

1 STATE OF NEW YORK
DEPARTMENT OF STATE

2

NEW YORK STATE REAL ESTATE BOARD

3

Public Hearing Pursuant to Part WW of Chapter 56
4 of the Laws of 2022 -proposed resolution
authorizing the use of videoconferencing and
5 written procedures governing member and public
attendance - Discussion by David Mossberg

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DATE: May 18, 2022

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TIME: 11:03 a.m. to 1:16 a.m.

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BEFORE: DUNCAN MACKENZIE, VICE CHAIR

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VENUE: WebEx

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Reported by Becky Foster

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1 APPEARANCES :

2 DENISE TIDINGS

LISA HELMER

3 JODI DELOLLO

ERNITA GANTT

4 ALISON LACY

MARCELLA ROSE

5 EDWIN CLARK

DAVID MOSSBERG

6 SANDHYA ESPITIA

EMILY LUPE

7 SANDRA ERICKSON

DALE BURNETT

8 NEIL GARFINKEL

SHANNON MAGUIRE

9 DAVID DWORKIN

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1 D. MACKENZIE: Good morning. This
2 is an open meeting of the New York State Board of
3 Real Estate that is being held remotely. This
4 remote meeting is conducted in accordance with the
5 Governor's Executive Order relating to the total
6 pandemic and as authorized by Chapter 417 of the
7 Laws of 2021, Chapter 1 of the Laws of nineteen --
8 2022 and Part WW of Chapter 56 of the Laws of
9 2022.

10 So, with that, we can continue on
11 with the agenda and the first item we have -- you
12 all have a copy of the agenda -- and that is the --
13 -- a public hearing -- the resolution and you all
14 received a copy of the resolution in advance, so
15 can I have a motion to vote?

16 D. MOSSBERG: All right Duncan.
17 The -- the item, actually, is the public hearing
18 pursuant to Part WW.

19 D. MACKENZIE: Okay.

20 D. MOSSBERG: And, so, if it's all
21 right with your permission, we actually have to
22 open up the public hearing portion of that before
23 we can get to any discussion on a possible vote to
24 adopt a resolution or the written procedures.

25 D. MACKENZIE: Absolutely. Please

1 go ahead.

2 D. MOSSBERG: All right. Thank
3 you. So, good morning. It is approximately
4 eleven a.m. on May 18th. This is a public hearing
5 conducted by the State -- Real Estate Board of New
6 York pursuant to Section 103-A of the Public
7 Officers' Law, for the purposes of receiving
8 comment on a proposed adoption by the Board of a
9 Resolution authorizing the use of video
10 conferencing and to establish written procedures
11 governing member and public attendance for future
12 meetings of the Board and meetings of any and all
13 subcommittees of the Board now existing or
14 hereinafter.

15 Section 103-A of the Public
16 Officers' Law authorizes a public body to allow
17 its members to participate in a meeting remotely
18 under extraordinary circumstances at locations
19 that do not allow for in-person physical
20 attendance by the public provided that the public
21 body adopts a resolution authorizing such remote
22 attendance and establishes the written procedures
23 governing member and public attendance consistent
24 with Public Officers Law.

25 As mentioned, if adopted, the

1 resolution would authorize the Real Estate Board,
2 any of its -- all subcommittees, now existing and
3 hereinafter, to use video conferencing to conduct
4 meetings in a manner authorized by Section 103-A.
5 These would be meetings where a member is unable
6 to attend physically due to extraordinary
7 circumstance but would be permitted to participate
8 using video conference technology in a remote
9 location that is not open to the public and the
10 resolution would also establish the written
11 procedures governing the specific protocols for
12 attendance by board members.

13 The notice of the hearing was
14 posted on the Department's website. Any person
15 present that would like to make a public comment,
16 please raise your hand using the Webex if you're
17 appearing virtually or if you are physically
18 attending our New York City Office, please
19 indicate on the screen that you would like to make
20 a public comment. I'm just looking around giving
21 people the opportunity.

22 So, just looking around it doesn't
23 appear as if any members of the public wish to
24 provide public comment. Noting for the open
25 meeting allows as well as pursuant to Public

1 Officers' Law, this meeting is being recorded and
2 it will be posted later on the Department of
3 State's website. There being no one appearing and
4 offering to wish public comment, let the record
5 reflect that it is now approximately eleven ten
6 and the hearing is now closed.

7 D. MACKENZIE: Thank you David. I
8 move to item number three and I hand it over to
9 you again.

10 D. MOSSBERG: All right. Thank
11 you. So, in the board members packet and also
12 posted on the website and as listed in the agenda
13 item for today, there is both a draft proposed
14 resolution, which would generally authorize this
15 board and all its subcommittee members to appear
16 virtually using video conferencing technology, not
17 telephonic, but it would have to be a video. In
18 the event that there's an extraordinary
19 circumstance that would prevent the board member
20 from actually appearing at that public location in
21 person.

22 So, as I had mentioned at the last
23 open meeting of the board, it's likely that the
24 COVID emergencies may not be extended again.
25 They're currently in affect through June 14th

1 where if it's not extended after that date, any
2 future meetings all members would have to appear
3 at a location that is opened to the public.

4 So, what the law allows under Part
5 WW would allow a board member, if they have an
6 extraordinary circumstance, to appear virtually.
7 The rest of the board would, actually, still have
8 to meet at a public location that any member of
9 the public can attend. So, the quorum would have
10 to be at those locations, but anybody else that
11 wanted to participate could then also participate
12 virtually and their vote would count the same way
13 as if they were in person. It's just their
14 location is not open to the public.

