

MINUTES OF PUBLIC MEETING
New York City Loft Board Public Meeting

Held via teleconference

March 19, 2020

The meeting began at: 2:13pm

Mr. Hylton: Board members, are you all back? Would you please state your name?

The following Board members responded by name: Chuck DeLaney, Elliott Barowitz, Julie Torres-Moskovitz, Robinson Hernandez

Attendees: Elliott Barowitz, Public Member; Charles DeLaney, Tenants' Representative; Julie Torres-Moskovitz, Public Member; Heather Roslund, Public Member, Robinson Hernandez, Manufacturers' Representative. Renaldo Hylton, Chairperson Designee; and Helaine Balsam, Loft Board, Executive Director.

INTRODUCTION:

Chairperson Hylton welcomed those present to the March 19, 2020, 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.

Mr. Hylton continued: For the record, this meeting is being held via teleconference, due to the effects of coronavirus on the city of New York. We will now turn to the approval of the minutes of the January 30, 2020, meeting.

Mr. DeLaney: Excuse me, also for the record, can you state the law that permits us to do this, under these circumstances?

Ms. Balsam: It's Governor's Executive Order 202.1, which suspended the Open Meetings Law to allow boards and other governmental bodies to meet via teleconferencing, as long as there's a word-for-word transcription made available to the public.

Mr. Hylton: And the public can join in.

Ms. Balsam: The public can listen during the meeting, yes.

Mr. DeLaney: And I believe there are public individuals in attendance. How will other people be able to access the recording of this meeting?

Ms. Balsam: You mean the transcript?

Mr. DeLaney: It was my understanding that the meeting would be recorded and then transcribed?

Ms. Balsam: Yes. That's what the Governor's Executive Order says. But anyone can obtain the audio by FOIL.

Mr. DeLaney: The audio file will be FOIL-able?

Ms. Balsam: Sure.

Mr. DeLaney: Thank you.

Mr. Hylton: Ok. Anyone else? We now turn to a vote on the minutes of the January 30, 2020, public meeting.

VOTE ON MEETING MINUTES:

January 30, 2020, Meeting Minutes

Mr. Hylton: Are there any corrections or comments to the minutes?

Ms. Balsam: This is Helaine Balsam, the Executive Director. On page 23 of the January 30th minutes, there is a quote from our Deputy General Counsel, Tina Lin, that says, "In general, you have to have the landlord's consent in an unstabilized lease." It should be, in a "rent-stabilized lease." That's on page 23, and we'll make that correction.

Mr. DeLaney: This is February 25th?

Ms. Balsam: No, January 30th.

Mr. DeLaney: Can you repeat that?

Ms. Balsam: Sure. January 30th, on page 23, seven lines from the bottom.

Mr. DeLaney: It should be rent-stabilized?

Ms. Balsam: Yes, it should be rent-stabilized.

Mr. Hylton: Any other comments or corrections on the minutes of January 30th? Can I entertain a motion to accept the minutes?

Ms. Balsam: You can't raise your hands.

Mr. Barowitz: This is Elliott. I move.

Ms. Roslund seconded.

Mr. Hylton: Mr. Barowitz; and Ms. Roslund, second. Ms. Rivera, please poll the Board members.

The vote:

Members concurring: Mr. Barowitz, Ms. Roslund, Ms. Torres, Chairperson Hylton

Members dissenting: 0

Members abstaining: Mr. Hernandez, Mr. DeLaney *

Members absent: Mr. Roche

Members recused: 0

* **Mr. DeLaney:** I was not able to read these minutes, so I'm abstaining.

February 20, 2020, Meeting Minutes

Mr. Hylton: We now turn to a vote on the minutes of the February 20, 2020, meeting. Do we have any comments or corrections on the minutes?

Mr. DeLaney: I just have one note. I see that we have started to list our conclusions of the Summary Calendar cases, which I appreciate. But what I see now is that some conclusions are more detailed than others. Going forward, I would ask that the staff see if they can find a way to achieve more uniformity in the conclusory statements; a way to give them all the same degree of clarity.

Ms. Balsam: We will do that.

Mr. Hylton: Thank you, Mr. DeLaney. Are there any other comments or corrections? Do I have a motion to accept the minutes?

Mr. Hernandez: Yes.

Mr. Hylton: Thank you, Mr. Hernandez. Is there a second?

