

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

**May 10, 2018**

**The meeting began at 2:05 p.m.**

**Attendees:** Attendees: Robert Carver, Esq., Owners' Representative; Elliott Barowitz, Public Member; Richard Roche, NYFD Representative; Chairperson Designee Renaldo Hylton; Daniel Schachter, Public Member; Charles DeLaney, Tenants' Representative.

**1. CHAIRPERSON'S INTRODUCTON**

**Chairperson Hylton** welcomed those present to the May 10, 2018 public meeting of the New York City Loft Board and briefly discussed Section 282 of the New York State Multiple Dwelling Law which establishes 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 and also explained there will be additional discussion on proposed changes to rules.

**2. DISCUSSION OF RULEMAKING STARTED IN APRIL 19, 2018 MEETING – PROPOSED RULE REPEAL OF CHAPTER 1 AND SELECTED CHANGES TO CHAPTER 2**

**A. Conference Scheduling**

**Ms. Helaine Balsam, Esq., Executive Director** explained a comment and that she made a change including e-mail in the new system. She invited further comments on Section 3 of the proposed rule.

**Mr. Carver** asked how we could make the process easier.

**Ms. Balsam** explained the old rule was that the owner could be the signatory on the narrative statement, but they would like a licensed design professional to be signing it.

**Mr. DeLaney** pointed out that Licensed Designed Professional is not defined in the Loft Board Laws, expressing concern over clarity of what exactly that means.

**Ms. Balsam** stated they will add a definition.

**Mr. Carver** asked about the deadline of 30 days to schedule a conference.

**Ms. Balsam** stated that realistically, the 30 days is when the staff reaches out to the parties to schedule a conference. This change reflects how the conference scheduling actually works due to conflicting schedules and insufficient time generally.

**Mr. DeLaney** asked how scheduling works as of now. **Mr. Carver** explained his concerns about timing with statutory limits and the concept of keeping the rule as is. Board members discussed and they decided to keep the rule as 30 days.

#### **B. Consideration of deadlines and other limits on objections by tenants**

**Mr. Carver** expressed a desire for a hard-line deadline for tenants to object because they wait until they end. He explained to the other members that there is no deadline currently and tenants always wait until later. **Ms. Balsam** explained that one issue with this might be because plans are constantly evolving. **Mr. Carver** responded saying that he doesn't want to impede on this right to object later and recognizes, as **Mr. DeLaney** discusses, that many things tenants want to object to don't surface until the end.

**Mr. DeLaney** asked **Mr. Michael Bobick, Esq** about how time is spent in his experience in Narrative Statement Conferences. **Mr. Bobick** explained that there have been times where agreements cannot really be achieved.

**Mr. Schacter** expressed his concern over more rigid timeframes actually being counterproductive for owners.

**Mr. Carver** suggested why not to have everything acceptable unless objected to.

After further discussion, **Mr. DeLaney** asked **Mr. Bobick** about what sorts of things delay progress at conferences. **Mr. Bobick** stated that delays generally happen when there are significant changes to a tenant's apartment unit or changes to access and provide inconvenience to the tenants during work. **Ms. Balsam** added that there are often issues with construction regarding access and egress. **Mr. DeLaney** followed up on this, saying that the objections are not often frivolous, but rather material.

**Ms. Balsam** asked Mr. Carver to clarify where he is suggesting a deadline be placed and what that deadline should be.

**Mr. Carver** responded saying that a certain number of days or weeks after service of a narrative statement, with certain exceptions applicable later.

**Mr. Bobick** asked Mr. Carver if what he means by his proposal is to allow the objections made right after service of the Narrative Statement to be the only objections allowed.

**Mr. Carver** stated that yes, that would be a good idea that he believes would streamline the process.

**Ms. Martha Cruz, Esq. Deputy General Counsel** explained that although there was one plan at first, DOB often requires changes to the plan in between conference sessions, so these potential changes might prevent those from objecting once a plan is changed.

**Mr. Schacter** suggested that those who would delay the process by not filing papers timely with the DOB should receive punitive damages, holding the landlord responsible for the actions of both them and their licensed design professionals.

**Mr. Carver** questioned putting this onus on the owner, suggesting hiring a licensed design professional should be enough without having to micromanage.

