

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

February 16, 2017

The meeting began at 2:30 p.m.

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

INTRODUCTION

Chairperson Hylton welcomed those present to the February 16, 2017 public meeting of the New York City Loft Board.

VOTE ON January 19, 2017 MINUTES

Ms. Shelton thought that Mr. Roche's comment on page 7 of the minutes regarding the administration's concern with the attorney client privilege was said by Chairperson Hylton. **Chairperson Hylton** confirmed that he did not say it and **Mr. Roche** confirmed that he had made those comments. **Mr. Roche** went on to restate that he was concerned that the public did not understand why the Board made some procedural changes and that the changes arose from this administration's concern with the attorney client privilege.

Mr. DeLaney asked whether Mr. Hernandez "litigated" the industrial business zones, as stated in the minutes. **Mr. Hernandez** clarified that he was responsible for the "creation" of the industrial business zones.

Mr. DeLaney appreciates the continued transparency of the minutes. In his statement about the private meeting on page 2, third paragraph, **Mr. DeLaney** commented that the word "potentially" should be "portion".

Motion: Mr. Carver moved to accept the January 19, 2017 meeting minutes. Mr. Roche seconded the motion.

Members Concurring: Mr. Carver, Mr. Roche, Mr. Hernandez, Mr. DeLaney, Mr. Schachter, Ms. Shelton, Chairperson Hylton (7).

Members Abstaining: Mr. Barowitz, Ms. Bolden-Rivera (2).

Report of the Executive Director, Helaine Balsam, Esq.

Ms. Balsam stated that the staff continues to proceed with possible rule changes and is currently working through Title 29 of the Rules of the City of New York § 2-01(d), the narrative statement process. **Ms. Balsam** further mentioned that she did take a look at the Board members' request as to Chapter 1 to try and identify what she believes the Board members refer to as policy changes. **Ms. Balsam** will send out a memo to everybody as to what she thinks the policy changes are so that the Board members have an opportunity to review and comment in advance. **Ms. Balsam** asked that when the Board members reply to her, to not "reply all."

Per Mr. Schachter's request, **Ms. Balsam** updated the Board members on 57 Jay Street, Brooklyn, New York. **Ms. Balsam** mentioned that the staff is still receiving intermittent hot water complaints but it seems the complaints are coming from one tenant. **Ms. Balsam** further mentioned that there was an issue with

the boiler in the building. Apparently, a booster should have kicked in when the temperature dropped below a certain temperature, but did not. **Ms. Balsam** believes that has been fixed.

Ms. Balsam informed the Board members that the staff did receive other heat/hot water related complaints throughout the month but the Loft Board's Housing Preservation and Development inspector, Mr. Sood, handled those complaints by working with the landlords to get those issues fixed.

As to the registrations, **Ms. Balsam** reported that we are down to twenty-four (24) owners who have not renewed their registrations for the 2016-2017 fiscal year. **Ms. Balsam** further reported that the staff did send these owners notices and these owners had until yesterday, February 15, 2017, to respond. **Ms. Balsam** stated that the staff will be coming to the Board members next month with proposed orders for failure to pay against those owners who did not renew their registrations.

In addition, **Ms. Balsam** reported that the staff did mail out notices of violation to landlords who failed to file their monthly legalization progress reports for the month of December 2016. The monthly legalization progress reports are required when the owner has received Loft Board certification but has not yet obtained a final residential certificate of occupancy. **Ms. Balsam** reported that there were fifty (50) owners who had never filed monthly reports since the time that they had received certification so the staff started off by issuing violations to these fifty owners. **Ms. Balsam** further reported that these violations were mailed out on February 1, 2017 and these owners have thirty (30) days plus five (5) days for mailing to cure. **Ms. Balsam** was happy to report that one owner did cure and that there are two who have started to file monthly reports, although they did not file specifically for December 2016. Staff did call these owners to inform them that a monthly report for December 2016 must be filed. Staff also received phone calls from owners who mentioned that their architect had passed away in December. **Ms. Balsam** is not sure how staff will handle these buildings as of yet. **Chairperson Hylton** asked whether this could be a defense to filing a monthly report. **Ms. Balsam** responded that it is really up to the Board members on how to proceed with these buildings.

Ms. Balsam reported that staff posted and mailed out a notice to all owners, reminding them about timely filing sales record forms and agreements. In the same notice, staff reminded all owners about the monthly report requirement. **Ms. Balsam** mentioned that this notice has been posted on the Loft Board's website.

