MINUTES OF PUBLIC MEETING
New York City Loft Board Public Meeting Held at
Department of Buildings
280 Broadway, Third Floor

June 15, 2017

The meeting began at 2:34 p.m.

Attendees: Robert Carver, Esq., Owners' Representative; Elliott Barowitz, Public Member; Richard Roche, Fire Department ex officio; Robinson Hernandez, Manufacturers' Representative; Charles DeLaney, Tenants' Representative; Daniel Schachter, Public Member; LeAnn Shelton, Public Member and Chairperson Designee Renaldo Hylton.

INTRODUCTION

Chairperson Hylton welcomed those present to the June 15, 2017 public meeting of the New York City Loft Board.

VOTE ON May 18, 2017 MINUTES

Motion: Mr. DeLaney moved to accept the May 18, 2017 meeting minutes. Mr. Roche seconded the motion.

Members Concurring: Mr. Carver, Mr. Barowitz, Mr. Roche, Mr. Hernandez, Mr. DeLaney, Mr. Schachter, Ms. Shelton, Chairperson Hylton (8).

Chairperson Hylton changed the order of the items on today's agenda. **Chairperson Hylton** moved the vote on the cases forward and the discussion of the rules to the end. **Chairperson Hylton** finds this order more expedient and it will allow for maximum time for the Board's discussion on the rules. **Mr. DeLaney** asked if there will be a report by the Executive Director. **Chairperson Hylton** stated yes, all six items on today's agenda will be covered.

VOTE ON APPEAL/RECONSIDERATION CALENDAR CASES

Ms. Martha Cruz, Esq., Deputy General Counsel, presented the below appeal calendar case for vote by the Board:

1.	517-525 West 45, LLC	517-525 West 45th Street, Manhattan	AD-0081

Motion: Mr. DeLaney moved to accept the proposed order. Mr. Barowitz seconded the motion.

Members Concurring:, Mr. Barowitz, Mr. Roche, Mr. Hernandez, Mr. DeLaney, Mr. Schachter, Chairperson Hylton (6).

Members Dissenting: Ms. Shelton (1).

Members Abstaining: Mr. Carver (1).

Mr. Michael Bobick, Esq., Assistant General Counsel, presented the below appeal calendar case for vote by the Board:

2.	Marybeth McKenzie, Tony Mysak, Charlotte Pfahl and Daniel Schneider	517-525 West 45th Street, Manhattan	AD-0084

Mr. Delaney stated that he will vote no for this case simply because he didn't realize that there is no way for the tenants to file a reconsideration on an administrative decision under these circumstances. **Chairperson Hylton** mentioned that the tenants do have further recourse.

Motion: Mr. Carver moved to accept the proposed order. Mr. Hernandez seconded the motion.

Members Concurring: Mr. Carver, Mr. Barowitz, Mr. Roche, Mr. Hernandez, Mr. Schachter, Ms. Shelton, Chairperson Hylton (7).

Members Dissenting: Mr. DeLaney (1).

VOTE ON MASTER CALENDAR CASES

Chairperson Hylton tabled the following cases prior to vote by the Board:

3.	Andi Rishoi, Anna Holmgren, Kelsey Knutson, John Cannon, Jaymee Domingo, Ximena Garnica And Shigekazu Moriya	58 Grand Street, Brooklyn	TR-1252
4.	Tenants of 79 Lorimer Street	79 Lorimer Street, Brooklyn	TR-1273

Chairperson Hylton presented the below removal calendar case for vote by the Board:

5.	43 Crosby Street Property Owner, LLC	43 Crosby Street, Manhattan	LE-0676

Motion: Mr. DeLaney moved to accept the proposed order. Ms. Shelton seconded the motion.

Members Concurring: Mr. Carver, Mr. Barowitz, Mr. Roche, Mr. Hernandez, Mr. DeLaney, Mr. Schachter, Ms. Shelton, Chairperson Hylton (8).

Report of the Executive Director, Ms. Helaine Balsam, Esq.

Ms. Balsam reported that a bill to amend the Loft Law was introduced into the assembly on June 15, 2017. The number is A8409 and Ms. Balsam will send the Board members a copy of the proposed bill so that they can review it.

Ms. Balsam mentioned that in January of 2017, she reported on the status of litigation in the case of Grant vs. New York City Loft Board. The Appellate Division, First Department, had issued a decision sustaining the Board's determination that Grant was foreclosed from an argument that he had not raised at a narrative statement conference. Grant had filed a motion for leave to appeal, but Staff was told by the Law Department that Grant's motion for leave to appeal was denied. That ends that litigation.

Ms. Balsam reported that the unofficial monthly revenue collected by the Staff in May was eleven thousand, three hundred and seventy-seven dollars and fifty cents ($11,377.50).

Ms. Balsam mentioned that Mr. DeLaney asked for some statistics regarding coverage applications and registrations filed since June of 2015. **Ms. Balsam** reported that there have been sixty-five (65) coverage applications, thirty-four (34) registrations and pursuant to Loft Board orders, Staff issued three (3) interim multiple dwelling (IMD) numbers. Staff did not include those in the registration totals because the owners did not file registration applications. In addition, between May 17, 2017 and yesterday afternoon (June 14, 2017), Staff received an additional eleven (11) coverage applications, and a couple more were received today as well.

Ms. Balsam also reported that on May 15, 2017, Staff mailed out administrative determinations based on the violations that we had issued back in January for failing to file monthly reports. Staff is preparing the next round of those violations to be issued. **Ms. Balsam** mentioned that Staff has been receiving a lot more monthly reports, so the message has gotten out there.

Ms. Balsam further reported that on June 9, 2017, Staff mailed out the registration renewals for the 2017-2018 fiscal year. Any owners or responsible parties should renew their buildings' registrations immediately in order to avoid the imposition of fines and late fees.

Mr. DeLaney asked a question with regard to last month as it reads in the minutes. **Mr. DeLaney** had made a request that at some point we look into whether we can have someone come to address the Board on light and air issues. **Mr. DeLaney** wondered if Staff had made any progress. **Ms. Balsam** stated no, but it is on her radar.

Mr. DeLaney also reiterated a request that he receive copies of the administrative determinations as they are made. **Ms. Balsam** asked all administrative determinations? **Chairperson Hylton** clarified as they are made? **Mr. DeLaney** responded yes. **Chairperson Hylton** asked if Mr. DeLaney meant that all members of the Board be supplied with copies of the administrative determination. **Ms. Balsam** stated that she will send them to everyone, and the Board members can read them or not.