15 So, the direct resolution,
16 basically, confirms that that is sort of the
17 intent and desire of the Board. To accompany
18 that, there is also the actual written procedures
19 that sort of explains how a board member could
20 potentially take advantage or rely upon Public
21 Officers' Law exemption to appear virtually. It
22 identifies extraordinary circumstances, for
23 example, disability, illness, caregiving
24 responsibility and any other significant or
25 unexpected factor or event, which preclude such

1 members physical attendance at such meeting at a
2 location that is open to the public and it
3 explains the process that a board member would go
4 to to use that. If a board member does appear
5 using video conferencing, they are required to
6 state that they are appearing virtually, that it's
7 through an extraordinary circumstance, that
8 they're on video and that the transcript or a
9 transcript will be produced and posted online.
10 The resolution and the written procedures will
11 also be posted on the Real Estate Board's website,
12 which is housed on the Department of State.

13 So, that's generally the proposal
14 for the adoption of the resolution as well as
15 written procedures as we just sort of went
16 through. This was publicly noticed and there was
17 no public comment received and so, at this point,
18 it would be up to any member of the board to make
19 a motion to, potentially, adopt the resolution and
20 then also make a motion to, potentially, also
21 adopt the ... try to address them with the board
22 members.

23 D. MACKENZIE: David, you -- one
24 second -- one moment --

25 D. MOSSBERG: Any questions?

1 D. TIDINGS: Yeah, I'm unmuting
2 everyone that -- the board members.

3 D. MACKENZIE: Yes, thank you. I
4 was muted there. So that -- can we have a motion
5 -- do you want to approve them separately or
6 together, Dave?

7 D. MOSSBERG: It would be separate,
8 so first would be a motion to adopt the resolution
9 pursuant to Part WW to authorize video
10 conferencing technology and then the second one
11 would be a motion to adopt the actual written
12 procedures.

13 D. MACKENZIE: Okay. Great. So,
14 can I have a motion to adopt the resolution,
15 please?

16 D. BURNETT: Really quick, I have a
17 -- I have a -- just a question just -- just as for
18 clarity. So, if the quorum were seven and there
19 were five people present at a physical meeting and
20 two people virtually, we would still have quorum?

21 D. MOSSBERG: No, you would not.

22 D. BURNETT: That's -- that's what
23 --.

24 D. MOSSBERG: Yeah. And -- and the
25 thing to note about this particular Board is that

1 the quorum requirements, technically, can change.
2 Some of the other Boards that are --.

3 D. MACKENZIE: Before we get into
4 discussion -- before we get into discussion, ...
5 motion seconded and then we'll open it to
6 discussion, please. So, we have a motion, do we
7 have a second?

8 S. ESPITIA: Second.

9 D. MACKENZIE: Okay. Thank you.
10 Then we can open it to discussion.

11 D. MOSSBERG: So, just, you know,
12 answering Mr. Burnett's question, this Board --
13 the statutory authority specifically provides that
14 the majority of the members currently serving on
15 the board shall be required for the quorum whereas
16 other boards it doesn't have that provision and
17 so, even if there were vacancies, they'd still
18 count towards the quorum. So, in this Board,
19 hypothetically, you know, if there were five
20 vacancies instead of two vacancies, we would just
21 be counting how many people are actually serving
22 on the board and then the simple majority of that
23 to satisfy the quorum and then that number --
24 those -- those people would have to be at a
25 location that's open to the public in order to

1 conduct business.

2 D. MACKENZIE: All right. Are
3 there any questions? Seeing none and hearing
4 none, all in favor?

5 ALL: Aye.

6 D. MACKENZIE: All those opposed?

7 (NO RESPONSE)

8 D. MACKENZIE: Any abstentions?
9 Seeing none, the resolution is adopted. Excuse
10 me. And now, I need a motion, please, to approve
11 the governing procedures.

12 N. GARFINKEL: I'll make that
13 motion to adopt the governing procedures.

14 D. MACKENZIE: Thank you. I need a
15 second, please.

16 D. BURNETT: Second.

17 D. MACKENZIE: Okay. Discussion?

18 D. BURNETT: Second.

19 D. MACKENZIE: Do we have any
20 discussion on the procedures? All right. Seeing
21 none and hearing none, all those in favor say,
22 aye.

23 ALL: Aye.

24 D. MACKENZIE: All those opposed?

25 Are there any abstentions? All right. The -- the

1 governing procedures are now approved. We now go
2 to item number four on our agenda -- New Business.
3 The next meeting date is Thursday, July 1st at one
4 o'clock.

5 D. TIDINGS: July 21st.

6 D. MACKENZIE: I'm sorry, July
7 21st. My apologies. Thank you. Is there any new
8 business to come before the Board? All right.
9 So, I'm hearing none. This meeting is adjourned.

10 (The proceeding concluded.)

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1 STATE OF NEW YORK

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3 I, HOWARD HUBBARD, do hereby certify that the
4 foregoing was reported by me, in the cause, at the
5 time and place, as stated in the caption hereto,
6 at Page 1 hereof; that the foregoing typewritten
7 transcription consisting of pages 1 through 12, is
8 a true record of all proceedings had at the
9 hearing.

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IN WITNESS WHEREOF, I have hereunto
subscribed my name, this the 26th day of May,
2022.



HOWARD HUBBARD, Reporter

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