Ms. Shelton recommended/suggested that the notice inform the reader that there are two topics and then bold out where the fines are, in order to make it pop.

Mr. DeLaney asked whether the sample monthly report violation passed around to the Board members for 70-72 Wooster Street in SOHO was a building that had never filed a monthly report. **Ms. Balsam** responded yes. **Mr. DeLaney** commented that the remedy says "if this violation is not corrected within thirty (30) days of the mailing date, you will be fined \$1,000 for each missing report." **Mr. DeLaney** commented that he could read that to mean that they are missing one hundred twenty (120) reports. **Ms. Balsam** replied that was not the intent. The staff could put in more than one month, but the staff decided to start with one month. There are buildings who have not filed for a very long time, and the staff could have hit them very hard. However, **Ms. Balsam** didn't believe that would achieve the desired result. The result is to get owners to file monthly reports. **Mr. DeLaney** clarified that he is not advocating having Wooster Realty, LLC fined \$120,000. **Ms. Balsam** mentioned that this was the building that cured. **Ms. Balsam** further mentioned that the staff could, in the future, list more than one month and that is why the remedy reads the way it does. **Mr. DeLaney** asked if I was put on notice that I was missing six (6) months of reports, would it be productive for me to list how things changed and file six reports. **Mr. DeLaney** stated that the reason why he raised this issue in the January 2017 Board meeting was to see whether "monthly" made sense or should the requirement be "quarterly". **Mr. DeLaney** stated that he is not out to screw owners who have not filed reports. **Mr. DeLaney** mentioned that he used this topic as an example of a policy change and believes that issuing these violations was a good step in the right direction, but doesn't really resolve the issue. **Mr. DeLaney** asked what it is the staff really wants. **Ms. Balsam** responded that staff will look at this issue when it gets to that part of the rules and really think about whether we need a monthly report compared to a quarterly report. **Ms. Balsam** further replied that the idea behind the monthly reports is to know where the building is in the legalization process so that the staff could push the building one way or the other. Certainly when an owner applies for a letter of no

objection, the staff wants to know where an owner is in the legalization of the building. **Chairperson Hylton** asked, as far as enforcement goes, if staff decides in the future to issue violations every month, would you let the Board know. **Ms. Balsam** responded that the staff may not have the resources to undertake such an agenda. **Chairperson Hylton** asked that if the Board members have any ideas or suggestions, to please let Ms. Balsam know. **Ms. Balsam** did state that if the rule was to be changed, staff would not go less than quarterly. In terms of the utility of this exercise, **Mr. DeLaney** asked staff whether the reports are read and whether there is a model building that has filed a monthly report every month. **Mr. Michael Bobick, Esq., Assistant General Counsel**, responded that he reads all the monthly reports as they come in. **Mr. DeLaney** further asked if you were to take the years' worth of building x, and you read all twelve (12) of them, is there a narrative. **Mr. Bobick** responded yes, these reports give us a good snap shot of where this building was on January 1st and where the building is on December 31st, how much legalization work has been completed, where they are in the legalization process, if they have a permit or if they have reached Article 7-B compliance, how many applications they have left to sign off, how many applications have been signed off, all gives a good idea of how close a building is to getting a final residential certificate of occupancy.

Mr. DeLaney asked about Ms. Balsam's concern with "replying all" in an email and whether that is an open meetings law issue. **Ms. Balsam** responded that is correct.

Mr. DeLaney asked staff to consider putting on next month's agenda a discussion to be held by the Board about the expiration of the two year window to file coverage applications. **Mr. DeLaney** would like the Board to give some thought about rendering an opinion to the mayor's office and the mayor's legislative representatives as to whether or not the Board, who are the experts in the Loft Law, think having a deadline and closing the window for coverage is a good idea or not in terms of implementing the Loft Law and public policy. **Ms. Balsam** asked whether Mr. DeLaney was making a motion to put this topic on next month's agenda. **Mr. DeLaney** responded that if a motion would be appropriate, he would make a motion. **Mr. Barowitz** doesn't know if we need a motion on this but asked if we could get a sense of the Board whether we would ask for the state legislature to get rid of the June 15, 2017 deadline on filing coverage applications, as it should be in perpetuity. **Mr. Barowitz** further mentioned that the Board previously discussed contacting the law office of the city to see whether or not legislation could be put in the State Legislature to open up the window for coverage. **Ms. Balsam** believes that if you read the legislative history of the last amendment of the Loft Law, the city was actually not in favor of the expansion and the deadline was a compromise between the city and the state. **Mr. Barowitz** believes that this occurred under Mayor Bloomberg who was not interested in this process, but now there is a different mayor.

