MINUTES OF PUBLIC MEETING
New York City Loft Board Public Meeting
Held at 22 Reade Street, Main Floor, Spector Hall

July 11, 2019

The meeting began at: 11:05 AM

Attendees: Robert Carver, Esq., Owners' Representative; Elliott Barowitz, Public Member; Richard Roche, Fire Department's *ex officio*; 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 July 11, 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.

LOFT LAW:

Mr. Hylton: On June 25, 2019, the governor signed the amendments to the Loft Law into law. Staff has redrafted some of the Board's rules, based on these amendments, and Ms. Balsam will lead the discussion of those proposed changes.

Mr. Hylton first took a moment to welcome Mr. Barowitz back and to thank him for making the effort to attend; and also acknowledged Mr. Carver's presence.

Ms. Balsam: As I indicated when I sent you the documents, we're going to start with §2-08, because that is the section where most of the changes will occur. For Board members, it's page 141; for the audience, it will be page 1. There's nothing on page 141. On page 142…

Mr. DeLaney: Actually, I have a question about page 140. It's a general question. In the new Chapter 1, we have definitions; but in Chapter 2, there are still definitions. And one of the things we don't define anywhere is Zoning Resolution. Should we specify that it's the New York City Zoning Resolution that's mentioned in §2-08(a)(1)(i), and define it somewhere? Because we're so clear about everything else.

Ms. Balsam: We can certainly add that – defining what the term means in the rule.

Mr. DeLaney: Subsequent to that, §2-08(a)(1)(i) then defines a building using the same words, albeit broken up with subsequent letters, as in Chapter 1. Is there a reason to repeat it?

Ms. Balsam: Originally, when we moved the definitions, we were going to do a much broader version of the rules. Then we pulled back from that and were only going to do limited changes to Chapter 2, and I was concerned about changing the definitions that were in Chapter 2 – about deleting the definitions from sections of Chapter 2 if we weren't changing all of Chapter 2. So I left them there, and if you look at the definitions section in Chapter 1, it does say, "Unless otherwise defined in these rules, the terms below have the following

meanings." So to the extent that there might be a conflict with Chapter 1, the definitions that are in Chapter 2 would be controlling. So again, I was concerned about changing definitions if we weren't changing (all definitions)

Mr. DeLaney: So far in my reading of Chapter 2, I've come across half-a-dozen places where there are definitions; some of which are also in Chapter 1; some that aren't. I guess the main thing we want to be concerned about is that if they are in both places, they're identical.

Ms. Balsam: No, they don't have to be, because Chapter 1 says, "unless otherwise specified," here's what these terms mean.

Mr. DeLaney: It would be nice if they were identical.

Ms. Balsam: If they need to be identical, yes. And we can certainly look at that.

Mr. Carver asked whether the terms that are defined are lower case or upper case letters.

Ms. Balsam said she believed they were upper case, as they should be upper case.

Mr. Carver noted that some were in lower case, which would prevent the reader from realizing they are defined terms; so at some point, they should be reviewed. **Ms. Balsam** agreed.

Mr. Carver also pointed out a typo on page 141, line 4.

Ms. Balsam noted that she had taken this opportunity to change the thirty-two cross-references in Chapters 1 to Chapter 2, which the Board had discussed; asked if there were any additional comments on page 141 (none); and advanced to page 142, saying:

We're adding a reference to §281-5. On lines 6 and 7 on page 142, there is a (4) (iii). Before that it said, "…from January 1, 2008 to December 31, 2009..." But that isn't how the Window Period is defined in the law. The Law says there has to be someone living there for twelve consecutive months during that period. I felt the rule was not accurate in terms of what's required by the Law. So I changed that to read as the Law reads: "...for twelve consecutive months during the period commencing January 1, 2008, and ending December 31, 2009,…" So that is not a change to reflect the amendments to the Law, but a change to make it more exact.

Mr. DeLaney: Just to be clear, conceivably, you could have three units that had somewhat different twelve-month periods.

Ms. Balsam: Absolutely. And the next thing, which is on line 9, is to add the new Window Period, which is similarly worded in the Law: " …for twelve consecutive months during the period commencing January 1, 2015 and ending December 31, 2016, for buildings seeking coverage under Article 7-C pursuant to MDL §281(6)." Are there any questions on that?

Mr. Barowitz asked for the dates of the new Window Period to be repeated.

Ms. Balsam: January 1, 2015, ending December 31, 2016.

Mr. Barowitz: If you apply afterwards, is there any leeway? Didn't I see a date of 2020 somewhere?

Ms. Balsam: I think there is such a date for the Code Compliance deadlines. We put in the actual dates for the Code Compliance deadlines, based on changes to the Law. Instead of just saying, "nine months from the effective date of the Law," we put in the actual date. But that wouldn't be here. This is just coverage and issues of status.

Mr. DeLaney: The new language looks fine to me. In the next section – Grandfathering – on line 12, once again, we have a definition. Then on line 16, there's an asterisk.

There was some discussion among Board members and staff as to the significance of the asterisks that appeared in various locations. Ms. Balsam will double-check, and delete if possible.

Mr. DeLaney noted, in addition, that in (i) (the following section), "Minor modification and an administrative certification," are terms that are also defined in Chapter 1.

Ms. Balsam: Are you proposing to take them out of Chapter 1 and leave them here? Or delete them from here? If they're the same, is it terrible to have them on both places?

Mr. DeLaney responded that he didn't feel strongly one way or the other. But if the goal is to reduce word count, then it would make sense just to have them in one place. If the goal is to have the definition at the ready for someone reading it who's not very familiar with the material….

Mr. Carver: I would say leave it there, because it's helpful to have the meaning there, on the same page.

Mr. DeLaney felt that, if that is the goal, then it would be logical to have the wording in both Chapters 1 and 2 be the same.

Ms. Torres-Moskovitz said she would prefer having all of the definitions in one place – in Chapter 1. When the reader encounters a word in bold in the Chapter 2, they know they can refer back to the definitions. She felt that repeating allowed for possible mistakes.

Ms. Balsam asked if there were any other opinions on this (none), and said, while her preference would be to have all the definitions together in one place, she did understand the merits of Mr. Carver's point about having the definition together with the language.

Mr. Carver: Having them in both places satisfies everybody.

Ms. Balsam: As long as they're accurate. And we have to see what the Law Department has to say about it, as there was an issue a few years ago streamlining rules. So, we'll see what they say.

Mr. DeLaney: Right, this whole thing has to go to the Law Department.

Ms. Balsam: Yes, it does.

Ms. Balsam asked if there were any additional comments on page 142 (none).

Mr. DeLaney: On the top of page 143, there's a double asterisk. We also refer to the Board of Estimate, and since that's been gone now about twenty-five years, does it make sense?

Mr. Carver: I think so, and I'll tell you why. This is from my experience at the Law Department. City Council and the mayor's office sometimes fight over who is the lawful successor, based on the particular topic. So I don't know that we would actually want to choose….

Ms. Balsam: A successor?

Mr. Carver: Right.

Ms. Balsam: The rule is valid, because it's "…or any entity which succeeds it..."

Mr. DeLaney: The Board of Estimate was very powerful. They had the final say on franchises and land use….It just seems to me that if you have an entity that no longer exists, and you have a new attorney or professional looking at this….I guess in the age of Google, I'm sure there's a Wikipedia entry on it.

Mr. Hylton: Do we know the actual successor right now?

Mr. Carver: This is probably knowable, because it requires a special permit. But we need to find out.

Ms. Balsam: Right.

Mr. Balsam pointed out that §2-08 on lines 21 and 22 should not be underlined. They are not new. This happened because in the original text they were links, and this is how they translated to this document.

Mr. DeLaney: Is the intention to have them in the final product, or not?

Mr. Balsam: Yes, they will be in the final product. But it's not new material. New material is usually underlined, and this shouldn't be.

Ms. Balsam asked if there were any additional comments on page 143 (none), then advanced to page 144 and explained that, instead of just bracketing the material to be removed, she also used strike-outs, as it's easier to read. This isn't standard rule formatting, however, and it will have to be changed to brackets before going to the Law Department. She also noted that (G) is being removed because it references MDL §282-a, which was deleted from the Law.

After acknowledging a formatting issue **Mr. Carver** pointed out, **Ms. Balsam** asked if there were any additional comments on page 144 (none). Moving to page 145, line 5, she continued…

The Law took out the basement, so we just said that it should not be located in a cellar. As we had some referential definitions that proved problematic in one case, we decided to just leave it vague, but we're open to discussion on that.

Mr. DeLaney: With regard to…?

Ms. Balsam: Cellar. Should we include the definition of that?

Ms. Torres-Moskovitz asked if this was covered in Chapter 1.