Chairperson Hylton stated that the Board received a petition from Dumbo Neighborhood Alliance Inc., requesting amendments to the protected occupancy rule Title 29 of the Rules of the City of New York ("29 RCNY") § 2-09. Executive Director Balsam forwarded each Board member a copy of the petition and a copy of his response to that petition. **Chairperson Hylton** further stated that given the Board's current rule making posture, pursuant to 29 RCNY § 1-11(b)(6), he rejected the petition and asked the petitioner to send comments during the public comment period on the proposed rules. **Chairperson Hylton** asked if any Board members have any questions or comments. **Mr. DeLaney** commented that the final sentence of § 1-11(b)(6) reads "copies of the Chair's notice rejecting the petition, together with a copy of the petition, shall be presented to the Board at the next regularly scheduled session, after which any Board member may present the petition for consideration by the Board." **Mr. DeLaney** mentioned that he doesn't think the Board has come to this particular fork in the road before. **Mr. DeLaney** wants an explanation of how the Board reads that sentence. **Chairperson Hylton** responded that it is clear, and you can do just what it says. **Mr. DeLaney** replied that it is not clear, and wants someone to parse after "which". **Chairperson Hylton** clarified timing wise? **Mr. DeLaney** stated that it is his intention to present the petition for consideration by the Board. **Chairperson Hylton** stated that it could be considered now if Mr. DeLaney makes a motion. **Mr. DeLaney** responded that he could make a motion, but it is not clear that's what's required by this sentence. **Mr. DeLaney** reiterated that he is asking Staff for an explanation. **Chairperson Hylton** replied that he decided to not grant this petition, and asked that the petitioner make these comments during the rule making process that is going to follow. The Board members have a right to make that motion here or to bring this forward. **Mr. DeLaney** further responded that the Chairperson rejected this petition and he again asked what this sentence means as we have not come upon this before. **Ms. Balsam** responded that as this is a case of first impression, if Mr. DeLaney is asking for her interpretation, she would say that if Mr. DeLaney would like to make a motion and present the petition to the Board now, that would be great because everyone should have read it. **Ms. Balsam** thinks that the Board is in a good place to discuss it today, as opposed to putting if off and having everybody re-read it. **Mr. DeLaney** again stated that the "after which" is a little unclear what that implies. **Ms. Balsam** responded that she thinks it is after the rejection or after the petition and rejection has been presented at the next Board meeting, which is now. **Mr. DeLaney** then clarified that Ms. Balsam reads "present the petition for consideration", to mean that a motion is required. **Ms. Balsam** responded that she believes a motion is required. **Mr. DeLaney** commented that he is not so clear on that. The way he would read this would be at the request of a member, the petition be presented for consideration, would mean it would be placed on an upcoming agenda. **Mr. Barowitz** commented that he reads it as once we go through the changes of chapter one, then we can consider this petition. **Mr. Barowitz** asked if he was wrong in that assumption. **Ms. Shelton** and **Mr. Schachter** responded that is the Chair's position. **Mr. DeLaney** stated that this rule seems to imply that there is a right of a member to keep a petition alive in some manner, shape or form. Since we have never actually come upon this before, we have to figure out what that means. **Mr. Barowitz** responded that maybe the better thing to do is to make a motion to resubmit this proposal once we finish chapter one. **Chairperson Hylton** asked why not discuss it now? **Mr. Barowitz** stated that he thinks we should go through the rules before we discuss this proposal. **Chairperson Hylton** responded that was the decision he had made. **Ms. Shelton** clarified that the question is whether we need a motion to bring the petition back from the dead or not. Staff is saying you need a motion, but Mr. DeLaney is saying you don't need a motion and he has a right to present the petition to the Board without a motion. **Mr. DeLaney** and **Mr. Barowitz** both agreed that is correct. **Ms. Balsam** asked if Mr. DeLaney is presenting the petition to the Board. **Mr. DeLaney** responded yes. **Mr. Barowitz** commented, although he read the petition, he is not prepared to discuss it today since the rejection letter is based on the fact that we have not finished the rules. **Ms. Shelton** commented that now we make a motion to overrule Mr. DeLaney's request to discuss it today. **Mr. Barowitz** responded that is

his theory. **Mr. DeLaney** stated that the rule doesn't say that any Board member may request, it says any Board member may present. **Ms. Shelton** responded right, but you have Board members who do not want you to present it today. **Mr. Barowitz** thinks it is a little premature. **Mr. Carver** responded that one of the problems is, since it is not on the agenda, the amount of focus that he put on it was quite small. **Mr. Carver** read it, but it has been over the weekend and he doesn't even recall the nature of the petition. **Mr. DeLaney** stated that rather than make a motion, he would rather make a suggestion. If the chair would put the petition down for discussion for the next Board meeting, that would seem to address the concerns expressed by his colleagues. **Chairperson Hylton** responded that if we are going to discuss it when we get to that point in the rulemaking process, why put it off until next month. Why not either discuss it now if everyone wants to, or we wait until it gets to that point in the rulemaking process. **Mr. DeLaney** thinks that if our goal today is to get through chapter one, then to ask people who may not have put that much effort and time into reading it because of limited time, that a reasonable approach would be to mark it down for next month. The purpose of having it discussed before the Board's Staff presents to the Board a draft of chapter two would be to have some of these concepts presented in the petition discussed as a job aide for the Staff as they consider chapter two. **Ms. Balsam** asked if Mr. DeLaney envisions the Board voting in favor of Staff initiating a separate rule making for 29 RCNY § 2-09, separate and apart from all the other rule making that Staff is doing. **Ms. Balsam** further commented that is the consequence of what Mr. DeLaney is saying. If it goes before the Board, what the Board can do is override the objection and say to Staff, initiate rule making. **Ms. Balsam** asked Mr. DeLaney if that is what he wants Staff to do, assuming that the Board decides it is a good idea. **Mr. DeLaney** responded that he needs a moment to think about it. **Mr. Barowitz** stated that the rejection letter in some way seems a little contradictory. The word "reject" is used and later the letter says submit your proposal. **Mr. Barowitz** is perfectly in accord with the idea of re-submitting the proposal. **Mr. Barowitz** asked the Chair why do you prefer to discuss it now. **Chairperson Hylton** responded that the petition should be re-submitted during the rule making process because when we have the rule, and we adopt some of the items in the proposal, then that would be part of the rule, or if you don't, comments can be made during that process. Right now, members of the Board are considering whether to override his objection of the petition or not. If they do, **Chairperson Hylton** wants that to be done right now. **Mr. DeLaney** does not think that the Board needs to override the Chair's rejection. As **Mr. DeLaney** reads 29 RCNY § 1-11(b)(7), it says "within sixty days from the date the petition was received by the Loft Board, the Loft Board shall either deny any petition not previously rejected by the Chair by written notice stating the reasons for the denial, or shall state in writing the Loft Board's intention to grant the petition and to initiate rulemaking by a specified date. In proceeding with such rulemaking, the Loft Board shall not be bound by the language proposed by petitioner, but may amend or modify such proposed language at the Loft Board's discretion." **Mr. DeLaney** reads that not to say that the Board needs to drop everything it is doing to deal with the proposal without seeing it in a larger context. That the specified date does not have to be within thirty (30) days. There is no specificity there. **Mr. DeLaney** thinks that this petition was introduced by the Dumbo Neighborhood Alliance with the hope that it be considered individually or be the subject of some discussion by the Board to help Staff determine how to address 29 RCNY § 2-09. **Mr. DeLaney** thinks that perfectly reasonable. **Ms. Balsam** responded that basically, you want to take 29 RCNY § 2-09 and discuss it before other things in chapter two. Because that is the result of what is going to happen. **Mr. DeLaney** says that it might be within the spirit of the way the rule currently exists to have a discussion on it not necessarily to take action on it. **Ms. Balsam** further stated that we are going to discuss it anyway when we present chapter two for discussion. **Chairperson Hylton** responded that this is going to come up very shortly, why take this out of sequence now. **Mr. Schachter** asked when will we discuss chapter two. **Ms. Balsam** replied hopefully next month, if we get through chapter one. **Mr. Schachter** commented that he thinks the Board agrees, let's discuss it next month. **Mr. DeLaney** thinks the point is that in the case of chapter one, Board Staff provided us with a full proposal. It's no secret that the subject matter that's touched on in this proposal is part of what's been discussed in a number of cases over the last few years. It seems to mark a point of significant head-butting between the Office of Administrative Trials and Hearings (OATH) and the Loft Board, where OATH keeps coming up with recommended opinions which they believe the following law and precedent, which the Board rejects whole or in part. So in this case, **Mr. DeLaney** would say perhaps reading this proposal supplied by the Dumbo Neighborhood Alliance and having a discussion of it among the Board members as a way to discuss the topics without it being in the specifics of the case could be a healthy tonic for formulating an opinion of how Staff would like to proceed. **Mr. DeLaney** further stated that it is true that six or seven weeks ago, the Executive Director asked for people's opinions. **Ms. Balsam** replied that she had asked for Board members' opinions. **Mr. DeLaney** agreed. But here, a member of the public has provided a thought out, rational