Mr. DeLaney believes that there are two separate issues here. **Mr. DeLaney** stated that if there was no deadline for coverage applications, it does not expand the universe of who could apply. It is not creating a new window period. It is merely saying people who are eligible, via tenants applying for coverage or an owner who decides that he wants to register the building. There was a period from March of 2014 through approximately May or June of 2015 when the window was closed and you couldn't register a building and you couldn't apply for coverage in a new building, and then the state legislature decided to create a two year opening of the window before it was set to close again on June 15, 2017. If you let it close, then what you end up with is a bunch of renegade buildings that can't be legalized under the remedial powers of the Loft Law. The prior Executive Director had made some representations a couple of years ago that this was an issue that the Board should take a position on because clearly if we create in the way the 2010 amendments were set up, if you have a bunch of conditions that caused buildings to be residential but kind of be renegades and not come under the Loft Law, it sure doesn't benefit the fire department, the tenants, the building stock or the people in the adjacent buildings if there is a problem. **Mr. Barowitz** stated that it only benefits the real estate owners who, we can just assume, make private deals, as we have seen before, with tenants who don't ask for coverage, to allow them to stay and we want to eliminate that. **Mr. Barowitz** further stated that we have no idea how many renegade buildings there are where people are living, and when this law sunsets in June 2017 there will be all these illegal buildings where the Landlords can do what they wish with the tenants, which is not fair. **Chairperson Hylton** stated that he hears what the Board members are saying and wants to get back to the Board members next month. **Mr. DeLaney** stated that there are two approaches. One is the city administration will make up its mind on what it wants to do without consulting the Loft Board or it will acknowledge that the Loft Board does have some expertise and consult with them. The Loft Board may be consulted, but

the city administration may not agree. **Mr. DeLaney** further mentioned that two years ago, he could not get the junior city lobbyist in charge of this to return his phone call. **Chairperson Hylton** stated that this topic will be added to next month's agenda.

Chairperson Hylton wanted to discuss how to publicize the deadline for filing coverage applications and registrations. The deadline for filing coverage applications and registration applications is June 15, 2017 and after that, the Loft Board will not be able to accept new registrations and applications for coverage. As a matter of discussion, **Chairperson Hylton** asked the Board members if they had any ideas or suggestions on how to publicize this deadline. **Chairperson Hylton** mentioned that right now it is on the Loft Board's website. There may be other means/methods that we can use to inform the interested parties. **Mr. Roche** stated that he certainly believes that we should explore other options especially with the evolution of social media. **Chairperson Hylton** asked whether the Loft Board "tweets" as the Department of Buildings uses Twitter. **Ms. Balsam** replied that the Loft Board does not tweet. **Ms. Shelton** asked about using NY1 on cable as they run stories all week. **Mr. Schachter** asked if it would be appropriate to provide some targeted information to city council members because it seems to him that there are concentrated districts which have a significant portion of current and potential buildings. **Chairperson Hylton** commented/added that we do some outreach and let them know what's happening just in case this is not on their radar. **Mr. Schachter** responded yes, and he suspects that many of those council members are then in contact with non-profit organizations in their communities that may work with tenants in other organizations and therefore they may then be able to disseminate that in turn. **Mr. Hernandez** mentioned that we contact community boards. **Mr. Schachter** further commented that particularly where it's targeted, we are providing specific information to community board leaders about buildings in their area. **Mr. Barowitz** asked whether it would be incumbent upon us to have a private meeting, maybe just staff and council members. **Chairperson Hylton** clarified when Mr. Barowitz says council members, he also means state assembly members. **Mr. Barowitz** is wary about this process, although he mentioned it, but he believes it should come from a grass roots effort. **Mr. Hernandez** replied that is why we should do as much outreach as possible, reach out to state assembly members, senators, and basically any elected official. **Mr. Hernandez** further added that it might be difficult to get a meeting with council members because of how many things are on their plate and this might not be a priority for them. **Ms. Shelton** further added that you might not need a meeting, you might just need to send them information, as an FYI. **Mr. Hernandez** asked if staff was capable of customized email. **Ms. Balsam** replied yes. **Ms. Shelton** asked if there was a city registrar where things are published, like announcements. **Ms. Balsam** replied that there is the City Record. **Mr. DeLaney** mentioned that when the expanded Loft Law passed in 2010, the champion for it was really former assemblyman, the late Vito Lopez. A tremendous amount of outreach was done in his district because he insisted on it. **Mr. DeLaney** commented that he had an opportunity to spend some time in the Mott Haven section of the Bronx and saw dumpsters and the major rehab going on there. **Mr. DeLaney** strongly believes that there are buildings there that would fall within the 2008 and 2009 window period. **Mr. DeLaney** further mentioned that there are council members now who view loft tenants as a gentrifying force depending on the neighborhood. It is not our position to take sides. It is our position to get the information out. **Mr. DeLaney** believes sending a letter to every council office, every borough president, and every community board would be better than an email, as emails tend to get lost or overlooked. **Ms. Balsam** replied that we could do both. **Chairperson Hylton** asked the Board members to think about what they could do with their own constituents.