Mr. Barowitz: I'll second. Elliott Barowitz.

Mr. Hylton: Thank you, Mr. Barowitz. Ms. Rivera, would you please poll the Board members.

The vote:

Members concurring: Mr. Barowitz, Mr. Hernandez, Mr. DeLaney, Ms. Roslund, Chairperson Hylton

Members dissenting: 0

Members abstaining: Ms. Torres

Members absent: Mr. Roche

Members recused: 0

Mr. Hylton: Thank you. Ms. Balsam will now give her executive director's report.

EXECUTIVE DIRECTOR'S REPORT:

Ms. Balsam: In terms of the COVID 19 emergency, we do have some people working from home. We're not fully staffed so we ask you to please be patient with us. If you have documents to submit to us, if it is possible and allowed in our current rules to submit electronically, we would ask you do that, so that they are accessible to staff working from home. Obviously, where you need to file originals with us, you can do that, either via snail mail or in person if you'd like. We will have drop boxes available for that. So please bear with us. We are trying very hard.

Revenue: The unofficial Loft Board revenue for February was \$65,935.

Violations: The Loft Board issued three housing maintenance violations in February—one for no gas, and two for inadequate plumbing. One for inadequate waste lines and one for inadequate drainage.

Litigation: In terms of litigation, no new lawsuits have been filed.

Decisions: We have two Decisions.

One was *110 Bridge Street Realty Corp versus New York City Loft Board and Department of Buildings*. The owner had sued us, asking us to decide a coverage application, which we did; so the court dismissed that case as moot.

383 8th, LLC versus New York City and New York City Loft Board. This was an Article 78 petition, where the owner challenged the Loft Board's Order number 4849, denying an abandonment application because the owner failed to prove that no one claimed succession rights after the protected occupant died. In a decision and Order dated December 3, 2019, the court dismissed the petition. The court found the Loft Board's interpretation of its rule requiring the owner to prove all of the elements of abandonment, including that no one claimed succession rights, was rational. The court likened the Loft Board's rule to the Surrogate's Court Procedure Act, which requires an executor or administrator to serve all the potential distributees and legatees with a citation and notice of probate or administration. The court found the Board properly interpreted its rules when it held that the mere failure of the tenant's parent to appear or contest the abandonment application is not sufficient to show that they waived any succession rights they may have.

And that is the end of my report.

Mr. Hylton: Are there any questions for Ms. Balsam?

Mr. DeLaney: I have a few questions. First, would you distribute a copy of that decision on the abandonment case, please?

Ms. Balsam: Yes.

Mr. DeLaney: Second, I'd like to request copies of the three housing maintenance violations.

Ms. Balsam: Sure.

Mr. DeLaney: Finally, I am perplexed by the notion that the recording for this meeting has to be FOIL-ed. I don't understand why it can't be posted for the public to access without going through the FOIL process.

Mr. Hylton: We'll look into that, Chuck. It's a good point.

Ms. Balsam: If it can be posted, we will do it.

Mr. DeLaney: And I know we have an agenda item relating to the rules discussion, but I'd just like to ask for an update as to the status of the rules at the moment. Have they been to Corp. Counsel?

Ms. Balsam: I was going to do that when we got to it, but sure, yes, they've been submitted to the Corp. Counsel's office and the Mayor's Office of Operations. I've already received one round of edits from the Mayor's Office of Operations, and I've responded to those. This morning, they sent back more edits, but I haven't had a

chance to look at them. When we finish our back-and-forth, it will go over to the Law Department. Normally, the Mayor’s Office of Operations and the Law Department coordinate their comments and send them back to the agency together; but the attorney at the Law Department is very busy with COVID 19 emergencies. So he said that the Loft Board and the Mayor’s Office of Operations should iron out their issues, and then he’ll try to take a look at it. I don’t know when that will be, but that is the current status of where we are.

Mr. DeLaney: Thank you. **Mr. Barowitz:** Will it be distributed to us personally? Or would we then have to take it and print out a hundred-and-some- odd pages...

Ms. Balsam: No, no, no. When it’s in a form for you to discuss and vote on, before publication. So that’s after all that editing back and forth with Law and Operations. We will get you hard copies by either snail mail or delivery.

Mr. Barowitz: OK.

Mr. Hylton: Any other questions for Ms. Balsam? (none). Thank you, Ms. Balsam. We now turn to voting on the cases.

