

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

June 21, 2018

**The meeting began at: 2:30**

**Attendees:** Robert Carver, Esq., Owners' Representative; Richard Roche, Fire Department ex officio; Charles DeLaney, Tenants' Representative; Julie Torres-Moskovitz, Public Member; Robinson Hernandez, Manufacturer's Representative; Renaldo Hylton, Chairperson Designee; and Helaine Balsam, Loft Board, Executive Director .

**INTRODUCTION:**

**Chairperson Hylton** welcomed those present to the June 21, 2018 public meeting of the New York City Loft Board and briefly summarized Section 282 of the New York State Multiple Dwelling Law, which established the New York City Loft Board, and he described the general operation of the Board as consistent with Article 7-C of the New York State Multiple Dwelling Law.

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**Vote on May 10, 2018 Meeting Minutes:**

**Mr. Hylton** asked if there were any comments or questions; then for a motion to accept, and a second.

**Mr. Roche** moved to accept; **Mr. Caver** seconded the motion.

**Members concurring:** Mr. Carver, Mr. Roche, Mr. DeLaney, Chairperson Hylton

**Members abstaining:** Mr. Hernandez, Ms. Torres. **Members absent:** Mr. Barowitz, Mr. Schachter

**Mr. Hylton:** So we have a legal issue.

**Mr. DeLaney:** We've had this issue before, where we had to wait for another meeting.

**Vote on May 17, 2018 Meeting Minutes:**

**Mr. Hylton** asked if there were any comments or questions; then for a motion to accept, and a second.

**Mr. Hernandez** moved to accept; **Mr. Roche** seconded the motion.

**Members concurring:** Mr. Carver, Mr. Roche, Mr. Hernandez, Mr. DeLaney, Chairperson Hylton

**Members abstaining:** Ms. Torres **Members absent:** Mr. Barowitz, Mr. Schachter

**Ms. Balsam gave her report:**

In terms of staffing, for the benefit of those who were not at the last meeting, I'd like to introduce our summer interns again, Trishawn Raffington and Ben Winters, as well as our new project manager, Terry Ryan.

Loft Law: At the last meeting, I said that the Assembly had passed amendments to the Loft Law. The City then issued a statement of support for that bill, which I've distributed to all Board members. After that event, the owners and tenants began a dialogue that included intense negotiations, and we spent all of yesterday going back and forth with the Mayor's office discussing drafts of various documents. Unfortunately, the Legislature did not get to the Loft Law, so for now, it stays as-is.

Registration: Invoices went out June 6th. So far, 63 buildings are registered, and we've collected \$179,000 in fees. The unofficial revenue for May is \$14,233.75

Enforcement: The HPD inspector assigned to the Loft Board conducted an inspection of an IMD building at the direction of the Housing Court, which exposed violations for no elevator, no intercom, no gas, and no running water. Staff is working on an enforcement plan, which we hope to have by the end of the month.

Litigation: The Board had filed a notice of claim against an owner who had begun bankruptcy proceedings. After we filed that notice of claim, the owner made a motion in bankruptcy court to sell the property free and clear of any claims and encumbrances. We asked the Bankruptcy Division of the Law Department to file opposition papers, explaining the requirements to legalize IMD under the Loft Law. So the property should not/could not be sold free and clear of claims and encumbrances. After the Law Department filed, the judge requested that the Loft Board prepare a letter in brief for the Court, explaining tenant rights under the Loft Law, which we have done.

Other Litigation: The owner of 58 Grand St filed a mandamus, asking the Court to order the Loft Board to decide the tenant's request for consideration. There's actually a court date today, but I haven't heard yet what has happened.

**Mr. Hylton**: Any questions for Ms. Balsam?

**Mr. DeLaney** asked for the address of the building visited by the inspector.

**Ms. Balsam**: 79 Lorimer Street

**Mr. DeLaney** asked for the address of the building in bankruptcy court, and if he could get copies of the papers on that.

**Mr. Bobick**: 533 Greenwich

**Ms. Balsam** said yes.

**Mr. Hylton** asked if there were any more questions for Ms. Balsam. (None). He turned to votes on this month's cases.

**Mr. Winters** presented the following case:

	<b>Applicant(s)</b>	<b>Address</b>	<b>Docket No</b>
1	Brianne Catherine Blessing	870 Broadway, Manhattan	R-0364

**Mr. Hylton** thanked Mr. Winters, asked if there were any questions or comments (none), and asked for a motion to vote.

**Mr. Carver** moved to accept; **Mr. Roche** seconded the motion.

**Members concurring:** Mr. Carver, Mr. Roche, Mr. Hernandez, Ms. Torres; Chairperson Hylton

**Members abstaining:** Mr. DeLaney

**Members absent:** Mr. Barowitz, Mr. Schachter

**Mr. Hylton:** presented six cases on the Summary Calendar, as a group.

	<b>Applicant(s)</b>	<b>Address</b>	<b>Docket No</b>
2	Benjamin Smith and Sonia Hylling	1099 Flushing Avenue, Brooklyn	PO-0058
3	Campbell Watson	57 Thames Street, Brooklyn	TA-0244
4	Charlotte Pfahl, Daniel Schneider, Marybeth McKenzie and Tony Mysak	517-525 West 45th Street, Manhattan	TH-0211
5	Charlotte Pfahl, Daniel Schneider, Marybeth McKenzie and Tony Mysak	517-525 West 45th Street, Manhattan	TM-0094
6	Patricia Soete and Eric Weinberg	44 Water Street, Manhattan	TR-1287
7	Jessica Mays, Risa Harris-Gerstein, Lauren McCullough and Melissa Kelly	44 Water Street, Manhattan	TR-1296

**Mr. Hylton** asked if there were any questions/comments re these cases.

**Mr. DeLaney:** Stated that in reference to 57 Thames Street, he is concerned about a report he received at his request, which indicates that this building doesn't seem to be making any progress under the Loft Law. He was told it hasn't filed an alteration application, and, obviously, doesn't have a permit. We've objected to, and the owner doesn't appear to have an architect. At the last two Board Meetings, I've expressed concern about 86 East 10<sup>th</sup> St. being an IMD that the Loft Board should consider in terms of how it can achieve its mandate here. These are people are giving us a "gesture of lack of intent," if you will, so I would add this building to the concerns about these.

I also recall that at a recent meeting, the Executive Director said she'd have a plan to share with us no later than the July Meeting, and I look forward to that, and ask that it address buildings such as these as well.

**Mr. Hylton** agreed.

**Mr. DeLaney:** Yes, and I can go a bit further. In conjunction with the discussions in Albany, I was asked to provide some stats on what's going on at the Loft Board, which I did, stating that this is from information I myself gathered. It's not from the official Loft Board staff, and if you want to know what the Loft Board thinks,

you have to ask them. I'm finding that the way that the Loft Board currently provides its members with information makes it hard to spot the bad actors. Some months ago, I provided Renaldo and Helaine with a copy of the breakdown that used to be provided under the previous Executive Director. It detailed all the buildings in the system under 281(1), all the buildings in the system under 281(5), with the number and each milestone, which was extremely helpful. But that report is no longer issued.

