

MINUTES OF PUBLIC MEETING  
New York City Loft Board Public Meeting  
Held at 22 Reade Street, First Floor (Spector Hall) New York, N.Y. 10007

January 17, 2019

**The meeting began at: 2:18 pm**

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

**INTRODUCTION:**

**Chairperson Hylton** welcomed those present to the January 17, 2019, 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.

**Vote to approve October 18, 2018, Meeting Minutes**

**Mr. Hylton** asked if there were any corrections or comments on the minutes.

**Mr. Hernandez** noted that his title in the Attendees section was incorrect. It should be Manufacturers' Representative.

**Ms. Balsam** made note to correct it.

**Mr. Hylton** asked if there were any additional corrections to the minutes.

**Mr. DeLaney** noted the following: In his comment on page 5, line five, the words "security room" should be "hearing room." And on page 11, the fifth line from the bottom, where it reads, "*it* qualifies as an IMD...", it should be "*those units* qualify as IMDs..."

**Mr. Hylton** asked if there were any additional corrections to the minutes (none); then for a motion to accept the minutes.

**Mr. Hernandez** moved to accept the October 18, 2018, meeting minutes, and **Mr. Carver** seconded.

**The vote:**

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

**Members dissenting:** 0

**Members abstaining:** Mr. Schachter, Ms. Roslund

**Members absent:** 0

**Members recused:** 0

**Vote to approve November 15, 2018, Meeting Minutes**

**Mr. Hylton** asked if there were any corrections or comments on the minutes.

**Mr. DeLaney:** I just have one question. On page 14, there's the outcome of the Executive Session, where we discuss 255 18<sup>th</sup> St.; and my question to Ms. Balsam is, are you going to report on 18<sup>th</sup> Street in your report?

**Ms. Balsam:** I hadn't planned on it, but I can.

**Mr. Hylton** asked if there were any corrections or comments on the minutes (none); then for a motion to accept the minutes.

**Mr. Carver** moved to accept the November 15, 2018, meeting minutes; **Mr. Barowitz** seconded.

**The vote:**

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

**Members dissenting:** 0

**Members abstaining:** Mr. Hernandez, Mr. Schachter,

**Members absent:** 0

**Members recused:** 0

**The 2018 Annual Report:** A pdf of the presentation is attached.

**Mr. Hylton:** The Loft Board staff has prepared and will now present the 2018 Annual Report. Ms. Balsam will begin.

The following are the general topics of the presentation and the staff member who presented each.

**Ms. Balsam:** **Current Inventory of Buildings**

**Ms. Balsam:** **Cases Considered by the Loft Board**

**Ms. Cruz:** **Application Status**

**Mr. Leveille:** **Enforcement**

**Mr. Bobick/ Mr. Clarke:** **Administrative Matters**

**Questions asked during the presentation:**

**Re Enforcement:**

**Mr. Hylton** asked Ms. Leveille the meaning of “Violations Administratively Closed.”

**Ms. Leveille** explained that those were violations sent out in error.

**Ms. Balsam** added that sometimes a building is listed in the system under one address, but the report was submitted under another address; or we just missed it...

**Mr. DeLaney** wanted to confirm the number of violations sent out in 2017 and 2018 for not filing monthly reports.

**Ms. Leveille** replied that in 2017, twenty-four violations were sent out; as compared to one hundred and sixty-eight in 2018.

**Mr. DeLaney** asked, re the **Enforcement Plan/ Selection** section, if Ms. Leveille could give a break-down for the number of buildings in the Expired TCO and CO But No Removal categories [as she had done for the first three: No. Alt 1 (5), Alt 1 Filed but No Narrative Statement (1), and Expired Alt 1 (5)]

**Ms. Leveille** responded that there are five in Expired TCO; ten in CO; and one in 7B (which totals 27 buildings).

**Ms. Torres-Moskovitz** asked Ms. Leveille for clarification of the last item in the **Enforcement Plan/ Implementation** section.

**Ms. Leveille:** The Board has sent out twenty-two warning letters to building owners in the different categories, saying, this is where you are, this is what you need to do, and please let us know if you have any issues. Some have responded, but for those who have not responded, or for those we feel we need to take to the next phase, before we can issue a violation or impose a fine, we have to send a “notice of proceeding,” explaining to owners what the rule is and how the owner is in violation of the rule, based on the information we have. Owners also have an opportunity to respond to the notice of proceeding.

**Ms. Torres-Moskovitz** asked about the numbers: twenty-two letters versus twenty-seven buildings.

**Ms. Leveille** responded with the status of the other five buildings. Of the twenty-seven buildings, twenty-two letters were sent out. One building may be subject to a housing maintenance violation proceeding before OATH. One other building was also selected to receive both a warning letter and for potential referral to OATH for violation, if no we receive no response.

