

**MINUTES OF PUBLIC MEETING
New York City Loft Board Public Meeting Held at
Department of Buildings
280 Broadway, Third Floor**

September 15, 2016

The meeting began at 2:06 p.m.

Attendees: Robert Carver, Esq., Owners' Representative; Elliott Barowitz, Public Member; Richard Roche, Fire Department ex officio; Chairperson Designee Renaldo Hylton; Charles Delaney, Tenants' Representative; Gina Bolden-Rivera, Public Member; and LeAnn Shelton, Public Member.

Members Absent: Daniel E. Schachter, Esq. (1).

INTRODUCTION

Chairperson Hylton welcomed those present to the September 15, 2016 public meeting of the New York City Loft Board and hoped that everyone had a wonderful summer. **Chairperson Hylton** is looking forward to a productive working relationship with the Board members. **Chairperson Hylton** welcomed a new member to the Board, Supervising Inspector Richard Roche from the New York City Fire Department, representing the Fire Commissioner.

VOTE ON June 16, 2016 MINUTES

Motion: Mr. Delaney moved to accept the June 16, 2016 meeting minutes. Mr. Barowitz seconded the motion.

Members Concurring: Mr. Carver, Mr. Barowitz, Mr. Roche, Mr. Delaney, Ms. Shelton (5).

Members Abstaining: Chairperson Hylton, Ms. Bolden-Rivera (2).

Members Absent: Mr. Schachter (1).

Chairperson Hylton introduced the Loft Board's new Executive Director, Helaine Balsam, Esq. who took charge of the Loft Board on August 29, 2016. **Chairperson Hylton** also thanked Ms. Martha Cruz, Esq., the Loft Board's Deputy General Counsel, who functioned as Interim Executive Director while a search was conducted for a new Executive Director. **Chairperson Hylton** praised Ms. Cruz and the Loft Board staff for performing their job responsibilities at a high level.

Chairperson Hylton gave a brief history of Ms. Balsam's professional background.

REPORT OF THE EXECUTIVE DIRECTOR, Helaine Balsam, Esq.

Ms. Balsam thanked Chairperson Hylton and thanked everyone in advance for helping her make this transition into the Loft Board's Executive Director and will be relying on everyone's expertise as we move forward. **Ms. Balsam** stated that her goals are to stream line processes and to try to get the buildings under the Loft Board's jurisdiction legalized. **Ms. Balsam** also stated that she will be working on re-drafting the Loft Board's rules to make them more simple, straightforward and accessible.

Ms. Balsam stated that at the moment the Loft Board has 277 Loft Buildings fully registered. There are 55 buildings that remain un-registered. Of those 55 buildings, five buildings need to pay late fees and one building paid, but failed to file the renewal registration application.

DISCUSSION AND VOTE ON SUMMARY CALENDAR CASES

Chairperson Hylton presented the below summary calendar cases for discussion and vote by the board.

1.	ECQ Realty Corp.	37 Grand Avenue, Brooklyn	LS-0232
1	K&C II LLC	235-241 Berry Street Brooklyn	LS-0223
2	216 Est 95 Realty LLC	43 West 27 th Street	LS-0235
3	Claudia Dias	19-27 Jay Street, Brooklyn	PO-0023
4	Michael Seeler	151 Kent Avenue, Brooklyn	PO-0027
5	Various Tenants of 169 Spencer Street	169 Spencer Street, Brooklyn	TH-0204
6	Kathe Burkhart, Dale May, Vanessa Riegel, Bill Abbott and Chris Borrok	47-53 South 5 th Street, Brooklyn	TM-0080
7	Various Tenants of 169 Spencer Street	169 Spencer Street, Brooklyn	TM-0085
8	Rafael Pabon-Bey	255 McKibbin Street, Brooklyn	TR-1162
9	Beryl Man, Scott Piscitelli, Dennis Mcelroy, Jennifer Gonzales, Manel Garza, Claire Mitchell, Gabriel Friedman, Lee Anne Grove	65-75 Roebling Street, Brooklyn	TR-1198
10	Brian Hubbard, Joel Niedfeldt, Jamie Schultz, Gage Cass, Anne Palmer, Simon Marcus, Amy Korb, Leanne Fonseca, Damien Higgins, Ramie Roth, April Silverman, Lief Nelson, Josh Blank, Emily Rosenburg, Sarah Meyer, Matthew Isaacs, Brant Mounger, Clay Holley, Matt Spiegelman, Heather Nicosia, Heidi Korsavong, Brent Tomer, Erin Detrick, Ondine Karady, James Rutenberg, Danielle Goneconti And Alec Isaacs, Megan Isaacs, Jennifer Mielke, Megan Walton, Ari Taub, Victoria Stevens, Zackery Hollister, Marek Berry, Allison Navis, Tara Lee Byrne, Sasha Samuel And Clyde Hagerty	65-75 Roebling Street, Brooklyn	TR-1199
11	Alexander Ehrlich and Nathaniel Benfield	65-75 Roebling Street, Brooklyn	TR-1204
12	Daniel Arce, Clair Catillaz, Alesander Perrelli, Giuseppe Agostaro, Jocko Selberg, Itamar Jobani	49 Wyckoff Avenue, Brooklyn	TR-1219
13	Nicholas Bennet and Mark Losinger	151 Kent Avenue, Brooklyn	TR-1227
14	Kimberly Manne	65-75 Roebling Street, Brooklyn	TR-1229
15	Raphael Taylor	440 Broadway	TR-1275
16	Cedric Wilson	101-105 Water Street, Staten Island	TR-1281
17	Xiuhong Zhao	816 Broadway	TR-1292