THE CASES:

Appeals and Reconsideration Calendar:

Mr. Hylton: There are two cases on the Appeals and Reconsideration Calendar. The first case is

	Applicant(s)	Address	Docket No.
1	Dezer Properties II LLC	18 W 20 Street, Manhattan	AD-0087

Ms. Lee presented this case.

Mr. Hylton: Do I have a motion to accept this case?

Mr. DeLaney moved to accept this case.

Mr. Hylton: Do I have a second?

Mr. Barowitz: Elliott Barowitz. I second.

Mr. Hylton: Mr. Barowitz. Are there any comments on this case?

Mr. DeLaney: Yes, I have a comment. I will be voting in favor of this case, and it’s significant that the agreement was signed prior to the passage of the Loft Law in June of 1982, because that’s what gave rise to the Multiple Dwelling Law § 286.12, which explicitly says that you can’t sell rights regarding the Loft Law unless you’re covered by the Loft Law. And it was put in because there were owners who, through various methods, were trying to coerce tenants into signing agreements that, if a law were passed in Albany – and the law had failed in 1980 and 1981 – the law wouldn’t apply to them. So that’s why this is here, and I believe that the Proposed Order in this case accurately captures the intention of that section of the Loft Law.

Mr. Hylton: Thank you, Chuck. Are there any other comments on this case? (none) Ms. Rivera, please poll the Board members.

The vote:

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

Members dissenting: Ms. Roslund

Members abstaining: 0

Members absent: Mr. Roche

Members recused: 0

Conclusion: The Loft Board holds that the facts found by the Executive Director in the Administrative Determination are supported by substantial evidence in the record, that the Executive Director correctly applied the law, and that Owner would not be severely prejudiced. The Loft Board finds that Units 901 and 904 remain subject to the legalization requirements of, and rent regulation under, the Loft Law.

Mr. Hylton: Thank you. The next case is

	Applicant(s)	Address	Docket No.
2	Various Tenants of 47 Thames Street	47 Thames Street. Brooklyn	R-0375

Ms. Balsam presented this case.

Mr. Hylton: Do I have a motion to accept this case?

Ms. Roslund moved to accept this case.

Mr. Hylton: Do I have a second?

Mr. Hernandez: Robinson Hernandez. I second.

Mr. Hylton: Mr. Hernandez. Are there any comments on this case?

Mr. DeLaney: I'd like to make one comment. The history of a handful of buildings that received declaration as rent-stabilized buildings, while being loft buildings and IMD eligible, started before the Loft Law passed in two cases: Black Gold Realty v Milne and Mandel v Pitkowsky. There have been subsequent issues around whether certain buildings may be rent-stabilized even after exiting the Loft Law, which is why we mark it in a footnote. I am going to support this Proposed Order, because I do believe the owner qualifies as an IMD and, therefore, should be registered. However, the tenants seem equipped to continue their battle to clarify this. And I will be interested in following it. I've also volunteered to assemble some of those cases for the Board members, so they have a clearer picture of the six to ten buildings where this has come up since the late 1970s to the present. That's all.

Mr. Hylton: Thank you, Mr. DeLaney. Any other comments? (none) Ms. Rivera.

The vote:

Members concurring: Mr. Barowitz, Mr. Hernandez, Mr. DeLaney, Ms. Roslund, Ms. Torres, Chairperson Hylton

Members dissenting: 0

Members abstaining: 0

Members absent: Mr. Roche

Members recused: 0

Conclusion: The reconsideration application is denied. The Order remains in full force and effect.

Summary Calendar

Mr. Hylton: Thank you, Ms. Rivera. There are ten cases on the Summary Calendar, and they're usually voted on as a group, but we're going to separate out two cases, 4 and 5, for separate votes. The following cases will be voted on now:

	Applicant(s)	Address	Docket No.
3	Zachary Treitz, Dylan Goldman and Lucas Sacherman <div style="border: 1px solid black; padding: 5px; margin: 5px 0;"> <p>In a stipulation of settlement dated October 7, 2019, Tenants agreed to withdraw their applications without prejudice. Owner agreed to register Tenants as the protected occupants of their respective units. Loft Board records have been updated accordingly. The Loft Board neither accepts nor rejects the remaining terms of the stipulation.</p> <p>The application is deemed withdrawn without prejudice.</p> </div>	22 Catherine Street, Manhattan	PO-0061 TR-1353 TR-1355
6	Angelique Di Domenico, Galen Stops and Rebecca Fordyce <div style="border: 1px solid black; padding: 5px; margin: 5px 0;"> <p>The Loft Board's records have been updated to reflect the Tenants as protected occupants of the Unit. The application is deemed settled.</p> </div>	239 Banker Street, Brooklyn	PO-0115
7	Jolene Chee and Bjoern Eriksson	239 Banker Street, Brooklyn	PO-0117