**Ms. Torres-Moskovitz** asked if there was a phase two to this process.

**Ms. Leveille** explained that the different buildings are in different phases of the work, and once the time for that phase expires, they will decide how to proceed.

**Ms. Torres-Moskovitz** asked if the Board would then be providing an up-date in the public hearing.

**Ms. Balsam** replied, saying that this is just an Annual Report, and that in terms of enforcement, quarterly would probably be better. She also added, re the “Failure to Take All Reasonable and Necessary Action,” we have a rule that addresses that, and there are two different paths in the rule. For some of the violations, you

don't need a hearing at OATH, but for others, you do. So for the test cases, we didn't want to do a lot of those that would have to be prosecuted at OATH. We chose the test case, to see how that will go. Then we'll see how to proceed in terms of other buildings.

**Re Administrative:**

**Mr. Hylton** asked Mr. Bobick, regarding the **346 LONO Requests Decided** section, if he would explain the meaning of the "Rejected (Not an IMD)" designation.

**Mr. Bobick** replied that it's possible they were loft buildings at one time, and had been removed, but for some reason, they still showed in the system, so a Loft Board requirement came up. But as there was nothing for us to approve, I sent the expeditor a copy of the Loft Board Removal letter to demonstrate that the building is not an IMD.

**Mr. Hylton** asked, regarding those that are **Incomplete**, if Mr. Bobick had a sense of when those happened. If they were towards the end of the year, or...

**Mr. Bobick** replied that they were spread throughout the year, and could be the result of any number of factors, which he outlined, such as awaiting permits, narrative statements, etc.

**Mr. Hylton** asked that, since the numbers were so small (8), perhaps Mr. Bobick could follow up and see what their current status is.

**Mr. Barowitz** inquired, regarding the **Staff Field Visits** section, at what point the Board would be advised of the reviews of these buildings, so they could participate.

**Ms. Balsam** replied that New York City Loft Tenants had asked to have Board members tour buildings, and they're supposed to give us a list of buildings to vet to be sure that there's nothing pending. They haven't given us that list yet, but we have another meeting scheduled with them for next week, at which, I assume, they will give us the list.

**Mr. DeLaney** asked, regarding the same, if this was separate and apart from our inspector making visits.

**Mr. Hylton:** Yes. And he added that for 255 18<sup>th</sup> Street, staff did not only visit but also presented in support of DOB's application to revoke the C of O. They did a good job of presenting to BSA, and BSA granted the very same day.

**Mr. Schachter** asked Mr. Clarke if, for the Clearwell searches, the staff was going through archived emails of staff that may have left.

**Mr. Clarke** confirmed that was correct.

**Mr. DeLaney** asked about Board members' emails.

**Mr. Clarke** said he did not think they had access to Board members' emails, unless they appeared as part of a thread of communication with a staff member.

**Ms. Balsam** added that she didn't think the staff had ever had a FOIL request for Board members' emails.

**Mr. DeLaney** asked if the Clearwell searches were only tied into the FOIL requests.

**Ms. Balsam** confirmed that was correct, and gave the example of a FOIL request for Lanny Alexander emails; that Clearwell would be used for that.

**End of questions re the Annual Report**

**Mr. Hylton:** So that is just some of what the staff was involved with last year, and I'd like to thank them and Ms. Balsam for their hard work. I just want to "toot their horn" a little bit, because I know FOIL, in particular, can be contentious. Anything related to government can take a long time, and FOIL requests usually take a very long time to be answered. The Loft Board has zero background in fulfilling FOIL requests, so I want to thank them, because that, in particular, shows that we are on the ball. The Staff has also been doing a lot community-wise, responding to many different things, as you know, with the effort to revive the Loft Law back in Albany. That's completely out of our scope, but we've been working hard with all involved and with politicians to assist with trying to perfect the Law that's going to be introduced this year. So, I want to thank the staff again. It's been a lot more than what you thought you were being hired for, but... thank you for everything. It's greatly appreciated.

**Mr. DeLaney:** Before we move on, I'd like to spend a few minutes reacting to this very comprehensive report. My first question is, I assume the PowerPoint you presented is a public document?

**Ms. Balsam:** Yes, it will be posted on the web site.

**Mr. DeLaney:** Good. In addition to that....Let me back up a minute. Sometimes the Board is criticized by various interest groups for various reasons, and I think that the broad scope of activities the Board undertook in 2018 is something that should not only be posted on the web site, but if there's a way to make its existence more widely known, it would help to enhance Board's reputation.