Chairperson Hylton stated that last month the Chair tabled a motion about how staff should present cases at Board meetings. Given that the Board will no longer discuss or debate issues in public sessions, staff has put together four options for the Board members to consider and vote on as to how staff will present cases. The four options are:

1. Vote without having any information or the outcome being communicated;
2. Have staff present just the ultimate outcome of the case. For example, this is a case seeking de-coverage of a unit. The board finds that the unit should remain covered;
3. Have staff present an abstract of the case as done in previous Board meetings; and
4. Ms. Shelton's proposal: This is a case seeking..., the applicant claims..., the respondent opposes the application because..., the board finds that..., and the law that supports the determination.

Mr. DeLaney asked Ms. Shelton whether her proposal would include more or less information than the abstract of the case. **Ms. Shelton** responded that it is an abstract of the abstract, so less information. It is

a streamlined version of the report and recommendation. **Mr. Carver** asked whether Ms. Shelton's proposal is work that the staff could do easily when they prepare the proposed orders. **Ms. Balsam** replied yes. **Mr. Michael Atzlan, Esq., Assistant General Counsel**, responded that Ms. Shelton's proposal may be more difficult than the small abstract. For example, **Mr. Atzlan** commented that while preparing an abstract for today's master case, it was difficult enough to minimize the information while at the same time getting all the points across. **Mr. Atzlan** further commented that to make it smaller than what was already done, you may not understand the case besides the type of case. **Chairperson Hylton** narrowed down the issue to how much information should be presented. **Mr. DeLaney** asked how much information would go into the abstract (option 3). **Mr. Atzlan** responded that the abstract would be similar to what the Board members are used to when Ms. Cruz prepared them over the years. **Mr. Roche** stated that he is in favor of divulging as much information to the public as possible. **Ms. Shelton** commented that the background is day to day stuff that you do not need here. **Mr. Atzlan** responded that she is looking at the proposed order. For example, the master case is four pages long, but stated that he was able to get the abstract down to a page and a half. **Mr. Bobick** commented that Ms. Shelton's proposal may be longer based on the case because if you were to add the tenant's claims and the owner's arguments, it may create a longer synopsis than what the staff has already prepared. **Mr. Carver** responded that he likes Ms. Shelton's proposal but it may be more work for staff. **Mr. Bobick** replied that the Board members should not be concerned with how much more work it would cause staff, as staff will do whatever the Board chooses. **Chairperson Hylton** stated that staff is prepared to go with option 3 today.

Motion: Mr. DeLaney moved to adopt option 3. Mr. Roche seconded the motion.

Members Concurring: Mr. Carver, Mr. Barowitz, Mr. Roche, Mr. Hernandez, Mr. DeLaney, Ms. Bolden-Rivera, Mr. Schachter, Ms. Shelton, Chairperson Hylton (9).

VOTE ON SUMMARY CALENDAR CASES

Chairperson Hylton presented the below summary calendar cases for vote by the Board:

1.	Empsrgreene LLC	47-49 Greene Street, Manhattan	LS-0233
2.	Empsrgreene LLC	47-49 Greene Street, Manhattan	LS-0234
3.	Mark Richard Miller	151 Kent Avenue, Brooklyn	PO-0024
4.	D. Victoria Valencia	151 Kent Avenue, Brooklyn	PO-0026
5.	Cortnie Loren Miller	57 Thames Street, Brooklyn	TA-0213
6.	Ben Weinstein	1099 Flushing Avenue, Brooklyn	TA-0218
7.	Debra Taylor	70-72 Franklin Street, Manhattan	TM-0078
8.	Kenneth Brandman, Lynn Phillips, Jim Raglione and Gordon Wallace	112-114 West 14 th Street, Manhattan	TM-0090
9.	Theodore Coulombe, Karine Laval, Shabd Simon-Alexander, Antoine Catala, Melissa J. Arra, Luis A. Lara-Malvacias, Jeremy Nelson, Jon Hokanson and Jocelyn Worrall	39 Ainslie Street, Brooklyn	TR-1179
10.	Ben King	39 Ainslie Street, Brooklyn	TR-1250
11.	Jonathon Hexner and Elizabeth Berdann	71-73 West Broadway, Manhattan	TR-1274