	<p>The Loft Board's records have been updated to reflect the Tenants as protected occupants of the Unit. The application is deemed settled.</p>		
8	<p>Dylan Brown & Ross Anti</p> <p>The Loft Board's records have been updated to reflect the Tenants as protected occupants of the Unit. The application is deemed settled.</p>	239 Banker Street, Brooklyn	PO-0121
9	<p>Travis Witmer and Ryan Bennett</p> <p>The Loft Board's records have been updated to reflect the Tenants as protected occupants of the Unit. The application is deemed settled.</p>	239 Banker Street, Brooklyn	PO-0122
10	<p>Sebastian Bear-McClard</p> <p>By letter dated August 8, 2019, Tenant withdrew both coverage applications with prejudice. The applications are deemed withdrawn with prejudice.</p>	43-49 Bleecker Street, Manhattan	TR-1320 TR-1364
11	<p>Gaston Marticorena</p> <p>In a stipulation of settlement dated October 7, 2019, Tenant agreed to withdraw his application. Loft Board records have been updated accordingly. The Loft Board neither accepts nor rejects the remaining terms of the stipulation. The application is deemed withdrawn without prejudice.</p>	80 Varick Street aka 2-6 Grand Street, Manhattan	TR-1351
12	<p>Ximena Garnica and Shigekazu Moriya</p>	58 Grand Street, Brooklyn	TR-1371 TR-1372

	<p>On October 17, 2019, upon granting an application for reconsideration of a prior Loft Board order, the Loft Board found that the Garage Unit was covered under the Loft Law and that Tenants were entitled to Article 7-C protection. <i>See Matter of Garnica and Moriya</i>, Loft Bd. Order No. 4903 (Oct. 17, 2019). By an email dated December 10, 2019, Tenants withdrew their applications without prejudice. The Loft Board deems Tenants' applications withdrawn without prejudice.</p>		
13	<p>Kirsten Beecy</p> <p>By an email dated January 14, 2020, Tenant withdrew her applications without prejudice. The Loft Board deems Tenant's applications withdrawn without prejudice.</p>	150 Franklin Street, Brooklyn	TR-1386 PO-0106

Mr. Hylton: Do I have a motion to accept these cases?

Mr. Hernandez: Robinson Hernandez. Yes.

Mr. Hylton: Mr. Hernandez. Second?

Ms. Roslund: Heather Roslund, second.

Mr. Hylton: Ms. Roslund. Thank you. Are there any comments on these cases? (none). Ms. Rivera, will you please poll the Board members.

The vote:

Members concurring: Mr. Barowitz, Mr. Hernandez, Mr. DeLaney, Ms. Roslund, Ms. Torres, Chairperson Hylton

Members dissenting: 0

Members abstaining: 0

Members absent: Mr. Roche

Members recused: 0

Mr. Hylton: Thank you, Ms. Rivera. The other two cases are:

	Applicant(s)	Address	Docket No.
4	Karen Woelki	950 Hart Street, Brooklyn	PO-0089
5	Nicolas Matar	59 Grand Street, Brooklyn	PO-0094

Mr. Hylton: Do I have a motion to accept these cases?

Mr. Barowitz: Elliott, I move.

Mr. Hylton: Mr. Barowitz. Second?

Mr. Hernandez: Robinson. I second.

Mr. Hylton: Mr. Hernandez. Are there any comments on these cases?

Mr. DeLaney: Yes, Chuck here. I asked that these cases be taken up separately. I plan to vote no on both of them. While they're on the Summary Calendar, these are cases where it appears that the applicants filed protected occupant applications in good faith, with competent counsel, only to discover down the line that in both instances the owners, separate owners, had what appeared to be pretty legitimate-looking 286.12 purchase agreements. And I don't know if they were on file with the Loft Board, so that the tenants could have discovered it via due diligence; or whether the owner kept it in a drawer by his bedside, waiting to pull it out like a get-out-of-jail-free card. Because there was so much of that, we enacted a fine for owners for untimely filing. And therefore, I will not vote to advance these cases and adopt these Orders until the staff has had time to research whether and when the 286.12 sales records were filed with the Board. Because clearly, these two applicants had to devote a significant amount of time and money to what were fruitless cases. And that's a waste of everybody's time.