Ms. Balsam: No. The way it read before was, it "…must not be located in a 'cellar' or 'basement,' as such terms are defined in MDL§§ 4(37), and 4(38)…" We had a case that involved a basement, and there was a lot of discussion around that definition. Is that the right definition? Maybe in our case we wanted a different definition. Ultimately, it was resolved in a different way, but one of the questions staff has for the Board is, should we keep the "…as such term is defined in MDL§ 4(37)." That is, cellar.

Mr. Hylton suggested using the definition of cellar that's contained in §4(37).

Ms. Balsam: We could do that.

Mr. Hylton: But there's a problem. What if they change the MDL? We'll have to change the rules.

Ms. Balsam: That's why cross-references are problematic.

Mr. Barowitz asked for clarification of the difference between "cellar" and "basement." The former would not be habitable, but the latter might be?

Ms. Balsam: Right.

Mr. Hylton: As defined now, a cellar has less than one half of the livable space above grade; a basement has more above grade. So should we put that definition in, or just reference what it is in the MDL?

Mr. Carver: What's the problem that would lead you to not use the MDL definition of cellar?

Mr. Hylton: I don't know that we could not use it. I don't think we can make up our own definitions. The definition of MDL changes.

Mr. DeLaney: Let's peg ourselves to some definition, rather than leave it open to…

Mr. Hylton: So if fifty years from now, the definition of MDL somehow changes, could our rule stand, if we just took what's there now and put it here?

Ms. Balsam: If we copied over the definition that's in §4(37) to here, our rule would stay the same -- if §4(37) changed. If we left it as defined in MDL §4(37), our rule would be changing when §4(37) changed.

Ms. Cruz and Ms. Balsam conferred about the details of the specific building and case referenced above.

Ms. Balsam: That building presented a lot of issues in terms of what definitions to use.

Mr. Hylton: Was the MDL definition different from that in Zoning?

Ms. Balsam: It was.

Ms. Torres-Moskovitz asked if the Board could review the two definitions of cellar….in Zoning and in MDL.

Ms. Balsam: I don't know whether or not the definition of cellar is different in Zoning. The case involved basements, and there were definitely two definitions.

Mr. Hylton: And we don't care about basements.

Ms. Balsam: Right, because they're being deleted. We can come back with definitions of cellar. Certainly 4(37); and see if there's anything specific in the Zoning Resolution.

Mr. DeLaney: So we're going to leave that as an open issue for the moment?

Ms. Balsam: We can, yes.

Mr. Hylton: And we'd have to decide whether or not to cross-reference it?

Ms. Balsam: I'm always going to say, don't cross-reference. You all know that about me by now.

Mr. Hylton: Wouldn't that create a problem?

Ms. Balsam: It can. Obviously, if the Board wants a cross-reference, there's going to be a cross-reference. Personally, I'm not in favor of it.

Mr. DeLaney: You're in favor of plugging in the existing language?

Ms. Balsam: Yes.

Ms. Torres-Moskovitz asked if it would be possible to pull the two definitions during the lunch break.

There was some discussion of this.

Ms. Balsam: Ok. But the deletion of "basement" is required by Law. On line 10, we're taking out the window requirement, because the Law took it out. Then we have to change the numbering down the line. Then, in terms of the Industrial Business Zones, the Law added the language beginning on line 16, page145: "… unless the building is in a district zoned M3 as such district is described in the zoning resolution of the City of New York in effect at the time the application for registration as an interim multiple dwelling or for coverage of residential units is filed. " That was taken directly from the Law.

Mr. DeLaney: Thus far in §2-08 we've capitalized Zoning Resolution; but here it's lower case.

Ms. Balsam: I think the Law has it as lower case. But we should be consistent. Does the Board want to use upper case or lower?

Mr. Carver: It should be consistent throughout, and I think the correct format for legislation is actually lower case, unfortunately. So I think if at some point we decide we want to always use upper case when referring to the defined terms, it's going to be a lot of work.

The Board seemed to favor upper case, and **Ms. Balsam** commented that, with the help of the summer interns on staff, it could be done.

Ms. Balsam: So Zoning Resolution will be upper case throughout.

Ms. Balsam noted that the last change on page 145 was to lettering, on line 27, and asked if there were any additional comments.

Ms. Torres-Moskovitz suggested an alternate method of lettering the items. Rather than re-lettering, perhaps just write "omit" at the deleted line, rather than reassign the letter/number. For example, item (C), page 145, is being deleted. Instead of moving the following items up to fill that place, just leave it empty and write "omit

Ms. Balsam: Next to (C) we could say "reserved," and leave all the other letters the same.

Ms. Torres-Moskovitz: Otherwise, it could get confusing years ahead.

Ms. Balsam agreed and noted how the lettering would read: line 10 (C) is reserved; Line 11 is (D); Line 12 is (E); Line 27 is (F).

Ms. Balsam asked if there were any further comments on page 145 (none), then advanced to page 146:

There is much information on this page about inherently incompatible use. One of the additions to the Law was that the use had to be inherently incompatible with residential "…use by creating an actual risk of harm that cannot be reasonably mitigated…" So we added this to the rule. Then, we're adding basically the same language we have for the §281(5) buildings, for the §281(6) buildings, pursuant to the Law.

Mr. Carver noted that on page 146, line 15 referenced the "cellar."

Mr. DeLaney: Above that, on line 14, you cite §281(5), but I think we're talking about §281(6).

Mr. Carver: I have a question about the statutory language: "…an actual risk of harm that cannot be reasonably mitigated." When? This process could take ten, twenty, thirty years. I don't quite understand what that's supposed to be doing.

Ms. Balsam: It says, "…at the time this subdivision shall take effect" – which is June 25, 2019 -- "and continuing until the time of the submission of an application for coverage by any party" -- I think that's the time frame – "…also contains a use in legal operation, actively and currently pursued, which use is set forth in use group eighteen….which the loft board has determined in rules and regulation is inherently incompatible with residential use in the same building by creating an actual risk of harm which cannot be reasonably mitigated…" It seems to be that the beginning of the sentence is the time frame.

Mr. DeLaney: One refers to "contained," rather than "mitigated."

Mr. Carver: What page is it in the statute?

Ms. Balsam: Page 3. It starts on line 35, with the (ii). It seems to me that the reasonable mitigation would deal with legalization. Are you suggesting we should insert a time?

Mr. Carver: I don't know what to make of it. If there is an actual risk, are we supposed to be blind to it?

Ms. Torres-Moskovitz: Well, that's like sprinklers; anything that has to make it through to a final C of O.

Mr. Carver: But it has to do with the use itself; the nature of the use. Like the firecracker factory. Are you satisfied with this language?

Ms. Balsam: I think sometimes things have to evolve. And I don't know that we have definite guidance from the Legislature…

Ms. Cruz to Mr. Carver: I understand your concern: that there could possibly be a condition in the building that could be detrimental to the tenants, or anyone occupying the space. Is that it?

Mr. Carver: Or to the building itself.

Ms. Cruz: I just wanted to be sure I understood. So you think that, perhaps, there should be something in the rule that can immediately address the issue? And then a more permanent solution during legalization? Definitely not in this part of the rule; this is about coverage. But perhaps in another section of the rules we can talk about something the owner can do to mitigate any potential harm while the legalization process is happening?

Mr. Carver: Are we saying that we're going to allow coverage for a residential unit, while we know there's another use in the building that can't be legalized? And that it might be mitigated twenty years from now? I'm just trying to understand….

Mr. Roche: Which, if that's the case, it's exactly what the Fire Department has argued over the past few months. The fallacy of this. And that is that the onus is now on the Loft Board to say, OK, you're covered, in the sense that we know that's an issue.

Ms. Balsam: Let me just say that all of those arguments were raised to the Legislature, and this is the language the Legislature went with. So we are bound by that. I'm not saying it's a bad argument, but they enacted the Law despite those arguments.

Mr. Roche: Your point is correct, but now the baton has been passed to us (the Loft Board) to say what we're going to do. Which was what some people were arguing to begin with: that all of this can be settled by the Loft Board. And that's factual, but Mr. Carver raises a good point. When? How long? Are we going to provide coverage, knowing that there's something wrong?

Mr. Hylton: We are going to provide coverage, because that's the law. It's not a question of whether we're going to provide coverage or not. That has to happen.

Mr. Carver to Mr. Hylton: Not necessarily, because "reasonable mitigation" is written right into the statute. Is that an issue that has to be resolved in coverage? The ability to mitigate?

Ms. Balsam: There is an argument to be made. If I were representing an owner that had a Use Group 18 use, I would probably want to argue during the coverage preceding that there's no way that this use can be reasonably mitigated.

Mr. Carver: Who has the burden on that?

Ms. Balsam: The owner.

Mr. Carver: Is that in the statute?

Ms. Balsam: Yes.

Mr. Carver: On this issue?

Ms. Balsam: Yes.

Mr. Carver: And what if there's a finding that the harm can be reasonably mitigated? When is that supposed to happen?

Ms. Balsam: I think it would be during legalization.

