

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 17, 2015

9:27 A.M. to 10:30 A.M.

December 17, 2015

MEMBERS PRESENT:

Lt. Dan Albano, Esq. - Police Department
Robert Carver, Esq. - Citizen Member
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:

Jim Macron, Esq. - Counsel to the Board, OATH/ECB
Rachel Amar - Special Assistant to the Commissioner, OATH
Helaine Balsam, Esq. - Deputy General Counsel, OATH
Denis Brogan - Assistant General Counsel, OATH
Vanessa Caughman - Computer Service Technician, OATH
Kelly Corso, Esq. - Assist. Director of Adjudications, 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 - Staff Attorney, Appeals, OATH/ECB
Mark H. Leeds, Esq. - Special Senior Counsel, ECB
Maria Marchiano - Senior Counsel/Assist. Commissioner,
OATH
Carol Moran - Deputy Commissioner of Health and Consumer
Hearings and Taxi, OATH
Arisleyda Ramirez - Facilities Assistant, OATH/ECB
Tynia Richards - Dept. Commissioner, General Counsel
Doris Stewart - Department of Transportation
Peter Schulman, Esq. - Deputy Supervising Attorney,
Appeals, ECB
Amy Slifka, Esq. - Deputy Commissioner/Executive Director,
ECB
Thomas Southwick, Esq. - Supervising Attorney, Appeals,
ECB

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2 (The Board Meeting commenced at 9:27
3 A.M.)

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

7 ALL: Good morning.

8 MR. DEL VALLE: Is there a motion to
9 adjourn? No. Well, then is there a motion to
10 adopt the minutes of the November 19 meeting?

11 MS. SHAMONDA GRAHAM, DEPARTMENT OF
12 BUILDINGS: I abstain.

13 MS. MADELYNN LIGUORI, ESQ., DEPARTMENT
14 OF SANITATION: Abstain.

15 MR. ERNEST CAVALLO, CITIZEN MEMBER: I
16 vote yes.

17 LT. DAN ALBANO, ESQ., POLICE DEPARTMENT:
18 I vote yes.

19 MR. JORGE MARTINEZ, ESQ., DEPARTMENT OF
20 HEALTH AND MENTAL HYGIENE: Yes.

21 MR. DEL VALLE: Okay, we have a yes and
22 about three or four abstentions?

23 MR. RUSSELL PECUNIES, ESQ., DEPARTMENT
24 OF ENVIRONMENTAL PROTECTION: Abstain.

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2 MR. CAVALLO: Abstentions?

3 MS. ELIZABETH KNAUER, ESQ., CITIZEN
4 MEMBER: I wasn't here.

5 MR. DEL VALLE: Three. Four. Four
6 abstentions. But you guys weren't here. And
7 thanks to the security downstairs, maybe almost
8 none of us were here. We have a request for cease
9 and desist orders.

10 MR. PECUNIES: Good morning. I'm Russell
11 Pecunies, Assistant Counsel, with the Department
12 of Environmental Protection. DEP first has a
13 request for an order to cease and desist under
14 the sewer code. This relates to Gumbo's Café at
15 5425 New Utrecht Avenue in Brooklyn. This
16 location has been repeatedly cited for failing to
17 install and maintain properly sized grease
18 interceptors. Since they have still failed to
19 come into compliance with the Commissioner's
20 orders and have not complied with the violations
21 either, which they have been adjudicated in
22 violation of -- I believe they've defaulted on
23 them actually -- the Department is asking the
24 Board to issue an order to cease and desist.

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2 MR. DEL VALLE: Is there a motion? It's
3 unanimous I think, with one abstention.

4 MR. PECUNIES: One abstention. Okay.
5 Then we are requesting a double batch of cease
6 and desist orders relating to failure to comply
7 with orders to install backflow prevention
8 devices. There was a batch from November that
9 were tabled because I arrived just as the meeting
10 was ending and then the usual batch that would
11 have been presented to the Board this month
12 anyway. These are all related to situations where
13 the respondent has been directed to install
14 backflow prevention devices. They have failed to
15 do so. They've been cited with a notice of
16 violation for failing to do so. That's been
17 adjudicated in violation and they are still not
18 in compliance. So in all of those cases, DEP is
19 asking the Board to issue an order to cease and
20 desist.