**Mr. Roche** suggested that the conversation should move on from this rule and that there should be a specific proposal of the language Mr. Carver would like changed for consideration at the next meeting.

**Mr. Barowitz** tried to summarize Mr. Carver's viewpoint by saying that once the filing is complete, objections are to be made with that filing specifically.

**Mr. Carver** asked Mr. Bobick if there are any additional deadlines that might help move it along.

**Ms. Cruz** responded that it's not a bad idea to have the parties layout for the owner and the Loft Board what the issues are. She stated it is the barring parties from raising other issues that makes the other board members nervous. She explained that it's not a bad idea to have tenants raise the issues as early as possible when they can, but that the whole point of the process is to have a conversation.

**Ms. Balsam** stated she doesn't think owner's architects drag it out purposely or fail to file, but not all tenants have the resources to hire an architect in a timely fashion or at all. She explained that the purpose of the conference is to tell them what the parameters are and give them an opportunity to have a voice that the law entitles them to because some have little to no idea what the narrative statement process is all about. She expressed that a deadline could be reasonable after the initial conferences.

**Mr. Carver** asked whether it would be helpful, even if it would be reasonable.

**Ms. Balsam** expressed she is unsure about this.

**Mr. Bobick** explained that the narrative statement process is a lengthy one that is time-consuming and sensitive both to owners and tenants in regards to control and access to the building. He explained that it is just an inherently complicated and sensitive process.

**Mr. Schacter** attempted to clarify that this is really just about not slowing down the process and perhaps that tenants could be encouraged to keep things moving along and not needlessly delay.

**Mr. Roche** suggested some language be inserted that at discretion of loft board staff, if they feel the tenants are deliberately slowing the clock, they would have some power.

**Mr. Schacter** said they are already doing that.

**Chairperson Hylton** expressed that as of now, this problem they are trying to fix is not a problem, and that the rules can always be changed at a later date.

**Mr. Carver** responded that these problems do come up.

**Mr. Barowitz** suggests that although dragging the process along used to be commonplace, both tenants and owners have an inherent incentive to move it along.

**Mr. Carver** said that tenants have handed out papers that said "stop the fast track."

**Mr. Roche** said that people generally like to kick the can down the road.

**Chairperson Hylton** asked Mr. Carver to come back with specific examples.

**Mr. Carver** expressed his worry about there being no laws on the books about this timeline.

**Ms. Balsam** stated that there are actually rules, but it is not in the proposal because they are not up for changing.

**Mr. Bobick** stated that it is 45 days and they have to exercise all reasonable and necessary effort to complete objections within 45 days and they may get an extra 15 days.

**Mr. DeLaney** stated there are a number of other points regarding the narrative statement process and brings up another question would the way it is currently, where almost all plans are objected to, why not have the narrative statement further down in the process after these plans have been more discussed.

**Ms. Balsam** expressed that this would be unfair moving forward because the building owner would have to go back and forth with the DOB Plan Examiner and get more approvals before the tenants would even see it so it would delay it on both sides ultimately. And that the process for those in compliance would substantially slow things down.

**Chairperson Hylton** clarified with Mr. DeLaney whether there should be approved plans by the owners prior to the narrative statement.

**Mr. DeLaney** stated he would like to consider this and that they should have done some sort of triage on the objections.

**Ms. Balsam** gave an example that if this was the process, how owners would really have significantly more power in doing it the way they want it.

**Mr. Bobick** explained there is plenty of back-and-forth in the process about the plans. He said this might lead to a lower willingness to negotiate.

**Ms. Balsam** considered that owners will have spent so much time on the plans beforehand, that it is a waste of time because they will likely have to change to work with tenants.

**Mr. Bobick** stated they might start the clock, but there are not many alternate plans filed.

**Mr. DeLaney** stated that only one or two alternate plans have actually been decided on.

**Mr. Carver** stated he will prepare anecdotes and written expression.

### **C. Section 3**

**Mr. DeLaney** stated on section 3, the occupants may examine the alteration application legalization plans by contacting the Loft Board.” He proposed they allow them to make copies, where most people would make copies by taking pictures on their phones.