Ms. Cruz: When the Board had to deal with the issue of the Modine heaters, the Board took action. The Board sent correspondence to the owners about what to do to safeguard these units; to mitigate any potential harm that could occur because of those heaters. So the Board has had experience dealing with issues related to circumstances that could cause harm to building residents. We can do something like that if we come across an issue that perhaps is widespread by informing the owners that there's a problem and letting them know how they can fix it.

Ms. Balsam: In terms of Narrative Statements and in the context of construction, we have also beefed up our examination of Tenant Protection Plans. We had an issue where there was work on an adjoining lot we felt

might be detrimental to the tenants, so we worked with DOB to fashion a better Tenant Protection Plan; then DOB made sure it was implemented. So we have been working on those kinds of issues.

Ms. Torres-Moskovitz: But I'm also wondering about The Project Guidelines. I haven't received them yet. But they're coming?

Ms. Balsam: Yes.

Ms. Torres-Moskovitz: That sets up a system where there are examiners working just within Loft Law buildings. It seems that might be a way to address issues like this.

Mr. Barowitz: Didn't we get a whole list of environmental protections when someone came to speak to us about non-use spaces?

Ms. Balsam: Yes, and we do have information in the rules. We have a rule that talks about the different kinds of uses that would be inherently incompatible. What the Legislature did was add a level, so you could still have an inherently incompatible use, but now, when determining coverage, you're supposed to take into consideration whether that use could be reasonably mitigated. And it seems to me that the way it's supposed to work is that the mitigation would take place during the legalization process. And yes (Mr. Carver), I agree with you, that it could be a very long time. But on the other hand, if it can be reasonably mitigated, I think the Legislature's idea is that the building should be covered. That is what they're looking to do, for better or worse.

Mr. Carver/ Mr. DeLaney: Who defines "reasonably mitigated"?

Ms. Balsam: It's going to have to evolve.

Mr. DeLaney: So for example, on the extreme level, if all I do is manufacture fireworks – this is not a small accessory to a cigar store – then one would think that the argument would prevail that that can't be mitigated. A residential unit in a fireworks factory would not be covered.

Mr. Carver: But if the fireworks were a small part of the cigar store business, would the store owner be forced to stop making fireworks?

Mr. DeLaney: Conceivably, yes. There are land-use issues now in SoHo where the micro-brewery now has a tasting area. So is it a bar? Is that use permitted? That's the kind of thing that would be subject to a coverage discussion.

Mr. Carver: I'm not sure that the answer is that this Law would actually force a change in the use, but it would be some sort of physical manipulation in the building.

Ms. Balsam: Yes, I agree with that. So for example, you have the cigar factory, and let's assume it's not a Use Group 18, but part of it is a Use Group 18, then maybe you need additional fire-stopping around that business, and you need to have more sprinkler heads there, etc. I really feel strongly that it was not the Legislature's intent to put businesses out of business, because that was a huge issue in the passing of the Law.

Mr. DeLaney: Similarly, on the other side of the spectrum, Martha's analogy of the Modine heaters is very apt. There's a danger a) of carbon monoxide and b) if there's something not right about the gas line, there's an even bigger problem. That gets fixed during legalization, but there are undoubtedly buildings from the 1982 Loft Law that have not completed legalization, where those Modine heaters are still in operation. So it's up to the Board, with its heightened enforcement and higher fining powers to move owners through the legalization process.

Mr. Carver: But couldn't reasonable mitigation include shrinking some of the residential tenants' spaces to meet the requirement?

Ms. Balsam: It could. We've had that before. There's a case we've cited more than once where the resident had to give up space to accommodate a staircase. There had to be a second means of egress, and that's the only place it could go. They fought it, and the Board said no, it's required, and that's that. (To Mr. Carver) So are you proposing changes to this language? If so, what? And we can talk about that. If not, we can move on.

Mr. Carver: We should move on. I want to think about this a little more.

Mr. Roche: So there's the possibility that we'll come back to this.

Mr. Hylton: I just want to make something clear. We're not going to deliberate really crazy things and try to solve all the world's problems here. The rules are rules, and we can move forward. And they're critical right now. So with all due respect to everyone's opinion, we don't want to spend too much time trying to work out issues that are not easily resolved.

Ms. Balsam: And I would add that the universe of buildings to which this language applies is now much smaller. Because now it's just Use Group 18 buildings, and I don't know how many people are actually living in Use Group 18 buildings as there are high hazard uses in those buildings.

Ms. Balsam asked if there were any additional comments on page 147 (none), then advanced to page 148, saying:

This part of the rule deals with when a building that has a Certificate of Occupancy doesn't have to register, then the Study Areas. So we just added in Chapter 20 of the Laws of 2015, which had never been added to the rules; and Chapter 41, of the Laws of 2019, which of course are the 2019 amendments. And then the date becomes "June 25, 2019, for buildings, structures or portions thereof seeking coverage under Article 7-C pursuant to MDL § 281(6) as enacted in Chapter 41 of the Laws of 2019." So §281(5) has several different iterations of laws that changed it, so we added where we needed to, and then added §281(6).

Mr. DeLaney: One question regarding the structure of this Section 5 Study Area. In 1982, there were Study Areas where the Loft Law did not apply, subject to the completion of the study of the Study Areas. But I don't think there are Study Areas that are applicable to the 2010 Law. In reading through this, it struck me……because then we get into Certificate of Occupancy under……

Ms. Balsam: I understand what you're saying. Do you we really need to add to this rule, if we know there are no Study Areas now?

Mr. DeLaney: That *"(b) Certificate of occupancy;"* is that (5)(b)? And if so, where's (5)(a)? Because it seems like this is a different topic.

Ms. Balsam: Study Area is the final piece of (a). Then (b) starts a whole new topic – *Certificate of occupancy.* So they're not actually related to each other.

Mr. Hylton: So (5) needs to be tabbed over some more?

Ms. Balsam: I can tab it over. I'm not sure.

Mr. DeLaney: OK.

Mr. Barowitz: I'd like to go back to lines 8 through 12 (on page 147). It's one thing after another, after another, after another; and I find it hard to understand.

There was some discussion of this, and it became clear that there really weren't any reasonable places to insert semi-colons or other breaks. So it was decided to leave it as it.

Ms. Balsam explained that it was necessary to parse it out: Was it there on June 25, 2019? Was it continuing at the time of the submission of an application for coverage? Was the use in legal operation? Was it actively and currently pursued? Has it been determined by the Loft Board to be inherently incompatible with residential use? Does it create an actual risk of harm? That cannot be reasonably mitigated? So it's seven different conditions, but they all follow, one after the other.

Mr. DeLaney: It's a beautiful sentence.

Ms. Balsam: I'm not taking credit for that sentence. OK, page 148. On line 26, again, we added again June 25, 2019. So, "(2) Registration as an IMD with the Loft Board shall be required of: (i) Any building, structure, or portion thereof, which otherwise meets the criteria for an IMD set forth in:" etcetera, etcetera. And (D), we added June 25, 2019, and then (E) – top of page 149 -- we added MDL §281(6).

Mr. DeLaney: On line 24, which is old language, you've got June 1, 2012. I'm not sure that's the right date.

Ms. Balsam: I think that's the effective date of the rules.

Ms. Cruz: Of the Law. I think it's 2013. It's retroactive. Some parts of the 2013 amendment were retroactive to June 1, 2012.

Mr. DeLaney: That's the best explanation I've heard.

Ms. Balsam: I could bring Chapter 4.

Ms. Balsam and Ms. Cruz consulted about this.

Ms. Balsam asked if there were any additional comments on page 148 (none), then advanced to page 149.

Mr. DeLaney: On page 149, lines 5 through 10, seems to be like that character in Catch 22 that says everything twice.

Ms. Balsam and Mr. Hylton reviewed this for a few minutes, and Ms. Balsam confirmed that the language was there twice and explained:

Part of the problem with the way the rules were put together when they were originally enacted, is that it they have these broad statements at the end that really apply to everything. Practically speaking, it looks like it's part of (D). But it really isn't. It should be a separate section. Regardless… First of all, everything after the semicolon in 7, where it says "issuance of a certificate of occupancy pursuant to…" – that's a duplicate and

should be stricken. (From that part of line) 7, through 10, should be stricken. Then the question is whether or not we should make that sentence (F); which we could. There's no harm in doing that.

Mr. DeLaney: All it's really doing is affirming what's been defined previously.

Ms. Balsam: Correct. And I'm in favor of leaving it in there, because it's been very helpful to us in various cases.

Mr. Hylton: For the sake of structure, can you just make (F)?

Ms. Balsam: You can't.

Mr. Carver: You can't, because (i) is a colon, and it has to follow.

There was some discussion of the formatting in this section, which ended with Ms. Balsam explaining:

Ms. Balsam: It's like a note. It's just further clarification of the thoughts expressed.

Mr. Hylton: And in other rules, how are those typically expressed?

Ms. Balsam: Our rules are not like other rules.

