

MINUTES OF PUBLIC MEETING

New York City Loft Board Public Meeting

October 20, 2022

The meeting began at 2:06 PM

Attendees: Charles DeLaney, Tenants' Representative; Christian Hylton, Owners' Representative; Heather Roslund, Public Member; Samira Rajan, Public Member; Richard Roche, Fire Department's *ex officio*; Guillermo Patino, Chairperson Designee

INTRODUCTION:

Chairperson Patino welcomed those present to the October 20, 2022, public meeting of the New York City Loft Board, 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 Board as consistent with Article 7-C of the New York State Multiple Dwelling Law.

VOTE ON MEETING MINUTES:

September 15, 2022, Meeting Minutes

Chairperson Patino asked if there were any comments on or corrections to the September 15, 2022, minutes. As there were none, he asked for a motion to accept the September 15, 2022, meeting minutes and for a second.

Mr. DeLaney moved to accept the September 15, 2022, meeting minutes, and **Mr. Hylton** seconded.

The vote

Members concurring: Mr. DeLaney, Mr. Hylton, Ms. Roslund, Ms. Rajan, Chairperson Patino

Members dissenting: 0

Members abstaining: Mr. Roche

Members absent: Mr. Barowitz, Ms. Oddo,

Members recused: 0

EXECUTIVE DIRECTOR'S REPORT

Loft Board Offices' Move: We have vacated the fifth floor completely. We are now fully operational on the first floor of 280 Broadway, in the area called the Atrium.

Rules: The proposed rules will be sent for publication next week. The tentative date for the public hearing is December 8, 2022.

Personnel: We're interviewing for attorney positions. We had an interview last week. We have another one tomorrow. I'm hopeful to have announcements about new hires next month.

Enforcement: In late September, the staff sent thirty-nine enforcement notices for building owners who failed to complete the annual registration. Since then, we've been receiving calls and/or payments. Right now, we have twenty-four buildings that still have not completed the annual registration process. It's our goal to present these enforcement cases to the Board for the November meeting.

Enforcement under the Reasonable and Necessary rule: We've been talking about enforcement of this rule for a couple of months now, and as you may remember, we issued ten violations in April, and in August, we issued eight administrative determinations fining owners for failure to legalize. We've received three administrative appeals related to these administrative determinations. One of them is on today's calendar.

Our enforcement efforts on this will continue. At the September meeting, I reported that we identified approximately fifty buildings that are ripe for this type of enforcement. We've issued fifteen notices of violations since the September meeting. The move to the first floor slowed us down a bit, but we're working through the list, and the goal is to send the rest of the notices before the November meeting.

Litigation: Since the last meeting, we've received two favorable decisions in cases filed against the Loft Board. The first decision concerns the challenge brought by the tenants of 72 Warren. The case

challenged an administrative determination which rejected an application filed by the tenants in response to an amended Narrative Statement and granted the certification. The tenants did not submit substantive comments to the owner's plan. Instead, the tenants argued that DOB could not issue a permit for the application because the application had expired and could not be reinstated. Because the application was in fact reinstated by the Department of Buildings, the administrative determination rejected the application and granted the certification. The tenants filed a case in Supreme Court. Finding that the tenants failed to raise a substantive challenge to the owner's amended plan, the court dismissed the tenants' case.

The second decision involved the building at 401 Wythe Avenue in Brooklyn. The case challenged the Loft Board Order No. 5112, dated March 17, 2022. The Order denied the tenant's protected occupancy application. The Loft Board found that the 2019 amendments, which created a new Window Period for coverage in § MDL 281(6), did not create a new claim for protected occupancy status for a unit covered under § MDL 281(5). The court dismissed the petition, finding that it lacked merit and that the Loft Board performed its duties above the rational standard required.

Ms. Roslund: Ms. Roslund asked for the number of buildings on the list that that have yet to receive violations.

Ms. Cruz: Thirty-five

Mr. DeLaney: Thank you for covering the ongoing enforcement efforts. I realize you've been delayed with the move, but my principal question is, back in May I think, you provided us with some statistics on case backlog, and I'm anxious to see where we are in terms of the number of registered IMDs and where they are in the compliance process.

Ms. Cruz: As we're going through the enforcement, we're updating the list with whatever information we have. Once we're done with this round of fifty, I will present whatever we have to date.