Prior to the vote, **Mr. DeLaney** requested that cases 12 and 13 on today's agenda, Ruggero and Valentina Vanni, 188 Grand Street, Manhattan, TR-1284, and Robert Shearer, Matthew Brown and Ryan Jones, 188 Grand Street, Manhattan, TR-1295, be voted on separately. **Mr. DeLaney** commented that we have reached a new level: you make an application, you withdraw, there is an agreement to withdraw and there is an allusion to a separate agreement. Up until now, we have made people show their cards, and the Loft Board accepts the withdrawal but takes no position on the other terms of the agreement. **Ms. Balsam** responded that the tenants in both cases vacated. **Mr. DeLaney** replied that he doesn't care if the tenant vacated, but we have a completely separate agreement that doesn't come before us. **Mr. DeLaney** asked whether this was a new step in the evolution process. **Ms. Balsam** responded that staff will not answer that question. **Chairperson Hylton** asked whether Mr. DeLaney suggests that staff has a tolerance for a different procedure. **Mr. DeLaney** responded that we have gone through a number of cases where an application was made for coverage, and for some reason the tenants and the landlord/building owner determine that it might be to their benefit to not be covered under the Loft Law. In

various cases the prior agreement stated that the tenants would be under “pretend” rent stabilization and the building would be brought up to code pursuant to some schedule, but won’t be covered under the Loft Law. The Board rejected those withdrawals as they were contrary to public policy. **Mr. Schachter** responded that in those cases, the tenants would have continued in occupancy in those buildings and so if there are no tenants in these buildings then that’s a different set of facts. **Mr. DeLaney** stated that all we know is that the tenant who applied for coverage vacated and the likelihood that the landlord turned around and rented that unit to manufacturing is possible but it’s highly likely that the unit was re-rented as residential. **Mr. Schachter** asked if Mr. DeLaney’s priority is to get a copy of that agreement. **Mr. DeLaney** responded that in his view, if you applied for coverage and you go to register your building, you are basically putting your foot in a bear trap, and you have to explain what’s going. **Mr. DeLaney** asked Ms. Cruz whether this is the first time that we have encountered this. **Ms. Balsam** replied that staff will not answer the question.

Motion: Ms. Bolden-Rivera moved to accept the proposed orders. Mr. Hernandez seconded the motion.

Members Concurring: Mr. Carver, Mr. Barowitz, Mr. Roche, Mr. Hernandez, Mr. DeLaney, Ms. Bolden-Rivera, Mr. Schachter, Ms. Shelton, Chairperson Hylton (9).

12.	Ruggero and Valentina Vanni	188 Grand Street, Manhattan	TR-1284
13.	Robert Shearer, Matthew Brown and Ryan Jones	188 Grand Street, Manhattan	TR-1295

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

Members Concurring: Mr. Carver, Mr. Hernandez, Ms. Bolden-Rivera, Mr. Schachter, Ms. Shelton, Chairperson Hylton (6).

Members Dissenting: Mr. Barowitz, Mr. Roche, Mr. DeLaney (3).

VOTE ON MASTER CALENDAR CASES

Mr. Atzlan presented the below master case for vote by the Board.

14.	Joshua Boss And Tyler Boss	385 Troutman Avenue, Brooklyn	PO-0029
-----	----------------------------	-------------------------------	---------

Mr. Carver commented that anytime the Board is going to propose a fine, it should be imposed through an issuance of an NOV instead of being handed down in the context of a case where an owner has not had an opportunity to be heard. It is an ongoing objection to this process. **Mr. DeLaney** commented that he could get behind what Mr. Carver mentioned if the fine was increased to \$10,000.

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

Members Concurring: Mr. Carver, Mr. Barowitz, Mr. Roche, Mr. Hernandez, Mr. DeLaney, Ms. Bolden-Rivera, Mr. Schachter, Ms. Shelton, Chairperson Hylton (9).

Chairperson Hylton concluded the February 16, 2017 Loft Board public meeting at 3:30 pm and thanked everyone for attending. The Loft Board’s next public meeting will be held at 280 Broadway, third floor, on March 16, 2017 at 2:30p.m.