

**MINUTES OF PUBLIC MEETING
New York City Loft Board Public Meeting Held at
22 Reade Street, Main Floor
Spector Hall**

March 15, 2018

The meeting began at 2:12 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; and Chairperson Designee Renaldo Hylton.

INTRODUCTION

Chairperson Hylton welcomed those present to the March 15, 2018 public meeting of the New York City Loft Board and briefly discussed Section 282 of the New York State Multiple Dwelling Law which established the New York City Loft Board. He described the general operation of the Board as consistent with Article 7-C of the New York State Multiple Dwelling Law

VOTE ON February 15, 2018 MINUTES

Chairperson Hylton asked the Board members if they had any corrections or comments to the minutes of the February 15, 2018 meeting. The Board members made no comments or corrections.

Mr. DeLaney referred to last month's discussion about recidivists and asked if the discussions to address that issue had yielded any results yet.

Ms. Balsam stated that the discussions were still on-going and had not yet arrived at any conclusions.

Chairperson Hylton invited a motion to accept the minutes of the February 15, 2018 meeting.

Motion: Mr. Schachter moved that the minutes be accepted. Mr. Hernandez seconded the motion.

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

Report of the Executive Director, Helaine Balsam, Esq.

Ms. Balsam reminded the Board members that when cases are returned from OATH, with recommended decisions, there is always a lot of accompanying documentation, all of which is not always forwarded to the Board members for case review. The complete record of all such documentation is always available for review in the office; in addition, staff is always willing to provide any specific portions of the complete record upon request.

Ms. Balsam stated that the Loft Board's unofficial revenue for February was \$1,833.78.

Ms. Balsam stated that in response to the request made at the last Board meeting statistics concerning heat complaints. A chart was distributed revealing 24 heat complaints with a variety of symptoms; 19 of the 24 complaints were remedied, most resolved on the same day. The remaining 5 are being monitored by staff.

Ms. Balsam also stated that in terms of registrations, there were still 19 buildings that failed to register.

Ms. Balsam also stated that the protected tenants of 79 Lorimer Street had brought an action in Kings County Housing Court asking that the court order the owner to fix conditions in order to lift the vacate order and restore Petitioners to physical possession, asking for an harassment finding with punitive damages, and if owner fails to

comply, tenants request that the City enter a judgment against the owner for penalties. The Loft Board was named as a party in the action.

Mr. Carver then asked to clarify if the Loft Board was or was not named a party in the action.

Ms. Balsam said yes, the Loft Board was named a party in the action; but that it really was a dispute between the tenants and the owner.

Mr. DeLaney then asked for clarification about what and why staff would send some and not all the documents concerning a case to the Board members.

Ms. Balsam stated that the documents sent were only those documents referenced in the decisions.

Mr. DeLaney then asked if it would be possible to include a summary of available documents with the cases sent to the Board members.

Ms. Balsam stated that some cases come back to staff with a summary of available documents and in those cases it would be easy to comply with this request, but for staff to create a summary for the cases that do not already have a summary would be too difficult.

Mr. DeLaney then explained that without the summary of available documents, Board members are unable to determine if there might be some additional information readily available that could help in their assessment of the case.

Ms. Balsam stated that she could not assume that such a summary of available documents was provided for all cases, but as long as one was provided it could easily be included in the transmission to Board members.

Chairperson Hylton asked if it was possible, in the situation when a case arrived without a summary of available documents, to ask for such a summary to be provided.

Ms. Balsam stated staff could ask OATH if such a summary did exist and might have been accidentally omitted, but could not mandate that such a summary be created.

Chairperson Hylton suggested that a little diligence when the cases come back and staff to do their best to acquire all such summaries, staff would be able to provide Board members all the summaries that were created for the cases.

Mr. DeLaney said that would be very helpful.

Mr. Barowitz asked if there was any idea of the size of the current case backlog.

Ms. Balsam said that cases are not forwarded to Board members as soon as they come in, but that the addition of two summer interns should allow staff to make some reduction in the Summary Case backlog. Statistics on the backlog can be presented at next month's Board meeting.

Chairperson Hylton asked if there were any other questions for Ms. Balsam; there being none, Chairperson Hylton thanked Ms. Balsam for her report.

Chairperson Hylton then proceeded to votes on this month's cases.

VOTE ON RECONSIDERATION AND APPEALS CALENDAR CASES

Mr. Michael Bobick, Esq., Assistant General Counsel, presented the following case to the Board for consideration:

1.	Quay Plaza LLC	79 Quay Street, Brooklyn	AD-0085
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Chairperson Hylton invited comments on this case.