Ms. Roslund: You have the same thing on lines 7 and 8 on page 148. And you've got section (5) (b) (1) (i) through (iii)…

Discussion followed among staff and Board members about various formatting and citing issues.

Ms. Balsam asked if there were any additional comments on page 149.

Mr. DeLaney: (E) and (F). (E) is referring to…This is something you're correcting not due to the new law, but because of a weakness in a prior draft?

Ms. Balsam: I don't know that is was a weakness. I think there was no drafting. After the June 2015 amendment, no one did rule-making. So we're adding what should have been added then.

Mr. DeLaney: And (F) is a creature of the new law?

Ms. Balsam: Right.

Ms. Roslund asked for clarification of some formatting for citations in lines 15, 16, 17.

Ms. Balsam: Because §281(5) has been amended several times. So they tweaked the size of the unit, and various other criteria.

Mr. DeLaney: My last question regarding page 149 is, you've got language that's struck, starting at the end of line 27, which needs a strike-out, but my question is, why are we taking that out? It seems to be a distinct thought, that if there's a lapse in the TC of O, we're final.

Ms. Balsam: I think our logic there was that a TCO is not a final C of O, and if you have a TCO you shouldn't be exempt from Article 7-C coverage. So if you get a TCO, but you keep the TCO in place until you get the final,

why should that exempt you from Article 7-C coverage? You didn't have an MDL §301 C of O on the current dates, so why should the fact that you got a TCO, and kept that in place, mean that you should not have to register? That was our thinking. I'm sorry I didn't strike that out. I didn't do that on purpose.

Mr. DeLaney: Oh, no. A lot of work went into this. But what was that originally trying to say?

Ms. Balsam: I think it was saying that if you had a TCO when the building would have been required to be registered, and you kept that TCO going, you don't have to register under Article 7-C, and those units are covered. But the Law doesn't say that. The Law just says you don't have a §301 C of O. So why should we have this in here?

Mr. Hylton: So could this have been a misunderstanding when it was drafted? That a TCO is actually a C of O?

Ms. Balsam: It could be. I wasn't here, so I don't know, but it seems to me that there was some logic to it, because the owner has already done all of this work and obtained a TCO. Do we want to make the owner start, basically, from scratch, with a Narrative Statement and a Legalization Plan, etc.? So I can see where it came from, but I think it's subject to a lot of abuse. And in our experience, to be perfectly honest, the owners who come in with a TCO haven't kept them up anyway. I don't know that anyone has ever exercised their rights under this to say, I don't have to be covered.

Mr. DeLaney: But you're saying it might be applicable. You have a TCO, so you're exempt from the Narrative Statement process. But it's an issue of coverage.

Ms. Balsam: Right. It's about coverage.

Mr. Hylton and Mr. DeLaney: OK.

Ms. Balsam: So we're OK with taking that out?

The Board members reviewed this language (Lines 26 – 28 page 149, through line 2, page 150).

Mr. Carver asked for clarification.

Ms. Balsam: What we're proposing to strike is the language that says, if the owner has a TCO and they've kept it in place, then they don't have to register. We don't think that's the way it should be. They don't have to register with us and legalize if they have an MDL §301 C of O; and a TCO is not an MDL §301 C of O.

Mr. Carver: I'll have to think about it some more.

Mr. Hylton: The code is quite clear, a TCO is not a C of O.

Ms. Torres-Moskovitz asked what the duration of a TCO was.

Mr. Hylton and Ms. Cruz said it's something like every three months, extended up to eighteen months, normally.

Ms. Balsam asked if there were any additional comments on pages 150, 151 (none), then advanced to page 152, saying: We're adding §281(6) and on 153, the West Chelsea exception, which the Legislature retained.

Mr. Barowitz: Do we know why they made the exception for West Chelsea?

Ms. Balsam: No.

Ms. Balsam asked if there were any additional comments on pages 152, 153 (none), then advanced to page 154, saying: Again, we're adding MDL §281(6) to the next provision.

Mr. Barowitz: I have a question about lines 17 to 21 on page 154. Regarding A.I.R, last year the City of New York certified one artist. To most, A.I.R, doesn't actually exist, because on outside of West Chelsea, A.I.R's were only allowed two units per building. Two units per building do not make an MDL. So I have no idea why this is in here. The term "joint living working quarters for artists" only applies to SoHo, and we have ignored that. Why is this in here? Also, the City is planning to rezone SoHo, and most of the artists who live there are older artists. When we took the survey, we learned that most of these people have been living in New York for fifteen to thirty-five years. I don't know why we haven't dealt with this. And the City hasn't dealt with it.

Ms. Balsam: I think it was put in originally to acknowledge the A.I.R.s or JLWQA (joint living and working quarters for artists) are still in existence. I don't know when A. I.R. came in, but JLWQA came in before the Loft Laws.

Mr. Barowitz: Long before.

Ms. Balsam: Right. And these sections were added back in 1982, at the original rule-making, to make it clear that these kinds of residences qualified. So we don't necessarily have to change it. I don't see a down-side to changing it. Actually, we're not changing that; we're just adding §281(6) on line 16. So I think that's why it's there: So that no one could ever say that an A.I.R. doesn't count towards the three required residential units.

Mr. Barowitz: But occasionally, we've gotten notes from the Law Department about the fact that we have been certifying people in this district that are not joint living and working quarters for artists. And we just ignore it. And the City ignores it. So I don't know why this is here anymore.

Ms. Balsam: Do you want to take it out?

Mr. Barowitz asked Mr. DeLaney for his opinion.

Mr. DeLaney: I think it probably makes sense to leave it in.

Mr. Barowitz: But it's no longer applicable.

Ms. Balsam: I'm worried about unintended consequences.

Mr. DeLaney: You could conceivably have someone come out of the woodwork and apply for coverage under §281(1) in an A.I.R. unit.

Mr. Barowitz: Ok. Question resolved.

Ms. Balsam: If we could go back to the page, I wanted to point out to the Board that there was a change in the Law about the extra criteria, not the occupancy, but the extra criteria for the 400 square feet, etcetera. The Legislature changed it to say that only the unit seeking coverage would have to meet those additional criteria,

so we are changing that here. The §2-08(a)(4)(i)(A), (B),(C), (E), those are the additional criteria: 400 square feet; not having to walk through another unit; not in the cellar…etcetera. So we changed that language, in lines 11 and 12, to say " 'the unit seeking coverage' must meet…"

Mr. Carver asked where that appeared in the statute.

Ms. Balsam: Page 1, line 14, and page 3, line 15.

Ms. Balsam: So we need the three units for the top part, but not the bottom part.

Ms. Torres-Moskovitz asked where they were in the text.

Ms. Balsam: If you look on page 1, line 14 of the Law. It says "the unit seeking coverage," and seeking coverage is underlined. So that's added.

Mr. Carver: So the three-unit minimum is gone?

Ms. Balsam: Except in West Chelsea, the three-unit residency requirement is still there. But in terms of these additional factors, only the one unit – the unit seeking coverage – has to meet those requirements. Obviously, if there are five units seeking coverage, then all five of them have to meet those criteria.

Mr. Carver: I'm just wondering what happens to the question of proof on the tenant's part. The tenant need only prove the qualification of their own unit, and not any other unit?

Ms. Balsam: For those particular things. Let's assume you have a building that has two units that are 350 square feet, and one that's 400 square feet. All have been residentially occupied for twelve consecutive months from January 1, 2015, to December 31, 2016. Now, the person in the four-hundred-square-foot unit is filing a coverage application. That unit meets all the requirements. The other two residentially occupied units don't meet the four-hundred-square-foot requirement, but we could still grant coverage to that four-hundred-square-foot unit, because the Law now says that only the unit seeking coverage has to meet that four-hundred- square-foot requirement.

Mr. Carver: So is this changing the ultimate unit count to one?

Ms. Roslund: Does it make more sense if you use the word "any" instead of "the"? So it's "any unit seeking coverage"?

Ms. Balsam: No, but it could actually change the coverage count to one. Because even though there were three units that were residentially occupied, only one of them would be eligible for coverage under the Law. So yes, it could change the unit count to one.

Mr. Carver: But the statute itself still says three or more.

Ms. Roslund: For an MDL.

Ms. Cruz: Three units that were residentially occupied. So you have to prove residential occupancy for three units.

Mr. Carver: Even if the other two wouldn't qualify?

Ms. Balsam: Would not meet the other qualifications? Yes.

Mr. Carver: And therefore, would not qualify?

Ms. Balsam: Yes.

Mr. Carver: That's the effect of this change?

Ms. Balsam: I believe that is the intended effect of the change. We had a lot of discussion around this.

Mr. Carver: Is there any legislative history?

Mr. DeLaney: There is now.

Ms. Balsam: I'd have to take a look at what they put in. But I believe that is what they intended.

Mr. Carver: Thank you for your explanation.

Mr. DeLaney to Ms. Balsam: I had proposed a change in the rules perhaps a year ago, that we consider this. But the Chair determined we had enough new material on our plate at that time. But this, in essence, accomplishes that.