scheme that he thinks is worthy. **Chairperson Hylton** asked if he puts it off until next month. **Ms. Balsam** responded that it has to be within sixty days. **Mr. DeLaney** responded to the Chair by saying he wouldn't characterize it as putting it off. He would characterize it as heroically putting it on the agenda. **Chairperson Hylton** replied that he is putting it on the agenda for next month. **Mr. Carver** asked if the substance is on the agenda, or is the process on the agenda. **Chairperson Hylton** replied the substance. **Mr. Carver** responded that he thinks it is a bad idea because we will get to it at some point and without the benefit of the Staff's draft, this is crazy, Staff should be driving the train. **Mr. Roche** commented that he is not reading the Chair's letter to where he feels that the Chairman and Staff is slighting any tenants and neighborhoods. **Mr. Roche** thinks the Chair is just saying, with all due respect, let's do this in the most efficient manner, which he thinks **Mr. Carver** is saying. **Mr. Carver** asked then why is this being put on the agenda. **Ms. Shelton** replied that Mr. DeLaney asked for it. **Mr. Schachter** asked if we are going to cover other elements of Chapter two. **Chairperson Hylton** responded absolutely. **Chairperson Hylton** wants to end this conversation and move on. This topic is going to come up. If members of the Board want to move this particular discussion up prior to the other parts of the rule, out of sequence, then he wants a motion now to do that for next month. The motion is that this discussion be moved up ahead of the other sections for discussion. **Chairperson Hylton** asked for a second. **Mr. Barowitz** commented that the Chair cannot make a motion. **Chairperson Hylton** then asked for a motion by a Board member. **Mr. Hernandez** moved. **Mr. DeLaney** seconded the motion. Prior to vote, **Mr. DeLaney** stated that he does not want the Board to feel that they are being pressed to take things out of order. He is not suggesting the Board bring forth their proposed changes to 29 RCNY § 2-09. In the same spirit, with which last month, he suggested wouldn't it be nice to have a discussion about light and air in legalization absent it being meshed in an issue, what he is proposing here is that we take advantage of this hard work done by the Dumbo Neighborhood Alliance to talk about the concepts here, how they relate or don't relate to what is currently in the rule. If the Staff wants to talk about what they are thinking about doing or they don't want to talk about it, that's fine, but having a general discussion about a hot topic without it being meshed into specifics, can be very helpful to a conflict resolution. **Ms. Shelton** replied that is different then what you did, just to overrule a decision and bring the petition. **Mr. Carver** replied that will not be helpful. **Mr. Barowitz** commented that the discussion is out of order. The discussion may be between the motion and the second, after it has been seconded, the discussion is out of order. **Mr. Schachter** asked if he could ask for a clarification on the motion. **Mr. Barowitz** would change the wording of the motion to "hold over" the petition to next meeting, rather than putting it on the agenda. **Mr. Barowitz** moved to have the discussion of the petition held over to the next Board meeting. **Mr. Roche** pointed out that there has been a motion that has been seconded. **Mr. Barowitz** replied then that motion should be withdrawn. **Mr. Hernandez** withdrew his motion. **Mr. Barowitz** reiterated his motion that we hold over the discussion regarding the Dumbo Neighborhood Alliance proposal to the following meeting. **Mr. Carver** commented that he doesn't know what the motion is for. **Ms. Shelton** also commented to do what. The second motion is the same motion we just voted on. **Mr. Barowitz** commented that he just changed the wording. **Mr. Carver** moved to sustain the rejection of the petition by the Chair. **Mr. DeLaney** commented that at the moment there is a motion on the floor. **Mr. Carver** again asked what that motion is. **Ms. Balsam** clarified to discuss the petition next month.

Members Concurring: Mr. Barowitz, Mr. Roche, Mr. DeLaney, (3).

Members Dissenting: Mr. Carver, Mr. Hernandez, Mr. Schachter, Ms. Shelton, Chairperson Hylton (5).

Motion Failed.

Mr. DeLaney asked where does this leave us. **Chairperson Hylton** responded that it will be discussed when we get to that section of the rule. We are not rejecting anything contained in the petition. **Mr. Roche** asked whether the Chair's letter will hold true as written that we will address it. **Ms. Balsam** responded yes during the public comment period of the rule making. **Mr. Roche** stated that either way, the Dumbo Neighborhood Alliance will have their issue addressed. It is just a matter of when. **Chairperson Hylton** added in short order, in the next two months. **Mr. DeLaney** understands that but he wanted to state for the record that he is not sure that the action taken comports with the language of the last sentence of 29 RCNY § 1-11(b)(6) and he also pointed out that this particular sentence does not appear in the new language of chapter one proposed by the Staff. **Ms. Balsam** replied it is not necessary as the Board will consider the petition. **Ms. Balsam** believed that there was a redundancy and that is why Staff deleted the Chair's rejection from the rule.

CONTINUED DISCUSSION OF THE DRAFT OF THE PROPOSED RULES FOR CHAPTER 1 OF TITLE 29 RCNY

Mr. DeLaney had a comment on § 1-20(a) Meetings. "The Board will schedule regular meetings. It may also conduct special meetings at the request of the Chair or by affirmative vote of at least 5 members." **Mr. DeLaney** asked how could five members get together to hold an affirmative vote absent a meeting. **Ms. Balsam** responded that this is in the current rule. **Mr. DeLaney** understands that and the fact that it is in the current rule and it is proposed to be continued in the new rule, doesn't mean it makes sense. **Ms. Balsam** asked if Mr. DeLaney wants to take it out. **Mr. DeLaney** responded that he wants to understand what it means. **Mr. Carver** thinks it means that you can take a vote at a meeting that is regularly scheduled. **Mr. DeLaney** clarified that you read it to mean that when at a meeting, it can vote to conduct a special meeting. **Mr. Carver** continued Mr. DeLaney's sentence by stating at a date set, a future date. **Chairperson Hylton** commented if affirmed by five members. **Mr. DeLaney** added or at the request of the chair. **Chairperson Hylton** asked, if the Chair requests a meeting, does it have to be affirmed. **Ms. Balsam** responded no.