There were no comments.

Chairperson Hylton invited a motion to accept this case.

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: Mr. Carver (1)

VOTE ON SUMMARY CALENDAR CASES

Chairperson Hylton presented the below summary cases for vote by the Board:

2.	Robert M. Rossi	870 Broadway, Manhattan	PO-0018 and TA-0211
3.	Neil Fenton, Cynthia Sobek, Annabel Orford Merseberg and Lars Merseberg	322-324 East 3 rd Street, Manhattan	PO-0049
5.	Rad Roubeni	78-82 Reade Street, Manhattan	PO-0063
6.	Jill Prink	78-82 Reade Street, Manhattan	PO-0064
7.	Carol Eckman	598 Broadway, Manhattan	TA-0245
8.	Neil Fenton, Cynthia Sobek, Annabel Orford Merseberg and Lars Merseberg	322-324 East 3 rd Street, Manhattan	TR-1332
9.	Alex Locadia, Benjamin Oliver, Noah David and Elizabeth Smith	371 Canal Street, Manhattan	TR-1357

Chairperson Hylton invited comments on these cases.

There were no comments.

Chairperson Hylton invited a motion to accept these cases.

Motion: Mr. Carver moved to accept the proposed orders. Mr. Schachter seconded the motion.

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

Chairperson Hylton presented the summary case below for vote by the Board:

4.	Laura H. Bond	83-91 Meserole Street, Brooklyn	PO-0052
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Chairperson Hylton invited comments on this case.

Mr. DeLaney stated the case involved a tenant, informed by the former tenant that no sale of rights had taken place, filed for protected occupancy status. The landlord reported a previous MDL § 286(12) sale of rights with

the sale amount “blacked out”. He further stated that he would no longer support any case where the sale of rights price is “blacked out” by the owner and he plans to vote “No” on this case.

Chairperson Hylton invited further comments on this case.

There were no further comments.

Chairperson Hylton invited a motion to accept this case.

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

Members Concurring: Mr. Carver, Mr. Roche, Mr. Hernandez, Mr. Schachter. Chairperson Hylton (5);

Members Dissenting: Mr. Barowitz, Mr. DeLaney (2)

VOTE ON MASTER CALENDAR CASES

Mr. Stephan Clarke, Esq., Assistant General Counsel presented the following case to the Board for consideration:

10.	Michael Freimuth	473-493 Kent Avenue, Brooklyn	PO-0067
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Chairperson Hylton invited comments on this case.

There were no comments.

Chairperson Hylton invited a motion to accept this case.

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

Members Concurring: Mr. Carver, Mr. Barowitz, Mr. Hernandez, Mr. Schachter. Chairperson Hylton (5);

Members Dissenting: Mr. Roche, Mr. DeLaney (2)

Mr. Michael Bobick, Esq., Assistant General Counsel, presented the following case to the Board for consideration:

11.	Caitlin Waid	473-493 Kent Avenue, Brooklyn	TR-1253
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Chairperson Hylton invited comments on this case.

Mr. DeLaney stated that he agrees with the recommendation of the OATH Hearing Officer insofar as it finds that the transaction between the owner and the estate of Mr. Hetherington did not constitute a sale of rights or fixtures to the unit. He pointed out that the owner rented the unit to Ms. Waid before the negotiations with the Hetherington estate were even concluded, and that the evidence presented by the owner seemed to involve discussion of a sale of a few items in the unit. He stated that he intended to vote “No” on the case, because of the Board’s decision to request further proof from Ms. Waid regarding the question of whether she used the unit as her primary residence before determining that she was the protected occupant, despite the fact that it appears clear that this is where she lives. He took issue with the reasoning in the proposed order that since she had applied for coverage after the initial one-year lease that the landlord gave her, she was not automatically the prime lessee of the unit. He pointed out that many tenants who were found to be protected occupants over the years under the Loft Law had leases that had expired many years before coverage application was submitted.

Mr. Roche stated the he commends the staff attorneys as well as the staff in general for their diligence and dedication on this case, but he will vote no because he feels that he needs more time to review this case.

Mr. Carver stated the he agreed with the staff's decision to request the current tenant to submit the documentation in question to the Loft Board directly for review and consideration as a good and practical way to move things forward.

There were no further comments.

Chairperson Hylton invited a motion to accept this case.

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

Members Concurring: Mr. Carver, Mr. Hernandez, Mr. Schachter. Chairperson Hylton (4);

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

Mr. DeLaney requested a summary of the previously held discussion and decision made with respect to the number of Board member votes that were required for a motion to be carried.