What I was able to determine, through my own research, including going through the last 8 years of meeting notes and counting the number of LE (removal) cases, is that we are actually moving buildings out at a pretty good pace. This year, in fact, could be a record year, as we've moved 11 out already just through the May meeting. We don't have any on this docket. Helaine shared information that shows a considerable number of old buildings, about 200 of which left in our system are at or near exit; either have a C of O or a temporary C of O; or are....what's the term? "removal pending"? So of 200, 281(1) buildings, there are about 100 clustered there, which means of the 900 or so IMD that were issued as part of the 2010 law, about 100 are fumbling on the track and nowhere near the finish line. And there are about 125 buildings covered under 281(5) that are nowhere near the finish line. I wasn't able to sort through the raw stats, but I'd be happy to provide you a copy of that summary, to which I again refer.

But to finish with my main point: We need a plan for people who don't want to get with the program.

**Ms. Balsam:** Stated that staff is still working on the plan and hopes to finish it by the end of the month. In terms of data, I have a spread sheet that contains all the active buildings, which can be sorted in many different ways to produce any figures you need. I think it's much more flexible. I constructed it based on data that I tried to personally verify as much as possible. But there are missing boxes; so re the number of 281(1), or 281(4), or 281(5) buildings – there are buildings I cannot determine, even after pulling the registration. I believe in providing very accurate data, and I believe this format is so much more flexible than what you used to get (She gives some examples of how it can be sorted). I'm not sure why having a piece of paper would be better.

**Mr. DeLaney:** I certainly agree that the record-keeping by the Board – of the status of loft buildings, code-compliance, and also some of our historical records and transcripts of early hearings – were all thrown out 15 or so years ago; so I know you inherited a problem. However, I don't think it's realistic to ask Board members to spend time sorting an Excel spread sheet. A one-page document can be very handy.

**Ms. Torres-Moskovitz:** Maybe a demonstration would help? Can I get a copy of the spread sheet, and instructions on how to sort?

**Ms. Balsam:** Sure.

**Mr. Hylton:** So re the Enforcement plan, I think Ms. Balsam was saying that by the end of the month, certainly by the next Board Meeting, she'll be able to supply that to the Board. He asked Ms. Balsam if we answered Mr. Delaney's question about the spread sheet.

**Mr. DeLaney:** To drill down on this a bit. One of the documents he examined recently was a draft proposal that a group of owners were circulating, and the Legislature sought to re-write section 280 of the Multiple Dwelling Law Legislative Findings. The basic point of what they wrote was that the Loft Law has been a huge failure; and that very few buildings have been legalized. And that sent me off on a quest to figure out what the

situation really was. And what I discovered is that the Loft Law has been pretty successful. Even with some of the problems it had to confront after the 2010 expansion, etc.. In fact, 300 buildings left of about 1200 registered, means that 900 or so have gone on, a large number into rent stabilization, a few co-ops, a few reverted to commercial or were demolished, but for the most part have succeeded and exited the program.

When you've got people with confusing and conflicting viewpoints in a place like Albany, the answer is not, "Here's a spread sheet." They're going to want to know what the legalization/ compliance steps are, so having one simple, clear page, like this one from July, 2014, is incredibly useful. And by not doing it, you're not telling your own good news story.

**Mr. Hylton:** Are you saying we should have this at every Board meeting?

**Mr. DeLaney:** Quarterly. Or once a year. (He reads from the July, 2014, example, to show how quickly and easily significant information can be spotted).

**Ms. Balsam:** But what you're citing – you won't see that 100 buildings moved out and 100 buildings moved in.

**Mr. DeLaney:** True, but if you had one of these for every year, you could easily put the story together rather than plowing through minutes on line.

**Mr. Hylton/ Ms. Balsam:** Ok, we'll consider it. We're certainly all for making good news available.

**Mr. DeLaney** said he'd be happy to send a copy of his analysis. **Mr. Hylton** accepted. **Mr. DeLaney** will send a copy to **Ms. Balsam**, and she'll distribute it.

**Mr. Hylton:** Are there any other comments on these cases? (None). So we move to a motion to accept these cases.

**Mr. Hernandez** moved to accept; **Mr. Carver** seconded the motion.

**Members concurring:** Mr. Carver, Mr. Roche, Mr. Hernandez, Mr. DeLaney, Ms. Torres, Chairperson Hylton

**Members abstaining:** 0

**Members absent:** Mr. Barowitz, Mr. Schachter

**Mr. Hylton:** There's one case on the Master Calendar

Ms. Leveille presented the case.

	<b>Applicant(s)</b>	<b>Address</b>	<b>Docket No</b>
8	Fiona Campbell Stone, Peter Aleksa, Bernard Walker, Vlad Teichberg, Jason Beckford, Stephen A. Westbrook, William Foster, Nico Haupt and Arik Macandreas	13-15 Thames Street, Brooklyn	TR-0889

**Mr. Hylton:** Does anyone have any comments on this case? (None). Do we have a motion to accept this case?

**Mr. DeLaney** moved to accept; **Mr. Roches** seconded the motion.

**Members concurring:** Mr. Carver, Mr. Roche, Mr. Hernandez, Mr. DeLaney, Ms. Torres, Chairperson Hylton

**Members abstaining:** 0

**Members absent:** Mr. Barowitz, Mr. Schachter

**Mr. Hylton:** Then returned to the discussion of the rules in Chapter 2.

**Ms. Balsam:** We had ended the last time with a discussion of a proposal by Mr. DeLaney to change 2-08(k) to provide for inserting the words, “illegal operation,” into the rule, and we had an extensive discussion about why it might or might not matter. The main question was whether or not an illegal operation should trump a residential application for IMD status. We were asked by the Board to see if we could compose a definition, and we spent quite a lot of time trying to, at first, determine what “in legal operation” would mean, and there are many possibilities. But given the fact that the law did not pass yesterday, we think our time would be better spent on issues we can actually deal with, since this rule would only apply prospectively, and we can still no longer take coverage applications. So we would prefer putting this aside and moving on to other things.

**Mr. Hylton** confirmed with Ms. Balsam that the Board can return to this at a later date.

**Mr. DeLaney:** Could you expand on your thinking with regard to that kind of change being prospective?

**Ms. Balsam:** rules are usually passed prospectively, and they apply to new cases; they don’t go back in time and apply to old cases.

**Mr. DeLaney:** And the dividing line between new case and old case would be the application date?

**Ms. Balsam:** It would be for applications submitted after the date the new rule goes into effect.

**Mr. DeLaney:** Therefore, in your view, should the Board decide to include that language, that would not apply to any case that’s currently in discussion at OATH.

**Ms. Balsam:** Correct.

**Mr. Carver:** Can we get some legal research on that proposition? Because I think the way effective dates are addressed somewhere in the rules, a rule change *would* apply to a pending case.