**Mr. Hylton:** I like the idea, but do you have any ideas as to how this could be accomplished?

**Mr. DeLaney:** A couple of things. Some of what we looked at is "inside a baseball." So, you'd need to include a definition of LONO. And the numbers comparing 2017 and 2018 activities should be put into columns, so people can see the increase; and maybe include a few years' history regarding the amount of money the Board collects, for example. I'd be happy to review this again, and send some suggestions as to how you could amplify it in ways that would matter to people who aren't familiar with what we do every month.

**Ms. Balsam:** Sure.

**Mr. Hylton:** Maybe what we need is a PR person on staff. (To Mr. DeLaney) I'd appreciate that.

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

**Mr. Carver:** One of the projects on the list was the DOB Guidelines. And you had recently circulated that to us, and asked for comments. I think today is the deadline?

**Ms. Balsam:** I think we had asked for comments from the Board members by today, so that we could prepare comments to give to DOB by next week. In terms of the Board, collectively, submitting comments, I think we wanted them tomorrow.

**Mr. Carver:** The document is large and dense and I was wondering if we could have more time...We have a very limited time frame.

**Mr. Hylton:** It's highly technical too, so I don't know... (to Mr. Carver) Do you need more time?

**Mr. Carver:** I'll send them through whenever I have them, and if they get read, that's nice; and if not, then...

**Mr. DeLaney:** I was actually going to ask about the Guidelines.

**Ms. Balsam:** It's in my report...

**Mr. DeLaney:** And just to close out on the Annual Report, what you said about having zero open FOIL requests, that really should be in here. That's a very impressive piece of information.

**Ms. Balsam:** And let me just say that it's our unbelievably hard-working Public Information Officer, Michelle Shepherd, who handles all of this. When I first came to the Loft Board, I was amazed at the number of FOIL requests the Board gets. And I came from very large agency that got a minute number of FOIL requests. It was shocking to me to see how many the Board receives; so she is just fantastic.

**Ms. Torres-Moskovitz:** I read that Commissioner Chandler is retiring February 1. So, maybe this report could be used to help explain what we do to the temporary replacement.

**Mr. Hylton:** The article also says that the acting Commissioner will be the current First Deputy Commissioner, who is very familiar with Loft issues. So in terms of the changing of the guard, there shouldn't be any issues. But, yes, it would be our job to orient him, and this report could be a tool for doing that, if that's what you're suggesting.

**Ms. Torres-Moskovitz:** Yes. And how long will there be an acting Commissioner?

**Mr. Hylton:** We don't know. He could remain as acting, or be appointed, or there could be another change. That's up to the Mayor's office.

**Mr. Barowitz:** It wouldn't be a bad idea to invite the Deputy Commission/ new Commissioner to attend a meeting, if he so desires.

**Ms. Balsam:** He was the Chair for a while, Tom Fariello.

**Mr. DeLaney:** And Commissioner Chandler, we never see him.

**Mr. Hylton:** I'm his designee. But at least one former Commissioner we know actually did chair the meeting.

**Mr. Carver:** I have a question about the flow of cases and the number of cases. We have lots of good stats here, which is nice to see, and I assume with no more coverage cases coming in, the number of cases might shrink over time. I don't know if you've felt the effects yet. No? (Laughter). But is there any thought about

having goals in terms of how long it takes for you to actually issue a draft to us? And this isn't meant to be critical, but we do see the courts issuing orders to make the Board act – *mandamus* – and, obviously, their number was not included in your stats. (Laughter).

**Ms. Balsam:** It's in there. It's included in the twenty-two that are in litigation.

**Mr. Carver:** It's a real problem, obviously. The parties do suffer when the cases take too long, and I'm just wondering if any thought has been given to how we can move things along.

**Ms. Balsam:** I think it's a great idea, but the problem is one of the things I've certainly found with the Loft Board: There's no one-size-fits-all. We can take the *Saladino* case as an example. Multiple tenants, multiple issues, a massive record of many, many hearings. I was the attorney who worked on that case. It took me months, and I worked very hard on it; as opposed to, say, a one-issue case for one tenant, like a rent dispute. That's going to take a lot less time. We could try and come up with some sort of rubric, based on the extent of the hearing and the complexity of the case....I would love to have no back-log whatsoever. And we have made progress. We have fewer cases pending this year than we did last year, and I can give you those stats. Yes, the number of coverage cases is shrinking, but there are still quite a number of them out there. But yes, I agree with you, that we should try and work faster. So, in terms of setting standards, yes, we can think about it, and discuss it amongst ourselves. I think it's a good idea.