Mr. Hylton: Thank you, Mr. DeLaney. Are there any other comments? (none) Ms. Rivera.

The vote:

Members concurring: Mr. Barowitz, Mr. Hernandez, Chairperson Hylton

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

Members abstaining: 0

Members absent: Mr. Roche

Members recused: 0

Mr. Hylton: So those three cases are not going to pass.

Ms. Balsam/ Mr. Hylton: Two cases.

Ms. Balsam: This is Helaine Balsam. Just so I understand, what does the Board want us to do with these cases?

Mr. DeLaney: Take a look. Let us know.

Ms. Balsam: OK. We will do that.

The Master Calendar

Mr. Hylton: There are four proposed cases on the Master Calendar. The first case is:

	Applicant(s)	Address	Docket No.
14	Jennifer Chantrtanapichate	1099 Flushing Avenue, Brooklyn	TA-0220

Ms. Balsam presented this case.

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

Mr. Barowitz: Elliott, I move.

Mr. Hylton: Mr. Barowitz. A second?

Ms. Roslund: Heather Roslund, second.

Mr. Hylton: Ms. Roslund. Are there any comments?

Mr. DeLaney: Yes, I have a comment.

Mr. Hylton: Mr. DeLaney, go ahead.

Mr. DeLaney: The difference in calculation between the tenant’s perceived rent rate and the owner’s is not tremendously far apart. And it is correct that both the 2010 version of the Loft Law, and future versions, as well as the 1982 version, did not disturb existing leases. In 1982, there were virtually no existing leases, because it was the expiration of original leases that really started the whole legal battle that led to the passage of the Loft Law through the late 1970’s and early 1080’s. However, I do have a concern about the charging of security deposits in excess of one month, particularly now that there is a state law that makes clear that security deposits should be capped at one month in residential units. So the applicant just might want to consider challenging this decision, and I think it’s something the Board should take a look at.

Mr. Hylton: Thank you, Mr. DeLaney. Any other comments?

Mr. Barowitz: I certainly agree with that. I mean this woman has gone years and years and years with that double security deposit. Otherwise I will vote on the order.

Mr. Hylton: Thank you, Mr. Barowitz. Any other comments? (none) Ms. Rivera.

The vote:

Members concurring: Mr. Barowitz, Mr. Hernandez, Mr. DeLaney, Ms. Roslund, Ms. Torres, Chairperson Hylton

Members dissenting: 0

Members abstaining: 0

Members absent: Mr. Roche

Members recused: 0

Conclusion: The Loft Board denies Tenant's claims of rent overcharge. The Loft Board does not have jurisdiction over the Tenant's claim for security deposit. We find that the base rent of the Unit was \$1,851.27, and after all applicable milestone increases, the maximum permissible rent is \$2,042.57.

Mr. Hylton: Thank you, Ms. Rivera. The next case is

	Applicant(s)	Address	Docket No.
15	281 North 7 th Street Tenants	281 North 7 th Street, Brooklyn	TR-1180

Ms. Lee presented this case.

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

Ms. Roslund/ Mr. Hernandez both accepted.

Mr. Hylton: Heather Roslund was first to accept, and Mr. Hernandez will second.

Mr. Hylton: Are there any comments on this case?

Mr. DeLaney: Yes, I have a comment. I'm going to vote in favor of this case, although I note that I continue to object to the exclusion of spouses from protected occupancy status. It's contrary to what I think is correct; it's contrary to what our prior practice was; and we are pondering changing that in our proposed rules; so hopefully, at some point in the future, Mr. Casper will be able to achieve what I think is his due, which is protected occupancy status.

Mr. Hylton: Thank you, Mr. DeLaney. Are there any other comments?

Mr. Barowitz: I'd just like to say I agree with that.

Mr. Hylton: Thank you, Mr. Barowitz. No other comments? (none) Ms. Rivera, would you please poll the Board members.