**Ms. Balsam:** You can have a rule the effective date of which becomes active at a future point, but rules don’t go back in time. Normally, you publish a final rule, and it’s effective 30-35 days after that. Unless the Mayor signs a Statement of Need. But you could, theoretically, enact a rule that says it will take effect in a year. (Gives an example of a prospective rule from DEP).

**Mr. Carver:** I was thinking of your proposal to change the standard/ burden of proof –that would *not* apply to a pending case?

**Ms. Balsam:** No. Or at least if it would... No one has told me that. We haven't contemplated that, and we can have someone take a look at it.

**Ms. Torres-Moskovitz:** At the last meeting, you raised this issue (burden of proof), because there were a lot of cases stuck in OATH, dealing with that issue? And you're saying that even if we wrote the rule, it wouldn't help...

**Ms. Balsam:** It wouldn't help pending cases.

**Ms. Torres-Moskovitz:** So when you mentioned that, you were just thinking for the future?

**Ms. Balsam:** That was the impetus for proposing the rule to begin with. When a new rule is passed, you have a vision of how it will play out, but sometimes it doesn't work that way, which is why you can revisit rules. So here was, perhaps, an example of this. But if we change it, it won't look back in time. There are all kinds of reasons for that, including the fact that people have made decisions based on what the rules were at the time.

The Loft Law was a remedial law, so the Legislature can enact a law that looks back, which they have done here. But as far as I know, we don't have the authority to do it.

We'll do the legal research on the effective dates. I'd like to table this discussion for now and move on to other things.

**Mr. Hylton** asked if all the Board were OK with this. (Yes)

**Mr. DeLaney:** Before we move on, in the private meeting, I had asked that the discussion we had about how we're going to take things up and in what order be recapped in the public meeting.

**Ms. Balsam:** Yes. The plan for this meeting was to talk about 2-08 (k), and then Mr. Carver's proposal for 29 RCNY 2-01, which we had talked about last time. He said he would send something, and he did. And then, hopefully, move on to 2-09 (b), which are the protected occupancy rules. Which brings us to Mr. Carver's proposal.

**Mr. Carver:** It's a four-page proposal, and much of it is clean-up. But the substance of it is on the bottom of page 3. There are 2 lines stricken, and the sentence I'm proposing that we strike is, "The applications for extensions of the deadlines will be limited to one." And I'd like to offer some background supporting why I think we should strike this.

The legalization milestones in the Loft Law are so short that many of the owners can't meet them. The legal consequence of that is that the Tenants do not have to pay rent. Human behavior being what it is, if you don't have to pay something, you might not. The failure to pay rent leads to a lack of income on the owner's part and the inability to do the work required to legalize the building. We have buildings that languish here at the Loft Board for years, if not decades, some go bankrupt in the meantime.

The law gives the Board the power to grant extensions, but only if the owner meets a two-pronged test. One is for reasons beyond the owner's control; the second is that the owner must demonstrate good-faith efforts to satisfy the milestone. I'm not proposing that we alter a standard, nor can we. But the Loft Law contains no limit on the number of extensions that can be granted to an owner who satisfies these requirements. Yet our

current rule imposes a limit of one extension per milestone. There are lots of reasons beyond the owner's control why he may not be able to meet a deadline, and they're often independent of each other. So our current limit of one extension is not reasonable, because it jeopardizes the situation of an owner working in good faith if he runs into more than one obstacle. The current rule also incentivizes the tenants who prolong the situation.

So my proposal is to eliminate the cap of one extension, and have no limit, provided, of course, the owner meets the two aforementioned standards. The proposal is consistent with the law, which has no limits, and it's in the public interest, because it will insure that the rent flow, which is the money required to legalize, is not interrupted.

Many of the problems owners experience in legalizing really boil down to this one sentence in the rule, because it can cut off funds, and it incentivizes a tenant who does *not* want to see legalization to delay.

There's one other issue of substance, on page 1. I'm asking that the 90-day time frame currently granted owners to show their good-faith efforts be extended to 120 days. One of the main reasons for this is the delays often experienced obtaining required information, etc. , from architects.

But the substance of the change is to strike the one-extension limit per milestone.

**Mr. Hylton:** And you're asking for unlimited?

**Mr. Carver:** As long as the statutory standard is met; because things happen in the future that are independent of things that have already happened. So each time you encounter another problem beyond your control, and you've been acting in good faith, you should be eligible for an extension.

**Mr. Hylton:** Do you see the opportunity for this to be abused a bit?

**Mr. Carver:** No, because this will be controlled by the Board. The owner has to demonstrate reasons every time.

**Mr. Hylton:** Do you have a sense, Mr. Carver, of the magnitude of the problem the owners are facing with regards to rent?

**Mr. Carver:** I've asked a law firm to do a survey of the firms that handle the bulk of those cases, to see what that number is. But my impression is that it will be more than half. (But) I'm not sure if it's half of the *buildings* or half of the *units* that are not in compliance. In terms of the number of buildings that are not in compliance, that can probably be determined by the spread sheet we were talking about, and I assume it's a very large number.

**Ms. Torres-Moskovitz:** You're assuming that in half of those buildings, tenants aren't paying rent?

**Mr. Carver:** No. I'm saying that amongst the buildings that are *not* in code-compliance, my feeling is that more than half are not paying rent.

**Ms. Torres-Moskovitz:** To look at this in reverse, could it be that those buildings are the ones where the owner is not supplying gas, water, basic services?



**Mr. Carver:** I'm only talking about cases where code-compliance is the legal basis. But let's talk about data for a second. Legislative drafting and rule-making isn't always done in response to data. It's based on human behavior. So if a landlord is out of compliance, and as a tenant, you *don't have to* pay rent, we *know* that people might not pay rent. So the fact that I don't have a hard number for you at this moment doesn't change the basic fact that the law allows for tenants to behave this way, should they so choose.

**Mr. DeLaney:** I have to say that I think you've constructed what I would regard as a "straw tenant," and I don't think it's the most effective way to press your argument. Tenants may be on rent-strike, might go on rent-strike, maybe half of them are. I don't think those numbers are correct, although I'd be happy to look at any hard data available. But more to the point, why not give us some examples of the kind of issues that need more extensions? I'd rather hear about the problems the landlords are actually having, than about some tenant behavior that could/ might/ may *possibly* happen.

**Mr. Carver:** I did say the word, "obstacles," and I have four pages of obstacles that I will read to you shortly. The issue of non-payment of rent is a "potential consequence." That is a legal fact.

**Mr. Roche:** To chime in here in defense, if we can roll back the clock a few months, I know I for one, as well as some others, who I can't recall at the moment, had asked to get some of these people in to explain to us what some of these obstacles are – some professionals from the industry, representing the tenant and the owner, so we can find out what some of these obstacles are.

**Mr. Hylton:** Mr. Roche, that was regarding sale of rights, not about this issue....

**Mr. Roche:** With all due respect, we don't know, but it's also something we never followed through with, and now we all want hard data. And this is not the first time we've done this dance -- trying to get hard data. I still think it's a good idea, and various others were in agreement at the time. You remember, don't you Joe? It wasn't just the owners' problems; it was the tenants' problems, too.

