

MINUTES OF PUBLIC MEETING  
New York City Loft Board Public Meeting  
Held at 280 Broadway, Third Floor Conference Room

October 18, 2018

**The meeting began at: 2:00 pm**

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

**INTRODUCTION:**

**Chairperson Hylton** welcomed those present to the October 18, 2018, public meeting of the New York City Loft Board. He then briefly summarized Section 282 of the New York State Multiple Dwelling Law, which establishes the New York City Loft Board; and described the general operation of the Board as consistent with Article 7-C of the New York State Multiple Dwelling Law.

**PRESENTATION OF THE RESOLUTION HONORING CHIEF RONALD SPADAFORA**

**Mr. Hylton:** As you know, Chief Ronald Spadafora, the Fire Department designee to the Loft Board, passed away earlier this year, due to 9/11-related injuries. To honor his service and commitment to the Loft Board and to this great city, the Board adopted a resolution establishing a Certificate of Service Award, in his name, for members of the Loft Board or Loft Board staff, who demonstrate a similar commitment in service to the Loft Board and to the people of the city of New York.

Since having every member of the Loft Board make comments is not practical in this setting, the Board asked Mr. DeLaney, the tenant representative, who is the longest serving member on the Board and who knew Chief Spadafora when he was first appointed to the Board, to prepare a tribute in his honor. Mr. DeLaney has asked me to read this on his and the Board's behalf, and I'll do so now.

**(The text of the testimonial is attached).**

**Mr. Hylton:** At this time, we acknowledge the presence of Chief Spadafora's close partner, Rhonda Shearer, and his brother, Nicky Spadafora, with us today. Also in attendance are Chief Inspector Andrew Kaczynski and Executive Director for Administration and Planning, my friend, Robert Rampino, as well as Counsel for Co-Development, Kelly Car, with us today from the Fire Department.

And now, on behalf of the Buildings Commissioner, Rick Chandler, Chair *ex officio* of the New York City Loft Board, here to present this resolution to Chief Spadafora's family, is the Deputy Commissioner of Legal and Regulatory Affairs for the New York City Department of Buildings, Alexandra Fisher, who will also make some remarks.

**Deputy Commissioner Fisher:** I don't think I can add any more – or as kindly -- to Mr. DeLaney's comments. I just want to say that I'm humbled to be able to present this today. I knew the Chief from the Fire Department, and I was very happy when I came to the Building Department, as I was able to work with him there, and also here, when I was chairing the Loft Board on behalf of the Commissioner. I always found him to be extremely kind and thoughtful, and so smart. He will be missed. So, Resolution of the New York City Loft Board, honoring former New York City Fire Department Assistant Chief and Chief of Fire Prevention, and Board Member, Ronald R. Spadafora, adopted July 19, 2018:

“ Whereas the New York State Multiple Dwelling Law establishes the New York City Loft Board and charges the Board with overseeing the timely conversion of interim multiple dwellings from commercial and manufacturing spaces to safe, rent-stabilized residences; and,

Whereas, Mayor's Executive Order 129, dated May 22, 2009, establishes the Fire Commissioner as an *ex officio* member of the Loft Board; and, whereas, on March 18, 2010, the Fire Commissioner appointed Assistant Chief and, subsequently, Chief of Fire Prevention, Ronald Spadafora, as his representative on the Loft Board; and,

Whereas, Chief Ronald Spadafora was the first member of the New York City Fire Department to serve on the Loft Board, and also a loft resident; and,

Whereas, Chief Ronald Spadafora, a forty-year veteran of the FDNY, began a storied career as a fire-fighter at Engine 237 in Brooklyn in 1978, and rose up the ranks until he became Assistant Chief of the Bureau of Fire Prevention in July of 2010; and,

Whereas, Chief Ronald Spadafora responded to the World Trade Center terror attack, on September 11, 2001, and supervised both rescue and fire suppression efforts, and was named the World Trade Center Chief of Safety in October, 2001, for the entire Ground Zero recovery operation, ending in June, 2002; and,

Whereas, Chief Ronald Spadafora died on June 23, 2018, of illness related to the destruction caused by the World Trade Center terror attack;

Now be it therefore resolved that the New York City Loft Board honors him for his commitment to the Board and to the City of New York, and establishes a Certificate of Service Award in his name for members of the Loft Board or Loft Board Staff, who demonstrate similar commitment to the Loft Board and to the City of New York.” Thank you.

**Deputy Commissioner Fisher and Richard Roche**, the Loft Board Fire Department *ex officio* member, then presented a plaque to Rhonda Shearer and Nicky Spadafora.

**Mr. Hylton:** Please understand how really special Chief Spadafora was to all of us. Many people on the Board may not know it, but I actually served with the Fire Department and the Bureau of Fire Prevention, and so I can say that the testimony that Mr. DeLaney made I found to be so true. Even though he was not the Chief of Fire Prevention when I was there, he was a strong supporter of the Bureau of Fire Prevention's staff; and having remained in contact with the Bureau over time, I can say that his contribution continued to be felt and greatly appreciated by the staff.

## **THE BOARD MEETING COMMENCES**

**Mr. Hylton:** Normally, at this time, we would turn to a vote on the minutes, but the minutes of the September 27, 2018, meetings are being tabled until the next meeting. So we'll now turn to the report of the Executive Director, Helaine Balsam.

### **Executive Director's Report**

**Ms. Balsam:** Thank you. In terms of registrations, as of September 30, 2018, we have 321 buildings that registered. Staff sent out twenty notices to owners who had not registered, and we've had some positive responses as a result of that, because the owners were informed that if they continued not to register, we will ask the Board to issue fines.

During September, the unofficial revenue of the Loft Board was \$95,305.

The only other thing to report is that a case was argued in the Appellate Division First Department, in the *Matter of Lerner v. the New York City Loft Board*. It was actually two companion cases; one was *Lerner and Nydick* and the other was *Gould*. The case involved an appeal from a Board denial of coverage filed by tenants, Lerner and Nydick, because the tenants failed to demonstrate that three families lived independently during the Window Period. On reconsideration, the tenants argued they had found new evidence of residential occupancy, which was not previously available. The Board held that a diligent search would have revealed that evidence, and refused to consider the new evidence. The Appellate Division held that the Board's denial was supported by substantial evidence, and that the Board reasonably accepted the finding of the OATH ALJ, that the tenants failed to meet their burden of showing that three families had occupied the building on April 1, 1980. The Board also found that the tenants failed to establish any extraordinary circumstances warranting reconsideration.

In a companion case, which was decided in the same decision, *Gould v. New York City*, petitioner Gould, the owner of the building in which Lerner and Nydick resided, asked the court to reverse the portion of the Board's reconsideration order that denied Gould's request for reconsideration. In the underlying order, the Board had declined to rule on the issue of whether Lerner, who was a net lessee of the building, would be entitled to protected occupant status under the Loft Law. The Board declined to rule because, having denied coverage, there was no reason to reach that issue. The Appellate Division held that Gould lacked standing to challenge the denial of her request for reconsideration, because she was not aggrieved by the Board's decision. Gould also failed to show how the Board's decision declining to rule on the question would cause her any actual injury. To the extent that Gould argued that Nydick should not be a protected occupant, the court held that the argument was unpreserved, as Gould did not raise that argument at the administrative level. I've distributed a copy of the decision to the Board members, and if you have any questions about it, you can reach out to me.