Ms. Balsam: Yes.

Mr. Carver: It needed a change in the Law.

Mr. DeLaney: I don't know that it needed a change in the Law, but now there is a change in the Law.

Ms. Balsam: I think the statute before was ambiguous. You could argue one way or the other, and there were arguments on both sides. But the fact that they changed it, seems to me that they're leaning toward just the one has to meet these additional requirements.

Mr. DeLaney: On page 154, line 20. You took out, "pursuant to the Zoning Resolution." What was the thinking there?

Ms. Roslund: Yes, that does seem kind of important.

Mr. DeLaney: Is "joint living and working quarters " defined in the Zoning Resolution?

Ms. Balsam: It's defined in MDL §7-B, I know that.

Mr. DeLaney: It was in 7-B. Can you take a look at that?

Mr. Carver: One more question about the single-unit buildings. Will the various agencies allow multiple dwellings to have only one unit? Like buildings in HPD?

Ms. Cruz: They wouldn't have been required to register.

Mr. Hylton: This is the Loft Law. And multiple dwellings in code compliance require three, four, five dwellings.

Mr. Carver: Would HPD issue a registration number?

Mr. Hylton: The owner has to register…

Ms. Balsam: They would have to, because it would be a mixed-use building, wouldn't it? Mixed-use buildings have to have MDR's. If you had a store with two apartments above, you'd get an MDR for that.

Ms. Cruz: If it's not a multiple dwelling, I don't know how HPD would deal with it.

Mr. Roche: When we've tried to bring an HPD law into a situation where there's not at least three units, we sometimes run into problems.

Mr. Hylton: Can I put our HPD inspector on the spot? Do you know?

Mr. Tarek confirmed for Mr. Hylton that an MDR is not required for less than three residential units in a mixed-use building.

Mr. Hylton: So what would the point then be Mr. Carver?

Mr. Carver: How is this problem going to be resolved?

Mr. Hylton: What kind of problem do we have?

Ms. Roslund: If there's now a law that allows a multiple dwelling to not be a multiple dwelling…

Mr. Hylton: You mean an interim multiple dwelling?

Ms. Rosland: …an IMD… then how can it be…

Mr. Hylton: My answer is that this is really not the same. It is a carve out.

Mr. Carver: But it's not an IMD anymore.

Ms. Roslund: But once it gets through the process, then it's no longer an IMD; it becomes an MD. Then it needs to register and do all these things. So it's a really valid argument, that if you get to the end of the process, and you can't become a multiple dwelling….

Mr. Carver: Owners may have problems at the end of the road.

Mr. DeLaney: This is not a new issue.

Mr. Hylton: Problems with what? Registering the building? They can voluntarily register even if it is not required.

Mr. Carver: I think the HPD agent said that ….

Mr. Hylton: Even if it's not required by law, if I have a one-family home, and I want to register it, I can't do it?

Ms. Roslund: But a one-family home has to be a one family. It can't be a one-family home with….Well I guess it could... have six stores?

Mr. Hylton: I've seen buildings voluntarily registered at HPD, regardless of whether they're required by law or not. Two family homes…

Mr. Carver: If staff is telling me that a one-family multiple dwelling is not a problem, I'm going to have to take your word for it.

Ms. Balsam: Can I just say there are other sections of the rules that talk about the fact that there were originally three units; now there are no longer three units; so there's only one unit left…which some people here refer to as last man standing. Upon legalization, it's down to one unit. Those buildings still get legalized. Those sections are already in our rules.

Mr. Carver: But this building never had three units.

Mr. Hylton: And you're saying the Loft Board should not have to register the building? And HPD?

Mr. Carver: My question to you is, will there be problems? And the architect is telling me that that's possible.

Ms. Balsam: I guess if there are problems, then the Legislature will have to deal with it.

Mr. Hylton: I still don't understand what the problem would be…to register the building.

Mr. Carver: If you're telling me that HPD will register it…

Mr. Hylton: If you submit a registration today, HPD will take it.

Ms. Balsam: And so will the DHCR.

Mr. Carver: I'm going to take your word for it.

Mr. Hylton or Mr. Carver: I am positive.

Ms. Balsam asked if there were any additional comments on 154 (none), then advanced to page 155:
We're adding §281(6) where appropriate; we're adding the June 15, 2015, date for the units covered under the 2015 amendments and June 25, 2019, for the §281(5) and §281(6) buildings covered by Chapter 41, the 2019 amendment. Any questions on those?

Mr. DeLaney: Two questions. With section (E), for Chapter 20, the laws of 2015, what units would those be?

Ms. Balsam: I think those laws (2015) just extended the deadlines of 2013.

Mr. DeLaney: And I think 2015 was to give the additional two years for the registration.

Ms. Cruz: That was the year they changed the size.

Mr. DeLaney and Ms. Balsam: The size was changed in 2013. Chapter 4, 2013.

Mr. DeLaney: I don't know if there are actually any units to which this pertains. But there may be. And then the distinction in (F) -- that could either be units that will seek coverage or have already sought coverage under §281(5), that will now be covered because of the amendment. For example, an outstanding case where there was a dispute over a Use Group 16 unit that's now negated.

Ms. Balsam agreed, and moved to the top of page 156, noting that the revisions were similar revisions to those they just discussed. She asked if there were any additional comments (none), then advanced to page page 157 and said: We're adding §281(6) where appropriate, on lines 3 and 5. And then we can talk about lines 22 through 24. I think this actually goes back to Mr. Barowitz's point. We thought we would strike this because, since our units don't have to have artists, we didn't understand why, at the time of the issuance of a final C of O, the occupant would have to have an artist's certificate. I'm assuming that must be in compliance with the Zoning Resolution -- an artist's certificate, or the unit must be vacant. That didn't make any sense to us. Maybe it made sense back in 1982, when you were only allowed to have residential use of these buildings if it was residential use as of right, unless you fell into one of the other categories. It didn't make sense to us to keep it there, so we thought we should strike it, as it could be used against people.

Mr. DeLaney: I circulated this. As I think some Board members are aware, there is this so-called process taking place now in SoHo and NoHo. Ms. Balsam has attended some of the meetings. I know that this proposed deletion is not predicated on anything in Chapter 41 of 2019. It's more of a maintenance issue. But I flagged this last week and circulated it to some of the people in that advisory group. At the moment, I'm getting conflicted feedback. It's good; it's bad; it's terrible; it's helpful…So I would ask that we leave this open for now, until I have more clarity on the issue.

Ms. Balsam: Yes, that's fine. I'm fine with leaving it in altogether. We just felt it wasn't accurate, so why is it there?

Mr. DeLaney: Not to go down this particular rabbit hole at the moment. I don't know that we need to, but I think the reason this is here is because, in 1985, there was an attempt to address this via the Soho-NoHo Non-Artist Grandfathering (clause), which attempted to create a path forward for IMD units that were not occupied by a certified artist. The requirement was that those people identify themselves as such, and they would be grandfathered in. There was a considerable amount of community outreach. I think this is trying to say that the occupant must be in compliance with the Zoning Resolution, which included that non-artist grandfathering clause. Or they need to be vacant. So whether we're better off with it, or without it, my mind isn't clear on that at the moment.

Mr. Barowitz: When I moved into my loft, even though I was a member of the Artists Certification Committee, I needed certification to get a mortgage. Now, I'm the only artist left in the building, and no one else needs one. So the City just hasn't addressed this problem; and it's been what, three months since that first Soho-Noho meeting?

Mr. DeLaney: Right. The first one was in late January. So five or six months. (To Ms. Balsam) And as you know, and you've had correspondence with some of the advisory group members asking questions about this, it does seem a bit murky.

Ms. Balsam: That's fine.

Ms. Cruz: The only thing I would add is that, I think it's in the definition of the JLWQ in the Zoning Resolution. That talks about occupancy in the Zoning Resolution. There's a general provision at the end that talks about occupancy otherwise provided by law. And that other law would be the Loft Law. So, it's no longer required to have artist certification in an IMD, even if you're in a zoning district that requires it, because the authorizing law is the Loft Law, not the Zoning Resolution.

Mr. Barowitz: It certainly was the case in my building, and I'm amazed that the City had such foresight to do this, rather than just letting it slip away.

Mr. Carver: Would the final C of O state the phrases, "joint living and working quarters for artists"?

Mr. DeLaney: It frequently does.

Ms. Balsam: Yes, and we're trying to get away from that, because it causes this confusion. But what DOB had been doing was saying it's JLWQ, with an asterisk, and there was a declaration at the end of the C of O that said, for example, units 2, 3, and 5 are legalized under Article 7-C, so you don't need an artist. That can be problematic if whoever is inspecting just sees JLWQ and doesn't read to the end.