**Ms. Balsam:** I want to say that I'm very leery of doing this. It's fine to have a list of things owners are saying they're facing, but in terms of having people come to speak, there's the possibility that the speaker will digress into talking about pending cases, and that would be very bad, because then you would all have knowledge that you're not supposed to have, and so you wouldn't be able to vote on the cases. I understand where you're coming from, but maybe we could just get people whose cases are done.

**Mr. Roche:** We need to come up with another mechanism for obtaining some of this hard data, which we seem to keep kicking down the road. It's difficult to contact a law firm that represents tenants or owners, and ask them to take some of their billable hours and do us a favor and throw some hard data together. Then we'll have the data, but we won't have anyone to question about how that data was arrived at.

**Mr. Hylton:** Can staff comment about this? Is this something that staff find helpful in making determinations?

**Ms. Balsam:** Yes, that's definitely true.

**Mr. Hylton:** Does it happen a lot?

**Ms. Balsam:** It happens enough that it bothers me. What we're talking about people – owners – who are doing what they're supposed to do. It gets confused, because there are those who are *not* doing what they're

supposed to do, and my understanding is, that at one point in time, there were a lot of abuses of the extension process. I understand that this is a reaction to that, but if you have owners who are trying and tenants who are working with them, I don't see a problem with granting an extension, rent aside. I feel that someone who's doing what they're supposed to do should have the opportunity to continue doing that.

**Mr. Hylton:** Mr. Carver, can you talk about some of the reasons, the obstacles?

**Mr. Carver:** (Lists reasons). If the building requires landmark approval. If it requires a variance from the BSA. If the landlord is denied reasonable access to a residential unit. If an architect takes too long to complete something, even when they know there's a deadline, and they're paid well to do the work. A serious health issue of the architect, resulting in prolonged absence, can cause a significant delay. The need to appeal a Building Department or BSA decision. The owner's financial hardship, and the time required to apply for loan. Elevator issues: legalizing a freight elevator can be time consuming, because there are not a lot of contractors in this field. Commercial tenants can be an obstacle. Litigation over coverage...can take years, as we've seen.

**Ms. Balsam:** But they can get an extension if it's a recently covered unit. We have that in the rules already.

**Mr. Carver:** But isn't the deadline from the "claim" of coverage?

**Ms. Balsam:** Yes.

**Mr. Carver:** And that litigation could take years. Well beyond the deadline in the statute.

**Ms. Balsam:** No, they would get an extension. Let's say someone filed for coverage in 2015, and we transferred coverage in 2018. It would file within 90 days to get an extension, and assuming they demonstrated good-faith efforts, we would give them an extension past that. So the code-compliance deadline looks back, but the extension would go from the date of the application filed for the extension.

**Mr. Carver:** Is that the "one" extension?

**Ms. Balsam:** Yes, that's the one.

**Mr. Carver:** Well, that's the problem. All these obstacles are independent of each other, and if you've used your "one," you're out of luck. So that's the answer to your question about obstacles.

**Mr. Hylton:** So again, I want to ask, would good-faith mean that you contemplate some of these other issues ahead of time? I don't think it's "good faith" if you don't anticipate that there are going to be other issues going forward.

**Mr. Carver:** That term, "good faith," is vague, probably intentionally, to allow for possibilities we might not think of right now. But if you think the reg should have examples of good faith, that's something we could work on.

**Mr. Roche:** Mr. Chairman, what I think you're saying is that you're leaning towards granting the Executive Director the leeway to grant extensions as required.

**Mr. Hylton:** Not me, the Board.

**Ms. Balsam:** So you know how it works now: The owner files a request, which is served on the tenants and other affected parties, who have the right to answer. After the answer period, it goes to the Executive Director, and I examine the record and the Loft Board records. If it's a new owner or a newly covered unit, I'll look at the 90 days, then I make an administrative determination based on that. And good faith is going to vary from case to case, depending on a variety of factors. For new owners, who came over after the deadlines have passed, obviously, there are circumstances beyond their control. For newly covered units, that could be an issue. That's basically how it works. It goes out in letter form as an administrative determination, and it's appealable to the Board. You've seen some of that, and we'll be seeing more of it in the future. So we're basically doing a case-by-case analysis now.

**Mr. DeLaney:** My question was going to be along the same lines. Are you getting lots of requests for extensions?

**Ms. Balsam:** We have a handful. 12 -15. Certainly, if we change the rule, we'll get a lot more.

**Mr. DeLaney:** Drawing on Mr. Carver's theory of human nature, that tenants who don't have to pay rent may not pay rent....

**Ms. Balsam:** I don't know if that's true.

**Mr. DeLaney:** I don't know if it's true either. I think it's baloney. But similarly, I would think you'd get a number of owners who didn't know, thoroughly, that they couldn't get a second extension, at least trying to get a second extension.

**Ms. Balsam:** We've had people file for second extensions, and I've decided it on that basis – that you can't get a second extension. I think we have a court case pending now on that issue.

**Mr. DeLaney:** And would you say you've gotten 5 of those in the past year? Or 50?

**Ms. Balsam:** I don't know that it's even 5.

**Mr. DeLaney:** When you said 12-15 requests, is that currently pending? Or per month?

**Ms. Balsam:** I don't know how many we have currently pending. There may be 1 or 2 that are still in the answer period, but as far as I know, I think we're pretty up to date.

**Mr. DeLaney:** So it's not like we've got a 1000 cars trying to go through the tunnel, and there's only 2 lanes...We're not swimming in extension requests?

**Ms. Balsam:** No.

**Mr. DeLaney:** And your proposal doesn't add to the grounds for seeking an extension, and it doesn't change the standard, but it doesn't seem like there's a problem here.

**Mr. Carver:** Everybody's already used their one. That's the problem.

**Mr. DeLaney:** How many is "everybody"...has already used their one?

**Mr. Hylton:** Let me just clarify what Helaine said. She doesn't have a lot of requests, but if the rule were to change, she expects there would be a lot more. Meaning, people may not now be applying for more because they know they are only allowed one. If people know they can apply for more, they will.

**Ms. Balsam:** Can I also say that we have had situations where both the owner and the tenants agree that there should be another extension, but I can't legally grant it, because the rules say there can only be one. So I do feel that more flexibility would be better, but it's your decision, and I'll abide by whatever that is.

**Mr. Roche:** It seems to be me that the meeting ground on this is to keep the 90 days, but grant the Executive Director more flexibility in how many extensions she can grant. (He reads the language from the rule about the one extension). Mr. Carver is asking for that to be stricken and that we give the Executive Director the power to grant a second extension. That seems like the win-win situation.

**Mr. Hylton (and various):** If you strike this, you're eliminating the idea of a "limit" on extensions, and leaving it to the discretion of the Executive Director.