One other thing I do want to say, in terms of contacting the Loft Board, we've had some issues with people emailing the Loft Board, and I want to make sure the public knows they can write to the Loft Board at [nycloftboard@buildings.nyc.gov](mailto:nycloftboard@buildings.nyc.gov). That is the email address for the Loft Board. We will forward appropriate materials to the Board members. But if you send us something regarding a pending case, we will not forward that to Board members. To the extent that you want to reach the Board members, you can do it through that

email address. Again, it's [nycloftboard@buildings.nyc.gov](mailto:nycloftboard@buildings.nyc.gov). The public can use the contact link on the Loft Board website.

**Mr. DeLaney:** With regard to the twenty notices that were sent out, do you have a sense of when those cases will come to the Loft Board?

**Ms. Balsam:** We might be able to bring them in November. It's tight, but we'll try our best. Otherwise, it will have to be January.

**Mr. Hylton:** Are there any more questions for Ms. Balsam? (None)

**Voting on Cases:**

**Discussion and vote of the appeal and reconsideration**

	Applicant(s)	Address	Docket No.
1	Tai Loy Corp.	324 Canal Street, Manhattan	AD-0092

**Mr. Clarke** presented the case.

**Mr. Hylton:** Thank you, Mr. Clarke. Is there a motion to accept this case?

**Mr. DeLaney** moved to accept the case; **Mr. Barowitz** seconded.

**Mr. Hylton** then asked if there were any comments or questions (None).

**The vote:**

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

**Members dissenting:** 0

**Members abstaining:**

**Members absent:** Mr. Schachter

**Members recused:** 0

**Next Case:**

	Applicant(s)	Address	Docket No.
--	--------------	---------	------------

2	James Gubelmann	442 Broadway, Manhattan	R-0358
---	-----------------	-------------------------	--------

**Mr. Hylton** announced that this case will be tabled until next month, on the authority of the Chair.

**Next Case:**

	Applicant(s)	Address	Docket No.
3	Frank Hughes	401 Wythe Street, Brooklyn	R-0362

**Mr. Bobick** presented the case.

**Mr. Hylton:** Thank you, Mr. Bobick. Is there a motion to accept this case?

**Mr. Carver** moved to accept the case; **Mr. Barowitz** seconded.

**Mr. Hylton** then asked if there were any comments.

**Mr. DeLaney:** I’m going to vote against this, and I would encourage all my colleagues on the Board to think long and hard before voting to support this order. As I commented in the private session, where we now discuss cases, this particular issue was one of multiple issues that was before us in a case called *Matter of Salidino*, where the Board worked very hard to deal with a host of different issues, including units that were considered to be in a basement that was perhaps as far below the ground as the step here in the hearing room. And of course, basement apartments are legal in all kinds of multiple dwellings in New York City; that’s just one of the exclusionary provisions of the Loft Law. There are also complicated issues regarding residential occupancy in other units and access to windows in various units. So the Board did not focus particularly on the issue of Mr. Hughes. Had we had the luxury of being able to discuss it at the time, we would have found ourselves back in, what I consider, a policy back-pedal, that started about 2014, with regard to how we define who is a protected occupant. So I think that the tenant’s claim in this reconsideration application, with regard to both an error of law and due process, deserves more consideration than it’s given in this case. Specifically, as we say on page two of the opinion: “Here, Tenant may have been a residential occupant of the unit during the period 2008 to 2010,” (which, Mr. DeLaney adds, was the entire Window Period), but by his own admission, at some point in 2012, Tenant no longer lived in the Unit. He was no longer a residential occupant of the Unit.”

As I understand it, he was living with his girlfriend. The order before us goes to considerable length to see *Matter of Gallo* and the unit belonging to a Ms. Marriner-Smith as being “the most analogous.” In the case of Gallo and Marriner-Smith, it was documented that she, with her husband, bought a house in Long Island and was living and working there, which, in my mind, is quite different than choosing to live with your girlfriend. As I’ve pointed out to the Loft Board, there was a period of time before my building was registered, when I lived with my girlfriend, because the landlord had shut off the water in my building. Choosing, out of necessity or affection, to spend a majority of nights elsewhere, to me, is not significant. And in the order, we learn that,

heaven forbid, the tenant was subletting at some points while he wasn't there. But of course, that was during the period when the building wasn't covered. And as anyone who was at last week's meeting (knows), the Board is currently trying to bring its rules on the question of protected occupancy into greater conformity with the policy we've started edging toward, in a series of, perhaps by this point, fifteen or twenty decisions, on all of which I voted no.

Therefore, in this case, I think we're trying very hard to carve out a position that I don't think is correct. In my point of view, the owner should have been ordered, in the underlying order – in *Saladino* – to register this unit; name Mr. Hughes as the protected occupant; and then, if the owner had proof to demonstrate that Mr. Hughes had not used the unit as his primary residence for a reasonable period of time – in rent stabilization, that look-back period is two years – then let the owner attempt to evict Mr. Hughes for lack of use as a primary residence.

To say, you weren't living there during a period, when your landlord shouldn't even have been renting residentially, therefore, you're not a protected occupant, to me makes no sense. I plan to vote against this case, and I hope that this is reviewed in a court of competent jurisdiction.

**Mr. Hylton** asked if there any other comments.

**Mr. Carver:** Michael, as I mentioned to you in the private secession, I thought that your draft is the highest quality legal product I've seen since I've been here. You did a great job with the analysis of the facts of the law. It was a really super job, and we all thank you for it, even if we don't vote for it.

**Mr. Hylton** asked if there were any further comments. (None)

**The vote:**

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

**Members dissenting:** Ms. Torres, Mr. DeLaney

**Members abstaining:** Mr. Barowitz,

**Members absent:** Mr. Schachter

**Members recused:** 0

**Mr. Hylton:** This will go back on the calendar. And thank you Mr. Bobick. Even though it was the highest quality presentation, it still didn't pass muster with the Board. It's a tough Board.

**The Summary Calendar:**

**Mr. Hylton:** There are eight cases on the Summary Calendar. They're voted on as a group, but we will be separating out number 9, which we'll do first.