21 MS. KNAUER: Can I ask you a question?

22 MR. DEL VALLE: Yes, please.

23 MR. PECUNIES: Yeah.

24 MS. KNAUER: Elizabeth Knauer, Citizen

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2 Member. I just wanted to make sure that all of
3 the ones that we're voting on today were in our -
4 - were in the materials we received for this
5 meeting?

6 MR. PECUNIES: I think that the November
7 ones were resent --

8 MS. KNAUER: They were.

9 MR. PECUNIES: -- as part of the
10 attachments for this meeting. And then the
11 December ones were sent as well.

12 MS. KNAUER: Okay, thank you.

13 MR. DEL VALLE: Any other questions? Is
14 there a motion? Again, I think it's unanimous
15 with one abstention.

16 MR. PECUNIES: Okay. And then finally,
17 DEP has four requests for orders to cease and
18 desist under the noise code. The first one is
19 Nuevo Canario restaurant at 1062 Broadway in
20 Brooklyn. This location has been repeatedly cited
21 for noise from the kitchen exhaust. They have
22 been found in violation once and defaulted the
23 last two times they've been cited. Due to the
24 repeated violations and continuing failure to

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2 comply, DEP is asking for an order to cease and
3 desist.

4 MR. DEL VALLE: Any questions? Is there
5 a motion. And again it's unanimous with one
6 abstention.

7 MR. PECUNIES: The second one is the
8 Crossover Baptist Church at 358 Kusciuszko in
9 Brooklyn. This obviously is a church building
10 with an air conditioning unit on the roof that
11 has been cited for excessive noise on four
12 occasions. They've defaulted three times and been
13 found in violation once. Due to the repeated
14 violations and the continuing failure to come
15 into compliance, DEP is asking the Board to issue
16 an order to cease and desist.

17 MR. DEL VALLE: Questions? Is there a
18 motion? Again, it's unanimous with one
19 abstention.

20 MR. PECUNIES: Okay. And the last one,
21 there are two requests relating to a building at
22 1311 Brightwater Avenue in Brooklyn, owned by
23 Tower Owners. This is a very large apartment
24 building I believe in Coney Island. There are

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2 multiple circulation devices on the roof of this
3 building that have been attracting numerous
4 complaints. We have issued at this point multiple
5 violations to two of those devices. One of which
6 is a hallway exhaust fan that has been cited on
7 four occasions; two of which they were found in
8 violation and two of which they stipulated to.
9 And then the other one is a bathroom exhaust fan
10 and they've been cited four times for that device
11 and again two violations and two stipulations. So
12 for both of these individual devices, due to the
13 multiple violations and continuing failure to
14 comply, DEP is asking for separate cease and
15 desist orders.

16 MR. DEL VALLE: Any questions? I have a
17 question.

18 MR. PECUNIES: Mm-hmm.

19 MR. DEL VALLE: On the hallway, is that
20 an exhaust fan?

21 MR. PECUNIES: All of the -- we had done
22 a cease and desist order for a different building
23 owned by Tower about two years ago. And as part
24 of that hearing, it emerged that there were like

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2 25 different circulation devices on the roof of
3 the building. So, the hallway exhaust and the
4 bathroom exhaust are the two that we've issued;
5 been able to isolate and issue two on multiple
6 occasions. So, we're asking for orders on those
7 two.

8 MR. DEL VALLE: Is the hallway exhaust
9 fan part of Fire Department regulation stuff?

10 MR. PECUNIES: That I wouldn't -- I have
11 no idea on that.

12 MR. CAVALLO: Question. Ernie Cavallo,
13 Citizen Member. Russ, you say it's a complex. So,
14 are there 25 of these devices on each one of the
15 buildings?

16 MR. PECUNIES: Yeah, these are separate
17 buildings.

18 MR. CAVALLO: And do you violate each
19 building? Is that how it's done?

20 MR. PECUNIES: Yes.

21 MR. CAVALLO: Or do you violate the
22 whole complex?

23 MR. PECUNIES: Yes, it was a different
24 address. Now, it's the same owner apparently --

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2 MR. CAVALLO: Right.