Mr. Barowitz: Let me just give you another example of how confusing everything is. We have a Real Estate Board, and at least three times, it has stated that if artists refuse to pay rent, they can get away with it. Or if the artist refuses to allow the landlord to inspect their premises, they can get away with it. Finally, I got a message to them saying that if the artist refuses to do this, they could be evicted. But the Real Estate Board of New York, they read this and make their own conclusions about it. There's such mystery about all of this.

Ms. Balsam: Why don't we just leave it open for now. Worst comes to worse, we just leave it in there. But I certainly wouldn't want to have something in our rules that is going to hurt people. That was my concern.

Mr. Carver: Hurt people living in loft law units.

Ms. Balsam: Yes, Obviously.

Mr. DeLaney: Part of the driving force behind this advisory group and the process that Borough President Brewer and Council member Chen and the City Planning Commission have undertaken is that there are all kinds of people grappling with different facets of this issue. So you've got the person who is a certified artist in a co-op or condo, who wants to sell, but can they sell to a non-certified artist? Does that depress the potential sale price? This is all up in the air at the moment, under pretty intensive discussion. So I think leaving it open for the moment is the best thing. By the time we get to a public hearing, there might be more clarity. Or, it might be muddier!

Mr. Hylton announced that the Board would now take a half-hour break, and then continue the meeting for another hour and a half after that. He then adjourned the meeting.

After the break:

Mr. Hylton: Before we begin, I would like to thank our HPD inspector, Mr. Dewan Trarek, for doing some research to clarify for us the registration requirement for HPD, which came up before, in terms of when a building is required to be registered with HPD. For three families or more, obviously, that's a multiple dwelling and they have to be registered. But for less than three families, or for any other dwelling where the owner is not occupying a unit, then the building would have to be registered. So for non-owner occupied buildings with less than three families, HPD registration is required. So if I have a two-family home, and I do not live there, I would have to register it with HPD. Or, if I have a mixed use building, for example, a store at the bottom and two families above, and I don't live there, it would have to be registered.

Ms. Roslund: What about rent regulation?

Ms. Balsam and Mr. Hylton: It's a different agency.

Ms. Roslund asked if a unit was still subject to rent regulation once it completed the legalization process and left Loft Board jurisdiction.

Ms. Balsam: Yes it is. Because Article 7-C says that these units are rent-regulated. They still have to register with DHCR, and DHCR will take the registration.

Mr. DeLaney: Another way to look at it is that there are former IMD's that enter rent-stabilization, and they get there with an exit visa from the Loft Law. So, for example, post 1974 ETPA (Emergency Tenant Protection Act), there has to be six or more units to be rent stabilized. But in 1982, the Loft Board consciously said, oh, it's a four-unit building; four residential units; bring it up to code; join rent stabilization.

Ms. Roslund: So, no matter what….

Mr. DeLaney: Coming from the mysterious land of the Loft Law, you arrive at rent-stabilization with a visa stamp.

Mr. Carver: I just want to add that it would be important for owners to see the Multiple Dwelling Law cited on the face of the C of O for the units in the building.

Ms. Balsam: We agree with that, and we'll make sure that happens.

Ms. Balsam then advanced to the top of page 158, saying that, on lines 8 and 29, §281(6) was added where required. The same on page 159, lines 10 and 11.

Mr. DeLaney: I would just point out on page 159, that we have the whole Study Area/Board of Estimate arcane language. So if we ever decide to do anything about it, it crops up here as well.

Ms. Balsam: Ok. On page 159, lines 24 and 25, you'll note we added to §2-01(a)(9). It said (a)(9)(10), but we had to add an (11) and (12), and actually a (13), which is in the next paragraph on line 28, to §2-01. We haven't gotten to it yet, but those are the result of the 2015 amendments, which is §2-09(a)(11); then §2-09(a)(12) is §281(5) as a result of the 2019 amendments; and then §2-01(a)(13) is a result of §281(6).

Any questions on page 159? (No). On the top of page 160, adding 281(6) where required, and I would note on lines 4 and 5, those sections are the same sections about occupancy: 400 square feet, not in a cellar, must have your own entrance, etcetera.

Mr. DeLaney asked Ms. Balsam if she would explain the intent of this section.

Ms. Balsam: This is what we were talking about before, where there's a revocation of IMD status. For example, we had a building with X number of units above, and also units in the basement – at the time when there was a basement exclusion. So the IMD status of those units was revoked. In that building, it didn't really matter, because there were enough units above to allow it to qualify. What this was basically saying was, even if the revocation of IMD status reduces the number of units to less than three, the remaining units are still covered.

Mr. DeLaney: But, if you look at 7 and 8, "…the IMD status for the entire such building shall expire…"

Ms. Balsam: Oh, I'm sorry.

Ms. Balsam took a moment to review/ consult with Ms. Cruz and Mr. Hylton about this, and said: This is talking about if you revoke the status of one of the units, to make it less than three. What it says now is that the building is no longer an IMD. But, since the Law changed, if we find out that one of the units does not meet the criteria, the other two can still stay.

Mr. Carver: But the criteria were in existence at that time, in the past. I don't think the Law is going backwards.

Ms. Cruz: If you look at this criteria, it talks about either a residence or a home for one family, as defined in MDL § (4), located in the building, a portion of which is commercial/ manufacturing.

Mr. DeLaney: If I remember correctly, the principal reason this law was put in after 2010, was, what if the owner wanted the building to be an IMD, as did the tenants, but there was an incompatible use that the owner turned a blind eye to, and registered? I think this was intended to empower the Executive Director to be able to revoke that determination. Does that sound about right? Now to your example (Ms. Balsam), so I'm an owner who hasn't been paying much attention, and I want to register the building. There are five units above ground and three in the basement, which could have been de-covered. But the building would still remain and IMD because of the five above. But if there were three in the basement and one above ground….

Ms. Balsam: That's a problem.

Mr. DeLaney: Then I think the way the Law was written in 2010, but now amended in 2019…

Ms. Balsam: But I think Ms. Cruz is right. What I said before was wrong. I apologize. That at §2-08(a)(4), on page 143 where it says:

(i) In order for a residential unit to be deemed an IMD unit qualifying for coverage under Article 7-C, the unit must:

(A) be the residence or home of a "family" as defined in MDL § 4(5) that is living independently;

(B) be located in a building, a portion of which was occupied at any time for manufacturing, commercial or warehouse purposes;

(C) lack a residential certificate of occupancy issued pursuant to MDL § 301,….

(D) .....

(E) (and) be located in a building that is not municipally owned;

That's what these sections are referring to.

Ms. Cruz: So if there are three units, and one of them is not residentially occupied, coverage would not be granted.

Mr. DeLaney: There are three questions here. What did it mean post 2010? Was that correct? What should it say now?

Ms. Cruz: Post 2010, nothing was required. And it's still correct, because if you have three units in a building, and one of them was not the residence of one family, then that unit is not subject to coverage. So because there were not three families living in the building, it should not be covered.

Mr. DeLaney: So you're saying the exemption applies to the over-arching criteria described in §281(1)?

Ms. Cruz: Yes.

Mr. DeLaney: But not the added exclusions in §281(5)?

Ms. Cruz: Yes. But we have to find where it says that; where it talks about the qualifying criteria, and change it. Because the 2019 amendment does affect that.

Mr. DeLaney: So there's work to do on this section?

Ms. Cruz: Yes.

Ms. Balsam: But this is right, isn't it?

Ms. Cruz: Yes, this is right. Because the sections they reference are still conditions for coverage. You can't be a city-owned building; you can't have a C of O; there has to be three families in residence – except for the Chelsea exception. And that still exists.

Mr. DeLaney: You're saying this is in reference to the §281(1) criteria?

Ms. Cruz: Right. The cross sections here, the §2-08(a)(4). It's on page 143. (Ms. Cruz reiterated the criteria given by Ms. Balsam, listed above).

Ms. Balsam reviewed requirements of §281(1)(i) to confirm this, and said: Yes, this is what it has to be. This still applies.

Mr. DeLaney: OK.

Ms. Balsam: Thank you for raising that.

Ms. Torres-Moskovitz asked about lines 10 to 12, on page 160.

Ms. Balsam reviewed the language and said: In other words, if you're not covered under the Loft Law, you're not supposed to be living there.

Ms. Torres-Moskovitz: Right but this is an issue of enforcement and I think this always gets overlooked.

Mr. Hylton and Ms. Balsam explained that this was just an illegal occupancy, and that they are looking into the matter of enforcing illegal residential occupancy in non-IMD units in IMD buildings.

Ms. Torres-Moskovitz said she was just thinking about educating such tenants: Does it mean they will have to either apply or get out? There's no other option?

Ms. Balsam: Now they have the option to apply. Before June 25th, they didn't.

Ms. Torres-Moskovitz: Right. But I just never knew where this line sat. In the rules, is this the only place it exists?

Ms. Balsam: I think so.

Mr. Hylton: That's just saying, any illegal occupants…

Ms. Torres-Moskovitz: Right. They have to get out.