Applicant(s)	Address	Docket No.
--------------	---------	------------

9	Various Tenants of 85 Quay Street	85 Quay Street, Brooklyn	TR-1293
---	-----------------------------------	--------------------------	---------

**Mr. Hylton** asked for a motion to accept this case.

**Mr. Carver** moved to accept the case; and **Mr. Hernandez** seconded.

**Mr. Hylton** asked if there were any comments on the case.

**Ms. Torres-Moskovitz:** I will be abstaining, as these were clients of mine in the past.

**Mr. Hylton** asked if there were any further comments. (None)

**The Vote:**

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

**Members dissenting:** 0

**Members abstaining:** Ms. Torres

**Members absent:** Mr. Schachter

**Members recused:** 0

**Next Case:**

**Mr. Hylton** read the remaining seven cases.

	<b>Applicant(s)</b>	<b>Address</b>	<b>Docket No.</b>
4	Aurora Associates LLC	78-82 Reade Street, Manhattan	LS-0238
5	Caroline Scott and Asa Stella	307 Scholes Street, Brooklyn	PO-0032 and TA-0224
6	Hanh Pham, John Minh Nguyen, Jaymie Wisneski, Morteza Saifi, Isabel Asha Penzlien, Angelo Fabara, Nicole Noselli, Erik Wysocan, Nihn Wysocan, Trevor Clark, Vera and Daphne Correll	83 Canal Street, Manhattan	TR-1175
7	Various Tenants of 397 Bridge Street	397 Bridge Street, Brooklyn	TR-1208
8	Michael Flynn, Kathryn Flynn, Christopher Keath, William Kaner and Mitchell Wilson	280 Nevins Street, Brooklyn	TR-1223
9	Various Tenants of 85 Quay Street	85 Quay Street, Brooklyn	TR-1293

10	Theodore C. Lockhart	226 Franklin Street, Brooklyn	TR-1318
11	Nora Ballard and Nejc Poberaj	473-493 Kent Avenue, Brooklyn	TR-1331

**Mr. Hylton:** Is there a motion to accept these cases?

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

**Mr. Hylton** then asked if there were any comments or questions. (None)

**The vote:**

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

**Members dissenting:** 0

**Members abstaining:** 0

**Members absent:** Mr. Schachter

**Members recused:** 0

**The Master Calendar:**

**Mr. Hylton:** There are three cases on the Master Calendar.

	Applicant(s)	Address	Docket No.
12	Thomas Brigham	72 Warren Street, Manhattan	LI-0046

**Mr. Clarke** presented the case.

**Mr. Hylton:** Thank you, Mr. Clarke. Is there a motion to accept this case?

**Mr. DeLaney** moved to accept the case; **Mr. Hernandez** seconded.

**Mr. Hylton** then asked if there were any comments.

**Ms. Torres-Moskovitz:** I would just add the comment I made in the private session. I feel strongly that, as a Board member, I should uphold the idea of not displacing people in New York City, so I find that we also have to consider that displacement during construction causes inconvenience and suffering. As an architect, and after reading through all the testimony, I feel that the owner and the contractor really took way more time –



eleven months instead of three months. If I were writing this, I would have the penalty of \$2500 applied in addition to the slap on the wrist we're giving the owner. But I guess the way it's written now, there's no penalty, so I'm willing to accept it as-is. But I feel this is a really important issue.

**Mr. Hylton:** Are there any further comments? (To Ms. Torres-Moskowitz). So you are willing to accept this as-is?

**Mr. Torres-Moskowitz:** Yes, I accept it, but I want to point out that, in the future, we should put people on notice that we will fine them when they leave tenants out on the street.

**Mr. DeLaney:** I would just add that I appreciate the Board taking a second look at this case. I think it's very important, and I urge my colleagues to vote for the proposed order because, had we gone the other route, I think we would find that this case would be cited as precedent (in situations where extended) delays in work under these kinds of circumstances occur. Here, we're making a statement. Maybe there was ill-intent or maybe you just say, "three months" because you really have no idea how long it will take. If the tenant knew it might be three or four times that long, he/ she might not be so quick to agree. So I think this is an important step.

**Mr. Torres-Moskowitz:** I would just add that this is a big issue for me, because I'm an architect who's been involved with Build-It-Back after Hurricane Sandy, and I've seen what it does to families when they're displaced for so many years. I think of the impact it would have on my own family, if we were expecting to be out for three months, but it turned into eleven – a full school year. It's a critical issue to keep in mind.

**Mr. Barowitz:** Well, we all know how often the City says they're going to do something in a certain amount of time, but it takes them a year more to do it. You always put on the best face possible – yeah, it'll be done in a little while, but then it takes longer. I also tried to measure this twenty-five-foot reduction, with the sheetrock wall, and I couldn't come up with anything more than 10 or 12 square feet, so I just get very cynical about these things. As I said in the private meeting, I'll abstain on this issue.

**Mr. Torres-Moskowitz:** You know that in a program like Build-It-Back, the tenants are displaced, but they're paid for their rent by the program. In this case, the tenants are not being paid to be out of their apartment. In this particular case, (the tenant was paid) \$321, which can't get you anything.

**Mr. Barowitz:** I had a situation with my son and his family after Hurricane Sandy. There was a catastrophic condition in their loft. And since they own their place, they had no one to complain to. The engineer and construction company my son hired said three months, but it took them eight months. Fortunately, they were able to live with us, and every day, I would take the kids to school in Brooklyn and pick them up. Things happen in the city that, sometimes, are beyond your control.

**Mr. Torres-Moskowitz:** They were lucky they had a good family that would take them in. Not everyone has that.

**Mr. Hylton:** Thank you. Now to vote...

**The vote:**

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

**Members dissenting:** Mr. Carver

**Members abstaining:** Mr. Barowitz

**Members absent:** Mr. Schachter

**Members recused:** 0

**Next Case:**

	Applicant(s)	Address	Docket No.
13	517-525 West 45 LLC	517-525 West 45 <sup>th</sup> Street, Manhattan	LS-0239

**Ms. Leveille** presented the case.

**Mr. Hylton:** Thank you, Ms. Leveille. Is there a motion to accept this case?

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

**Mr. Hylton** then asked if there were any comments.

**The vote:**

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

**Members dissenting:** 0

**Members abstaining:** 0

**Members absent:** Mr. Schachter

**Members recused:** 0

**Next Case:**

	Applicant(s)	Address	Docket No.
14	Neil Redding and Kylin O'Brien	39 Pearl Street, Brooklyn	TA-0196 and TR-1092

**Mr. Hylton:** This case is tabled by the Chair until the next meeting. We will now take a five-minute break before proceeding with rule-making.

**RULE-MAKING DISCUSSION:**

**Mr. Hylton:** We begin today with a proposal from Mr. DeLaney to amend rule § 2-08(d)(i). I'd like him to explain his proposal in a minute, but I do want to say, that I'm not in favor of adding rules to those we're currently discussing. We're having trouble getting through the current proposals, and if we do not limit what we're doing, we will never finish. That's my feeling. In addition, this proposal, unless applied retroactively, which we've already determined is risky, would help no one unless the law is amended and the Board is allowed to accept new applications for coverage. So it seems fruitless to discuss this now instead of staying with the current proposal. So I'll let Mr. DeLaney have a chance to explain.

**Mr. DeLaney:** Thank you, Mr. Chairman. Maybe you could elaborate a bit more on the topic of retroactivity?

**Mr. Hylton:** Ms. Balsam may be able to speak about that.

**Ms. Balsam:** So this is a rule that concerns coverage, and since we're not accepting coverage applications, unless the Board would vote to apply this rule retroactively – which we've said is a risky process – it's not going to help anyone.

