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Division of Elevator Safety
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MINUTES
ELEVATOR SAFETY REVIEW BOARD MEETING
CLOSED SESSION
Tuesday, January 19, 2010
Des Plaines, Illinois

Board Members Present: Chairman, Frank Christensen
David Dattilo
Thomas Ganiere
Gerald Gross
Richard Jandora
Tom Jirik
K. Douglas Jones
Al Popovits
Darrel G. Swienton
Kelly Weller
Gerald Wolin

Board Members Absent: William Bogdan
Rod Gilles
Craig Grant
Mark Hertsberg

OSFM Staff Present: John Fennell, Legal Counsel
Joseph August, Deputy Director
Robert Capuani, Director of Elevator Safety
James Aubin, Inspector
Elaine Del Greco

Recording equipment malfunctioned during this meeting; therefore verbatim minutes are not available.

Closed Meeting Synopsis

A. A discussion was held to determine whether the closed meeting minutes from February 14, 2008, March 13, 2008 and August 14, 2008, should remain closed. Mr. Fennell explained that only board members that were present at the time of the closed session meetings could make a motion. Mr. Wolin requested Mr. Fennell's perspective on the subject. Mr. Fennell explained that there are no criteria listed in the Open Meetings Act as to whether you should keep the minutes closed or not. Mr. Fennell proposed some general guidance to the Board and stated the decision is a subjective one and the decision can be based upon the Board members thoughts on the subject. Mr. Fennell also explained that the Board can postpone until the next meeting. Mr. Ganiere pointed out that you have to find a continuing need to keep closed meeting minutes confidential. Mr. Ganiere did not see any issues with releasing the February 14 and August 14 meeting minutes closed and the March minutes needed more review. It was agreed that Mr. Fennell would review the March minutes and render an opinion at the next meeting. Mr. Weller expressed concern regarding the August 14th minutes and does not believe the information should be released. Mr. Fennell then explained that when the Board comes out of closed session everyone could vote and procedural requirements were explained.

B. John Fennell discussed complaints filed against Otis, ThyssenKrupp and Thompson Elevator Inspection Service for failure to obtain or issue permits in accordance with the Act's requirements. At the last meeting Mr. Fennell was given the authority to reach a settlement. In his conversations with the attorneys for all three companies, he was convinced that this was a non-recurring violation, a violation that they regretted, and a violation that would not be repeated. All three companies agreed to a settlement agreement and they agreed to pay a fine of [REDACTED]. Mr. Fennell does not believe there will be any repeat issues and the agreements stand without prejudice. They cannot be raised in a subsequent hearing unless a respondent at a hearing states they have never been previously charged. Mr. Fennell stated that this information should not be shared outside of the Board.

C. A discussion was held regarding the two companies that were brought up in New Business. Mr. Fennell discussed the issue regarding the issuance of permits in a location that does not have an agreement with the State. Elevator Inspection Services issued a permit in a State jurisdiction location and Suburban Elevator Company performed the work. Mr. Capuani explained that Batavia does not have an agreement with the State. Since discovery, Suburban has applied for a permit with the State. Batavia was sent a Cease and Desist Order, which basically tells them they cannot issue permits unless they have an agreement with the State. Mr. Fennell explained that we really don't have any authority to do anything with the municipality, but we can go after the owner or shut the elevator down. Mr. Jones questioned if it would be a violation of the accessibility law if we shut down an elevator. Mr. Capuani explained that it would be hard to shut one conveyance down in a building if that was all they had, but if they had two, it would be acceptable. Mr. Gross reaffirmed that if there was one conveyance in a building and you shut it down; you would be violating the American Disability Act. It was then reaffirmed that Mr. Fennell would file the complaint against the two companies and authorization was granted to negotiate a settlement.

Mr. Fennell instructed the Board as to procedures when they come out of Closed Session. They will deal with the closed session minutes, they do not have to move on the settlement agreements already finalized, and he will relate the details regarding Suburban Elevator and Elevator Inspection Services matter.

Respectfully submitted,



Richard Jandora
Secretary, Elevator Safety Review Board

rj/ed