Mr. Delaney raised questions on three of the cases. For case number 8 on the calendar, TR-1162: this concerns a building, 255 McKibbin Street, Brooklyn, New York, in which five units were removed from coverage by the former Executive Director pursuant to an administrative determination based on these five units being in the basement of the building. **Mr. Delaney** mentions that it is possible to legalize a unit located in a basement, but the 2010 amendment to the Loft Law excluded from coverage units located in a basement. **Mr. Delaney** asked whether these five units are still being residentially occupied and asked whether the Loft Board has inspected. **Ms. Cruz** stated that the Loft Board has not inspected these units.

Mr. Delaney's concern with the exclusions under Multiple Dwelling Law § 281(5) is that there are units that he believes should be brought into compliance as affordable housing units rather than excluded from coverage. **Mr. Delaney** states that there is no question that you cannot legalize a dwelling in a cellar, but the units at question in TR-1162 are basement units. **Mr. Delaney** mentions that he had no idea about the de-coverage of these units until he read the proposed order. **Mr. Delaney** requests a copy of the administrative determinations when made. Further, **Mr. Delaney's** position is that a unit is either a covered unit or it shouldn't be residential. The fear is that a lot of these units that are excluded from coverage, even though they could have been brought into compliance, will continue to be used residentially at higher rents and without proper public oversight. **Chairperson Hylton** asked whether these types of units should be inspected. **Mr. Delaney** believes that at a minimum they should be inspected.

Mr. Barowitz asked about the differences between a basement and a cellar. **Chairperson Hylton** stated that it has to do with the percentage of livable space above and below grade. **Mr. Barowitz** then

mentioned that some buildings have another grade in the backyard that is beneath the sidewalk grade. Would that then be covered by the sidewalk grade or backyard grade? **Ms. Shelton** believes it is based on sidewalk grade. **Chairperson Hylton** will find out and will let the Board-members know by email.

Mr. Roche stated that the FDNY would like to go in and inspect these units to ensure the safety of the tenants who reside there.

Mr. Delaney: For case number 12 on the calendar, TR-1219, 49 Wyckoff Avenue, Brooklyn, New York has never been registered and does not have an interim multiple dwelling (“IMD”) number. Pursuant to the stipulation dated March 30, 2016, the tenants withdrew their coverage claims with prejudice and agreed to vacate the premises. The stipulation further stated that the owner was buying out the tenants’ rights to their units pursuant to MDL § 286(12). The problem is if the unit is not an IMD and has never been registered as an IMD, the owner cannot buy the rights to a unit under the Loft Law for a unit not covered under the Loft Law. **Mr. Delaney** asked whether the Loft Board staff would interpret that action at a future date and time as being a MDL § 286(12) sale. **Ms. Cruz** stated that it is not how the staff interprets, it is for the board to determine how to proceed. **Mr. Delaney** disagrees with Ms. Cruz’ interpretation and will write an opinion explaining his position.