**Mr. DeLaney:** Ok, a couple of points. The way I wrote this was not with the intention that it be made retroactive. I'm not opposed to that but, frankly, I think it's very important that we *do* include this – and I promise I won't make any other proposal. And really, during this period, while there is a bar on coverage applications -- which is either temporary or forever, depending on the will of the legislature -- assuming that it's likely to be lifted at some point and new applications accepted, what better time to change the rule than now, when there's nothing pending? So it will be clear going forward. As I discussed last month, I think when the Board drafted some changes to the rules in 2010, it overlooked the consequences of the way this section is currently worded. And the reason for that is that the basic qualification of what creates an IMD is three or more families living independently, during a Window Period, in a building that was either commercial or manufacturing, and that lacks a residential C of O. Because of the exclusionary provisions of § 281(5), in essence, it was subsumed into that definition, (and) we didn't really look at the consequence -- which I think is the *wrong* consequence. That is to say, if I'm an owner with two units above ground, with windows, an exit – fine, they qualify as IMD units under § 281(5). And I've also got three units in the basement being used residentially; but the way the Loft Law is currently written, and the application for coverage under § 281(5), those units could not be covered. OK. Fine. That's what the law says. But that also gives me the license to prevent any successful IMD claim, because there are only two units I have to register. I think if there are three, five, seven, however many units used residentially, they should all count toward the qualifying number of "three," whether or not that individual unit can be accepted for coverage as well. And I have heard the Executive Director, at least at one point, say she questions the logic of the way the law currently exists. So all that's intended here is to correct that, and to prevent owners from circumventing IMD coverage, as long as there are only two units that would qualify and however many that would not qualify. I think that, (currently, it) is totally contrary to the remedial intent of the statute.

**Mr. Carver:** I'm not actually following the argument, Chuck. If the law requires three units, how can you count units that don't qualify?

**Mr. DeLaney:** The law says three units trigger the designation of a building as an IMD. So that, for example, we've had coverage cases – not under § 281(5), but under the original § 281(1) – where there were two units left; the tenant had moved out of the third unit; but the remaining tenants were able to prove that it was used residentially during the Window Period. No one said, well, that unit is vacant, so the building's not an IMD. I think that units that are used residentially during the applicable Window Period, in a building that could otherwise qualify, should go toward that count.

**Mr. Carver:** But by definition, an IMD has three qualifying units.

**Mr. DeLaney:** Three units that trigger qualifying for coverage.

**Mr. Carver:** I'm still not following how a building with fewer than three units that could qualify, can fall under the definition.

**Mr. DeLaney:** I don't know that I can say it any more clearly than I have. I think Ms. Cruz is familiar....

**Ms. Balsam:** The question is, in terms of how § 281(5) is worded....The thing is, it uses the singular. "...[interim multiple dwellings] shall include buildings...which were occupied for residential purposes...by three or more families..." etcetera, etcetera. And, the definition of the Window Period, "... commencing January first, two thousand eight, and ending December thirty-first, two thousand nine, provided that *the unit*..." OK? So that's really where the ambiguity is. The first part of the section says, yes, you needed to have all those things you had before; and then it *adds* these additional eligibility requirements for "*the unit*." It doesn't say, "provided that *all three units*," etcetera, etcetera.

**Mr. Carver:** It need not include that extra language, because the definition of an IMD still exists -- as having three.

**Ms. Balsam:** Well, to be an IMD, you have to have had three families living independently in a building that had a commercial or manufacturing use, and doesn't have a residential C of O. That's where the "three" comes from -- three families living independently.

**Mr. Hylton:** As opposed to being the definition of an IMD...

**Mr. Carver:** No, that's the actual definition of an IMD. It says three; three families.

**Ms. Balsam:** It says three families. One of the things you need to be an IMD is three families living independently. And then, for the ones that are covered under § 281(5), the argument is that any particular unit that wants to be covered has to have these things. So, if you have a case where -- and let's leave West Chelsea out of it -- where you have ...

**Mr. Barowitz:** But leave them out of it? I don't understand why that exception was made for one little area of New York City.

**Mr. Carver:** That's the whole point. You need a legislative exception to get around "three." So I don't see how we can do something with a rule that requires legislation.

**Ms. Balsam:** I don't know that it requires legislation. I think if the legislature had wanted all three units to meet the eligibility criteria, the legislature could, clearly, have used an "s" -- "...provided that the *units*..." had windows, had doors, etcetera, etcetera. The legislature didn't say that; they limited it to a singular. So I think there's a valid argument to be made that you could have three families living independently, but that not *each* of those units *qualifies* -- meets the eligibility requirements. But can I just back up and ask -- should we even be having this discussion? We have other rules we've been working on for months. And I do understand the point about getting all your ducks in a row, "just in case;" there's something to be said for that. But I really want to finish what we've started. So...if Mr. Carver doesn't mind, I would ask Mr. DeLaney to make a motion to add this to the rule-making, so that at least we know it's going to go somewhere, and the that the Board's in favor of adding it.

**Mr. Carver:** What does that mean?

**Ms. Balsam:** Remember we developed a protocol, saying that if someone wants to add something, they would send it two weeks in advance? And the Board would decide whether or not to add it to the rule-making. Then we could first talk about it. So here we are talking about this, but we haven't even decided if it's something we want to add to the rule-making. The staff made a series of rules that we proposed to the Board. We added one about Extensions in exchange for perhaps having a little more leeway on Narrative Statements, and the Board seemed in favor of that. But since then, we've had other things coming in, coming in, and coming in, and we're not moving forward. It's a long time already. It's more than a year.

**Mr. Carver:** But if it's, arguably, unlawful, then perhaps it shouldn't even be added.

**Mr. Hylton:** That would be your vote. So, Mr. DeLaney, would you please make a motion?

**Mr. DeLaney** moved that the Board add this one revision to section § 208(d)(i) to its current consideration, in view of the fact that this is the ideal time to make that change, so that it's clear going forward. (He continued): For example, we're changing the Narrative Statement conference procedure to a degree, which, presumably, would apply not only to Narrative Statement conferences of buildings as yet unregistered, but would also apply to those of buildings that haven't even entered the Narrative Statement process as yet.

**Ms. Balsam:** Buildings that are already covered. Yes.

**Mr. DeLaney:** I'm not trying in any back-handed way to affect the reconsideration case that I won't mention, because it's in front of the Board. This is just prospective.

**Mr. Hylton** asked for a second, and **Ms. Torres-Moskowitz** seconded.

**Mr. Carver:** I would like to speak a little...briefly. We have a statute, the goal of which is to legalize these units. And you're telling me that we're supposed to count units that are illegal; that don't qualify? That makes absolutely no sense to me. This is absolutely nuts.

**Ms. Torres-Moskovitz:** You've got legal garden-level apartments in private buildings all over the city, so it's not outrageous to think that apartments that are halfway above the ground, with plenty of light and air, and with people living in them, shouldn't qualify....