**Mr. Carver:** I'm thinking of reconsideration cases sometimes taking more than twelve months ....

**Ms. Balsam:** We assign the reconsideration cases to a new attorney. I don't know if that always happened before I came here, but to me, "reconsideration" means someone else should be looking at it. It would go much faster if we had the same attorney look at it again, but I don't think that's ideal. An appeal or administrative determination, that's different. But the recons, I've insisted they go to different attorneys. So that is slowing things down, no question.

**Mr. Carver:** Thank you.

**Mr. Hylton** asked if there were any other comments on the Annual Report (None). I'll now ask Ms. Balsam to present the Director's report.

### **Executive Directors Report**

The first thing on the agenda is that our offices are being relocated to the fifth floor of 280 Broadway. Our tentative moving date is February 7, 2019. We will post that on the web site, so please keep looking for further notice. We've insisted on new signage – after *finally* getting a sign in the lobby that says, Loft Board 4<sup>th</sup> Floor – now we're moving! But we will have signs at the window on the 4<sup>th</sup> floor and on the 5<sup>th</sup> floor, for those who deliver documents to us. The path will actually be the same. You'll get off the elevator on the 5<sup>th</sup> floor; you'll turn right; then right again; and you'll see a window. It's not in the exact same location as it is now, but it's in the same general location. So that's the most important thing.

**Mr. Hylton:** This is to facilitate construction in the building.

**Mr. DeLaney:** Are you getting more space?

**Ms. Balsam:** No.

**Mr. Hylton:** But it's new space.

**Ms. Balsam:** In terms of 255 18<sup>th</sup> Street, I want to clarify one thing that was said. Yes, staff did go to a hearing at BSA and made an excellent presentation, for which we thank Michael. And BSA voted to revoke the C of O for 255 18<sup>th</sup> Street, but the written decision has not come out yet.

The unofficial amount of revenue for November was \$63,484. And the unofficial amount of revenue the Loft Board collected in December \$26,670. As of December 31, 2018, 336 buildings have renewed their registrations. That figure is up from last year.

On December 31, 2018, DOB mailed out Project Guidelines to selected architects in the Loft Community. The Project Guidelines are designed to provide guidance to the public and the DOB plan examiners as to how to handle legalization issues for IMDs. Comments are due back on January 25, 2019. I want to publicly thank Michael Bobick, who served as the Loft Board liaison to the DOB committee that developed the guidelines. And I have to say, having sat in on some of those meetings, they are mind-blowing. If you're not a technical person, it's very difficult. Michael did an outstanding job, and our mantra from the beginning was, "Make it easier to legalize." So we'll see where it goes. Again, they are not designed to address what's happening now, but to provide a path forward – how to address things in the future. I want to make that clear. One of the reasons we started the project was in response to the complaints we were receiving from architects and attorneys in the community that DOB was doing different things in different offices. The idea was to try to harmonize things, and provide a path forward in every office for everybody.

**Mr. DeLaney:** I wrote with a question about the Board members providing comments, and you replied, I think, correctly, that it's a professional document, for professionals. For those of us who are not professionals, is there any way for a summary to be provided, saying something like, "Issue one is this. There's been a change. There's been no change." Because looking at it...it almost seems that it's written in a way that was designed to *make* it hard to understand.

**Ms. Balsam:** My understanding is that there's actually a lot more text in *our* Project Guidelines than in any other Project Guidelines. I don't know if you're familiar with other Project Guidelines, but one of the things the committee said was, "We're getting a lot more information here than we did in any other." And we said, "Yes, do that! Do that!" That doesn't necessarily mean it's easy to understand if you're not technical.....But do you want something for the interim? I think once they're finalized, we could definitely have someone come in and present. I think that would make sense.

**Mr. DeLaney:** If that's possible, I think it would be helpful. It's very hard to tell, from the forty-five minutes I spent looking at it, whether or not this states the status quo, or if it's a proposed change; and if it's a proposed change, what it's a proposed change "from," "to."

**Ms. Balsam:** I don't know that it does that. What it's saying is, here's what you're going to have to do. It doesn't differentiate between what's been done in the past and what's going to be done in the future. It says, once these are published, this is the path forward. It's not meant to look back and say, "We have changed

this.” That’s not what it’s about. It’s about, here’s your path forward. If you want to do this kind of job, this is what DOB is looking for.

**Ms. Roslund:** It’s pulling pieces from the different regulatory bodies in New York City that are relevant to IMDs. It’s not saying, we’re going to change the Building Code from “x” to “y.” It’s just saying, this is the section of the Building Code that’s relevant for someone filing an application for an IMD. For example, these are the egress rules related to an application for legalization – as opposed to those governing, say, a brand new fifty-story office building in midtown.

**Mr. DeLaney:** So, part of the goal here is to address the concern I’ve heard expressed in the past that plans examiners in Brooklyn look at things differently than plans examiners in Manhattan. So what we want to say is, here’s a uniform set of rules as to how you make decisions.