Relevant to **Mr. Delaney’s** point about MDL § 286(12) sale of rights agreements, **Mr. Delaney** discussed another case on the calendar in which a tenant filed for coverage just a few weeks after the owner filed a MDL § 286(12) sale of rights. The problem with that case is the purchase of the previous tenant’s rights occurred three or four years back. A persistent problem exists where owners purchase a prior tenant’s MDL § 286(12) rights to a unit but fail to file it with the Loft Board. Subsequently, a future tenant of that unit comes into occupancy, thinks that they are protected under the Loft Law, goes to the expense of filing an application for coverage with the Loft Board, to only then find out that the owner had previously executed a MDL § 286(12) sale of rights for the unit in question. A mechanism needs to be in place to deal with such a situation.

Mr. Delaney: For case number 16, TR-1281, the tenant filed for coverage of three units on one floor and then withdrew the application without prejudice. **Mr. Delaney** asked whether the Loft Board staff had a mechanism in place for tracking these kinds of buildings. That is to say “buildings” where a tenant makes an allegation that A) the building is being used for residential purposes and B) the building appears to qualify for coverage under the Loft Law, but then the tenant withdraws their coverage claim. **Ms. Cruz** stated that we do have the buildings listed in our system, but that is as far as the Loft Board staff will track it. **Ms. Cruz** stated that with respect to TR-1281, the Loft Board staff did call to confirm that the applicant no longer resided in the building.

Motion: Mr. Carver moved to accept the proposed orders. Ms. Shelton seconded the motion.

Members Concurring: Mr. Carver, Mr. Barowitz, Mr. Roche, Chairperson Hylton, Mr. Delaney, Ms. Bolden-Rivera, Ms. Shelton (7).

Members Absent: Mr. Schachter (1).

DISCUSSION AND VOTE ON MASTER CALENDAR CASES

Ms. Martha Cruz, Esq. presented the below master calendar cases for discussion and vote by the board.

18.	Jen Gatién, David Mullen, George Dewey and Kelly Girth	43-49 Bleecker Street	TR-1060 TR-1111 TR-1163
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Mr. Roche noted that based on the case material, unit 306 has a constructed wooden structure within the unit with stairs leading up to the bed. Based on his agency’s research, the subject building is fully sprinklered, and as such there could be a concern that this wooden structure, which was added by the tenant, could obstruct the sprinkler flow of water to the area beneath. In addition, the wooden structure is being used as sleeping quarters. **Mr. Roche** stated that the FDNY has no objection to coverage of this building/unit, but would like to inspect unit 306 to ensure the safety of the tenant.

Mr. Barowitz asked if the FDNY finds that the loft sleeping space hinders the sprinkler system, what would the FDNY do? Would you have it removed? **Mr. Roche** stated that appropriate action would have to be taken in accordance with the fire and building codes. In his professional opinion, **Mr. Roche** stated that the tenant would not have to be removed from the unit, but some sort of reconciliation would have to be taken such as removal of the wooden structure or installation of a sprinkler head underneath the wooden structure.

Mr. Delaney asked about the testimony entertained by the Judge about other units in the building. **Ms. Cruz** stated that the Loft Board staff's recommendation to the board is to reject the Judge's analysis regarding these other units. **Mr. Delaney** asked whether there would be any prejudice against one of these tenants if they decided to one day file for coverage of their unit. **Ms. Cruz** stated that there would not be any prejudice.

Motion: Mr. Delaney moved to accept the proposed order. Ms. Bolden-Rivera seconded the motion.

Members Concurring: Mr. Carver, Mr. Barowitz, Mr. Roche, Chairperson Hylton, Mr. Delaney, Ms. Bolden-Rivera, Ms. Shelton (7).

Members Absent: Mr. Schachter (1).

19.	Erich Conrad and Erin Elliott	43-49 Bleeker Street	TR-1255 TR-1256
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Motion: Mr. Carver moved to accept the proposed order. Ms. Shelton seconded the motion.

Members Concurring: Mr. Carver, Mr. Barowitz, Mr. Roche, Chairperson Hylton, Mr. Delaney, Ms. Bolden-Rivera, Ms. Shelton (7).

Members Absent: Mr. Schachter (1).

Chairperson Hylton concluded the September 15, 2016 Loft Board public meeting at 2:50 pm and thanked everyone for attending. **Chairperson Hylton** mentioned that moving forward the Loft Board will hold its public board-meetings at 280 Broadway, in the 3rd Floor Conference Room. The Loft Board's next public meeting will be held on October 20, 2016 at 2 p.m.