Ms. Balsam reiterated that people living in illegal spaces do have to get out, and said: I have had situations where Building Inspectors have come to me – in one I recall, he said, I have a Loft Building with residences on the second, third, and fourth floors. What do you have? And we had two and three; the fourth was illegal. And they wrote a violation.

Mr. DeLaney asked about enforcement in such a case, and **Ms. Balsam** said it was enforced through DOB.

Ms. Torres-Moskovitz: I think in our education effort to get people to apply, we have to explain this, because the vast majority do not understand this.

Ms. Balsam: I think that's right.

Mr. DeLaney: So as a scenario, a building that's now eligible for coverage under §281(6). It has nine tenants. Six decide to apply for coverage. Option 1: They list the three other units as being residential, or option 2: They're really ticked-off at those other three people, and just decide to apply for themselves. Now you've got three residential units that have not applied for coverage or protected occupancy, but are eligible. Are they subject to enforcement?

Ms. Balsam: I would say yes, because they're not covered. If you're not covered, then you're subject to enforcement.

Ms. Torres-Moskovitz: The way I interpret this is, if you're in an IMD building going through the process, and you're in a unit that's not covered, then you're not supposed to be there. Until the final C of O, then….

Mr. Hylton: Presumably, the final C of O picks up those units. If they're not on the final C of O as residential units, they still can't be occupied.

Ms. Torres-Moskovitz: They can't be commercial spaces?

Mr. Hylton: It's whatever the C of O says.

Mr. DeLaney: So tease out my scenario: Nine units; six apply. They are silent about the other three units, who are eligible, and now there's no deadline. So along comes DOB and says, What! You're living here? They could still, then, apply for coverage?

Mr. Hylton and Mr. DeLaney: So the remedy would be to apply.

Ms. Balsam: Yes, sure. And the violation would not be written to them, regardless. It would be written to the owner of the property for having an illegal occupancy.

Ms. Cruz: The remedy for the owner would be to register.

Mr. DeLaney: But now, a commercial use on the second floor moves out. The owner sub-divides and creates two new residential units, that don't have a C of O, and don't qualify for any Window Period. They would be subject to being asked to leave?

Ms. Balsam: If they were occupied, yes.

Mr. DeLaney: And the owner could not rent those units residentially until he/she obtained a C of O for residential use of those units?

Ms. Balsam: That's the way it's supposed to work.

Ms. Torres-Moskovitz: We have to get that word out.

Ms. Balsam continued: Ok. On line 18, we added §281(6). On page 161, we have a similar revision, for accreted or additional units. So again, they have to meet those §281(1) requirements and the Window Period. Line 21 talks about accreted units that would qualify under §281(6) in buildings that are already covered under §§281(1) to (5). Such as someone who moved in at a later time; that unit could become an accreted unit in a building that's already covered.

Ms. Balsam asked if there were any questions (none), then advanced to page 162, saying that, again,§ 281(6) was noted where required.

Ms. Torres-Moskovitz: Sorry, on page 161, to Eliot's point. Line 5, re: joint living work quarters, we're going to research…

Ms. Balsam: What that definition is. If that's Zoning, or not. The definition of JLWQ – are we using Zoning's definition?

There was some discussion among staff and Board members, comparing the JLWQ as defined in the MDL and in the Zoning Resolution.

Ms. Cruz: I don't know that it's the same, but I know the definition in the Zoning Resolution says who can occupy a JLWQ. One of them is a certified artist, and the last section is someone authorized by another law; and our law, the Loft Law, is another law.

Ms. Balsam returned to page 162, line 3: This is the one I was thinking of, that references the decrease in the number of units. Where the building meets the criteria, it has to be registered. A decrease in the number of units to fewer than three or two, after the applicable residential occupancy period, is not the basis for exemption from coverage. The owner still has to register. And this has the dates. However, if the residential occupancy discontinues, during the Window Periods given, then that unit will be exempt from Article 7-C coverage. But the remaining units are entitled to protection. So this is adding the twelve-month Window Period under §281(6). But the 1.), 2.) and 3.) – lines 15, 17, and 19 -- should be reformatted.

Ms. Balsam continued to page 163, noting that §281(6) was added to the paragraph beginning on line 8 and said: Regarding the stricken lines 10 through 26: I think we just felt it was confusing, and we didn't need it. This all has to do with the statute of limitations and MDL § 282-a(1). Is that clear to everyone?

Ms. Balsam continued: Now, we come to inherently incompatible use. Adding in §281(6), as there still is some inherently incompatible use material related to it. The section now parallels the section of the Law, and on line 5 reads, the use has to be "…in legal operation and actively and currently pursued…" And, "For buildings for which coverage is claimed under §281(5)," here's what that term means. It means the same for §281(6), except it has a different date. So for §281(5), it has to be "in legal operation and actively and currently pursued" as of June 21, 2010, and for §281(6), it has to be "in legal operation and actively and currently pursued" as of June 25, 2019. Then, on line 14, adding §281(6). On line 16 and 17, striking out Use Groups 15 through 18, as it's now just Use Group 18.

Mr. Carver: A question on line 13 (page 164). This concept of, "continuing at the time of the submission of an application for coverage by any party."

Ms. Balsam: It says it in the Law.

Mr. Carver: That entire phrase?

Ms. Balsam: I think so, yes. If you look at page 2 line 22: "…continuing until the time of the submission of an application for coverage by any party,"

Mr. Carver: It's in the same context as in the rule?

Ms. Balsam: It's meant to be. If you think it's ambiguous, let's fix it. Actually, this is going to be on 281(6), but it's the same language. She then directed him to page 3, line 38.

Mr. Carver: So, "any party" means "every party"? In other words, is it the first coverage application, or the second or the last? This raises a practical problem. Once they issue and approve it, the next day, another coverage application gets filed, and they have to go through this whole exercise again.

Ms. Balsam: The Law says, "any party." I see your point; but I don't see how to get around it. Because what if it was there on June 25, 2019, and somebody filed for coverage in August, then the use continued until the end of the year? But then the commercial tenant moves out, not necessarily related to the Loft Law. And somebody files for coverage on January 1, 2020. Why would that person be denied coverage, if the use is no longer continuing? Does that make sense?

Mr. Carver: Yes, but what about the opposite? Having to prove the same point over and over again?

Ms. Balsam: Maybe you'd make a res judicata argument; or a collateral estoppel argument.

Mr. Carver: But if you made the first coverage application the time limit, that would solve the issue, I suppose.

Ms. Balsam: You're talking about if the commercial use continued in existence? So you want to add to the rule that if there's been a determination based on this, and the same business is still there, in existence, then…

Mr. Carver: You could have a trial that gets stopped. And then consolidate the claims, and have to do the research for the next time period. After all, the first application for coverage is served on everyone in the building, right?

Ms. Balsam: That's assuming that the person claiming coverage later was there at that time. Because the unit could have been residentially occupied during the Window Period, but that left and somebody else moves in later.

Mr. Carver: So the subsequent occupant of the unit would not be bound by a trial of this issue, even if it's in that same unit?

Ms. Balsam: I think you would have to make a factual inquiry as to whether or not the use is still in existence. It's a bifurcated timeline. Was it there on January 25, 2019? So the first case would establish that, yes, it was. Then for tenant number one, continuing to the date that they applied. But for tenant number two, you'd have to see if it continued to the date that tenant number two applied.

Mr. Carver: Is this the only section in the Loft Law that looks forward in time? Usually, the Law is looking at a fixed date and going back.

Ms. Balsam: The code compliance deadlines are prospective.

Mr. Carver: This does pose a possible problem, especially when a case is on-going.

Ms. Balsam: If the first case is on-going, I don't see why the cases wouldn't be consolidated. Why would the OATH judge want to hear all the same things twice?

Mr. Carver: But if that part is already determined…

Ms. Balsam: Are you talking about a case where the trial is continuing, and then somebody….

Ms.Cruz: The case is assigned to the same judge. It's a matter of practice at OATH.

Mr. Carver: They'd have to stop the trial, and the owner would have to do more research on the uses and codes.

Ms. Balsam: I guess it depends on whether or not the use has changed. If it's the same use, it should be fairly easy for the owner to come back at a later time and say, here it is; it was like this then; it's still like this now. Let's move forward. I do understand your point, though. But it says, "any party;" so I don't know how to fashion it any other way.

Mr. Carver: I have to think more about it.

Ms. Balsam asked if there were any additional comments on page 164.

Ms. Torres-Moskovitz asked if Ms. Balsam could provide a document with information about the New York State environmental rating categories; and Ms. Balsam said she would.

Mr. DeLaney: As I recall, when we went through the original incompatible use rules, we looked at various uses in all the groups. But it was my understanding that Use Group 18 is the heaviest of the heavy industrial uses. So perhaps at one of the September meetings, we could review those documents, just to refresh our memories.

Ms. Balsam: We can do that; but are you proposing changes?