The vote:

Members concurring: Mr. Barowitz, Mr. Hernandez, Mr. DeLaney, Ms. Roslund, Ms. Torres, Chairperson Hylton

Members dissenting: 0

Members abstaining: 0

Members absent: Mr. Roche

Members recused: 0

Conclusion: The Loft Board partially grants the application for coverage. The Loft Board finds that the Building is an IMD building and that the following units and tenants are covered and protected, respectively:

Covered Unit(s)	Protected Occupant(s)
4	Ned Rosen
8	Gabrielle Casper
10	Zachary Cutler
11	Anthony Arkin
12	FonLin Nyeu
13	Luis Baro
14	Donald M. Lunetta
15	Jessica Gallucci

The Loft Board finds that Jeffrey Casper is not entitled to Article 7-C protection. The Loft Board directs Owner to register the Building as an IMD building, the eight covered units as IMD units, and the eight tenants as protected occupants in accordance with this order, as well as to pay the applicable registration fees, within thirty (30) days of the mailing date of this order.

Mr. Hylton: The next case on the Calendar is:

	Applicant(s)	Address	Docket No.
16	Eric Jacobsen and Maria Estrada	473-475 Kent Avenue, Brooklyn	TR-1335

Mr. Argov presented this case.

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

Mr. DeLaney: I'll move. Chuck.

Mr. Hylton: Mr. DeLaney. Is there a second?

Mr. Barowitz: Elliott. I second.

Mr. Hylton: Mr. Barowitz. Are there any comments on this case?

Mr. Barowitz: I just want to make a note for the record that the judge spelled Jacobsen s-o-n, and we've spelled it s-e-n. We should check to see which is correct.

Mr. Hylton: So noted. Ms. Rivera, would you please poll the Board members.

The vote:

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

Members dissenting: 0

Members abstaining: Ms. Roslund

Members absent: Mr. Roche

Members recused: 0

Conclusion: Based on the foregoing, the Loft Board finds that Unit 1104 and 1108 are eligible for Article 7-C coverage pursuant to MDL § 281(5). Marie Estrada and Eric Jacobsen are the protected occupants of their respective units.

Mr. Hylton: Thank you, Ms. Rivera. The last case on the Master Calendar is a Removal case, and that is

	Applicant(s)	Address	Docket No.
17	17 East 17 th Street Condominium	17 East 17 th Street, Manhattan	LE-0697

Mr. Hylton: Is there a motion to accept this case?

Mr. Barowitz: Elliott. I move.

Mr. Hylton: Mr. Barowitz. Is there a second?

Mr. Hernandez: Robinson. Second.

Mr. Hylton: Mr. Hernandez. Are there any comments on this case? (none). Ms. Rivera, please poll the Board members.

The vote:

Members concurring: Mr. Barowitz, Mr. Hernandez, Mr. DeLaney, Ms. Roslund, Ms. Torres, Chairperson Hylton

Members dissenting: 0

Members abstaining: 0

Members absent: Mr. Roche

Members recused: 0

Conclusion: The Loft Board finds that the Condominium is in compliance with MDL § 284(1). A final rent adjustment is not necessary for the third, fourth, fifth and sixth/seventh units because the units are owner-occupied condominium units. Consequently, pursuant to MDL § 286(8), none of the units in the Building are subject to rent regulation.

Mr. Hylton announced that after a five-minute break, the Board would reconvene for a discussion of the rules.

Ms. Balsam: Before we take a break, I would just ask whether or not the Board has any comments. I've already said what I was going to say. If there are issues the Board is going to raise, we can take a break. If not, we can close the meeting.

Mr. DeLaney: There are issues I would like to raise.

Mr. Hylton: So let's take a five-minute break. According to my watch, it's 3:17PM, so we will resume at 3:22PM.

After the break:

Mr. Hylton called the roll, and the next session began.

RULE-MAKING

Ms. Balsam: I already gave you the update as to where we are with the Law Department and the Mayor's Office of Operations. Mr. DeLaney, I did get your list of comments, and I adopted just about all the changes you were advocating for; but I didn't put in the definition of natural person. You had a question about days being defined as calendar days, but we had a definition of business days. We have a rule about counting times, but we need to separate out when the close of business is, because we've had issues arise where people have filed things after we closed, on the same day. Do you want to discuss the specific things you asked about? Or do you have other comments to make?