**Mr. Hylton:** Helaine has expressed her support for having a little more discretion on extensions, so...

**Ms. Cruz:** I want to give the Board some context on the rule. While I was not the author of the rule, I recall the conversations that lead to it. At the time the Legislature entertained the Loft Law, they would extend the code-compliance deadlines, so the Legislature was giving the owners the extension in the statute. The Legislature was fond of extending the last 2 deadlines -- the 7B and the C of O deadline -- so we weren't seeing a lot of requests for extensions, because it was being done by the Legislature. That's why the language in the rule talks about amending the code-compliance schedule, because it was being amended by the Legislature. My other point is that the Board was frustrated by the prior rule. There were 3 types of extension applications, and I don't recall the exact time frame within which the owners needed to apply, but I believe it was 1 extension for less than 30 days, then 1 for 30 and 90 days, and then there was another type for a year. And the Board was very frustrated by the abuses and the frequency of these applications, which is why they came up with a limit: one extension and one type of application. That's my recollection of what happened, and I believe this was around 2006.

**Mr. DeLaney:** I agree with your discussion, but there is one other factor that should be taken into account, which is, at the time, owners were applying for extensions two years after missing the deadline. It was all over the place, and people were asking for long extensions for small problems. It was a mess. But now, to be clear, the current standard is one extension for four milestones.

**Ms. Balsam:** It depends on what they ask for. Not everyone asks for extensions for all of the milestones. But if someone does, we would grant it. And we usually grant the extension for all the milestones from that one application. The rule isn't exactly worded that way. Technically, they're supposed to apply for the first one, then come back and ask for the second, for the third. But we haven't been doing it that way, and I didn't feel comfortable upsetting the apple cart.

**Mr. DeLaney:** (Compares the application process to the time-outs a coach can call in sports)

**Ms. Balsam:** Yes, you could file an extension for one milestone, and then you could come back -- *before* the first one expires -- and say, now I need extension for the permit....

**Mr. DeLaney:** So if I play the game right, I could have four extensions, not one.

**Ms. Balsam:** Yes, but the total amount of time you would get would never exceed the maximum amount allowed by the statute. So if you came back four times, and you have 36 months to legalize, you would only get 36 months, no matter what. We're not going to exceed the maximum amount of time allowed under the law for the legalization process. Does that make sense?

**Ms. Torres-Moskovitz:** Could you explain the maximum amount of time? Because it's really slow to get these projects to their final C of O. So is there actually a time limit?

**Ms. Balsam:** If you read section (284), it talks about extensions. Unfortunately, the last one the Legislature passed is really hard to read, but it's roughly a 30/36-month period of time to get all this done. In general.

**Ms. Torres-Moskovitz:** But we're over that for the 2010...

**Ms. Balsam:** Yes, we are. Basically, nobody's in compliance. Unless they're a new owner or a newly covered building that has applied for an extension and has been granted one. So very few owners are in compliance.

**Mr. Carver:** I have a chart I'd like to read. I believe you have only 9 months from the claim of coverage, to file your Alt1, and get your plans through the Loft Board and the Building Dept. And then you only have 12 months from that same claim of coverage to complete the narrative process, clear all the DOB objections, and get a permit. So it's that 12 months that's just impossible.

**Ms. Balsam:** The way it reads now is, for an application that's filed after March 11, 2014, within 9 months of either the date of the initial application for coverage or the date of the Loft Board's issuance of an Interim Multiple Dwelling number or the date of the service of the pleading, whichever is earlier.

So for example, we had a building that applied for extensions, and when we looked in the Loft Board's records, there had been an application for coverage – in the '80s or the 90s? – which was eventually withdrawn, but *that was* the date of the initial application for coverage, so 9 months from then would make no sense at all, but that's what the law says, so it's a problem.

**Ms. Torres-Moskovitz:** I understand it's a problem to resolve, but I don't think that granting landlords extensions will move us any faster toward public safety and C of Os.

**Mr. Hylton:** Well, if you look at legalization as moving towards public safety, and the landlord is working in good faith, then I don't think granting him an extension to do that is posing an obstacle to health and safety.

**Mr. Hernandez:** Unique circumstances in any of these situations may require an extra period of time for the Department of Buildings or any of the regulatory agencies to play a role. I'm concerned that we're limiting the amount of time. If something is in an older building, it can be easily addressed without multiple reviews. We're limiting our opportunity.

**Ms. Torres-Moskovitz:** I'm just trying to understand the essence of the issue, because if every building ("many" Ms. Balsam corrected) is not in compliance, and if Carver's asking for an extension that either Helaine can grant, or unlimited extensions, and idea I don't like...

**Mr. Carver:** If you meet the standard. Not any owner, but one who encounters circumstances beyond his control, *and* is operating in good faith.

**Ms. Torres-Moskovitz:** What's the penalty for going beyond the extension?

**Mr. Carver:** You can't collect rent. I know you don't like hearing it.....

**Ms. Balsam:** They can also be fined.

**Ms. Torres-Moskovitz:** Withholding rent is a condition that's based on a desperate situation, and if we actually had a quantifiable number --- I spoke to Arthur Atlas, who has 40 buildings, and he thinks there might be one in which there is a rent strike. I think if we actually looked at the statistics, we'd see that this only occurs in a very small percentage of the total number of buildings, and in desperate situations.

**Mr. Carver:** This is different from people who are lawfully withholding rent for other reasons. You're mixing the two up.

**Ms. Torres-Moskovitz:** Ok, maybe I am. Can you explain that?

**Mr. Carver:** If an owner misses a deadline, he has no legal right to take a tenant to court who's not paying rent, for *this reason*. Housing maintenance is a different issue, and that survives this.

**Ms. Torres-Moskovitz:** Again, what are the stats on that number? It's got to be 5 cases, and you're saying 50%. The two numbers are so different...It's not fair to entertain this without some sort of quantification.

**Mr. Roche:** And with all due respect, that relates to my point about how this is going to keep playing out. Mr. Carver can come back with stats, and some of us are going to dispute how he came up with them. And this is just going to keep going back and forth. Either we have to find a common ground or we have to find a way to obtain hard data in advance that will satisfy everyone. Otherwise... law firms are not going to be eager to set aside billable hours and put someone on a project compile information for the Loft Board within 30 days. And if those numbers are challenged by an owner's rep, what happens? We go back to that attorney and ask him to substantiate his findings? It's just not realistic.

**Ms. Torres-Moskovitz:** Does the Loft Board have a way to know how many buildings are on rent-strike? I feel like it's very small.

**Mr. Roche:** I just don't see how we're going to satisfy everybody at this assembly.

**Ms. Torres-Moskovitz:** I could figure it out. You talk to a couple of architects who are handling the vast majority of the jobs, or lawyers from the different sides, you sit them down and say, out of your 40 or 60 projects, how many have (tenants withholding rent).

**Mr. Roche:** That's what I alluded to previously. Having the experts to sit down with .

**Ms. Torres-Moskovitz:** They're not necessarily experts.

**Mr. Roche:** An architect that doesn't deal with loft buildings wouldn't do us much good. One that does would be an expert on the subject, right?