**Ms. Balsam** clarified there is nothing to prevent them from taking pictures on their phones.

**Mr. DeLaney** said he wants something explicitly allowing that.

**Chairperson Hylton** said that there is no reason to have this in there if there’s nothing preventing them from doing it.

**Mr. DeLaney** mentioned that in E, the tenant protection plan is mentioned. He stated the term should be defined.

**Chairperson Hylton** said the definition in the relatively recent legislation should be cross-referenced.

**Ms. Balsam** clarified how the definition would be written: “the tenant protection plan, as defined in section xyz”

**Mr. DeLaney** then mentioned the lack of timing in the clause that said documents can be copied free of charge.

**Ms. Balsam** explained that as of now, the owner is not filing electronic copies. The tenant has a right to examine the plans and request copies from the owner.

**Chairperson Hylton** asked Mr. DeLaney when he wants the owner to provide electronic copies.

**Mr. DeLaney** did not have specific time period in which he wants these copies to be required to be made and distributed, deferring to staff for a specific time.

**Ms. Balsam** stated the section already states in one sentence above that the owner must give within 7 days.

**Mr. DeLaney** asked what the consequence is if an owner doesn't.

**Ms. Balsam** said there isn't.

**Mr. DeLaney** expressed that, if the idea is to expedite the process, a lack of consequences for the owner in making copies in a timely manner would drag the process more.

**Mr. Barowitz** said using the words timely fashion would be too vague.

**Chairperson Hylton** suggested that Mr. DeLaney is agreeable to the 7 day window.

**Mr. Barowitz** asked what the weight behind using the word must for copies means.

**Ms. Balsam** explained that if the occupant provides an email address, the narrative statement and other documents will be delivered electronically. She continued with the fact that this is simply a fail-safe to preserve the ways in which the parties still can receive documents, in person.

**Chairperson Hylton** brought the discussion back to Mr. DeLaney's question regarding the consequence and asked if there is anything in the rules that they can charge the owner with and asked Mr. DeLaney to come back with something prepared if he can.

**Mr. DeLaney** agreed to come back with something prepared.

**Ms. Balsam** read “an occupant may request from the owner a reproducible copy of the alteration application and legalization plans.”

**Mr. Barowitz** expressed that it should read paper or hard copy instead of reproducible.

**Ms. Balsam** agreed.

**Mr. DeLaney** believes reproducible was from when you couldn't copy certain words.

**Ms. Balsam** agreed to remove the modifier and read over without the word reproducible” “an occupant may request from the owner a copy of the alteration application and legalization plans.”

#### **D. Section 4, First Paragraph, vii**

**Mr. DeLaney** asked about evening conferences, if they ever work

**Ms. Balsam** explained it is not a problem.

#### **E. Language re: ex parte discussions**

**Mr. DeLaney** expressed the concept of ex parte conversations and if they are troublesome. Additionally, he stated minutes and notes should maybe be published.

**Ms. Balsam** explained that since a narrative statement is not related to the quasi-judicial function of the board, ex parte communications is not specifically an issue. She also explained that the staff takes judicious notes to ensure compliance with agreements from owners.

**Mr. DeLaney** asked if these notes are shared with the parties.

**Ms. Balsam** responded no.

**Mr. DeLaney** asked if the parties could record.

**Ms. Balsam** said it's not admissible and not really done. She continued that it helps facilitate a free and open discussion.

**Mr. DeLaney** expressed concern that here, unlike in OATH, there are no more formal proceedings after the meetings.

**Ms. Balsam** stated that there are – there are alternate plans.

**Mr. DeLaney** questioned why there are not just documents logging meetings, who was present, and what was agreed to and not agreed to.

**Ms. Balsam** expressed that conferences can sometimes be 5.5 hours long and who will type that up.

**Chairperson Hylton** asked how often there are really discrepancies to what happens.

**Mr. DeLaney** asked the same question to Ms. Balsam.

**Ms. Balsam** said normally they go back to the owner and reiterate the promises made. She explained that the tenant doesn't normally come back and say the owner said XYZ. She also stated that not everyone hears the same thing – the way that people intake.