**Ms. Balsam:** Right.

**Ms. Roslund:** And the rules already exist...

**Ms. Torres-Moskovitz:** It’s like a cheat-sheet...

**Ms. Roslund:** Exactly. It’s not writing the text of the Building Code, it’s just referring the reader to something that already exists.

**Mr. DeLaney:** OK. To the extent that, over the past couple of years, concerns have been expressed about sleeping alcoves, this is not saying: Here’s the issue; here are the arguments on various sides; and here’s a change. This is just setting the benchmark for where we should be right now.

**Ms. Balsam:** To the extent that there were policy decisions that needed to be made in terms of interpretation, those are included in the Guidelines. Not necessarily under the charts, but under the text part that follows the lists of the sections. I don’t have it with me, or I’d show you specific places. But there were policy calls that needed to be made; and the committee debated, and ultimately went to the First Deputy; and policy decisions were made.

**Mr. DeLaney:** So if one knew how to spot them, there are some policy decisions that represent some definitive statement with regard to something that’s been the subject of controversy?

**Ms. Balsam:** Yes. And we did have input from a tenant architect and an owner architect. And all of those comments, which they gave at the initial kick-off meeting, were discussed by the committee. Michael would know. The DOB committee was aware of the issues, and tried to deal with all that were raised.

**Mr. DeLaney:** So perhaps a distillation of that is what would be helpful.

**Ms. Balsam:** Ok, we can try and put something together.

**Ms. Balsam continued with her report:**

**Ms. Balsam:** We did talk about web site revisions, and I want to let you know that they are actually continuing. Hopefully the maps will be on the new website, which should be happening sometime in the spring. I also want you to know that we got a call from the Department of Information Technology and

Telecommunications – known in city circles as DoITT – the city’s IT Department -- who informed us that they are migrating us to a new server, so the current Loft Board URL will be changing a little. The old one will redirect you to the new server for the next three or four months, so please update your bookmarks if you need to.

In litigation, we received three favorable decisions, one of which I’ve already sent to the Board. That was the only one we received in writing, unfortunately. That was the case where we had the net lessee, the principal of whom was the son-in-law of the owner of the building, file for an extension application, which we denied, because the net lessee, who was the son-in-law of the owner of the building, is not a “new owner” under the Board’s rules. A new owner is established only when there is a transfer of title. Here, there was no transfer of title, and even if there was any kind of transfer of interest, it was certainly not to an unrelated entity for a bonafide business purpose. And the court upheld that.

We had two decisions that came down from the bench, so we’re waiting for the transcripts of those. One was *McKenzie et al v. Loft Board*, in which the tenants had filed an alternate plan dispute. The Loft Board denied their alternate plan, so they brought an Article 78 proceeding. The court denied the petition and dismissed the proceeding. When we have the transcript, I’ll be able to give you more information as to the judge’s reasoning.

Another interesting case, which I’m sure all of the Board members who were here will remember, is part of the *Saladino “suite”* of issues, *Dasa Realty Corp. v NYC Loft Board et al*. This was the case where we had the issue of whether or not a unit was in a basement. We were actually just talking about it in reference to correcting the meeting minutes. The owner challenged the Board’s finding that we were just going to go with what the C of O said -- which was that it was on ground – and the court denied the petition and dismissed the case. So Mr. Schwartz and Ms. Castro’s unit remains covered.

**Mr. DeLaney:** Is there an address associated with *McKenzie*?

**Ms. Balsam:** 417 West 45<sup>th</sup> Street.

**Mr. Hylton:** Thank you Ms. Balsam. If there are no further questions (none), we’ll now turn to voting on the cases.

**Voting on the Cases: The Summary Calendar:**

**Mr. Hylton:** There are twelve cases on the Summary Calendar. They are voted on as a group, but today we will separate out two cases, numbers 10 and 11, and vote on them separately.

	<b>Applicant(s)</b>	<b>Address</b>	<b>Docket No.</b>
1	241 Bedford Associates, LLC	156-170 North 4 <sup>th</sup> Street a/k/a 239-247 Bedford Avenue, Brooklyn	LS-0240
2	241 Bedford Associates, LLC	156-170 North 4 <sup>th</sup> Street a/k/a 239-247 Bedford Avenue, Brooklyn	LS-0241
3	241 Bedford Associates, LLC	156-170 North 4 <sup>th</sup> Street a/k/a 239-247 Bedford Avenue, Brooklyn	LS-0242
4	Andrew Ratcliff and Jason McDonald	1083-1095 Flushing Avenue, Brooklyn	PO-0065