**Mr. Carver:** It's outrageous because the concession in this rule is that these other units *don't* qualify, and we're going to count them in order to allow another unit to qualify. That's, in essence, the proposal.

**Ms. Torres-Moskovitz:** Can I ask the other Board members --- I'm familiar with the 2010 Loft Law and the Bloomberg exclusions -- was the basement exclusion prior to that?

**Mr. DeLaney:** No. There are basement units that were legalized under the original Loft Law. Mr. Carver, let me try to give you another way to think about this. Years ago, when Tribeca was still relatively unpopulated, there was a question as to whether or not a supermarket would locate in Tribeca. And the supermarket owners said they didn't think there were enough people in Tribeca to support their businesses. So they reached out to the Loft Tenants and asked, can you tell us how many loft tenants there are in Tribeca? And we said, no we can't, because membership is confidential; the people who belong to our association are illegal. What we're really saying here -- which makes all the sense in the world, and comports with the remedial nature of the statute -- is this: There are enough units in this building to open a supermarket. Maybe not everyone can enter the supermarket, but there are enough units that the police power of the State of New York should be invoked to require, under the remedial nature of the statute, the units that qualify to be brought up to residential code compliance standards. The corollary to that is, theoretically, that the owner should either evict the residential tenants/units that don't qualify and replace them with a commercial use, or the city should over-see that. But instead, in the example I gave -- two units that can be legalized/ five that can't -- the way our rule currently stands, we're just allowing that illegal use of multiple units to be continued *ad infinitum*.

**Mr. Carver:** No. We, as Board, aren't saying anything about those other units. The argument that you just made about the supermarket and the remedial nature of the statute --- Any time someone talks about "the remedial nature of the statute," it's because the actual language of the statute isn't working for them. You can't get into those kinds of arguments until you've overcome the actual statutory argument, which is that an IMD, by definition, is "three." So, I'll just say one last time: If the goal of our statute is to legalize units, it makes no sense to count units that can't be legalized or that can't qualify for coverage.

**Mr. Barowitz:** Initially, when the Loft Law went into effect, the AIR Law, which had started many years before, allowed only two units. And the city, in fact, lied to the artist community, and they had to put a sign up, saying "AIR 3" or "4." A certain size. The city had lied to us by saying that the Fire Department could only take two people out of a particular building, when in fact the IMD was not mentioned. And a lot of landlords and tenants who had upheld the AIR law were all dismissed when it came to the new Loft Law, because "three" is a multiple dwelling unit. And the argument was that a two-family house is two units. The city gets very confused about all these things. So, to this day -- and this was three years ago, Chuck?

**Mr. DeLaney:** The Department of Buildings memorandum that created the AIR was 1962. I've seen it.

**Mr. Barowitz:** So it's forever. And I'm still aggrieved by this rule. As if two would really hurt the two family houses in the inner boroughs. That's just the history of this.

**Mr. DeLaney:** In closing, I would just point out – and I gather Ms. Cruz is familiar with this case, although I think it pre-dates you -- to Mr. Carver: You have a building where there were three units during the Window Period, but one of those tenants moved out *after* the Window Period, and that unit was replaced with a commercial use. Now, the two remaining residential tenants come before the Board and say, yes, we were here during the Window Period, and our old neighbor, Joe, was also here during the entire Window Period. They present proof, and Joe even comes in and testifies to that effect. But your interpretation would suggest that that building could not be registered as an IMD, because there are only two units.

**Mr. Carver:** Is that what would happen now?

**Ms. Balsam:** We actually have a rule that deals with it. It says that if there were three during the Window Period, and one left, it could still be covered.

**Mr. Carver:** Right, but the three were three “qualifying” units?

**Ms. Balsam:** It just says that a reduction in number doesn’t matter. If there were three families living independently, a reduction in the three doesn’t matter.

**Mr. Carver:** Ok, but let’s talk about the definition of a multiple dwelling for a moment, because it’s the same language; the same three families living independently as an interim multiple dwelling. Can a multiple dwelling have any less than three units?

**Ms. Balsam:** Yes.

**Mr. Carver:** When?

**Ms. Balsam:** In a mixed use building. If you have a ground floor apartment and two residential units above, that qualifies as a multiple dwelling under the Multiple Dwelling Law. I’ll double-check it, but that’s my understanding from when I was at ECB.

**Mr. Carver:** But then I guess the question is, from what definition is that arising?

**Ms. Balsam:** I can find it. But I remember having that issue when I was at ECB; and whether or not they were going to have a multiple dwelling registration number...

**Mr. DeLaney:** The only other comment I’d like to make in support of my proposal, if you don’t mind, is this. I don’t think that the difficulty the Board has had getting through this round of rule-making is due to being bombarded with additional proposals. The DUMBO Neighborhood Association proposal came in eighteen months ago; hardly a last minute hit. We had Mr. Brody’s letter suggesting some changes. I think what’s been difficult for us has been some of the other rules we’re dealing with, rather than additional things coming in over the transom.

**Mr. Hylton:** Point well-taken. It’s just a matter of what we can afford to accommodate.

**Mr. Roche:** I just want to make sure I understand. What we’re doing here is saying we’re going to move this forward and actually debate it down the road, is that correct?

**Ms. Balsam:** That’s what the motion is.

**Ms. Torres-Moskowitz:** One more quick thing. Can I have some more information about that case where someone had moved out, but it would still count?

**Ms. Balsam/ Ms. Cruz:** Yes. It's in § 2-08.

**The Vote: On whether or not to add § 208(d)(i) to the rule-making roster**

**Members concurring:** Mr. Barowitz, Mr. Roche, Ms. Torres, Mr. DeLaney

**Members dissenting:** Mr. Carver, Mr. Hernandez, Chairperson Hylton

**Members abstaining:** 0

**Members absent:** Mr. Schachter

**Members recused:** 0

**Ms. Balsam:** The motion doesn't carry. So we're not going to talk about this. Or, we could vote again next time.

**Mr. Hylton:** The motion can be revisited at another time.

**Mr. DeLaney:** I would urge the Chair to reconsider his vote. The very statement that you read at the start of every meeting talks about making safe dwellings. The way that this law is written, which is no one's fault, it perpetuates *un*-safety. It was an unintended consequence.

**Mr. Carver:** Chuck, his point at the beginning, at least in talking about your proposal, was that due to our inability to take on new applications, the rule would have no effect, so it's just not worth the time at the moment. But that there are some legislative changes pending that might change that. I think that's what Chairperson Hylton was saying.

**Mr. Hylton:** Right. It's not that I'm voting against what you're saying. I just don't think we should take the time to debate this right now, when we have other pressing issues to attend to.

**Ms. Torres-Moskovitz:** So we're doing rule-making, and let's say something passes six months from now. Then we then have to redo rule-making, and reconsider the future?