For § 1-20(a)(1), **Mr. DeLaney** asked where in § 1-20(a) Meetings, does the Board comment on the requirement, now under law that a few years ago the meeting be recorded and made public on video and audio recorded, which is our practice. **Mr. DeLaney** asked whether that should that be included in chapter one. **Ms. Balsam** responded that it does not have to be in a rule because it is a law but if you would like Staff to add it, we can. **Mr. DeLaney** asked that Staff look into adding it. **Ms. Balsam** replied sure.

For § 1-20(a)(4), "Staff will prepare minutes of every regular meeting of the Board and make those minutes available to the Board members and the public no later than two weeks from the date of a meeting." **Mr. DeLaney** commented that for years, the Board did not come anywhere near doing this. It is to the credit of both the current Executive Director and to be fair the former Executive Director, that those minutes are available. **Mr. DeLaney** thinks we should amend this to say that a draft of those will be available. **Ms. Balsam** replied that this was taken directly from the Public Officers Law. **Ms. Balsam** did state that should would double check. **Mr. DeLaney** responded that we are not able to make the official minutes available. **Chairperson Hylton** believes that it is implied there because the minutes are not official until there has been a vote on it. **Mr. DeLaney** further commented does the Board need to distinguish between a public meeting and a private meeting and a lack of a record for meetings now closed to the public. **Ms. Balsam** replied that special meeting is defined. It means a meeting of the Board held at the request of the Chair or by an affirmative vote of at least five Board members. It is an additional meeting. There are no minutes of the private meetings. **Mr. DeLaney** clarified so special meeting is defined in the new definition section. **Mr. DeLaney** asked do we also define regular meeting. **Ms. Balsam** asked do you want it to say every regular or special meeting. **Chairperson Hylton** asked why not just take out "regular". **Ms. Balsam** replied well "public". Say public meeting, minutes of every public meeting. **Chairperson Hylton** asked if everyone is ok with that. You will not get minutes for the private meeting. **Mr. DeLaney** corrected special meeting. **Ms. Balsam** commented no, special meetings are public meetings. **Chairperson Hylton** confirmed that "regular" will be changed to "public".

For § 1-20(b) Hearings, **Mr. DeLaney** commented that the Loft Board hasn't had that many hearings in recent years. In the early days when the rules were being written, there were significant hours of public hearings which were very helpful. The question he has is during those early meetings, many times after the person speaking at the public hearing, a Board member or Board members would engage the person who is offering testimony in questions. That also was very helpful. A couple of years ago, in the last round of public hearings, it was determined by the prior Chair, prior administration, that Board members were not allowed to ask a question of someone who came to offer testimony. **Mr. DeLaney** would like the Board to consider what that protocol is. **Ms. Balsam** commented that based off her experience at the Environmental Control Board (ECB) where she did a lot of rulemaking, traditionally we did not allow questions, but if there was a low turnout and there was time, we would have a back and forth, but she thinks the idea of not allowing questions is so that if the meeting is crowded, such as this one, everybody has a chance to have their say. **Ms. Balsam** doesn't know if you could make a determination on that one way or the other. **Ms. Balsam** is not against asking questions for clarification, but she would be if people who wanted to make statements, were not allowed to do so because the time was used up in questions.

Ms. Balsam's preference is for people who come to speak, be able to get to speak. **Mr. DeLaney** commented and to take no position on whether or not… **Ms. Balsam** commented if there should be questions, yeah. **Chairperson Hylton** mentioned on a case by case basis. **Mr. DeLaney** mentioned that he has had it presented to him both ways, as an absolute one way, and the absolute other way. **Ms. Balsam** does not think there is a law that says it must be or mustn't be. **Mr. DeLaney** responded fine. **Chairperson Hylton** asked if anyone else had a question/comment on § 1-20.

For § 1-21(a)(5), on applications for rent adjustments, **Mr. DeLaney** asked if that was new language. **Ms. Balsam** replied no, it was moved from somewhere else. **Mr. DeLaney** mentioned that it tracks exactly. **Ms. Balsam** replied yes.

For § 1-21(a)(4), **Mr. DeLaney** asked if the Board looked at the four (4) year limitation on reach back for overcharges. **Ms. Balsam** commented that it was language that was carried over. If you want Staff to revisit it, we certainly can. But this language was just carried over. **Mr. DeLaney** asked the Staff to take a look at that and determine whether four years is appropriate. Personally, **Mr. DeLaney** doesn't know if it should be limited to four years. **Ms. Balsam** asked if Mr. DeLaney thinks there should be any limit. **Mr. DeLaney** replied no, if you could document that the overcharge reaches back a period x. **Ms. Balsam** mentioned that the only thing she wants to research is whether or not that rule is based on a statute of limitations. Staff will research whether or not there is one, in which case she is not sure how much leeway. **Mr. DeLaney** asked for Staff to take a look. Research is good. **Ms. Shelton** responded that it is in the Civil Practice Law and Rules ("CPLR"). **Ms. Balsam** replied that is what she thought. She thinks it is a statute of limitations in terms of when you can sue. **Mr. DeLaney** mentioned that at the time this was written, this rule also had a four (4) year limitation on coverage applications and that was struck down by the courts for being ultra vires.