**Mr. Hylton:** Ms. Balsam wants to say something, but I just want to jump in, because we need to move on. I think it's not so much about raw stats, which can be interpreted in a million and one ways, but about what the experts -- meaning the staff -- know about the process. Perhaps things have changed so much since 2006, that we need to adjust for the process. I'm not in favor of "unlimited," but we have to be able to come to some mutual ground, something reasonable, so that we can move the process along on both sides.

**Ms. Balsam:** I think we should get off the issue of rent. That's not what this is about. This rule is about allowing somebody who is doing what they're supposed to do to continue to do that, and giving them the benefit of the Loft Law. That's what this is about. The only people who are going to benefit from this are the owners who the Executive Director determines are doing what they need to do. There are many owners out there who are not making good-faith efforts, who will not be able to prove that there were circumstances beyond their control. On the other hand, we have buildings that have languished for years, which now have new owners, who were granted extensions. They are moving forward, but they are no longer in compliance, because we can't give them another extension. Those are the people who will benefit. So I ask the Board to think about that -- a way to bring these people into compliance. I think focusing on the rent issue is the wrong place to be.

**Ms. Torres-Moskovitz:** I'm just reacting to the way Mr. Carver introduced the topic, that if we strike this sentence, then landlords can recoup rent. Is that true? Is this the one sentence?

**Ms. Balsam:** If we strike the one-extension sentence, then owners who are doing legalization work, and who cannot meet their compliance deadlines for reasons beyond their control, can get more time. And yes, they will be in compliance with the law, and an ancillary benefit to them is that they will be allowed to continue to collect rent. But, before you even get to the issue of rent, you have to determine if this is an owner who's doing what he or she needs to do.

**Ms. Torres-Moskovitz:** But it's been established that there are many buildings out of compliance...

**Ms. Balsam:** But there could be many reasons why they're out of compliance. And there are a lot of buildings that are out of compliance because the owners have done nothing, and they're not going to get extensions, even if we change this. But there are people who have just purchased a building, who are working in good faith, but the deadlines have already expired, and they've already used their one extension.

**Mr. Hylton:** Again, this is only about code-compliance.

**Mr. DeLaney:** Can we look at this from another angle? I am the first to acknowledge that there are bad actors among both tenants and owners. I'm sure there are some tenants out there who would say, Oh, I don't have to pay rent; I'm not going to pay rent. I think it's probably not a large number. But in terms of the people who are doing what they need to do. No matter what we could do in terms of the number of extensions, there is a limitation on the time in which the work would have to be done, right?

**Ms. Balsam:** Yes. I don't think I can give more time than what is allowed in the statute. But at least I could give someone time within that time frame. There are new owners who've come in for an extension for a permit, but they couldn't get it by the deadline. So if they had one year to get a permit and 2 years to achieve 7B, I could give them another 6 months. And I'm not so easy in granting extensions.

**Mr. DeLaney:** So is that 24 months to 7B, or 18 months?

**Mr. Bobick:** 18 months from the outside date of the permit, which is set by the statute.... So they're getting a lot less.

**Mr. DeLaney:** So in what we could do to help such a person, there are only so many months we can allocate, whether it's one extension or five.

**Ms. Balsam** agrees.

**Mr. Hylton:** Is that saying there's a limitation to any abuse?

**Mr. DeLaney:** So giving multiple extensions is just a band aid. If the timetable outlined by the Legislature is unreasonable, this doesn't solve that problem.

**Ms. Balsam:** No, it doesn't totally eliminate the problem. I would agree with that.

**Ms. Torres-Moskovitz:** I think I've heard suggested before that there be training for the landlords, so they understand how they are supposed to operate within the milestone system. A workshop. I'm all for landlords getting buildings through the system, and there are good players, but there are also ones not doing what they're supposed to, or that don't understand it.

**Mr. Hernandez :** We keep saying we're giving extensions. We're not giving "extensions." We're giving the Executive Director the discretion to grant them.

**Mr. Hylton:** But striking this language would give her the ability to do that; to grant more than one extension, if certain criteria were met. Right now, she can only grant one extension.

**Ms. Torres-Moskovitz:** I would suggest that we grant a limited number of extensions, maybe 2, not unlimited, and that we address the problem at its heart, which is get landlords to understand the milestones. I don't think that an architect not doing their work should be cause for an extension...

**Ms. Balsam:** I didn't say that that would be a circumstance beyond their control.

**Ms. Torres-Moskovitz:** I'm an architect, and if you were paid, making the deadline shouldn't be an issue. I've worked with DOB for years, and you can make these deadlines. I understand that there can be difficulty along the way, but if the point is to make these building legal, safe, and moved through the system, I don't think we should give unlimited extensions.

**Mr. Carver:** I have language in here that I think addresses that.

**Mr. Hylton** concurred.

**Mr. Bobick:** Just to note: For an owner to get an extension, he has to file for it prior to the expiration of that deadline. So taking this out won't help those owners who are already out of compliance. Per this rule, an owner who gets an extension could then file for another extension prior to the expiration of what has already been issued. So this won't help everyone. Only a very select few, who are in compliance with either the old



statute, the new statute, or with an extension Ms. Balsam has issued. It will only help a select few who are doing the right thing. That's based on the statutory standard.

**Ms. Torres-Moskovitz:** And it's only in the future, because we're not affecting current cases?

**Mr. Hylton:** It's procedural, so would it affect current cases?

**Ms. Balsam:** If there were pending extension applications at the moment, and we changed the rule, it would not affect them. It goes by the date that application was filed. So it would only apply to applications made after the rule goes into effect. If someone had already filed, they're stuck with the one.

**Ms. Torres-Moskovitz:** I'm wondering why we're talking about this now, still, because it seems to only affect a small amount of people, and the last rule was set aside because it only affects a small number.

**Ms. Balsam:** No, the last rule we can't do anything about, because we can't get coverage applications. So it won't affect *anybody* if we change that rule at this point. If the Legislature had acted, and opened up a new Window Period, it would have been different. But in this case, you have people who would be affected, both owners and tenants. And it's terrible to be in a situation where you have someone who really wants to do the right thing, but will not be in compliance with the law because we're limited.

**Mr. DeLaney:** And this person who wants to do the right thing, they still continue working? There's nothing stopping them?

**Ms. Balsam:** Yes, they still continue working.

**Ms. Torres-Moskovitz:** So why do you feel bad for them?

**Ms. Balsam:** It's not a question of feeling bad; it's a question of them being able to get the benefit of the law.

**Mr. Hylton:** The law doesn't restrict; our rules restrict.

**Ms. Torres-Moskovitz:** What are they losing by not being in compliance? The work is going forward. The tenants are paying rent.

**Mr. Roche:** Assuming they still have an income stream to do the work.

**Ms. Torres-Moskovitz:** Right, but I'm pretty sure the problem is less than 5%.

**Mr. Roche:** But if less than 5% impacts the income stream, and thus the ability to go forward and address the safety issues, then it is a problem, and it is a concern.