**Ms. Balsam:** If there is new legislation, we will definitely have to do rule-making. We'll have to amend.

**Ms. Torres-Moskovitz:** So we're looking at two processes of public rule-making?

**Mr. Hylton:** You mean an additional one? We're going to *have* to.

**Ms. Torres-Moskovitz:** It would be nice if that one was the second one....

**Mr. Hylton (To Ms. Balsam):** Can it be moved at all, in terms of the legislation? This proposal?



**Ms. Balsam:** Well, actually, in the bill that passed the Assembly, there was a proposal to amend § 281(5). In what would have been the new § 281(6), it said that “unit seeking coverage.” So the Assembly actually *passed* that, which would *clarify*; and, yes, we would *absolutely have to* change the rule at that point.

**Mr. Hylton:** So the principle here is just, where do we want to focus right now?

**Ms. Torres-Moskovitz:** I only started in May, but I don’t think the rule-making is taking that long. I think all the discussions are healthy and important; but I would like it if the legislation changed, that we would then act on it right away.

**Ms. Balsam:** I think now we could talk about § 2-01(b), the Extension rule, which I circulated to everyone. The Board had asked for a couple of changes, and I did put those in. Does anyone have any more questions or comments about it? Do you want to vote on it? Do you want to discuss it more?

**Ms. Torres-Moskovitz:** I had spent some time trying to understand the milestones, in terms of what’s in them and in between them, and how much time is in the rules. I mapped them out, but I don’t have copies for every member. I thought it could be a really good exercise to take some hypothetical projects and run them through it. For example, with extensions, you have ninety days if you’re a new landlord.

**Ms. Balsam:** You have to file your request for an extension within ninety days. It’s not that you *get* ninety days; it’s that you have to *ask for it* within ninety days.

**Ms. Torres-Moskovitz:** But you get a reprieve based on the fact that you’re a new person buying the building?

**Ms. Balsam:** Yes.

**Ms. Torres-Moskovitz:** There are other scenarios. Our goal is to get projects out and safe, and I felt like we’re always talking about this, but we don’t have enough specifics in front of us. So I mapped it, and wanted to share some scenarios with you. My intention was to clarify some of the points, for example, where does the Narrative Statement process fit within the milestones? I’m not implying that you all don’t know the milestones really well, but I didn’t know them well. I wanted to understand -- when we give someone a reprieve, how many more months they have. I also think it’s critical for both landlord and tenant to understand that “zero” point, when you’re starting. Would you (to Ms. Balsam) describe when, exactly, a building starts in the process? My understanding is that when tenants apply for coverage, they haven’t gone through OATH; they haven’t been registered yet by the Loft Board; but they started on the date of their application?

**Ms. Balsam:** The way the law currently reads, yes, that’s correct. Because it says, whichever is earlier. It gives certain criteria, and says, whichever is the earliest. And if the coverage application was filed before any of the other things stated in that section, then yes, that would be the start date.

**Ms. Torres-Moskovitz:** The earliest date?

**Ms. Balsam:** Yes.

**Ms. Torres-Moskovitz:** I didn’t know if people realized that. And then to see how that affects things, for example, if we’re trying to understand what we’re doing here, I had a hypothetical case where the landlord

already starts in at minus twenty-four months into the milestone process, because that's how long it took to get through OATH and get a Loft Board decision.

**Ms. Balsam:** But in the case of a newly covered building, the owner could apply for an extension. If it's a new owner, or the building is newly covered, either of those could qualify him for an extension. Once the Board issues the Order, the owner then has ninety days to apply for an extension. Then "zero" becomes that application date -- for the extension.

**Ms. Torres-Moskovitz:** OK. The other component I don't quite understand is where the clock is in the Narrative Statement process. I'm not sure where that reads in the rules. The forty-five days, and how you start that clock.

**Ms. Balsam:** So the parties are supposed to get together and have a conference -- or more than one conference -- and we quite often have more than one conference. It really depends on the size of the building and how cooperative people are, etcetera. But everyone gets together; there's a conference; theoretically, the owner has to re-draft plans; we may have another conference.....Eventually, we reach a point where the issues have boiled down to -- people can't agree, on whatever the critical issue is. So let's take, for example, the owner wants to rip out the stairs and put in a new, nicer staircase. And the tenants say, no, we don't want you to rip out the stairs. There's nothing wrong with them, and we won't be able to get to our units, so we'll have to move out, and we don't want to move out. So they are at an impasse. When there's an impasse, which can happen sooner rather than later, the way that the impasse gets resolved is that we send a notice that says, tenants, here is what the owner's plan is. The owner has cleared all of their objections with DOB, except for this one -- the Loft Board certification. You have forty-five days to file comments for an alternate plan. That's the forty-five-day clock.

**Ms. Torres-Moskovitz:** So the timing of when it lands is always when all the objections are cleared?

**Ms. Balsam:** It could land before all the objections are cleared. It's much easier once all the objections are cleared, but...

**Ms. Torres-Moskovitz:** Does it need to state that in the rules, "once the objections are cleared"?

**Ms. Balsam:** No, I don't think so. I don't think that we necessarily want to do that. Because what if the tenants have a really good argument, then the owner's got to go back again, right?

**Mr. Bobick:** They also help the process along. If you know what the issues are at the beginning of the process, the clock can help everyone involved, because you weigh out your plans. You have the owner's plan; you have the tenant's plan. It gives everyone the opportunity to make a decision earlier on in the process, rather than waiting for one objection to be left, which is the Loft Board, and then keeping the owner in abeyance for six months to a year while the case is at OATH for fact-finding. So it really depends. It may be beneficial for both parties.

**Ms. Torres-Moskovitz:** So what you're saying is that the staff feels that the clock being flexible in that process is important for both sides?

**Ms. Balsam:** Yes. Flexibility in rules is always important. That's why you have to be very careful when you make rules, because when you make rules, you have to stick to them, and you can sometimes have unintended consequences. So building in as much flexibility as you can – within the context of having to make a rule -- is a good thing.

**Ms. Torres-Moskovitz:** So I'll pass this around. The purple is the regular milestone, and then if we grant a reprieve to someone, the yellow and green become the milestones that weren't achieved, and now we're giving them another chance.

**Ms. Balsam:** Can I just say, we're just giving them a chance to apply for that. With all due respect, you tend to assume that the extensions are going to be granted. And I think it's very important to emphasize that we're giving people *a chance to apply*. If the extensions are granted, then that's absolutely fine. But they may not be. And I think the Board needs to keep that in mind when considering the rule.

**Mr. Carver:** And if it's granted, it because the project is stuck for reasons beyond the owner's control.

**Ms. Balsam:** There are two statutory criteria: One is that they've made good-faith efforts to comply, and the other is that, yes, they were stopped by circumstances beyond their control.

**Mr. Carver:** So the extension time is just for those cases.

**Ms. Balsam:** Yes, they have to meet those statutory standards.

**Ms. Torres-Moskovitz:** But the third standard was a little loose, the one where, if a landlord can't gain access.

**Ms. Balsam:** That's not a statutory standard. That's an example of something that could be a circumstance beyond the owner's control.