5	Rosalina Merrihue	83 Meserole Street, Brooklyn	PO-0069 TR-1363
6	Elizabeth Marshall	222 Varet Street, Brooklyn	PO-0080
7	Thomas Zummer	314-320 Dean Street, Brooklyn	PO-0081 TA-0248
8	Andrew Ratcliff and Jason McDonald	1083-1095 Flushing Avenue, Brooklyn	TA-0242
9	Neal Sundet, Thomas L. Beyer, Steven Meyer and Argot Meyer	197 Henry Street, Manhattan	TH-0200
10	Tenants of 28 Locust Street	28 Locust Street, Brooklyn	TR-1272
11	Emma Anderson, Daniel Boventer and Micaela Carolan. <i>Coverage case.</i>	792 Flushing Avenue, Brooklyn	TR-1337
12	Marlene Simone Spoerri, Mladen Joksic, Misha Spoerri Joksic, Zora Spoerri Joksic, Luka Spoerri Joksic	645 Broadway, Manhattan	TR-1350

**Mr. Hylton** asked for a motion to accept these cases, and for a second.

**Mr. Schachter** moved to accept; **Mr. Carver** seconded.

**Mr. Hylton** asked if there were any comments on these cases (None).

**The vote:**

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

**Members dissenting:** 0

**Members abstaining:** 0

**Members absent:** 0

**Members recused:** 0

**Next Summary case:**

	Applicant(s)	Address	Docket No.
10	Tenants of 28 Locust Street	28 Locust Street, Brooklyn	TR-1272

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

**Mr. Carver:** Aren't there going to be some changes to the language?

**Ms. Balsam:** We're going to delete the last sentence of the Proposed Order.

**Mr. Barowitz:** We said something about the owner submitting the leases.

**Mr. Bobick:** We were going to take the last sentence out, and request that the owner file the registration materials pursuant to Loft Board rule 2-05(b)(8) within thirty days.

**Mr. Hylton:** With those changes made, which were requested in the private session, do we have a motion to accept this case, and a second?

**Mr. Barowitz** moved to accept; **Mr. Hernandez** seconded.

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

**Mr. DeLaney:** Yes. I asked that it be taken up separately, and I'm going to vote no on this case, because the rather lengthy stipulation from the owner sets up a scheme whereby, in the discussion that led to the agreement to register the tenants, the owner set up a separate, preferential rent schedule. Preferential rent is an issue that has been of great concern in the world of rent stabilization. So the owner and the tenants have agreed that the rent should be this. I'll add that this building is also interesting because, apparently, between the time the building applied for coverage and the time the case came to the Loft Board, the building obtained a residential Certificate of Occupancy. So there's a tenants' rent column in the stipulation that is a preferential rent, and then a tenant's rent plus the eighteen percent through obtaining a Certificate of Occupancy. I agree these tenants should be covered as protected occupants, but I don't know what the rent should be. And I think for the Board to accept stipulations with what I consider to be "weasel wording" -- "the Loft Board neither accepts nor rejects the other terms of the stipulation," -- sets up a whole host of questions. What is the official rent of this unit? What happens if one of these people moves out, and someone else moves in? How do they know what the rent for the unit is? We have accepted many, many stipulated settlements using our "the Loft Board neither accepts nor rejects" language. Some of the things we accept are benign, but every now and then something rises to a level that even the collective Loft Board has such a bad taste in its mouth they spit it out. And in my mind, this is one that should be spit out, and I intend to vote no.

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

**Mr. Torres-Moskovitz** to Mr. DeLaney: You were saying you agree with part of the case, but not the preferential rent. Is there a way to separate out (that part)?

**Mr. DeLaney:** The staff won't answer questions in public session, and all I can say is, I don't know. But preferential rent is causing evictions all over town right now, when people discover that the real, legal rent is something other than they thought it was. We've seen this kind of game go on in the Loft Board with owners who don't file section 286 (12) sales documents, leading a new tenant to believe they're moving into a covered space. What they don't know is that the space is covered in the sense that the owner is supposed to bring it up to code -- even though he probably hasn't -- but that the tenant is not a protected occupant. So in my mind, setting us up to go along with this is just....No.

**Mr. Hylton:** Are there any further comments?

**Mr. Barowitz:** What Mr. DeLaney says is really quite puzzling to me, and I would say at this point, I'm not prepared to vote on this.

**Ms. Balsam:** Are you saying, Mr. Barowitz, that we should table it?

**Mr. Barowitz:** The Chair can table it, even with a motion on the floor.

**Discussion follows among various members** on this topic, in terms of deciding how the Board should proceed with voting – or not – on this case.