Mr. DeLaney: As I wrote you when I submitted those comments, I had planned to distribute copies to the Board members at today's meeting, but obviously, this kind of virtual Board meeting makes it hard to put pieces of paper into people's hands. So for the record, what I submitted to Ms. Balsam were my comments on Chapter 1. I had been working on, and had planned to submit prior to this meeting, my comments on Chapter 2; but I wasn't able to get to that. Like everyone else, over the past two weeks, I've been involved in moving my office to my home, so I've not been able to complete my comments on Chapter 2. But I will do that in the coming days and send them to you. I appreciate your having looked at my comments on Chapter 1 and incorporated them. Am I correct that, at this point in time, any further changes to the rules are frozen until the Mayor's plain-English police and the Law Department complete their review of what was sent to them?

Ms. Balsam: I think that would be the best way to proceed.

Mr. DeLaney: And then after we receive their comments, we will review and address them, but we can also make other changes to the draft before we publish it. Is that correct?

Ms. Balsam: It depends, I guess, on what they are. Yes, we can do that, but remember that the Law Department will give us preliminary approval, and if we make substantive changes after we get that preliminary approval, I think we would have to go back to them. Which is OK; we can do that. But at least the process is moving forward.

Mr. DeLaney: OK. Fine. I appreciate that clarification. Here's what I would like to do now. Had this been a physical meeting, each of you would have been handed a letter from New York City Loft Tenants. And I would like to read that letter to you all now, so that it will be part of the record of today's meeting.

Mr. Hylton: Go ahead Mr. DeLaney.

Mr. DeLaney: Dated March 18, from the New York City Loft Tenants, Addressed to Helaine Balsam, Esq., Executive Director/General Counsel, etcetera, etcetera. With copies to all Loft Board members and also to Melanie E. La Rocca.

Dear Ms. Balsam and Members of the Board,

As you know, New York City Loft Tenants is a volunteer organization of loft tenants who provide advocacy, education and outreach services regarding the Loft Law for loft tenants throughout New York City. As such, we believe in the mission and the work of the New York City Loft Board and rely on a reasonable interpretation of the statutes during the promulgation of the Loft Board Rules. First of all we want you to know that we appreciate the careful work that you are doing. While we have our quibbles with some of the language in the proposed rule changes, there are at least two proposed rule changes that stand out to us as a dramatically incorrect new interpretation of the statute. The first relevant section is:

§ 3. Section 201(b) of Title 29 of the Rules of the City of New York is amended to read as follows...

An owner or responsible party must file an application for an extension [must be filed] before the expiration of the deadline(s) for which an extension is sought, except that an owner or responsible party may file an application for an extension on or before {insert date here} which is thirty (30) days from the effective date of this amended rule...

This proposed change seems to suggest that any owner or responsible party who is out of compliance may apply for an extension of time, regardless of whether or not they have already applied for and received or been denied an extension, or have met the statutory standard for an extension in the first place. We understand the need for some kind of “safety valve” to allow owners who have acted in good faith to come into compliance, but we do not think the proposed rule language is the right way to do it. With respect to extensions, the language of the Loft Law states:

(vii) An owner who is unable to satisfy any requirement specified in paragraph (ii), (iii), (iv), (v), or (vi) of this subdivision for reasons beyond his/her control, including, but not limited to, , may apply to the loft board for an extension of time to meet the requirement specified in paragraph (ii), (iii), (iv), (v), or (vi) of this subdivision. The loft board may grant an extension of time to meet a requirement specified in paragraph (ii), (iii), (iv), (v), or (vi) of this subdivision provided that the owner demonstrates that he/she has made good faith efforts to satisfy the requirements

We believe the proposed language has several issues:

1. It will allow for even willfully non-compliant owners, including those who have already been found to be acting in bad faith by the Loft Board, to force a readjudication of their extension claims. The costs of this language are extremely high to both tenants and the Loft Board.
 - o The (already overworked) Loft Board will in all likelihood be forced to reconsider and possibly re-litigate every single building ever found to be out of compliance and whose owners have stubbornly refused to take any of the actual steps that would bring about compliance.
 - o Tenants will be forced to file oppositions not only to these frivolous claims, but also to their appeals every step of the way. The legal costs of this effort would be enormous.

It is a tactic of some owners to bludgeon their tenants into self-eviction by burdening them with legal costs. This proposed rule opens the door to that kind of abuse on a level that is hard to overstate.