Ms. Balsam stated that the enabling legislation and the executive orders that established the Loft Board indicate the Board consists of 5 to 9 members with certain special members and other public members. For the purposes of voting, only a simple majority is required to carry a motion as long as at the Board meeting is made up of from 5 to 9 members and the three specialized spots, Owners, Manufacturing and Tenants, are filled.

Mr. Barowitz asked if there was any new information concerning the current vacancies on the Board.

Ms. Balsam stated that the Mayor's Office of Appointments is considering two candidates; one of whom seems to be very close to satisfying the requirements, another is going through discussions and another individual is also under consideration.

Chairperson Hylton presented the below removal cases for vote by the Board:

12.	873 Broadway Associates	873 Broadway, Manhattan	LE-0232
13.	31 Cooper Inc.	27-31 Cooper Square, Manhattan	LE-0668

Chairperson Hylton invited comments on these cases.

There were no comments.

Chairperson Hylton invited a motion to accept these cases.

Motion: Mr. Roche moved to accept the proposed orders. Mr. Barowitz seconded the motion.

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

Rule Making

Chairperson Hylton introduced this portion of the meeting by stating that Board members had already received a revised copy of Chapter 1 for today's discussion and that a revised Chapter 2 would be discussed at the next meeting. He then turned the meeting over to Ms. Balsam to guide the discussion through the revised Chapter 1.

Ms. Balsam stated that the revisions to Chapter 1 began with an overhaul of the definitions; some were modified, and some were moved from Chapter 2 to Chapter 1. In particular, the definitions related to “grandfathering” were modified and refined to be more consistent with current practices.

Mr. DeLaney asked if copies of the proposed rules were available for the public, today.

Ms. Balsam stated that there had not been sufficient time to make them before the meeting. They could be made available upon request. She added that it would be best if the request was a FOIL request for tracking purposes.

Mr. DeLaney suggested that a FOIL request was an unnecessary burden.

Ms. Balsam stated that in either case a request would have to be submitted in writing, with the only difference being the letters “F O I L” appearing on the request.

Mr. DeLaney asked if copies could be made available for the public in future meetings where rules are discussed.

Ms. Balsam answered yes.

Mr. DeLaney observed that there a significant number of colors on the definitions section copy and he asked if specific meanings were associated with each color.

Ms. Balsam answered that the red items were tracked changes throughout the process of making changes to the draft and the other colors were just cut and pastes from other sections. The colors displayed also seemed to be a function of the printer used to print the document.

Mr. DeLaney asked if the harassment definition, for example, was an exact copy of the definition as it appeared in Chapter 2.

Ms. Balsam answered that she would double-check, but that she believed it is.

Mr. DeLaney asked for clarification regarding the grandfathering of definitions.

Ms. Balsam answered that before addressing the grandfathering, she wanted to clarify that the examples of harassment as well as the examples of what was not harassment had been removed from the prior definition.

Mr. Barowitz asked why the word harassment sometimes appears within quotes and sometimes not.

Ms. Balsam answered that the text was copied that way, and that she would remove the quotes.

Ms. Balsam then addressed the grandfathering question by stating that the original first sentence remained as is, but that the part about the “as of right use” was removed since “as of right use” is no longer relevant to the current Loft Board environment.

Mr. Roche asked why the words “New York City Loft” were lined out inline under the executive director.

Ms. Balsam then answered because Board is defined as the New York City Loft Board for the purposes of the rules.

Mr. Roche asked how we ultimately arrived at the definition of family member.

Ms. Balsam answered that the wording was the current definition as it appears in 2-08.1 (c) (3).

Mr. Carver asked why an agent as defined only as a person and not also possibly an entity.

Ms. Balsam answered that the term person is defined as an individual, partnership, corporation or legal entity.

Mr. Carver pointed out that there was specified an age requirement which could not be applied to an entity.

Ms. Balsam responded that age requirement was meant to apply to the individual designated as the contact individual to whom building issues would be reported and who was responsible for resolution of building issues.

Mr. Carver raised a concern that there should be no conflict in the MDL definition of family member and the definition of family member in the Board rules.

Ms. Balsam responded that no conflict exists between the two definitions.

Mr. Carver asked about the use of the phrase “reasonable and necessary action” as a new addition to the rules.

Ms. Balsam responded that wording was brought over from 2-01.1 (a) (1).

Ms. Balsam asked if there were any more questions about the definitions.

Mr. DeLaney asked about the definition of the narrative statement and the possible need for more specificity as to what is to be included in the narrative statement.

