

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

**September 17, 2015**

The meeting began at 2:10 p.m. The attendees were Chief Spadafora, Fire Department Representative; Chuck Delaney, Tenants' Representative; Elliott Barowitz, Public Member; Daniel Schachter, Public Member; LeAnn Shelton, Public Member and Chairperson Alexandra Fisher.

**INTRODUCTION**

**Chairperson Fisher** welcomed those present to the September 17, 2015 public meeting of the New York City Loft Board.

**Mr. Delaney** requested that the staff have backup audio recordings of the Board meeting in addition to the YouTube videos. **Mr. Delaney** also asked if the staff would consider creating a newsletter with information regarding the 2015 amendments to the Loft Law, in addition to what is posted on the Loft Board's website.

---

**VOTE ON JULY 16, 2015 MINUTES**

**Motion:** Ms. Shelton moved to accept the July 16, 2015 minutes. Mr. Barowitz seconded the motion.

**Members Concurring:** Chief Spadafora, Chairperson Fisher, Mr. Delaney, Mr. Barowitz, Mr. Schachter, Ms. Shelton (6)

**Board Members Absent:** Ms. Bolden-Rivera (1)

---

**REPORT OF EXECUTIVE DIRECTOR**

**Ms. Alexander** reported that the Loft Board currently has 326 buildings in its jurisdiction.

**Ms. Alexander** also reported that the Loft Board has collected \$1,179,175 in registration fees; with 33 buildings that have still not renewed their annual registration for the fiscal year 2016. The Loft Board staff has started its annual "call-a-thon" to these building and will begin enforcement actions in the next two months.

---

**CONTINUED DISCUSSION OF 29 RULES OF THE CITY OF NEW YORK § 2-09**

**Mr. Delaney** requested a continuation of the discussion of Loft Board rule § 2-09(b) regarding the determination of who is a protected occupant. He stated that he was concerned that the current interpretation was unfair, was not the intention of the initial drafters of the rule, and was inconsistent with prior Loft Board orders. He said rule 2-09(b) was intended to determine the rights of subletting, and not determine who is a protected occupant. In response, **Ms. Alexander** observed that to the contrary, the rule addresses much more than just subletting.

**Mr. Delaney** noted that the Loft Board staff simply accepts the Owner's submission of protected occupants on a registration application, but only utilizes the rule when an occupant files an application for protected occupancy status. **Ms. Alexander** clarified that the staff does not do a protected occupant analysis of every tenant in every unit registered with the Loft Board. Rather, if an owner lists a tenant on the registration form, the staff adopts the owner's recognition of that the tenant as the protected occupant.

**Mr. Delaney** mentioned a prior Loft Board order (*In Matter of Schuss*) where the Loft Board found only the husband to be the protected occupant because he was the sole prime lessee. He stated he believes it is unfair that one spouse, who is the only prime lessee, is the protected occupant when the other spouse who lived in the unit during the window period and prior to the effective date of the law, is denied

protected occupant status, regardless of whether that spouse put in sweat equity or made improvements. **Mr. Delaney** also voiced concern about determining the protected occupant based in any scenario where tenants move into the unit together and put sweat equity into improving the loft, but only one of them is a prime lessee.

**Ms. Shelton** said in those cases the issue of who put in money and time improving the apartment should be in an agreement negotiated between them. **Ms. Alexander** stated that while we would all like to be fair, a rule can be seen as unfair to those who are adversely impacted by it. In every decision the Loft Board makes, someone will undoubtedly feel they have been unfairly treated. It does not necessarily mean the rule is wrong or should be rewritten.

**Mr. Delaney** stated that the purpose of the window period was to give owners a certain amount of time to be aware of tenants living in their buildings. **Mr. Delaney** said that for many years the Board would just look to see whether the occupants lived in a unit during the window period and if the Board found that the occupants did indeed occupy the unit during the window period, it would grant them protected occupancy status. He is concerned about looking at a lease since often times a lease is not determinative of who is living there. For example, tenants used to enter into commercial leases even though they lived in the units. **Ms. Alexander** observed that in the past, the Loft Board made occupants of a unit a protected occupant with little or no analysis. She also noted that many prior Loft Board orders did not apply the rule properly. However, the Loft Board staff is now applying the rule according to its plain language.

**Ms. Alexander** clarified that there is no mention of the window period in rule §2-09, which determines protected occupancy. Rather, the operative date is the effective date of the law. She also observed that in the early years, owners issued commercial leases even when they were aware that the tenants were going to residentially occupy the space. However, that is not something that the Loft Board staff sees at this time.

**Mr. Delaney** observed that the way the rule is written, it is very difficult to understand and interpret. **Mr. Delaney** said he believes that the current rule is too complicated and difficult to understand and proposed drafting a new rule rather than deciding the cases currently on the agenda under the rule as currently written. **Mr. Delaney** suggested that the Board get the public's feedback.