**Ms. Torres-Moskovitz:** I understand that the landlords hired a lobbyist who's talking about this issue of people not paying rent, but the reality is a different story. I feel like we're sympathizing with some guy (point made about owner being he/she and it), some "it," that I think if we looked at who they are, we'd find that there are the extremely negligent landlords.

**Mr. Hernandez:** I feel like we're picking battles based on whether it's tenants or landlords, and it has nothing to do with that. I'm looking at empowering the Executive Director.

**Ms. Torres-Moskovitz:** I like giving a little bit of power to the Executive Director, but I'm not looking to give too much power to anyone. You have to think about the future, when Helaine's no longer Executive Director. I don't want rules in place that can be abused later.

**Ms. Balsam:** Fair enough.

**Mr. Hernandez:** Well I think we're just going to go back and forth, and not make a decision here.

**Mr. Roche:** I like what the Chairman said. Leave it at 90 days; grant the Executive Director the power to grant further extensions as she sees fit; strike the language that limits it to one. It seems like the only common ground we're even close to.

**Mr. Bobick:** I want to further note that there is case law out there that tenants can use to make the case that the landlord doesn't deserve an extension. Ms. Balsam is not going to make these decisions based on whether she likes someone or not. It's that the owner is doing what he's supposed to, and it will be supported by the case law that's out there. We're not giving unlimited extensions. It's all based on the statute, and what's already out there.

**Ms. Cruz:** The tenants can file an appeal, like owners can file an appeal when they're denied. It will come before the Board, and you can agree with her or disagree.

**Ms. Torres-Moskovitz:** What I'm concerned about is based on your story of 2006, that there was an abuse of these extensions, so the Board reacted. Now I don't want to take it away and introduce more abuse.

**Ms. Cruz:** The Board was reacting to two things: One, the multiple classifications of extensions. I believe owners were filing 60- or 90 -day requests repeatedly, which I believe, at the time, could be done *ex parte* (without the tenant's input). Second, was the Legislature's constant extension of the code-compliance deadlines. So the Board didn't see fit to extend more than once, if the Legislature wasn't extending it, which is what they were doing routinely. But that's no longer the case. The Legislature is no longer, as a matter of course, just extending these code-compliance deadlines. They've stayed constant. In fact, recently they shortened it by six months. I believe that was in 2013. I think the Legislature finally heard the Board.

**Ms. Torres-Moskovitz:** Building codes are always being updated, so I could see someone wanting an extension to make modifications to comply with a new code. And there are new codes coming out. So when you're saying the Legislature doesn't rule that way....

**Ms. Cruz:** At the time, when the law came up for renewal, they would extend the (284) deadlines to some arbitrary date. Now, they sort of tie it to something, whereas before, it was some date in the future. I remember it being the last two deadlines: the 7B and the C of O. These are the two most important deadlines, that deal with safety, so the Board staff was constantly telling anyone who'd listen that the Legislature had to stop doing that, because they were directly impacting the safety of the people living in the IMDs. So that's why, in its rule-making, the Board limited the extension to one per amending code-compliance schedule.

**Mr. DeLaney:** To give some background, I've spent some time going through the various timetables that are set out in 284(1)( i),(ii), (iii). They froze the alteration application and permit requirements for the first time in 1999. Prior to that, for the first 17 years, everything got shifted, which meant, at that point, the owner who'd

done nothing was given a year completely in compliance ticket by the legislature, each time the Loft Law was renewed. In 1999, they froze the alt app and the permit. For the alt app, September 1, 1999 – that’s still on the books -- and the permit, March 1, 2000. They then moved the 7B and CO requirements so far that the ones on the books now from the original buildings, not the expansion, but the original buildings, are June 1, 2012, and July 2, 2012. So they moved those two for a period of 12 years. And this lead to multiple renewals – the Loft Law was renewed several times during that period – which lead to the tenant criticism that all the landlord had to do was get a permit, and then just sit. So it was against that backdrop that the extension situation was reviewed. I want to say it was earlier than 2006. But you’ve been here quite a while, Ms. Cruz...

**Ms. Cruz:** This particular version of the rule that we have now was definitely passed in 06, that I can tell you.

**Mr. Hylton:** We’ve spent quite a lot of time on this, so unless somebody really needs to say something, can I make a suggestion? Mr. Carver, as I mentioned, I don’t agree with unlimited extensions, but would the Board be amenable to making an application for extension of the code compliance deadlines that would be limited to 3 extensions per deadline. Is that something we could work with?

**Mr. Carver:** I think it’s better to look on page 3, where the language I had crossed out, which is the heart of the matter, the new underlined language I’m proposing, is giving the staff the ability to set the time frame of the extension to reach the next milestone. That means you don’t have to worry about “number of times.” This way, the staff is setting it up so that the owner can meet it, and if another one of these obstacles comes up, then the owner would have to ask again. I don’t know that an arbitrary number is meaningful in this context.

**Mr. Hylton:** But doesn’t the owner have to manage his own property? My point is, why should we think about it for the owner? Once the owner gets the extension, he should manage the project to meet that extension.

**Mr. Carver:** The owner will be asking for a specific time, but you would have the authority to accept that, make it longer, or make it shorter, depending on (the discretion of the Executive Director)

**Mr. Hylton:** Why would the Executive Director extend the time period an owner is asking for? Then the Executive Director would be doing the owner’s work for him.

**Mr. Carver:** If you don’t want flexibility....

**Mr. Hylton:** So an owner comes in and says, I need 2 months. Why would the Executive Director say, I’ll give you 3 months?

**Mr. Carver:** I’ll give you 3 months so you don’t have to come back.

**Mr. Hylton:** But if you have to come back, then you’re not acting in good faith.

**Ms. Balsam:** To the extent that staff caused a delay in granting the application – sometimes it can be a few months -- you might want the flexibility to grant a greater amount of time. Or simply have the extension run from the time it’s granted.

**Mr. Hylton:** Ok, we can work on that, but I’m not in favor of the Director just being able to give you more time than you asked for.

**Mr. Carver:** What if circumstances have changed while the application is pending?

**Ms. Balsam:** For example, September 11 or Hurricane Sandy.

**Mr. Hylton:** Ok, let's carve out some language here.

**Mr. DeLaney:** But wait a minute. If that were the case, if there's more than one extension application allowed, one approach would be filing another (application). Because I've been reading for a while now the language you proposed about "the Executive Director will grant an extension deemed reasonably necessary considering the totality of the circumstance" for the owner, which sounds like the Executive Director has to be a mind-reader.

**Ms. Balsam:** The owner would have to say, here's what I need, in terms of amount of time. And since the tenants will be on notice, which they didn't used to be under the old rule, the tenants would have the right to come back and say, oh that's ridiculous. The owner shouldn't need that amount of time.

**Mr. Carver:** I have to tell you also, these words are very familiar to lawyers, and it's not unreasonable to use them in the definition of the standard.

**Mr. DeLaney:** Even not being a lawyer, I understand "reasonably necessary." "Totality," though, is one I haven't encountered that often.

**Mr. Carver:** That's pretty typical.

**Mr. Hylton:** If we don't agree with this addition, the underlined piece here, do we agree with 3 extensions per deadline?