Mr. DeLaney: Okay, because, as you recall, there were periods where, under different Chairs and Executive Directors, stats came at some regular interval, and it would be nice if we could get back to

that, so when people say the Loft Board doesn't do anything, it would be nice to be able to say, this year, so many buildings exited for code compliance and whatever else.

Ms. Cruz agreed.

Chairperson Patino thanked Mr. DeLaney and Ms. Cruz and turned to the cases.

THE CASES:

Appeal and Reconsideration Calendar

	Applicant(s)	Address	Docket No.
1	307 Scholes Street LLC	307 Scholes Street, Brooklyn	AD-0125
<i>The Loft Board denied Owner's appeal of an Administrative Determination imposing a \$17,500.00 fine for failing to exercise all and necessary action to obtain a residential certificate of occupancy.</i>			

Ms. Storey presented this case.

Chairperson Patino: Thanked Ms. Storey and asked if there were any comments on this case.

Ms. Roslund pointed out that the Proposed Order says there were no signed, dated, stamped, and sealed drawings, but on pages 60 through 66 in the backup, there are.

After some review by **Mr. Clarke, Ms. Cruz, Ms. Storey**, and some Board members, the proposed order was amended to remove a sentence on page 3 that stated, "The plans attached to the Answer and the Appeal are not dated, are missing the architect's seal and the DOB job number."

Chairperson Patino asked for a motion to accept this case as amended.

Mr. DeLaney moved to accept this case, and **Mr. Roche** seconded.

The vote

Members concurring: Mr. DeLaney, Ms. Roslund, Ms. Rajan, Mr. Roche, Chairperson Patino

Members dissenting: Mr. Hylton

Members abstaining: 0

Members absent: Mr. Barowitz, Ms. Oddo

Members recused: 0

The Summary Calendar

Chairperson Patino explained that there are eight cases on the Summary Calendar: three access applications, one protected occupancy application, one rent dispute application, one diminution of services application, and two coverage applications, and that these are usually vote on as a block. Case No. 5 was taken up separately.

	Applicant(s)	Address	Docket No.
2	The Brocho V'Hatzlocho Corp.	538 Johnson Avenue, Brooklyn	LS-0245
<i>The Loft Board deemed the access application withdrawn.</i>			
3	241 Bedford Associates, LLC	156 North 4 th Street, Brooklyn	LS-0247
<i>The Loft Board deemed the access application withdrawn.</i>			
4	325 Greenwich Street LLC	187 Duane Street aka 325 Greenwich Street, New York	LS-0290
<i>The Loft Board deemed the access application withdrawn without prejudice.</i>			
6	Julian Bozeman	473-475 Kent Avenue, Brooklyn	TA-0295
<i>The Loft Board deemed the rent dispute application resolved.</i>			
7	Tribeca Enterprises Corp.	371 Canal Street, New York	TM-0110
<i>Loft Board deemed the application withdrawn without prejudice.</i>			
8	Shirley Green	112 Fourth Avenue, New York	TR-1397
<i>The Loft Board deemed the coverage application withdrawn with prejudice.</i>			
9	Lenka Drstakova	8-10 Grand Avenue, Brooklyn	TR-1446
<i>The Loft Board deemed the coverage application resolved.</i>			

Chairperson Patino asked if there were any comments on these cases (none); then for a motion to accept these cases, and for a second.

Ms. Roslund moved to accept this case, and **Mr. Hylton** seconded.

The vote

Members concurring: Mr. DeLaney, Mr. Hylton, Ms. Roslund, Ms. Rajan, Mr. Roche, Chairperson Patino

Members dissenting: 0

Members abstaining: 0

Members absent: Mr. Barowitz, Ms. Oddo

Members recused: 0

Chairperson Patino introduced case number 5 and asked if there were any comments on the case.

	Applicant(s)	Address	Docket No.
5	Daniel Bellisimo and Marco Grosso	385 Troutman Street, Brooklyn	PO-0183
<i>The Loft Board deemed the protected occupancy application withdrawn with prejudice.</i>			

Mr. Hylton asked if the tenants had been represented by counsel and if counsel had worked on and signed the stipulation.

Ms. Cruz confirmed both.

Mr. DeLaney: My intention is to vote no on this because once again, the Loft Board neither accepts nor rejects the terms of the stipulation. But in my view, as I've stated previously, I think that stipulations should address the fundamental issues that are raised either in the application or the answer. This stipulation reads more like a lease. It declares what the legal rent is and establishes a preferential rent. The tenants waive certain rights to do certain things for certain reasons. I take note of my colleague's point that the tenants were represented by counsel. I think that stipulations that go into excessive detail on topics and that are a *quid pro quo* for not acknowledging coverage shouldn't be crafted by attorneys for either set of parties. I plan to vote no.

