compliance with the sewer code, DEP is
13 requesting that the Board issue an order to cease
14 and desist.

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

17 MR. PECUNIES: Okay. And the second one
18 is Happy Restaurant at 40-28 Main Street in
19 Queens. On this one, a series of orders have been
20 issued requiring them to install grease
21 interceptors on a wide variety of different
22 equipment: several sinks, several woks, several
23 floor drains, trench drains, a roasting room. And
24 none of these orders to install grease

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2 interceptors have been complied with.

3 In addition, in November an inspection
4 observed them actually discharging grease
5 directly into the public sewer. So based on their
6 failure to come into compliance with all of these
7 orders and NOV's that have been issued, DEP is
8 requesting that the Board issue an order to cease
9 and desist.

10 MR. DEL VALLE: Questions? Motion?

11 Again, unanimous with one abstention.

12 MR. PECUNIES: Okay. And finally, DEP
13 has 28 requests for cease and desist orders under
14 the water code for failing to install backflow
15 prevention devices. In each of these cases, the
16 building owner has been ordered to install the
17 required devices. When they have failed to do so,
18 they've been issued a notice of violation, which
19 has been adjudicated against them. And they are
20 still not in compliance. So, the Department is
21 asking the Board to issue orders to cease and
22 desist.

23 MR. DEL VALLE: Questions? Motion?

24 Unanimous with one abstention.

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2 MR. PECUNIES: Thank you.

3 MR. DEL VALLE: Thank you very much. I
4 have one final item. I have a letter here from
5 Mayor de Blasio that I am going to read into the
6 record. It is addressed to Robert Carver and
7 says: Dear Mr. Carver, On behalf of the City of
8 New York, I would like to thank you for your
9 service on the New York City Environmental
10 Control Board. I commend your dedication and
11 benefit you have brought to our City as you
12 conclude your tenure on the Environmental Control
13 Board. Sincerely, Bill de Blasio, Mayor.

14 [APPLAUSE]

15 Actually, that's slightly I think
16 premature because he's now going to go and play
17 in the Loft Board, which has got some interesting
18 things coming down the pike. He's been an
19 attorney with the City of New York before. He's
20 now with Emmet Marvin & Martin. And hopefully,
21 you'll continue to have fun or have more fun
22 there. And stick around after we adjourn the
23 meeting, please.

24 MR. ROBERT CARVER, ESQ.: Thank you.

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MR. DEL VALLE: Is there a motion to adjourn? We are adjourned.

(The Board Meeting concluded at approximately 9:43 A.M.)

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CERTIFICATE OF ACCURACY

I, Andrew Slawsky, certify that the foregoing transcript of the Environmental Control Board Meeting on February 25, 2016 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Certified By



Date: February 26, 2016

GENEVAWORLDWIDE, INC

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