For § 1-21(b)(3), "for protected occupancy applications, affected parties include the owner", **Mr. DeLaney** commented that in addition to protected occupancy applications, he would like the Board to define affected parties, to consider in failure of owner to register cases, or FO cases, that the affected parties include the residential units. **Ms. Balsam** replied that she thinks Staff can put something in that says for FO cases, notice should be sent or served on all affected units, but she doesn't know if you could say a unit is an affected party because party is a defined term and affected party is a defined term, and they have to be natural people. **Ms. Balsam** is not against doing that, but she thinks she would do it in a different way. **Ms. Balsam** asked if that satisfied Mr. DeLaney's concern. **Mr. DeLaney** replied sure. **Ms. Balsam** spelled out that owner or responsible party will mail notice to affected units. **Ms. Cruz** clarified that Mr. DeLaney is talking about the notice mailed out by the Loft Board and that the Loft Board notifies the units. **Mr. DeLaney** replied right. Because given that an FO case is a Board – initiated case, and **Mr. DeLaney** thinks the Board should be initiating other kinds of cases as well, in an FO case, he thinks the residential units should be used as parties to be given notice. **Ms. Balsam** asked to what end. **Mr. DeLaney** replied to make them aware that their owner is not registered and out of compliance. **Ms. Balsam** responded again, to what end and that gets you where. She wants the justification for it. **Mr. DeLaney** replied sure, the justification part is simple, one of the consequences in our rule on the sale of improvements on Multiple Dwelling Law ("MDL") § 286(6) is that an owner who is not registered cannot contest the sale of improvements, therefore, the fact the owner is not registered, tenants should be made aware of that. **Ms. Balsam** asked for Mr. DeLaney to repeat his statement. **Mr. DeLaney** restated that in our rules, somewhere in chapter two, he thinks it is in § 2-05, but **Ms. Cruz** stated that is in § 2-07, one of the sticks that was applied to the owner to encourage the owner to register, was if the building was not registered, if an owner has failed to register, sufficient that the Board is taking the step in saying hey owner you better register or we are going fine you, then **Mr. DeLaney** is asking that the Board also notify the residents in the building. **Ms. Balsam** responded that she still does not understand. **Ms. Cruz** commented that there is a rule that says an outgoing tenant can sell their improvements to an incoming tenant. They have to file a disclosure form. That disclosure form is then filed with the Loft Board and the owner has a right to file an application with the Loft Board contesting that proposed sale to the incoming tenant. If the owner is not registered, delinquent in its registration, then the Loft Board can reject the owner's application. **Ms. Balsam** responded that we can reject any application if an owner is delinquent with their registration. **Ms. Cruz** replied yes but he cannot contest the proposed sale to the incoming tenant. **Ms. Balsam** still doesn't see how notifying the tenants that the owner hasn't registered is going to change any of that or give the tenants any other rights. **Ms. Balsam** stated that Staff will consider it. **Ms.**

Cruz clarified that Mr. DeLaney's proposal is for Staff to mail the FO notices out to the IMD units that are registered with us. **Mr. DeLaney** replied correct.

For § 1-21(e)(2)(ii), **Mr. DeLaney** commented that we talked about the question of electronic copies, but he doesn't remember the answer in terms of an electronic copy could be in a variety of different formats. **Ms. Balsam** replied that she thinks we had decided to limit the format because Mr. DeLaney was concerned about that, but she doesn't know if we have to have a rule. **Mr. DeLaney** responded that he guesses the only issue would be if an electronic copy were supplied in a way that was unacceptable. He recalls the question that he had raised was that if he takes a picture and sends you a JPEG instead of an electronic copy. **Ms. Balsam** thought that would be perfectly fine and that Mr. DeLaney said that it might not be legible. **Chairperson Hylton** asked about putting in a form acceptable to the Board. Electronic types could change. **Mr. Hernandez** mentioned that this provides for flexibility and adding anything additional details may restrict people from submitting an electronic copy. **Ms. Shelton** stated that we discussed this the last time, on page three of the minutes. **Mr. DeLaney** responded yes, and he is just asking to have his memory refreshed. Maybe an electronic copy of the application in an acceptable form as listed on the Board's website. **Chairperson Hylton** and **Ms. Balsam** replied ok. **Mr. DeLaney** is trying to avoid a "gotcha". So if I am up against my deadline to file but my application is incomplete because I supplied an electronic copy in RTF format or word perfect. **Ms. Balsam** commented that Staff does receive illegible paper documents now. We have to get with the future. **Mr. DeLaney** is looking forward to the future.

For § 1-21(e)(4) "Staff will not process an application, unless, as of the date of filing such application, the registration renewal application", **Mr. DeLaney** commented what if the applicant is not the owner, that goes to the responsible party language. **Ms. Balsam** replied an applicant who is not an owner could theoretically have outstanding penalties against them if there was a notice of violation issued to a tenant let's say, for not providing access. Theoretically, that could be, but we will look at whoever the applicants record is regardless. **Mr. DeLaney** asked for Staff to take a look.

For § 1-21, the last sentence in (6) "Staff may reject an untimely or incomplete application", **Mr. DeLaney** commented that a couple of years ago, we went through a whole dance about "may" and "shall". **Mr. DeLaney** asked why is this a "may". **Ms. Balsam** replied just to give us more flexibility because there can be a compelling reason. If the Board wants is as a "must", **Ms. Balsam** is ok with that. **Chairperson Hylton** responded that he would stay away from "must". **Mr. DeLaney** commented that Ms. Balsam is saying there might be a compelling reason… **Ms. Balsam** responded hurricane Sandy. There might be a compelling reason. So if it is a "must", we are stuck. If it is a "may", there's wiggle room. **Mr. DeLaney** asked about putting in language to the effect of a compelling… It can't just be at the whim of the… **Chairperson Hylton** commented that you have to leave some discretion. **Ms. Balsam** asked Mr. DeLaney if he wants extraordinary circumstance language. **Mr. DeLaney** responded yeah. **Mr. Barowitz** responded that he would not want to put that in because even that is suspect. What is extraordinary circumstance? **Chairperson Hylton** commented that as Mr. Barowitz is saying, every word that you put in is now going to be open to scrutiny and there has to be some room for the Executive Director to make a decision.

Mr. Carver had a question regarding § 1-21(a)(1), each application may only contain one claim. So is it the purpose that if you had a coverage claim and an occupancy claim you need separate pieces of paper. Is that how it is handled now? **Ms. Balsam** replied yes, although sometimes people file one or the other and the cases sort of morph and there have been situations where people filed for coverage but then raised protected occupancy during the trial. **Mr. Carver** asked if this would preclude those two claims from being heard together, because that would make sense that they are heard together. **Ms. Balsam** doesn't think it would preclude it. **Mr. Carver** asked if there was a way to play with the language. **Mr. DeLaney** stated that it has a revenue purpose. **Ms. Balsam** doesn't think it was revenue driven, the point is making sure you clearly understand the issues that are stated in the application. **Ms. Balsam** thinks it was for clarity. You are talking about twenty-five (25) dollars compared to some of the other application fees that are charged. **Ms. Cruz** stated that it was for clarity. **Mr. Carver** asked if this was helping make things clear or is it making it more muddled. Both **Ms. Balsam** and **Ms. Cruz** responded that they think it is helping. **Ms. Cruz** has seen it in the context of an overcharge application, tenant may raise a harassment claim and the Judge will not say the claim you brought is an overcharge claim, and then they start hearing about the harassment. So what is technically before the Board? Is it a harassment claim, an