3 MR. PECUNIES: -- that owns multiple
4 buildings. The last time we did this a couple of
5 years ago with a different building; it was one
6 specific device and I think that was a bathroom
7 exhaust device. And it came out in the hearing
8 that a lot of the exhaust fans were very old and
9 needed to be replaced. And I think if I remember
10 correctly that they addressed that one by simply
11 replacing a lot of these exhaust fans because
12 they were just old and noisy. But I guess maybe
13 they just did it in that building and not in this
14 building.

15 MR. CAVALLO: Okay.

16 MR. PECUNIES: We have complaints that -
17 - we've issued violations also for at least three
18 other fans on this building but just not multiple
19 ones, at least not yet.

20 MR. CAVALLO: So, we're going to be
21 seeing a lot of this.

22 MR. PECUNIES: We might. I mean, they
23 may respond to this by doing what they did in the
24 other building and replacing all of the old noisy

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2 fans.

3 MR. CAVALLO: Thank you.

4 MR. DEL VALLE: Which would be the
5 ideal. Is there a motion? It's unanimous with one
6 abstention.

7 MR. PECUNIES: Thank you.

8 MR. DEL VALLE: Thank you. Kelly Corso
9 is going to introduce pre-sealing reports.

10 MS. KELLY CORSO, ASSISTANT DIRECTOR OF
11 ADJUDICATIONS, OATH/ECB: Good morning. I'm Kelly
12 Corso, Assistant Director for Adjudications for
13 OATH, Environmental Control Board. We have 24
14 pre-sealing reports today for the Board: 15 of
15 them pertain to backflow violations; eight of
16 them pertain to air code violations; and we have
17 one noise code violation case. For the backflow
18 cases, in all of those cases, the hearing
19 officers recommend no further action based on
20 evidence of compliance that was presented at the
21 hearing. The same recommendation applies to seven
22 of the air code cases; because again the
23 respondents presented evidence of compliance at
24 the hearings.

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2 In the remaining air code case, DEP
3 requested a discontinuous of the C&D, based on a
4 recent inspection showing that the respondent had
5 come into compliance. And the hearing officer
6 agrees with DEP recommendation in that case. And
7 in the final case, which is the noise code case,
8 the respondent presented evidence of work done to
9 bring the air conditioner, which was the cited
10 equipment, into compliance with the noise code.
11 And the hearing officer has recommended that the
12 air conditioner remain unsealed, provided that an
13 initial re-inspection shows no violation and
14 further re-inspections for a period of 180 days
15 thereafter show no violation. And that's it. Any
16 questions?

17 MR. DEL VALLE: That's it. Questions?
18 Motions? It's unanimous with no abstentions. Is
19 there a motion to enter into Executive Session to
20 discuss fun stuff? It's unanimous. And we'll go
21 into Executive Session in a few seconds.

22 [OFF THE RECORD]

23 [ON THE RECORD]

24 MR. DEL VALLE: There's nobody else

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2 waiting to get in I'm told; so we are now back
3 from Executive Session. Is there a motion in
4 favor of affirming the appeals decisions from
5 December 10, 2015, 9:15 and 3:00 P.M. appeals
6 panels as presented in Executive Session? It's
7 unanimous. And with respect to the appeal
8 regarding NYC v. Racanelli Construction, I
9 believe that the Board is in favor of putting the
10 decision off until our next meeting, as we've
11 requested staff to prepare further documentation.
12 All in favor? Okay.

13 MS. GRAHAM: One abstention.

14 MR. DEL VALLE: One abstention. Thank
15 you. And before asking for a motion to adjourn, I
16 just want for the record to thank James Macron,
17 who is leaving us to go to another agency. He has
18 been counsel to the Board for a very long time.
19 And we're going to have some stuff afterwards,
20 after this meeting, in recognition of that he's
21 leaving for another City agency, who has hijacked
22 him from us. And since they happen to have all of
23 the money in the City of New York, which is a lot
24 more than we have; and him having demonstrated

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many times that he's not a fool, that's where he's going. Thank you. Is there a motion to adjourn, by the way?

MR. MARTINEZ: Yes.

MR. DEL VALLE: We are adjourned. Thank you, James.

(The public hearing concluded at 10:30 A.M.)

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CERTIFICATE OF ACCURACY

I, Andrew Slawsky, certify that the foregoing transcript of Environmental Control Board on December 17, 2015 was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

Certified By



Date: December 18, 2015

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