In response to **Mr. Delaney's** comment, **Ms. Alexander** stated that in fact, the rule is not complicated, and with the body of case law contained in the recent Loft Board orders, the rule will be more easily understandable.

**Ms. Alexander** noted that the cases on the September calendar regarding protected occupancy are a good example of the efficacy of the rule. Even though all of the cases have very different fact patterns, rule § 2-09(b) adequately addressed each situation. She stated that as with all law, the interpretations of the Loft Law and rules evolve as the times and situations change and develop. She stated that the Loft Board opinions were providing a body of case law upon which owners, tenants, lawyers and judges can rely.

**Ms. Alexander** stated that it is not possible to draft a rule that ensures every possible scenario is fair; in the final analysis she did not think that a new rule would be any better than the current one. However, she wants to make sure the Loft Board orders state the rule clearly and apply it consistently, and while the outcome may not seem fair at times, it will be proper.

**Chief Spadafora** asked for a clearer breakdown regarding § 2-09(b).

**Ms. Alexander** explained that the Loft Law does not tell us how to determine who is the unit's protected occupant. Protected occupancy is found in rule §2-09(b). **Ms. Alexander** explained again that § 2-09(b)(1) is the rule's "catch-all" section. **Ms. Alexander** explained it is helpful to begin the analysis by first looking at whether there is a prime lessee. If there is no prime lessee in possession of the unit as his or her primary residence, then the Loft Board considers whether the occupants were in possession before, or, on or after, the effective date of the law.

**Ms. Alexander** explained that under the Loft Board rules, a residential occupant who is not a protected occupant also has rights. The biggest difference is that a protected” occupant has the right to sell the Article 7-C rights or improvements pursuant to Multiple Dwelling Law §§ 286(6) and (12). However, a residential occupant also has protections. For example a residential occupant can file a harassment application, and participate in the narrative statement process.

**Mr. Delaney** asked what if Ms. Gui said to owner, “Take \$10,000, make me a protected occupant,” and owner said yes. What happens? **Ms. Alexander** again stressed that if owner says yes, then it is his choice.

**Mr. Barowitz** said that he needs more time to think about this issue. He suggested that **Mr. Delaney** draft an amended rule. **Chief Spadafora** agreed with **Mr. Barowitz**.

**Mr. Delaney** suggested that we invite practitioners to the meeting to talk about the rule. **Ms. Alexander** stated that to do so would cause more confusion and misinformation as each side advocates for their position while the Loft Board attorneys are counsel to the Board and do not advocate for any particular side.

**Ms. Alexander** proposed that the Board table the cases that are troubling the Board members, and move forward on the rest of the cases on the Agenda.

---

#### **MOTION TO VOTE ON THE PROPOSED SEPTEMBER 2015 CALENDAR CASES**

**Motion:** Mr. Schachter moved to vote on the proposed September calendar cases. Ms. Shelton seconded the motion.

**Members Concurring:** Chief Spadafora, Chairperson Fisher, Mr. Barowitz, Mr. Schachter, Ms. Shelton (5)

**Members Dissenting:** Mr. Delaney (1)

**Board Members Absent:** Ms. Bolden-Rivera (1)

---

#### **DISCUSSION AND VOTE ON RECONSIDERATION/APPEAL CALENDAR CASES**

|    |                      |                                   |         |
|----|----------------------|-----------------------------------|---------|
| 1. | 99 Commercial Street | 93-99 Commercial Street, Brooklyn | AD-0072 |
|----|----------------------|-----------------------------------|---------|

**Motion:** Mr. Barowitz moved to accept the proposed order. Chief Spadafora seconded the motion.

**Members Concurring:** Chief Spadafora, Chairperson Fisher, Mr. Delaney, Mr. Barowitz, Mr. Schachter, Ms. Shelton (6)

**Board Members Absent:** Ms. Bolden-Rivera (1)

---

|    |   |            |        |
|----|---|------------|--------|
| 2. | Luisa Gui, Christian Wassman & Denise Langenegger | 357 Bowery | R-0338 |
|----|---|------------|--------|

**Motion:** Ms. Shelton moved to accept the proposed order. Mr. Schachter seconded the motion.

**Members Concurring:** Chief Spadafora, Chairperson Fisher, Mr. Schachter, Ms. Shelton (4)

**Members Dissenting:** Mr. Delaney (1)

**Members Abstaining:** Mr. Barowitz (1)

**Board Members Absent:** Ms. Bolden-Rivera (1)

**MOTION DID NOT PASS. IT WILL BE REINTRODUCED AT THE OCTOBER 2015 BOARD MEETING.**

---

|    |                |                 |        |
|----|----------------|-----------------|--------|
| 3. | Brendan Behlke | 80 Varick Steet | R-0339 |
|----|----------------|-----------------|--------|