overcharge claim, or is it both? You look at the application and what you have is a claim for the only boxed checked off, an overcharge claim, so again what is before the Board. **Ms. Cruz** thinks it is better to have a document that says I have brought this claim and my claim is rent overcharge and if I have an additional claim for harassment, that there be a separate document that alleges the particular facts that the rule requires. **Mr. Carver** asked about any issues with timing like in the case where we would want the claims to be heard simultaneously, but only one piece of paper had been filed, is there an opportunity to get that second piece of paper in so as not to stop the hearing of multiple claims being heard. **Ms. Balsam** replied that would be governed by the OATH rules which provide for consolidation of cases. **Ms. Cruz** mentioned that we have had the situation where the OATH Judge will tell an applicant that if you wish to raise this claim you should file an application with the Loft Board and then there would be communication with us that when and if the applicant does do that, please forward a copy to OATH. **Ms. Cruz** mentioned that if she knows that there is a coverage application pending for a building and another tenant files a coverage application, she immediately alerts the Judge or OATH that there is this case pending. **Mr. Carver** asked why shouldn't we be able to check multiple claims on the same piece of paper. Why not be able to check multiple boxes for multiple claims. Would it help to have it that way? **Ms. Cruz** responded that she is not sure it would help. **Chairperson Hylton** during thought the whole explanation was that it would help with clarity. **Mr. Carver** commented that if claims do wind up morphing. **Ms. Balsam** replied sometimes. **Chairperson Hylton** stated that when it does, the Judge will say go back to the Loft Board and file an application. **Mr. Carver** commented right of course, but had the application allowed you to check multiple claims. **Chairperson Hylton** responded that it is not multiple claims. The judge is saying go file a separate claim. **Mr. Carver** commented then it wouldn't be heard in the same context, it would be a separate proceeding? **Ms. Balsam** replied that will depend on a case by case basis. **Mr. DeLaney** mentioned the new carve out between protected occupancy and coverage is a recent infusion and it doesn't seem to be working terribly well at the moment. He thinks it should just be coverage as we are getting off base with protected occupancy. Traditionally, you may have a tenant apply for harassment and diminution of services over the same issue. They cut off the elevator and it is designed to cut me out because I do not have sufficient physical mobility to climb six flights of stairs and if it is not harassment then it is a diminution of services. Why make those two separate applications. **Mr. DeLaney** agrees with Mr. Carver. **Ms. Cruz** replied that there are two different standards. First you have to prove it is a service that you are legally entitled to, and then the standard for harassment is that you have to show that it was done with the intent to force you to leave. **Mr. Carver** commented that any regular lawsuit makes all sorts of allegations with multiple standards to prove and different elements of a claim. **Mr. Carver** asked Staff to think more about it. **Mr. Barowitz** can see it both ways but coupling those two things together doesn't make sense to him. **Ms. Balsam** mentioned that twenty-five (25) dollars may be a lot to some people, so there is a waiver due to financial hardship available.

For § 1-21(a)(4) and (5), **Mr. Carver** commented in the context of a rent adjustment, there is an automatic waiver of the right after the time period expires in the regulations, that's in (5), but in (4), you have a time limit for a rent overcharge but you don't have a waiver. **Ms. Cruz** responded that there are two different claims. The application we are talking about in (5) is an application that is filed by an owner after the code compliance has been completed after they have achieved, most of the time, after they have received a final certificate of occupancy. So they can file an application with the Loft Board, seeking to recoup some of the cost for legalization. The application that we are talking about in (4) is an application filed by the tenant seeking an overcharge. **Mr. Carver** responded right, but the issue is why is the regulations drafted to have an automatic waiver of the right for the landlord in (5) but not for the tenant in (4). The final sentence in (5). **Ms. Balsam** sees what Mr. Carver is saying. **Mr. Carver** further commented if the owner fails to file timely, he waives the right to see an adjustment but there is no such waiver in (4) if the tenant fails to make an application. Make those parallel. **Ms. Balsam** responded ok. **Mr. DeLaney** responded that he is not in favor of that. **Ms. Balsam** commented that she is not sure you have to have a waiver if you are foreclosed. She thinks it was to make it clear. Normally you might have a longer period of time under a state law to bring some sort of action. The waiver was placed in because the Board was saying you only have nine (9) months even though under state law you might have a longer period of time. Whereas under (4), if the statute of limitations for that kind of claim and the CPLR is for four years, then it is four years. So you do not need the waiver because you are precluded under state law as well. That might have been the rationale. **Ms. Cruz** commented that there definitely needs to be a time period by which an owner needs to file because the Loft Board under the statute is required to make, if the owner applies for these rent adjustments, they are required to settle that issue before removing the building from its jurisdiction. So if we do not have a time frame, then a building with a final certificate of occupancy

could remain in our jurisdiction for years and the owner would still be allowed to file this application. If the Loft Board is required to make these rent adjustments, there has to be a time frame by when an owner has to file for them. That way the Loft Board can take action to remove the building from its jurisdiction. **Ms. Balsam** mentioned that remember the tenants have a right to contest the request of the code compliance so if you don't make the owner do it fairly quickly, the tenants might be prejudiced. **Mr. Carver** asked for the explanation for the lack of waiver language in (4). **Ms. Balsam** again stated that she thinks that based off having a statute of limitations in the CPLR as to when you can bring an action that it parallels that, so since there is no conflict with state law, then you do not need to have a waiver because they are foreclosed under any legal theory. It is something Staff will look into and research. **Mr. Carver** would like Staff to research. **Chairperson Hylton** asked if there were any additional comments or questions on § 1-21.

On the top of § 1-22(c), page 12, **Mr. DeLaney** commented that we refer to paragraph (a) of this rule. By paragraph (a) do you mean paragraph (a) of § 1-22? **Ms. Balsam** replied yes. **Chairperson Hylton** asked if we could clarify that. **Ms. Balsam** responded that she doesn't think it needs clarification. **Chairperson Hylton** asked of this rule or section. **Ms. Balsam** further replied of this rule.

For § 1-22(d), Extensions of Time to File an Answer, **Mr. DeLaney** asked when requests come in, is there any limit to the amount of time that can be requested, or should there be. **Ms. Balsam** responded that this goes back to the discussion we had last month about giving the Executive Director the power to extend any deadline. To answer Mr. DeLaney's question, **Ms. Balsam** stated no there isn't, but the parties could use various time periods depending on what the circumstances are. If the Board wants Staff to consider putting in a time limit, Staff could certainly do that. **Ms. Balsam** doesn't feel strongly one way or the other. **Mr. DeLaney** asked Staff to take a look at whether it might be worth adding in a maximum request, maybe a maximum request should be thirty (30) or sixty (60) days unless there is some demonstration of an inability... He doesn't know how often this comes up. **Ms. Cruz** mentioned that it does not come up often. And the only time **Ms. Cruz** had a situation where multiple requests had been made is when the parties were in the middle of settlement negotiations and both sides are asking for time. **Ms. Cruz** further mentioned that Staff generally gives a thirty (30) day extension.

For § 1-22(d)(2), "an applicant who wishes to oppose the request for additional time to file an answer may file opposition papers with the Loft Board within three (3) calendar days", **Mr. DeLaney** asked is that three (3) calendar days plus five (5) mailing days. **Ms. Balsam** replied yes but depends on how it was served. **Mr. DeLaney** clarified if it is mailed. **Ms. Balsam** replied yes if it is mailed, then there is an additional five (5) days for mailing. **Mr. DeLaney's** overall comment throughout the rules is that in the definition section we define business day, we don't define calendar day, which is fine because he thinks everyone knows what a calendar day is, but we seem to use business day sometimes, calendar days, and if you look down at (d)(3), "the written decision will specify the number of days". So **Mr. DeLaney** thinks it would be helpful if you globally went around… **Ms. Balsam** responded we can do that, but there is a timing rule though and the timing rule actually refers to when it says days, it means whatever days and she tried to take out all the ones that were there. **Ms. Balsam** may have carried over some inadvertently so yes Staff will look at that. **Chairperson Hylton** asked Mr. DeLaney what his preference is. **Mr. DeLaney** commented that we go out of our way to specify calendar day and define business day, and then we have the term "day" pop up. **Ms. Shelton** commented that it needs to be consistent. **Ms. Balsam** replied yeah that is why we have a rule that defines it but yes we will take out extra words.