**Ms. Torres-Moskovitz:** I can understand BSA and Landmarks as taking more time, but a tenant not giving access...There's a lot of wiggle room in how the tenant is contacted.

**Mr. Hylton:** You mean the reason why.

**Ms. Balsam:** The owner has to show that they sent the correct access notices. If you want to continue, I'm happy to. I think it's a beautiful chart, and I'd love to see it.

**Ms. Torres-Moskovitz:** Well, I was thinking of Excel, you just pop it in. What is it, 300 projects? That are in the early milestone stage? That could get a reprieve?

**Ms. Balsam:** I think there were 132 in the permit stage, and how many were pre-permit? Let's say 170 maybe?

**Ms. Torres-Moskovitz:** I thought it was a small enough number that you could put it into Excel, to see, visually, how long. The goal is we don't want buildings in here from 1982.... We want to get the buildings to safety. So there's a small enough number – that 170 – that we could qualify when they're targeted to exit the program. When they're granted a reprieve, and they have new milestones, do we know when they're targeted to leave the program?

**Ms. Balsam:** Within thirty months of the application.

**Ms. Torres-Moskovitz:** Thirty months from the date we give them the reprieve.

**Ms. Balsam:** No, no, no. Thirty months from the date they filed their application. That's not necessarily the date it would be granted.

**Ms. Torres-Moskovitz:** Well, let's say you have a building out of compliance, but they have a reason like Landmarks. We then say, Ok, we're going to give you this chance to get back on track with your milestones, because you've been meeting the statutory standards. Then they get thirty months max to make all three?

**Ms. Balsam:** It depends where they are in the process. Let's assume they have nothing. Yes, thirty months.

**Ms. Torres-Moskovitz:** So if they go off the thirty months, then they're off the rails, and construction's taking years. Maybe they're five more years into the process than they were before, but still not finished.

**Ms. Balsam:** So they're out of compliance again.

**Ms. Torres-Moskovitz:** And so...they're just sitting there with an unsafe building?

**Ms. Balsam:** I don't know. If they have a permit, and they're working, they're doing *something*. There are people who have *expired* permits, and that's one of the groups we wanted to target. Because then they're not working.

**Ms. Torres-Moskovitz:** I like the idea of enforcement and moving buildings farther along, but I also don't want to find out that 170 buildings started on track, rent strikes not possible, and then at month thirty, almost three years further into this, we realize they're out of compliance. And where are we? That would not look good.

**Ms. Balsam:** Yes, I would agree with that, and the idea is to get the buildings moving. You know, one of the things that landlords complain about – and I don't know whether it's true/ not true – is that they don't have the ability to collect rent. Assuming they meet the statutory standards, this would give them the opportunity to start collecting rent again. So that argument goes away. I'm not sure what else they could say. I think there is some merit to that. If, in fact, what they're saying is true -- and again, I don't know; I'm not there; I don't have the statistics – but if there is some merit to that, and they get to collect rent again, because we give them an extension – and again, these are only people who meet the statutory standards – then, theoretically, they should be moving forward. If they're being truthful, and that is the reason they couldn't move forward, now they have that money flowing again, at least for thirty months, and they can take that step. And I think that would meet the goal that's so important to everyone, which is getting the buildings legalized.

**Mr. Carver:** And even if it's not perfect. Even if not everyone at the end of the time period is finished, this has helped, even if it's not perfect.

**Ms. Torres-Moskovitz:** Helped in what way? You represent real estate, so help...?

**Mr. Carver:** Helped move it towards completion.

**Ms. Balsam:** So you mean, even if they don't finish on time, they've at least taken some steps?

**Mr. Carver:** Yes. At least it helps move it forward.

**Ms. Torres-Moskovitz:** As opposed to *status quo*.

**Mr. Carver:** Yes, which is, it's taking forever.

**Ms. Torres-Moskovitz:** That third rule is enforcement. We're giving them notice that you're going to be collecting fines, right?

**Ms. Balsam:** Well, we're going to be issuing violations. Whether or not we'll collect fines is different. Normally, if people owe us fines, we collect them when they register for the next year.

**Ms. Torres-Moskovitz:** So they might not pay the fine, but if they're issued fines by the Loft Board, do they have to clear it before they get a C of O?

**Mr. Hylton:** Two different things, right?

**Ms. Balsam:** Yes.

**Ms. Torres-Moskovitz:** I'm just wondering if it's like me having a bunch of parking tickets. Eventually, I'd have to pay.

**Mr. Hylton:** Well, you're talking about the Department of Buildings; you're not talking about the Loft Board, are you?

**Ms. Torres-Moskovitz:** We're in the Department of Buildings. But I would be talking about the Loft Board – the violations issued for this enforcement.

**Mr. Hylton:** I think before we approve a C of O, we want them to pay us, correct?

**Ms. Balsam:** At least in Manhattan, the current procedure is, when the owner of a loft building applies for a C of O or a T C of O, they come back to us to review the record. We want to see if they've legalized all the IMD units, if everything lines up. And one of the things we look for is if they owe us any fees or fines. We report that back to Manhattan, and file a letter with them saying we object or we don't object, based on whatever our reasons are one way or the other. We have to get that implemented in the other boroughs, and Renaldo and I have been working very hard on that.

**Ms. Torres-Moskovitz:** So the fines would be paid. Or could they be pardoned?

**Ms. Balsam:** I don't see how they could be pardoned. I guess someone could make an application to the Board.

**Ms. Torres-Moskovitz:** Is interest charged? For these buildings that have been in the system thirty, forty years?

**Ms. Balsam:** My understanding is that there isn't interest. My understanding is that the fines have to be docketed in court in order for the city to be able to charge interest. I'm not an expert on this, but that's my understanding. And we are not docketing them.

**Ms. Torres-Moskovitz:** I guess what I'm getting at is that we want to make sure it's really an incentive.

**Ms. Balsam:** Yes, we do. And since there's been no enforcement, I think having some enforcement is a shock. Some of what we've done already seems to be working, at least anecdotally; I don't have statistics. But certainly in terms of filings for the sales of rights, we seem to be getting a lot of them pretty quickly. I don't know that we did before. And that's an area we issue fines.

So just in terms of this rule, I've added a couple of things at the Board's request. If anyone has any more questions or comments, or needs the language tweaked...

**Ms. Torres-Moskovitz:** Could we also see the forms you're sending?

**Ms. Balsam:** Every year, in June, we run invoices for all of the buildings that include all outstanding fines and fees. They're printed and sent to the building owners. If you'd like to see some, we can email them to you.

**Ms. Torres-Moskovitz:** That would be great. But you mentioned the improvement in sales of rights being documented. What instigated that?

**Ms. Balsam:** I didn't say "better;" I said "sooner." In fact, they're probably not better. And that is a rule that's on the table. We just haven't gotten to it yet.

**Ms. Torres-Moskovitz:** But what triggered that?

**Ms. Balsam:** What triggered what?

**Ms. Torres-Moskovitz:** The sale of rights filings coming sooner.

**Ms. Balsam:** We started issuing violations. And the Board started fining owners who had not filed on time.

**Ms. Torres-Moskovitz:** Yes, I'd like to see an example of that type of letter, with the building information redacted.