**Mr. Barowitz:** I think that whoever made the motion -- in this case, me -- can withdraw; in which case the second would have to withdraw; and then the Chair can table the motion. Or we can go through the up-or-down process. We're in the horns of a dilemma here, so I think the best thing to do is to try to get this tabled.

**Mr. Hylton:** So the question is that we have two people who have issues with voting for this. Do we have enough interest in returning to discussion of this case?

**Mr. Barowitz** volunteered other possible alternatives for voting on this case at the present time.

**Mr. Schachter:** May I just ask, who originally proposed that we vote on this case?

**Ms. Balsam:** Mr. Barowitz.

**Mr. Schachter** to Mr. Barowitz: Are you withdrawing your motion?

**Mr. Barowitz:** Yes.

**Mr. Hylton:** So we are tabling this case.

**Next Summary case:**

	<b>Applicant(s)</b>	<b>Address</b>	<b>Docket No.</b>
11	Emma Anderson, Daniel Boventer and Micaela Carolan	792 Flushing Avenue, Brooklyn	TR-1337

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

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

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

**Mr. DeLaney:** Yes. Yet again, I've asked for this to be taken up separately. Here, in an extensive stipulation, the tenants have agreed to a number of things that the Loft Board should not be in the business of accepting; in particular, rewriting the access rule – waiving the access. The tenants also consent -- as if they had a vote -- to granting the owner a code compliance waiver. And again, my feeling is that, the more leeway that is allowed to negotiate settlements in front of OATH that deviate from the Loft Board rules or Article 7C, the bigger an area of difficulty is created, where, in an effort to gain concessions, proceedings can be drawn out, which causes people to make concessions, because the meter's running. If this kind of gray area was either eliminated or sufficiently narrowed, it would eliminate that kind of situation.

**Mr. Hylton:** Thank you, Mr. DeLaney. Are there any further comments? (None)

**The vote:**

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

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

**Members abstaining:** 0

**Members absent:** 0

**Members recused:** 0

**The Master Calendar**

	<b>Applicant(s)</b>	<b>Address</b>	<b>Docket No.</b>
13	383 8 <sup>th</sup> LLC	383-385 Eighth Avenue, Manhattan	LB-0192

**Mr. Hylton:** Mr. Clarke presented this case.

**CONCLUSION:** “The Loft Board finds that Owner failed to provide sufficient evidence as to whether there is a claim for succession rights and therefore failed to satisfy all three prongs of the abandonment analysis based on Tenant’s death. Accordingly, this application for a finding of abandonment is denied.”

**Mr. Hylton** thanked Mr. Clarke, and asked for a motion to accept this case, and for a second.

**Mr. Barowitz** moved to accept; **Ms. Roslund** seconded.

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

**Mr. Barowitz:** I think to say that the tenant abandoned the space, and then say that the tenant died....I think it should go the other way. The tenant is deceased, ergo, there’s an abandonment of the space. Because to say there’s an abandonment of the space, and *then* he died, implies that the tenant decided to leave the space before he died.

**Mr. Hylton:** Does what Mr. Barowitz said need to be addressed in the Order?

**Ms. Balsam:** I understand what you’re saying, but we really can’t do it that way.

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

**The vote:**

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

**Members dissenting:** 0

**Members abstaining:** 0

**Members absent:** 0

**Members recused:** 0

**The next case:**

	<b>Applicant(s)</b>	<b>Address</b>	<b>Docket No.</b>
14	222 Varet Realty Corp.	222 Varet Street, Brooklyn	LB-0193

**Mr. Hylton:** Mr. Clarke presented this case.

**CONCLUSION:** “The Loft Board finds that Tenant died on March 18, 2018, that Owner’s application for a finding of abandonment is timely, and no one has asserted any succession claims to the Unit pursuant to 29 RCNY § 2-08.1. Accordingly, this application for a finding of abandonment is granted.”

**Mr. Hylton** thanked Mr. Clarke, and asked for a motion to accept this case, and for a second.

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

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

**The vote:**

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

**Members dissenting:** 0

**Members abstaining:** 0

**Members absent:** 0

**Members recused:** 0

**The next case:**

	<b>Applicant(s)</b>	<b>Address</b>	<b>Docket No.</b>
15	Jen Gatien	43-49 Bleeker Street, Manhattan	TA-0222

**Mr. Hylton:** Mr. Clarke presented this case.

**CONCLUSION:** “The maximum permissible rent of the Unit is \$3,000.00 per month inclusive of escalators for utilities and real estate taxes. The Net Lessee is not entitled to the proposed four percent annual increase. Lastly, we note that as of the date of this Order, Owner is not entitled to any of the legalization milestone increases under MDL § 286(2)(ii). Owner has failed to meet the requirements listed.”