**Ms. Torres-Moskovitz:** Two. Three starts to get ridiculous.

**Mr. Hylton:** Did anyone read that last draft of the bill that was before the Legislature? It included language about unlimited extensions. And that language was the result of some kind of deal between the owners and the tenants. I'm not saying I like it, but if it was law, then that would have been law. I think whether it's 3 vs 2, it's still way better than unlimited.

**Ms. Torres-Moskovitz:** I agree with you about giving the Executive Director more power, but I'd like it to be capped.

**Mr. Hylton:** If this moves into law, then I think it gives a lot more than just one extension.

**Mr. Carver:** Of course. Anything's better than one extension. But in all honesty, plucking numbers out of the air, when I've established a standard...and again, because life happens; you encounter unforeseen obstacles. And it may be more than 1, or 2, or 3, and the fact that the tenant advocates in Albany pushing the bill have no problem with the lack of limit speaks volumes on this issue.

**Mr. Hylton:** I can't make a motion, but I would like to put the limit of 3 to a vote.

**Ms. Torres-Moskovitz:** Do we have to vote on this?

**Ms. Balsam:** If you want us to change/draft a rule...

**Ms. Torres-Moskovitz:** I'd like an extension to study this

**Mr. Carver:** It's not a final vote; it's just to keep it moving.

**Mr. Hylton:** The final draft would come around again.

**Ms. Balsam:** Pursuant to the Loft Board rules, we can't publish proposed rules in the City record until the Board signs off on the language. So this is just, are we going to deal with this? And how? That's what you're voting on. Does that make sense?

**Mr. DeLaney:** I would support for discussion purposes later on – 2. And when we get to public hearings, let owners come in and make their case why 2 are not enough.

**Mr. Hylton:** If I don't have a motion on the table, then someone should make a motion.

**Mr. Carver:** So how many votes do we need?

**Ms. Balsam:** Five. The majority of the Board, as called. So 5 of 8. To clarify: The motion should be to add this to the proposed rule with a limit of 2.

**Mr. Roche:** But my point is that if it passes, then the people who support 3 never have a chance.

**Mr. Carver:** Well let's just go around the room without voting, and see where we stand.

**Mr. Hylton:** So by a show of hands, a straw poll: How many would support 3 extensions? So 4 of 6. But that doesn't pass, because you need 5.

**Mr. Carver:** Well, let's wait for more members next time.

**Mr. Roche:** Which would give Julie what she was asking for. More time to ponder this.

**Mr. DeLaney:** Well, let's talk about that concept. Last meeting, I had something on the floor, and we decided not to vote on it because 2 members were missing. Two members are missing now. Mr. Schachter has missed 2 of the last 4 meetings. If we say let's not vote until everyone is here, we're going to need extensions. Even if we said 17 per milestone, our hands are still tied as to how much time we can give.

**Mr. Hylton:** Mr. DeLaney, the motion did not pass. Do you have a motion?

**Mr. DeLaney:** Yes.

**Various:** But that wasn't really a motion, it was a straw poll.

**Mr. Hylton:** Do you want to go to an official vote then?

**Mr. DeLaney:** No.

**Various** comment on how to proceed with the vote.

**Mr. Roche:** But do we really need a motion just to get a consensus?

**Ms. Balsam:** Perhaps you should vote on whether to even add this to the proposed rule and then worry about what it will say exactly.

**Mr. DeLaney:** I feel differently. I think there's merit to the argument that owners might need more than one exemption. I don't accept any of the language here about the "totality of the circumstances," etc., but I would be supportive of changing the language stricken in this proposal, the third and second to the bottom lines: "applications for extensions of the code compliance deadlines will be limited to one extension per deadline," change to, "will be limited to 2 extensions per deadline in the amended code-compliance table," and I'm making that a motion.

**Ms. Balsam:** His motion is to keep the rule as it is, except change "1" to "2," correct?

**Mr. DeLaney:** Right.

**Ms. Torres-Moskovitz:** So what about the Executive Director's powers?

**Ms. Balsam:** The Executive Director is going to decide no matter what, because that's who decides extension applications. The Board decided that years ago. The question is, can the Executive Director decide for 1 or 2 extensions.

**Ms. Torres-Moskovitz:** And what about all the other parts of Carver's proposal?

**Ms. Balsam:** Mr. DeLaney's motion is to reject everything except the change of that line to read "2" extensions per deadline instead of "1."

**Mr. DeLaney:** With due respect to Mr. Carver, who said that there are other aspects of just "clean-up" language, I'm happy to review them.

**Mr. Hylton:** Is there a second to Mr. DeLaney's proposal? And that is just changing the extensions from 1 to 2. No, so we don't have a second.

**Ms. Torres-Moskovitz:** It seems like we're rushing into this, if we haven't even reviewed the rest of the language.

**Ms. Balsam:** Can I just say that without a vote to even consider this as part of the proposed Rule, there's no reason to discuss anything else. Why talk about the rest of it, if the Board isn't willing to entertain making part of the proposed rule? Right? That's what we're talking about. Do we want to continue to talk about this – the proposed limit of 2 extensions per deadline? Do we want to put it into the proposed rule and move forward? We can still go back and talk about the rest.

**Mr. DeLaney:** I'd like to withdraw my motion, and instead suggest, if it's not too much work: a few years ago, there was a summary of extensions in the past year. I think it would be helpful for us to know about how many extension requests there have been in the past year or two. Four, 40, 400? And of those, how many were granted. So we have some idea of how the system is currently functioning.

**Ms. Balsam:** Fortunately, it's the perfect time of year for that, because we have interns. And I would suggest that we go back to September of 2016, because that's when I started.

**Mr. DeLaney:** I second that suggestion.

**Mr. Hylton:** So there's no motion on the table. We'll pick up with rule-making at the next meeting?

**Mr. Carver:** Yes, I'd certainly like to talk about the changes. I focused on the substance today.

**Mr. DeLaney:** Mr. Chairman, I have one request. In the private meeting, I raised the question of how, going forward, members with suggested language could/should submit it to the Board. When I suggested some language changes, I sent it in weeks in advance. When the Mayor suggested language changes, they came an hour before the meeting. Can we come up with some protocol? We have a section in Chapter 1 that allows the public to petition the Board for rule-making. And I have the feeling we're going to see more suggestions coming in, either from Board members or from the public.

**Mr. Hylton:** Are you suggesting that the Executive Director draft a set of protocols for material to be submitted to the Board for consideration?

**Ms. Balsam:** If I could get input from the Board members as to how long of a lead time you think you need? Of course, that will depend on the nature of the document...but a general sense?

**Ms. Hylton:** If you could do that within the next week, so she has some time to put the document together, and she'll bring that to the Board for discussion next time. Is that alright?

**Mr. DeLaney:** Sure.

**Mr. Hylton:** This will conclude our June 21, 2018 Loft Board meeting. Our next public meeting will be held at 22 Reade St, first floor, on July 19, 2018, at 2:00PM.

The End