Ms. Balsam clarified that this is a definition of the phrase “narrative statement”; the definition of the contents of the narrative statement appears in the section titled Narrative Statement in Chapter 2. The overall goal is to place all the definitions of terms in Chapter 1 for use throughout all the subsequent Chapters of the rules. She stated she would look at including more detail in the definition of the narrative statement.

There were no further questions about the definitions.

Ms. Balsam moved on to 1-13, there were several minor language corrections. She invited comments or questions; there were none.

Ms. Balsam moved on to 1-15, there was the addition for imposition of civil penalties upon anyone knowingly submitting false documents or information to the Board as part of a submission to the Board. She invited comments or questions; there were none and the Board was in agreement with the proposed addition.

Mr. DeLaney asked about the specific form of submission in the case where no form exists for the submission.

Ms. Balsam agreed to review and modify the language to address the concern.

Ms. Balsam moved on to 1-16 (c), she acknowledged Mr. Carver’s feedback to add the phrase “in the office of the Board” to the requirement for submissions to be received by Staff. She invited comments or questions; there were none and the Board was in agreement with the proposed addition.

Ms. Balsam went on to discuss public access to records, the change from weekdays to business days for defining relevant periods of time.

Ms. Balsam moved on to 1-20, she acknowledged Mr. Carver’s feedback questioning whether adding items to the agenda referred to date only or to date and order on the agenda for a particular day. She stated that she thought it meant both.

Mr. Barowitz was against being too specific.

Chairperson Hylton asked for clarification as to the strength of the request to add an item to the agenda of the Board.

Ms. Balsam stated that if three members of the Board request that an item be added to the agenda, the chairperson will put it on the agenda.

Chairperson Hylton asked if the Board had to vote on that issue.

Ms. Balsam stated that it would depend on what it is; it might be simply a matter for discussion.

Chairperson Hylton if the Chair could put a matter on an agenda for the next year if there was a request.

Mr. Barowitz said the Chair had that option.

Mr. DeLaney agreed that the way this was written the Chair could put off putting something on the agenda for three or four years.

Chairperson Hylton asked for a reasonable time requirement for inclusion on the Board agenda.

Ms. Balsam suggested some changes to the wording that was generally agreed to by the Board.

Ms. Balsam moved on to 1-20 (a)(4) stating that draft minutes would be prepared and distributed no later than 2 weeks after the Board meeting.

Mr. DeLaney asked about the idea of backup recording of the Board meeting.

Mr. Roche asked about the idea of a spare camera as a backup to the situation that the primary camera was irreparably damaged in some way.

Ms. Balsam stated that the citywide requirement allows for "best effort" regarding digital video recording and Board meetings could still be held in the case of a video camera disaster.

Mr. DeLaney asked about the need for Board members to have the opportunity to question members of the public who offer testimony during the rules review process.

Ms. Balsam stated that issue has been discussed at some length in the past, and her chief concern is that everyone who wishes to speak (3 mins.) should have the opportunity to speak without questions from Board members using up most or all of the time allotted for the meeting.

Mr. DeLaney suggested that a solution might be to allow Board members to request responses in writing to specific questions that could be posed to the person offering testimony at the conclusion of his or her testimony.

Ms. Balsam agreed that this was a good suggestion, but there might be issues regarding the time for acceptance of written comments. She would need to figure the mechanism for implementation and the time frame.

Ms. Balsam moved on to 1-21 (a) (2), the definition of the documents that must be attached to support a fact that makes a difference to the matter at hand.

In the interest of time and efficiency, Ms. Balsam moved on to 1-30 to discuss the issues concerning Settlements.

Mr. DeLaney stated that his preference was to continue having Settlements presented to the Board for approval.

Mr. Carver stated in the interest of streamlining and speeding up the overall process, allowing people to settle cases without requiring Board review and approval would be desirable.

Mr. Roche stated that his preference was in line with Mr. DeLaney's position.

Chairperson Hylton stated the change was proposed in the interest of reducing the work load of the Board members, but since there was some hesitance on the part of the Board the current practice would be maintained.

Ms. Balsam stated that the suggest changes to 1-30 would be replaced with the text from 1-06 (j) (5)

Ms. Balsam returned the focus of discussion back to 1-21; a list of owners who have not renewed registrations as required will be posted on the website.

Ms. Balsam reviewed the remaining items which were for the most part minor corrections or modifications.

Chairperson Hylton concluded the March 15, 2018 Loft Board public meeting at 4:15pm and thanked everyone for attending. The Loft Board's next public meeting will be held at 22 Reade Street, first floor, on April 19, 2018 at 2:00pm.