2. The plain English language of the Loft Law says that an extension may be granted. It very clearly does not say that multiple extensions may be granted, so allowing an owner who has been granted an extension and then failed to comply to try again does nothing except force tenants to spend enormous sums defeating this new language in court.
3. The Loft Law further states that owners must demonstrate “good faith” efforts toward compliance. Many of the owners who are going to re-apply will be ones who were found to be acting in bad faith by the Loft Board itself. It seems paradoxical that the Loft Board would judge an owner to be acting in bad faith and then give that owner an opportunity to claim they are acting in good faith. What purpose can that serve other than to create legal expenses and unnecessary work for the Loft Board staff?

The Loft Law is specifically worded to allow the Loft Board to sanction building owners who are out of compliance with their obligations. It is important to remember that every building owner has a surefire path to compliance, and that is to do the work required to bring the building up to code under article 7B. There is already a mechanism in place for circumstances that are beyond an owner’s control – for instance, there is an accelerated process to evict tenants who unreasonably deny access to perform necessary work.

Doing the work of advocacy for loft tenants, we have seen first-hand the abuses that this rule change would create. In most cases we have seen, out of compliance owners are willfully so. Rather than spend the money to meet their Loft Law obligations, they instead spend their money on lawyers and lobbyists in an effort to escape those obligations and evict their tenants. This rule change opens an enormous new opportunity for exactly that type of bad faith behavior.

We don’t think this language change will stand up to judicial scrutiny and we respectfully request that it be removed.

There is also the problem, to our way of thinking, that the current rules allow for only one extension per deadline. While we understand the proposal says that the extension cannot exceed the CO deadline in MDL 284, the Loft Board has interpreted the extension language as providing that when the extension is granted, the deadline in the extension supplants what is in MDL 284.

We are attaching, for the consideration of the board, some language that we feel corrects these issues .

Thank you, and best regards.

Sincerely,

New York City Loft Tenants

We hope you and your loved ones are healthy and safe. Please remember to follow all medical protocols for avoiding the COVID-19 virus.

Mr. DeLaney continued: I have that language, and we suggest it be evaluated. I would ask the Chair and the Executive Directory how I can submit both this letter and that proposed language to my fellow Board members, without circumventing any provisions of rules of practice. Thank you.

Mr. Hylton: Thank you, Mr. DeLaney. One second.

Mr. Hylton continued: Mr. DeLaney, you may just forward that letter to Ms. Balsam, and she will forward it to the Board members.

Mr. DeLaney: OK. And I will also submit this proposed language for the Board members to review; and if they find it of interest, I hope there is a way it could be fast-tracked for consideration by the Law Department.

Mr. Hylton: We'll see what we can do, Mr. DeLaney. Do any other Board members have comments on the rules?

Ms. Torres-Moskovitz: I don't have comments on the rules, but I wanted to thank you guys for pulling together this on-line session. This is great, to be able to continue and I just hope you guys stay safe since you're all in the same room.

Ms. Balsam: Don't worry. We are socially distant from each other.

Mr. Hylton: We are maintaining the six-foot requirement. But I want to thank you, the Board members, for making this happen. We're trying to do business as usual, so I'm glad we were able to facilitate this. It depends on how things go, of course, but be prepared for the possibility that this will be the format for next month as well.

Mr. DeLaney: I'm curious to know if any of my fellow Board members have any reaction to the points made in the letter I wrote.

(Various members speak at once).

Mr. Barowitz: It's a little hard to digest without copies in-hand. When I get it in-hand, if I have any comments, I'll let you know.

Mr. Hylton: Ms. Balsam, can they comment when you forward it?

Ms. Balsam: They can send comments to me, of course.

Mr. Hylton: You can send comments to Ms. Balsam, but you can't circulate them among the Board.

Ms. Balsam: Because that would be meeting, when you're not meeting.

Ms. Torres-Moskovitz said she had always been concerned about that section, so was happy to hear it's being addressed.

Ms. Roslund expressed appreciation for the well-written response.

Mr. DeLaney: I would just point out that the general thrust of the proposal was to allow an extension of the sort that is currently contemplated, but with some limitations on eligibility for owners who have come up short in various ways previously.

Mr. Hylton: Are there any other comments? We're about to close the Board meeting. With no further comments,

This will conclude our March 19, 2020, Loft Board meeting. Our next public meeting, we hope, will be held on Thursday, April 23, 2020, at 2:00 PM at 22 Reade Street, or whatever the venue allows.

The End