As there were no further comments, **Chairperson Patino** asked for a motion to accept the case, and for a second.

Mr. Hylton moved to accept this case, and **Ms. Rajan** seconded.

The vote

Members concurring: Mr. Hylton, Ms. Roslund, Ms. Rajan, Mr. Roche, Chairperson Patino

Members dissenting: Mr. DeLaney

Members abstaining: 0

Members absent: Mr. Barowitz, Ms. Oddo

Members recused: 0

The Master Calendar

Chairperson Patino explained that there were three cases on the Master Calendar and that one protected occupant case was consolidated with the pending coverage case. Then he introduced the first case.

	Applicant(s)	Address	Docket No.
10	American Package Company	226-240 Franklin Street, Brooklyn	LS-0283
<i>The Loft Board granted the access application directing the tenant to provide access.</i>			

Mr. Kim presented this case.

Chairperson Patino asked if there were any comments on this case.

Mr. DeLaney: I plan to vote against this. As I stated earlier in the day, the access provisions that are in the Board's rules following the law have worked very well over the years. I have occasionally voted to support tenants being fined for not granting access. It's incumbent on tenants to give access. However, the service issue here, I find, is enough of an erosion of the way that things are supposed to be done, that I think it takes us down a slippery slope. As was presented in the summary, this is a building with two different street addresses. The tenants receive mail at one address, the certified letter was sent to the other address, received by the owner's agent, and delivered to the tenants. And I personally think that we should stick to the letter of our rule, and I would prefer that the owner re-serve the request for access and get it exactly right. So, I plan to vote no.

Ms. Roslund: The address on all the Loft Board applications is Franklin Street, not Green Street, correct? And does that match the Department of Buildings application?

Ms. Cruz: The address registered with the Loft Board was 226 Franklin, but the mailboxes are at 97 Green.

Mr. DeLaney: But apparently there are mailboxes in both locations.

Ms. Cruz: My understanding is the mailbox is at 97 Green.

Ms. Roslund: That's how I read it too. But the post office has both addresses? And the other address exists in the world?

Ms. Cruz: Yes

Ms. Roslund: As a recognized location?

Ms. Cruz: 226 Franklin. It is.

Chairperson Patino thanked Mr. Kim, and as there were no further comments, asked for a motion to accept the case, and for a second.

Mr. Hylton moved to accept this case, and **Ms. Roslund** seconded.

The vote

Members concurring: Mr. Hylton, Ms. Roslund, Ms. Rajan, Mr. Roche, Chairperson Patino

Members dissenting: Mr. DeLaney

Members abstaining: 0

Members absent: Mr. Barowitz, Ms. Oddo

Members recused: 0

Chairperson Patino introduced the next case on the Master Calendar.

	Applicant(s)	Address	Docket No.
11	Opera House Lofts, LLC	11-27 Arion Place, Brooklyn	TR-1403 and PO-0132
<i>The Loft Board denied the coverage and protected occupancy applications.</i>			

Mr. Clarke presented this case.

Chairperson Patino thanked Mr. Clarke and asked if there were any comments on this case.

Mr. DeLaney: For the same reasons that I've stated at several prior meetings, I plan to vote no. I understand the tenants' argument that there was no Certificate of Occupancy for the address involved

because at the time the law passed, the address of the C of O was given as a vacant lot. So therefore, I plan to vote no.

As there were no further comments, **Chairperson Patino** asked for a motion to accept this case, and for a second.

Mr. Hylton moved to accept this case, and **Ms. Rajan** seconded.

The vote

Members concurring: Mr. Hylton, Ms. Roslund, Ms. Rajan, Mr. Roche, Chairperson Patino

Members dissenting: Mr. DeLaney

Members abstaining: 0

Members absent: Mr. Barowitz, Ms. Oddo

Members recused: 0

Before the meeting closed, Mr. DeLaney asked if December 8 was still the target date for the public hearing.

Ms. Cruz confirmed.

Mr. DeLaney asked if the Department of Buildings had signed off on this yet.

Ms. Cruz said no. She said that all should be finalized by the end of next week.

Chairperson Patino: This will conclude our October 20, 2022, Loft Board meeting. Our next public meeting will be held on November 17, 2022. Board members, please sign and email in your attendance sheets today. Thank you.