In § 1-23 discussing defaults, "a reasonable explanation may include:" (1)-(4), (4) any other fact that the Adjudicator considers relevant to the motion to vacate, **Mr. DeLaney** commented how would the party know, would the Adjudicator let them know. **Ms. Balsam** replied that they are making a motion to the Adjudicator, so yes. For § 1-23(b), "the Adjudicator assigned to the case may allow the applicant to file papers", **Mr. DeLaney** had the same comment regarding the "may". **Ms. Balsam** believes that is how it reads now. In other words, it could be an oral motion or let's assume the person who defaulted wants to file papers and make a written argument, so that's just saying that the Adjudicator can allow that as opposed to requiring an oral motion.

For § 1-24, **Mr. Barowitz** asked if in this instance the "upon 15 days" is calendar days. **Ms. Balsam** replied no, she thinks they are business days. She will fix this.

For § 1-25 Amended Pleadings, **Mr. DeLaney** stated that we do not have a definition for amended pleadings. Is it not necessary? **Ms. Balsam** doesn't think it necessary.

For § 1-25(b), **Mr. Carver** commented that it talks about a form for an amended application. **Mr. Carver** has been informed that there is no such form. **Ms. Balsam** replied that is true but there is a part of the rules that say if there is no Loft Board form, then you can use 8 by 11 inch paper. **Ms. Cruz** mentioned that we do have an amended coverage application form.

On § 1-26, **Mr. DeLaney** asked for a general summary on what we are trying to express here. **Ms. Balsam** replied that back in the day when the Loft Board had hearing examiners or Staff members were making determinations, the rule was designed so that the adjudicator would not have a conversation with one side on other than ministerial matters without the other side there while an application was pending. That's what this rule is about. It is kind of out of date now because we do not having hearing examiners anymore, but you never know, we could end up with a Staff of thirty (30) people, so we are keeping it in the rule. **Ms. Balsam** further mentioned and wanted to make it very clear, that it does not apply to the narrative statement process because the narrative statement process is much more of a mediation kind of a process so there can be times where people cannot be in the same room with each other. And you may, as the Staff person that is conducting the narrative statement process, have to talk to one person in one room and talk to another person in another room to try and reach a consensus. **Mr. DeLaney** further commented that one of the cases on today's docket there was an allegation of *ex parte* communication. Is there any way to under § 1-26(a) or elsewhere in § 1-26, to make your statement regarding narrative statement process clearer so that we can prevent that kind of misunderstanding. **Mr. DeLaney** mentioned that he came to the Loft Board this week to look at some papers and he commended Mr. Bobick for standing at the window answering questions regarding letters of no objection and other matters.

For § 1-26(b), **Mr. DeLaney** asked what exactly are we trying to do with (b). "After an application has been filed with the Loft Board, a Board member must not communicate with any member of Staff concerning the application until the matter is before the Board for determination, except that the Chair, in his or her administrative capacity, may communicate with Staff." **Ms. Balsam** responded that this goes back to the date when there were hearing officers and she thinks it was designed so that the Board members could not unduly influence the Board Staff that were conducting hearings and had cases in front of them. The Chair obviously needs to communicate with Staff about stuff. **Mr. DeLaney** replied but the next sentence "the Chair shall disclose the fact of such communication to the Board when the case reaches the Board for its determination", that has never happened. **Ms. Balsam** thinks that may be a typo. **Mr. DeLaney** replied that has been there for years. **Mr. DeLaney** mentioned that we have had some too-busy-to-read-this-stuff Chairs for whom the Staff would type up an explanation of what the case was about. **Ms. Balsam** mentioned that we do not have a Chair like that now. It seems to **Mr. DeLaney** that this sentence has been routinely ignored over the years and he thinks Ms. Balsam should look at it to make sure it reads the way she wants it to read. It seems to **Mr. DeLaney** that the Chair in his or her administrative capacity says to the Executive Director, I really want this case on for this month's agenda, that would be something that, according to this sentence, the Chair should say at the start of the Board meeting, I told the staff, seems kind of nuts. **Ms. Balsam** asked if Mr. DeLaney is proposing to take it out. **Mr. DeLaney** replied he asked what was intended as he never understood it. **Chairperson Hylton** commented that it is good that is there. **Mr. Schachter** asked if Mr. DeLaney was suggesting that it would be somewhat onerous for the Chair because he has to tell the Board every time he has to talk to Staff. **Mr. DeLaney** is puzzled by this for the past thirty (30) years and wants Staff to take a look at it.

On § 1-27(c), "All hearings will be conducted in accordance with procedures stated in these rules. Formal rules of evidence do not apply to such hearings, except rules of privilege recognized by law." **Ms. Balsam** commented that is in there now, and she doesn't think it necessary but left it in because it is there now. **Mr. DeLaney** asked for an example. **Ms. Balsam** stated marital privilege or attorney-client privilege.

For § 1-27(e), OATH Hearings, **Mr. DeLaney** asked if this was new. **Ms. Balsam** replied no, but it is necessary as there are conflicts between our procedural rules and OATH's procedural rules.

For § 1-27(f), **Mr. DeLaney** commented that there is a typo after duties, it should be a period instead of a comma.

In § 1-29(b), **Mr. DeLaney** asked if we are giving the adjudicator the discretion after two consecutive adjournments. **Ms. Balsam** replied yes, the adjudicator has the discretion to direct that the next scheduled hearing or conference is marked final. So it up to the adjudicator to determine whether or not it should be final. There could be a compelling reason why someone is asking for an adjournment.

For § 1-29(c), **Mr. Carver** the question of without prejudice versus with prejudice if the party fails to appear, it seems like there would be no consequence to someone who doesn't appear after the other party has spent an enormous amount of time, effort and energy. **Mr. Carver** asked if there should be some kind of standard as to when a failure to appear… **Ms. Balsam** finished should be marked with prejudice, dismissed with prejudice. **Mr. Carver** responded yeah. **Ms. Balsam** commented that this is for an applicant who fails to appear at a hearing not marked final. The adjudicator assigned to the case may dismiss without prejudice. They could also dismiss with prejudice. **Ms. Balsam** thinks Mr. Carver is suggesting that we should say the adjudicator should dismiss with prejudice under certain circumstances and enumerate what those circumstances are. **Mr. Carver** responded yeah. **Ms. Balsam** mentioned that we have cases on this. **Ms. Cruz** stated that when it is not marked final we give the adjudicator the ability to dismiss it without prejudice. **Mr. Carver** thinks there should be some kind of standard, a soft standard. It is really not fair to the party who has invested all this effort only to have the other person not show up. In court, at a trial, what happens if the party fails to appear? **Ms. Balsam** replied she isn't sure as she has never been a litigator. **Ms. Shelton** does not think there is one hard fast rule. For a criminal matter there may be a hard date. **Ms. Balsam** mentioned that we had a case recently where there was a disagreement about a dismissal and whether or not it should be with prejudice or without and the parties actually presented papers to the adjudicator. **Mr. Carver** mentioned that it might be better if Staff looked into adding some sort of standard as opposed to leaving this for future cases. **Ms. Balsam** reiterated that there are some cases out there so we can look at that. **Mr. Carver** responded that some of those standards could be codified in the rule. **Ms. Shelton** commented that by adding it to the rule, you may lose some flexibility. **Mr. Carver** responded the standard would still have built in flexibility.