**Ms. Balsam:** Yes, it's a notice of violation, and I can send that to you.

**Ms. Torres-Moskovitz:** So should we go through the text, starting from the beginning?

**Ms. Balsam:** We've already discussed a lot of this text, so I would ask if anyone has any issues with any of the text, starting with § 2-01(b)(1).

**Ms. Torres-Moskovitz:** This is for a new landlord, when the building changes hands, so they have ninety days.

**Ms. Balsam:** Yes.

**Ms. Torres-Moskovitz:** But it's also for a landlord who's owned a building but is also...

**Ms. Balsam:** That's (b)(1)(ii).

**Ms. Torres-Moskovitz:** So (iv) is being taken out? Is it moving somewhere else?

**Ms. Balsam:** No. It's no longer necessary. It also created a lot of procedural issues. Was it one extension per application? Was it just for one of the deadlines? The Board had previously voted that, if we were going to do this, people could get more than one extension, so (iv) is being deleted.

**Ms. Torres-Moskovitz:** Sorry, where's the part where they can have more than one extension, at the discretion of the Executive Director?

**Ms. Balsam:** That's later on in the rule; the second part. But even here, it says, if you look at (b)(1), at the second line, it says "...Loft Board for an extension of time"? We took out the "an" and added an "s" to extension, making that plural.

**Ms. Torres-Moskovitz:** And is it limited?

**Ms. Balsam:** Yes, but that's in the next section. I was asking if anyone had any comments on this one. If not, we can move on to the next one.

**Mr. Carver:** Nothing has changed of any substance, since we last spoke about it.

**Ms. Balsam:** Right. I just made the few changes the Board had asked for: "... as defined in section 1-12 of these rules," a cross-reference I think Ms. Moskowitz had asked for; and then "...a history of the denial of reasonable access..." in *Statutory standard* (2). I'm not sure that we got all the way to the end of this. And I know Mr. DeLaney had some concerns, which I'm not sure we've adequately addressed.

**Mr. DeLaney:** I'm not sure either. But, I had blocked only until 4PM.

**Mr. Carver:** Yes, I only have about five more minutes.

**Mr. Hylton:** So we're not going to get anywhere on this today. I can see there's still some discussion to be had.

**Ms. Torres-Moskovitz:** Well, I'll send this colored chart to you (Ms. Balsam) for distribution. I think it's part of the discussion.

**Ms. Balsam:** As the Chairperson will say in a moment, the next meeting will be November 15. We'll be doing cases, but we'll also be doing rules. I'll let you know at least two weeks in advance what rules, so that you can prepare.

**Mr. Hylton:** Is this part of it?

**Ms. Balsam:** Well, I thought we would finish this today, but we didn't, so now I'm not sure what to do. But if we could finish this, I think it would be good.

**Mr. Hylton (to Mr. Roche):** There's no meeting in December. Is that what you were going to say?

**Mr. Roche:** Actually, I was going to suggest that we look at altering the November meeting, to allow us more time. If we move the public meeting to 1:30PM, so the cases would be over, and we'd have more time to discuss (the rules). We don't need more time in the private session. If we're going to accomplish something by the end of November, we need more time in the public session.

**Ms. Balsam:** You want to start the meeting earlier?

**Ms. Roche:** I don't know if we actually can...

**Mr. Hylton:** Board members, is there a problem with the 4:30PM ending, in general?

**Mr. Barowitz:** Not if you tell us in advance.

**Mr. Roche:** So either start earlier and end at 4PM, or make arrangements in advance, so that we can go to 4:30 or 5PM. Either one. But I agree with the Executive Director; it would be nice to accomplish something before we break for the holidays.

**Mr. Hylton:** Would everyone be amenable to starting the next meeting to 1:30PM?

**The Board agrees.**

**Mr. Hernandez:** May I ask, that if someone has specific questions, they might be submitted to the Executive Director beforehand, as opposed to bringing them up in the meeting?

**Mr. Balsam:** Always.

**Mr. Hernandez:** I do have personal questions, and I also have a lot more to learn about specific processes. So it might be helpful to sit down and review that with you (Ms. Balsam), instead of the other Board members having to sit through explanations of things they already know.

**Ms. Balsam:** Sure.

**Mr. Hylton:** Ms. Balsam and the staff are always available to the Board members; you just need to make an appointment.

**Mr. Hylton:** This will conclude our October 18, 2018, Loft Board meeting. Our next public meeting will be held at 22 Reade St. Main Floor, Spector Hall on November 15, 2018, at 1:30PM.

The End



### **Remembering “Chief Ron” Spadafora:**

In May, 2009, then-Mayor Bloomberg transferred the NYC Loft Board out of the Mayor’s Office and into the Department of Buildings. His order also allocated a seat on the Board to FDNY for the first time.

At that point in time, this seemed problematic given that many loft buildings did not meet fire and safety standards.

How would having someone from FDNY on the Board impact the situation? It seemed risky. Since the loft residential conversion issue came to the fore in the 1970s, city agencies had historically been reluctant to tackle the problem, which was one of the reasons the Board was initially housed within the Mayor’s Office.

Any concerns I might have had as the Tenant Representative were allayed once I got to know (and work with) Ronald Spadafora, who was designated by FDNY as its first representative to the Board.

He brought a sense of calm and dignity to the job. He was thoughtful, and funny. He always had a twinkle in his eye. Throughout his entire six or so years serving on the Loft Board, he never spoke of his prior assignment overseeing the cleanup of the World Trade Center site in the aftermath of September 11, nor mentioned any of his many other accomplishments. Every now and then he’d pop up on the evening news, a Deputy Chief on duty for a multi-alarm fire somewhere in the city. Until he became ill, I never knew of the sacrifice he made spending years on “the pile.”

In 2010, after the Loft Law was expanded to include many new buildings, the Board was challenged with interpreting the legislature’s mandate concerning “incompatible use” in those newly covered buildings. Chief Spadafora’s expertise helped guide us through many difficult meetings and discussions of extremely complicated topics.

He invited me and other Board members to his elevation to Chief of Fire Prevention in late January 2015. I took time off from work to attend. It was a mild, sunny mid-winter day. I saw him take his oath, with his young grandchild holding the Bible in a diminutive set of turnout gear. I heard the loudest applause and cheers of the afternoon for Chief Ron from the staff of the Fire Prevention Unit, who clearly admired him. I said to one of them, “You must really like this guy.” The answer was short and to the point: “Damn right. He was the one who got us uniforms!”

I learned that day that while the men and women of FDNY exhibit great bravery fighting fires, preventing them is an equally important part of the job. Better not to have to fight them. At his funeral, I saw the faces of the members of a uniformed service that has paid a great price to uphold its honor and reputation. “Chief Ron” represented the best of that, and he paid the price. I know the other members of the Board join me in thanking him for his service. May he rest in peace.