**Mr. Hylton** thanked Mr. Clarke, and asked for a motion to accept this case, and for a second.

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

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

**Mr. Barowitz** noted that he will abstain from the vote.

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

**The vote:**

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

**Members dissenting:** 0

**Members abstaining:** Mr. Barowitz

**Members absent:** 0

**Members recused:** 0

**End of cases**

**Mr. Hylton:** We had scheduled the attorneys’ presentations for January 31, but that is being postponed until February 14th. So at our January 31, 2019, meeting, we’ll discuss rules outside of protected occupancy.

What we need to discuss now is this: For the February 14th presentations, the attorneys have asked for a panel discussion format. Each attorney will present a three-five-minute statement, followed by a discussion with the Board that will include the Board asking any questions they have. Ms. Balsam will lead that discussion.

**Ms. Balsam:** In November, when we agreed to have the attorneys come, we had set up a different structure: an attorney would present, followed by questions; the next attorney would present, followed by questions. So I want to ask you how you feel about the new format being proposed.

**Ms. Roslund:** Wasn’t there a concern about time? About the attorneys not keeping their presentations within the time limits? I think we were just trying to come up with a format that would prevent this from becoming an open-ended meeting that could go on and on.

**Ms. Balsam:** I think we would still allot the same amount of time for the total meeting, but the attorneys are asking to spend it differently. One of their concerns was that they wanted both sides to be able to answer

questions. So if a question was raised before attorney number one, attorney number three may also want to address that question. They've apparently done this before, in other forums, and they feel this is a better way to do it. I don't know, but I'll take them at their word. But it's your decision; not mine.

**Mr. Hernandez:** So they'll be free to debate each other? So, we're just present at their debate?

**Ms. Balsam:** Well, you'll be able to ask questions, so you would be participating.

**Mr. Hylton:** Initially, we said a fifteen-minute presentation per attorney; but now we're talking about a three-five-minute opening statement, so that leaves room there for discussion. The fact that they all agreed to this format is a help. We just have to have a good moderator to keep them in check.

**Ms. Roslund:** Right. That's what I was thinking. We don't want to get stuck on the first two presentations and, all of the sudden, it's been two hours. And while it was interesting, we only discussed one topic.

**Mr. Schachter:** Is there a way to insure that there's proper moderation? That after fifteen minutes, they're stopped?

**Mr. Hylton:** Yes. I'm the moderator, and I was going to model it on the presidential debates, where you get a certain amount of time to answer a question.

**Ms. Torres-Moskovitz:** Are the attorneys choosing the issues they feel are the most (important)?

**Ms. Balsam:** No. The Board voted on this, and I sent them the topics. The Board was very specific in terms of what they wanted them to address, and that's what they're going to address.

**Mr. Hylton:** We'll have to decide whether we want all of them to open first, or whether each opens at the beginning of his segment.

**Ms. Balsam:** I think they'll all do an opening statement, and then....

**Mr. Hylton:** So I'll put that out, probably by the January 31 meeting, and let the Board know what the format will be.

**Ms. Torres-Moskovitz:** And can you please recirculate the questions?

**Ms. Balsam:** Yes

**Ms. Roslund:** Can we request that as part of their opening statement they include some information about their background, the type of projects they mostly deal with....

**Ms. Balsam:** Brief bios? Yes.

**Mr. DeLaney:** Maybe to save time we could get those ahead of time.

**Ms. Balsam:** I will ask (that they submit a bio ahead of time). Their bios are probably also available on their web sites. I can also look at those.

**Mr. Hylton:** So is the Board in agreement about the new format?

**Mr. DeLaney:** My only suggestion would be this: So that we don't lose time explaining to the attorneys what the format is, maybe after we finalize this on January 31, we send the details out to them ahead of time, so everyone's clear on the ground rules.

**Ms. Balsam:** Ok.

**Mr. Carver:** I have one more suggestion. Perhaps prior to the start of the session, if you, Ms. Balsam, could spend five or ten minutes with us, and with a chart, that says very simply, these are the four big issues being addressed. Our current rule says WXYZ, and the proposed rule that you have out there says ABCD. We could even hang it up on the board behind Ms. Rivera, so it's right in front of is. So that for these salient points we know what the current state of affairs is, and what the proposal is.

**Ms. Balsam:** Yes, sure.

**Mr. Hylton:** To help keep focus?

**Mr. Carver:** Certainly to keep my focus.

**Mr. Hylton:** So, we were going to do rules, but we have two meetings this month, so I'm going to make the decision now to end this meeting. We'll see you again in two weeks.

**Mr. Hylton:** This will conclude our January 17, 2019, Loft Board meeting. Our next public meeting will be held January 31, 2019, at 1:00PM, at 280 Broadway, in the third floor conference room.

The End