**Motion:** Chief Spadafora moved to accept the proposed order. Mr. Barowitz seconded the motion.

**Members Concurring:** Chief Spadafora, Chairperson Fisher, Mr. Barowitz, Mr. Schachter, Ms. Shelton (5)

**Members Dissenting:** Mr. Delaney (1)

**Board Members Absent:** Ms. Bolden-Rivera (1)

---

|    |                      |                            |        |
|----|----------------------|----------------------------|--------|
| 4. | Gayle Marriner-Smith | 177 Water Street, Brooklyn | R-0340 |
|----|----------------------|----------------------------|--------|

**Motion:** Mr. Barowitz moved to accept the proposed order. Chief Spadafora seconded the motion.

**Members Concurring:** Chief Spadafora, Chairperson Fisher, Mr. Delaney, Mr. Barowitz, Mr. Schachter, Ms. Shelton (6)

**Board Members Absent:** Ms. Bolden-Rivera (1)

---

|    |                           |                                   |        |
|----|---------------------------|-----------------------------------|--------|
| 5. | American Package Co. Inc. | 226-240 Franklin Street, Brooklyn | R-0342 |
|----|---------------------------|-----------------------------------|--------|

**Motion:** Ms. Shelton moved to accept the proposed order. Mr. Barowitz seconded the motion.

**Members Concurring:** Chief Spadafora, Mr. Delaney, Mr. Barowitz, Mr. Schachter, Ms. Shelton (5)

**Board Members Absent:** Ms. Bolden-Rivera, Chairperson Fisher (2)

---

**DISCUSSION AND VOTE ON MASTER CALENDAR CASES**

|    |                                    |                |         |
|----|------------------------------------|----------------|---------|
| 6. | Ruth Baumann and Joshua Eichenbaum | 26 Bond Street | LI-0044 |
|----|------------------------------------|----------------|---------|

**Motion:** Ms. Shelton moved to accept the proposed order. Mr. Barowitz seconded the motion.

**Members Concurring:** Chief Spadafora, Mr. Delaney, Mr. Barowitz, Mr. Schachter, Ms. Shelton (5)

**Board Members Absent:** Ms. Bolden-Rivera, Chairperson Fisher (2)

---

|    |                         |              |         |
|----|-------------------------|--------------|---------|
| 7. | 450 Broadway Owners LLC | 450 Broadway | LT-0013 |
|----|-------------------------|--------------|---------|

**Motion:** Ms. Shelton moved to accept the proposed order. Mr. Schachter seconded the motion.

**Members Concurring:** Chief Spadafora, Mr. Delaney, Mr. Barowitz, Mr. Schachter, Ms. Shelton (5)

**Board Members Absent:** Ms. Bolden-Rivera, Chairperson Fisher (2)

---

|    |   |                           |         |
|----|---|---------------------------|---------|
| 8. | Fiona Campbell Stone, Peter Aleksa, Bernard Walker, Vlad Teichberg, Jason Beckford, Stephen Westbrook, William Foster, Li J. Choi | 13-15 Thames St, Brooklyn | TN-0217 |
|----|---|---------------------------|---------|

**Motion:** Mr. Barowitz moved to accept the proposed order. Mr. Schachter seconded the motion.

**Members Concurring:** Chief Spadafora, Mr. Delaney, Mr. Barowitz, Mr. Schachter, Ms. Shelton (5)

**Board Members Absent:** Ms. Bolden-Rivera, Chairperson Fisher (2)

---

|    |   |                           |         |
|----|---|---------------------------|---------|
| 9. | Fiona Campbell Stone, Peter Aleksa, Bernard Walker, Vlad Teichberg, Jason Beckford, Stephen Westbrook, William Foster, Li J. Choi | 13-15 Thames St, Brooklyn | TR-0889 |
|----|---|---------------------------|---------|

**Motion:** Ms. Shelton moved to accept the proposed order. Mr. Schachter seconded the motion.

**Members Concurring:** Chief Spadafora, Mr. Barowitz, Mr. Schachter, Ms. Shelton (4)

**Members Abstained:** Mr. Delaney (1)

**Board Members Absent:** Ms. Bolden-Rivera, Chairperson Fisher (2)

**MOTION DID NOT PASS. IT WILL BE REINTRODUCED AT THE OCTOBER 2015 BOARD MEETING.**

---

**Ms. Alexander** concluded the September 17, 2015 Loft Board public meeting at 4:30 pm and thanked everyone for attending. The Loft Board will hold its next public meeting on October 15, 2015 at 2 p.m. However, the location will be announced at a later date and will be published on the Loft Board website.