Mr. DeLaney asked if we added language to § 1-31(b). **Ms. Balsam** replied that we will be adding language to § 1-31(b). **Ms. Balsam** mentioned that Mr. Carver had suggested statutes and rules be added. **Mr. Barowitz** wondered what a majority of Loft Board members mean because we have taken votes where a member was absent rather than the Board members that are present. **Ms. Balsam** responded that the Public Officer's Law ("POL") or CAPA, but she thinks it is the POL, there is some section of state law that says for meetings you have to have, for the Board to take action, it has to be a majority of the Board, the number of people on the Board. Even if you have positions that are unfilled, you still have to have five. **Mr. Barowitz** asked about the one vacancy on the Board, does that count seat count. **Ms. Balsam** stated yes it still means nine so we need five affirmative votes. **Mr. DeLaney** commented that there are seven (7) Board members here. Currently there is one empty seat, there are eight board members, one is out sick, you can't pass four (4) to three (3), has to be five (5). **Mr. DeLaney** mentioned that there was a period of time when it went undefined but then Corp Counsel advised us.

For § 1-30(d), **Mr. Carver** asked if "unit" means covered unit. **Ms. Balsam** confirmed covered unit. **Mr. Carver** asked can't the parties can have an agreement where the tenant vacates later. **Ms. Balsam** replied that she doesn't think you really want to say that because it is against public policy and you do not want them to be living there illegally. It does happen now, but she doesn't think we can put in a rule that says they are allowed to live there illegally pursuant to a settlement if you are going to vacate later. **Ms. Balsam** reminded the Board members that when she first started, there were these cases that she called stalled-settled-cases, where an owner agreed to register their building and everyone signed off on the case, but owner failed to register the building, so the case just sat there, so this rule was designed to combat that.

For § 1-31(d), **Mr. Carver** stated that this talks about the Board or the Chair may direct the staff to provide it with additional information. **Mr. Carver** asked if the information has to be in the record also. He is worried about being outside the record. **Ms. Balsam** responded that she believes this comes from back in the day when the Staff still had hearing examiners where the hearing examiner would send just the report and recommendation but maybe the Board members wanted to look at documents that were in the

record. **Ms. Balsam** believes it is meant to only refer to things in the record but Staff can certainly clear that up.

For § 1-32, **Mr. DeLaney** had a general question, whether Staff gave any thought to addressing in any way the four grounds for reconsideration. **Ms. Balsam** replied that Staff is happy with them, unless the Board feels that there should be others or wants to take one away. For § 1-32(d)(1), **Mr. DeLaney** pointed out a typo, "form" should be "from".

Prior to § 1-33, **Mr. DeLaney** informed the Chair that at the end of the discussion of the rules, he does have a couple of general comments. In terms of appeals, is there any need to have a different provision for cases that go to ECB or is that out of our jurisdiction? **Ms. Balsam** responded that we really don't send cases to ECB, but it is in the law, but ECB does have its own appeals process. If there is an ECB determination, an ECB hearing officer determination, she thinks by law it would have to go through an ECB appeal. **Mr. DeLaney** suggested that Staff might want to spell that out a little even though we are not currently doing that.

In § 1-33(a), "Appeal from a Staff Determination. An affected party who disagrees with a written Staff determination may appeal such determination to the Board", **Mr. DeLaney** asked if we need to cite how or by when. **Ms. Balsam** replied that it is in § 1-33(c) Service and Filing of Appeal Application. **Ms. Balsam** mentioned that she tried very hard not to put in cross references because a lot of people find cross references very confusing. **Chairperson Hylton** asked if the thirty (30) days will be clarified. **Ms. Balsam** responded that she will get back to the Board members about the "days".

For § 1-33(g) Loft Board Authority, **Mr. DeLaney** asked if this was new language. **Ms. Balsam** responded she doesn't think so. **Mr. Barowitz** commented that the first letter in (g)(1)(2) and (3) should be capitalized. **Mr. DeLaney** mentioned that (h) is Judicial Review, and then you have another (h), which should be (i). **Ms. Balsam** noted that mistake and stated that (i) is ECB appeals. The fact that it says OATH Hearings Division, that is ECB. **Mr. DeLaney** clarified the second (h). **Ms. Balsam** confirmed that it will be changed to (i).

Mr. Carver asked if there is a mechanism for the Board members to give Staff more comments on this chapter. **Ms. Balsam** replied sure. **Mr. Carver** asked by email to Ms. Balsam. **Ms. Balsam** replied yes but please do not send them to everybody.

Mr. DeLaney commented in terms of the definition section, is there value in defining "administrative determination"? **Ms. Balsam** responded yes there probably is. For § 1-06.1, Limitations on Applications, **Mr. DeLaney** commented that it seems it disappeared from chapter one. **Ms. Balsam** replied that we do not need (a) because the law changed and we don't need it. If there is no amendment to the Loft Law and today's deadline stays in place, again we do not need a rule because it is the law. The rent overcharge and code compliance rent adjustments were moved. **Mr. DeLaney** commented that the current § 1-06.1 was defective because it had no mention of the two year period from the June 2015 to today. **Mr. DeLaney's** last request is that in one of the cases that we tabled today, it was very helpful that you highlighted the new language. The request he attempted to make last month, it would be very helpful to him if the next draft shows the new language and the language deleted using some convention, like it is done with legislation so that people don't have to read version one against version two line by line. **Mr. Schachter** asked about track changes. **Ms. Balsam** replied that Mr. DeLaney doesn't like track changes. **Mr. DeLaney** commented that he finds track changes irritating. **Mr. Schachter** responded that track changes would accomplish that task. **Mr. Barowitz** asked whether the two cases that were tabled, will the language change. **Ms. Balsam** responded no. **Ms. Balsam** responded that she could highlight the new language that changed as a result of these discussions. She is very worried about using brackets and underlining, in case she misses something, and something gets through. As this is all new, it will all be underlined. **Mr. DeLaney** commented any convention Staff can come up with, rather than giving us a new draft. **Mr. Hernandez** stated that although track changes is not the most ideal format, it is something that works for everyone and we are all familiar with it. **Ms. Balsam** will figure out a way to do that.

Chairperson Hylton commended the Staff on the proposed draft of this rule. **Chairperson Hylton** then concluded the June 15, 2017 Loft Board public meeting at 4:36 pm and thanked everyone for attending.

The Loft Board's next public meeting will be held at 280 Broadway, third floor, on July 20, 2017 at 2:30p.m.