**Mr. DeLaney** said this point is exactly why he does think it should be there.

**Chairperson Hylton** asked if he wants the staff to provide a summary.

**Mr. DeLaney** said this is one option.

**Mr. Barowitz** said that it is boring to watch a video of a conversation but a summary into a page or two is helpful.

**Mr. Barowitz** brought up that this increases the staff's workload unnecessarily. He also stated that sources of contention would be created by putting everything on to a paper. He suggested starting with good faith efforts for both parties and that the publication of these conversations would be more trouble than help.

**Mr. DeLaney** thinks that from the tenant perspective it would be helpful to have some recording.

**Ms. Balsam** offered an example where owners wanted to remove or move closets. The tenants did not want this. The owner said he needed to remove and will not rebuild. Loft Board told the tenant we'll make sure you have closets. She articulated that when the staff said this, they meant for an alternate plan application to be filed but the tenants heard that the Loft Board would personally ensure this is the case before it's approved. This disconnect shows that the recording wouldn't actually resolve this.

**Mr. DeLaney** clarified about this specific example, but it was clarified that it was a legalization issue.

**Ms. Balsam** explained this is an example of something interpreted different ways. She explained that the tenants have to exercise their own rights. The tenants have a responsibility.

**Mr. DeLaney** explained that he wanted not to change the law, but consider if it's possible to emerge with greater clarity between the board staff, the owner with their professionals, and the tenants along with their professionals.

**Ms. Balsam** said that this sort of happens, and that they have a verbal synopsis but that this is not available.

**Mr. DeLaney** expressed his concern about the informality of the process and asked what can be done about it.

**Mr. Barowitz** suggested something is written up and then reviewed by both sides.

**Ms. Balsam** said the informality is key and that memorialization will actually inhibit the process.

**Mr. DeLaney** said people have asked about it.

**Chairperson Hylton** said this will also slow the process down because people will be so careful about what they are saying, etc...

**Mr. Schacter** suggested that the burden is maybe not that high without so many attorneys present.

**Mr. DeLaney** asked for summary points of disagreement and agreement, even if general. He expressed that it might take more time in the initial conference, but asked if it might save time down the line.

**Mr. Barowitz** asked if he thinks there are benefits to a document to point to if there was an issue.

**Mr. DeLaney** said he would like more formal procedures and that alternate plans don't sufficiently clear things up. He says tenants and owners are not on the same page.

After back and forth regarding the legality of sharing audio, **Ms. Balsam** clarified to **Mr. Roche** that even if the video was made available, you can't use it.

**Chairperson Hylton** said that they can look at it and there will have to be more administrative concerns about discrepancies.

**Mr. Carver** asked **Mr. DeLaney** if with the knowledge that these recordings would not be binding if he was still interested in pursuing this rule.

**Mr. DeLaney** said that it was more about reaching clarity than binding anyone. He said with bigger buildings with different attorneys representing tenants, it can get muddled and confusing.

**Mr. Barowitz** agreed that the recording wouldn't increase the level of clarity.

**Mr. DeLaney** asked if it could be considered what was agreed upon.

**Mr. Carver** asked if it would be a good idea to have some piece of paper.

**Ms. Balsam** again brought up the concept of who would complete the memorialization.

**Chairperson Hylton** explained that agreements are reiterated in the meeting although can't be codified.

**Mr. DeLaney** suggested something along the lines of memorializing specifically what would be done by whom in the meeting, to achieve certainty.

**Mr. Roche** expressed a concern of if you're just writing the important things, everything will be insisted to be written down and then you're writing the whole meeting and wasting the aforementioned resources. He is concerned about opening the door a little and it being blown open.

#### **E. Other Section 4 Questions**

**Mr. DeLaney** brought up (C) and said the language assumes a preliminary list of objections is already done. He suggested adding language to require a list of objections.

**Ms. Balsam** clarified that the owner should have copies of the objections available at the conference and asked if anyone has an objection.

**Mr. Carver** asked if the staff believes it would be helpful.

**Ms. Balsam** said yes.

No objections.

**Mr. DeLaney** next brought up (D) timing issues which will be saved for the next meeting.

**Chairperson Hylton** thanked the staff for their diligence and expressed his appreciation for the effort to perfect the rules. He concluded the meeting and announced the next meeting of May 17, 2018 at 2PM at 22 Reade Street.