Mr. DeLaney: Well, at least four Board members weren't there when we had that discussion, so I'm just suggesting that a review would be helpful. And after the Law passed in 2010, for reasons that were not clear to me at the time, the Board decided to thrust itself into the middle of the incompatible use issue first, before reviewing any of the basic concepts as we've been doing today. And we were overwhelmed with the task of looking at the various uses within, at that time, Use Groups 15 through 18, some of which the Board decided, did not rise to the level of concern. Then, (there was) the whole question of using the environmental ratings under Section 24-153 of the Administrative Code; and we also looked at the Community Right to Know Law, and risk management. In all of this, the Board relied largely on the expertise and guidance of Chief Spadafora; but I think it's fair to say that none of us felt like we fully understood it. Now, with 15, 16, and 17off the table, it would be helpful to spend twenty minutes looking at how this all plays out. Some of the uses in the various groups were straightforward, i.e., large amounts of radioactive materials being stored….

Ms. Roslund: We were talking about this in Brooklyn recently, how everything has changed, and the Zoning Resolution hasn't exactly kept up with manufacturing as it's defined today; not as it was defined in the 1970's. A couple of months back, we were also talking about how the special mixed use districts in the Zoning Resolution account for this circumstance exactly. It says, you can do this, but with the exception of X, Y, and Z. And different districts have different exceptions and different inclusions. My point is, yes, the Zoning Resolution actually takes this into account in different places. I know we're not the Zoning Board, but why aren't we looking at this more? So I support Chuck.

Ms. Balsam: In terms of where we're going to spend resources, and promulgating rules, is there a need right now to revisit those categories that were exempted back then? I'm not sure there is. If the Board disagrees, that's fine.

Mr. DeLaney: I'm not suggesting revisiting them; just a quick summary, so we're on the same page.

Ms. Balsam: What you'd like to know is: How are "A" and "B" under 24-153 defined? What is the Community Right to Know Law? Who has to file the Risk Management Plan? And High-Hazard Group H occupancy -- you'd like to know something about what those things are?

Ms. Roslund and Mr. DeLaney confirmed that.

Ms. Balsam: Ok, we will do that.

Before moving on to page 166, **Mr. Carver** had a question related to his earlier discussion. (The concept of "continuing at the time of the submission of an application for coverage by any party." Page 164, line 13):

Mr. Carver: You had said that you didn't know how to get around, "any party." It's certainly understandable that it could be read to mean "each" party. But I think it's vague enough that the Board could decide that that means the first party to apply. And then the issue as decided should be binding upon those who were served when that application was made. But future tenants would not be bound by that determination.

Ms. Balsam: That's assuming that the occupancy is still continuing. That the commercial or manufacturing occupancy that excluded coverage at the time – I'm assuming that's where you're going with this…

Mr. Carver: Not necessarily. This might be read to mean, this is the point of time where you make the finding…

Ms. Balsam: But what if the use changes? That's where I get stuck.

Mr. Carver: But the issue is over. This could be read as a limitation.

Ms. Balsam: I think if we decided a case that said, you're not covered, because three years ago, there was an inherently incompatible use – which is no longer there, so it wouldn't stop you from being covered now. If we made that determination -- because three years ago, the Board had said you can't be covered -- I think that would be struck down very quickly.

Ms. Roslund: Wouldn't it be a new application?

Ms. Balsam: The question is, should the prior finding be binding? It makes sense if it was fully litigated the first time around, and it's still the same company, doing the same activity. But how do you know if somebody's filing an application three years later? That's a factual thing, which has to be verified.

Ms. Roslund: The way we're discussing it makes it sound like it's a continual thing. If an application is made, and struck down because an incompatible use is found, then that's the end of that. But that doesn't mean that three or five years down the road, a new application…

Mr. Carver: That's one way to read the statute. But the phrase "any party" could also be read otherwise, to say, beginning on "…June 25, 2019, and continuing at the time of the submission of an application for coverage by any party." "Any party" as of the date of application. That's the cut-off point. That's another way of reading it.

Ms. Roslund: But that's not the same application. Doesn't it say, when "this" application?

Mr. Carver: That's right.

Ms. Balsam: It says "an" application.

Mr. Carver: "… an application for coverage by any party." The first application has happened; so you've had the submission of an application for coverage by any party. That's another way of reading it.

Ms. Roslund noted that this could cause a problem for applications going forward.

Ms. Balsam: That's exactly what I was thinking. That would be limiting coverage applications going forward in a way that I don't think we should; that I don't think the Legislature intends to. It's up to the Board. I agree (with Mr. Carver), that it could be read that way. But I don't think that's the preferred reading. In my humble opinion.

Mr. Carver: And I certainly understand where you're coming from. But I think differently.

Mr. Hylton asked how the Board should proceed on this.

Ms. Balsam: Well, I think we need a consensus. If we're going to go with Mr. Carver's definition, I think we would have to add clarifying language. Or we could just leave it the way it is.

Mr. Hylton asked the Board if there was support for Mr. Carver's position.

Ms. Roslund: His position is that, once no is said, that's the final answer. Forever.

Mr. Carver: Based on the language, "… continuing at the time of the submission of an application for coverage by any party." Once it's happened…

Ms. Balsam: Once it's rejected, that's the timeframe.

Ms. Roslund: There's no opportunity for re-application?

Mr. Roche: Even if circumstances change.

Ms. Balsam: Correct.

Ms. Roslund (to Mr. Carver): Are you proposing to change the language to make it clear that that's what it should say? Or that's what you interpret as saying?

Mr. Carver: I'm suggesting that the rules reflect the way I read the statute.

Mr. Hylton: So you need a motion.

There was some discussion among the Board members about what the next step on this should be.

Mr. Roche recalled Ms. Balsam's belief that a case based on this interpretation would never hold up in court.

Ms. Balsam: I'm not saying it's illegal to interpret it that way, I just don't think it would hold up, so I don't advise it.

Mr. Hylton asked Mr. Carver if he believed his view could withstand a challenge.

Mr. Carver: I don't have a basis for making that decision.

Mr. Hylton: Are you satisfied with moving forward, then?

Mr. Carver: If no one else is interested in it….

Ms. Balsam proceeded to page 165, noted that sections (m) and (n) have been struck, and explained why: I'm not exactly sure why it was done this way. The way the rest of the rules about registration are written, the owners are required to register, and then, if they think the building should not be covered, they file a de-coverage application. These provisions prohibited the owner from registering the building at all; and it wasn't clear to me why there should be that carve out. And I know, from attending the Community Board One meeting, that owners were complaining that they could not even register and file for de-coverage. So I don't think it should remain this way. Staff is proposing to eliminate this, and allow owners to register and file for de-coverage.

This was added after the 2010 amendments. I suppose there is a rationale to saying, if no one is supposed to be there to begin with, why should we even register these buildings? But to me it seems like a Chelsea carve-out.

Ms. Cruz and **Ms. Balsam** discussed this and noted that some of this had been moved to the Registration section.

Ms. Torres-Moskovitz suggested holding off on this until the Board gets to the Registration section.

Mr. DeLaney: Before we leave page 165, section (l) describes the permissible, non-residential use in a residential unit. And I'm wondering if anyone can explain why number (4) reads, "has up to three non-residential employees."

Ms. Balsam: It's in the Zoning Resolution. And there was something about the percentage of space, the forty-nine percent…

Ms. Cruz: This is why it's very important to be very careful about what we call an IMD unit on the C of O, because that can trigger different sections of the Zoning Resolution. It affects what kind of usage, what kind of business activity, the tenant can engage in. For example what percentage of space can be used for their art or other business activities.

Ms. Torres-Moskovitz: Why do we list (1), (2), (3), and (4) versus just cross-referencing to the Zoning Resolution? It's a little confusing. From personal experience, as a business owner, the forty-nine percent only applies to an X zone -- a special district. But for buildings outside of that zone, it's only twenty-five percent.

Ms. Cruz: I think these criteria are for special districts.

Ms. Roslund: The deviation is for residential districts. It's the opposite -- you're working in a residence, rather than living in a manufacturing building. That's where the twenty-five percent is.

Ms. Balsam: This is already in existence, and no one has objected to it. So I don't know that we should mess with it.

Ms. Roslund: There's nothing in the Zoning Resolution that says you can have X percent residential in a manufacturing district. It says you can't live in a manufacturing district. Except for the special districts, and M15D. There are certain districts, in Soho, where they refer to each other.

Ms. Balsam asked if there was anything else on page 165 (nothing), then proceeded to page 166 and explained: Line 4 concerns revocation of the IMD registration. This particular rule allows the Executive Director, on written notice, to revoke the IMD registration at any time, for failure to meet the requirements. It said before, "on written notice to the owner," but nothing to the units, which I didn't think was fair. So I propose adding "and the units." As we don't know who the particular tenants are, we would send notice to the units, themselves, addressed to the Occupant of Unit 12, for example.

There was a discussion among some of the Board members and staff concerning how/ to whom the notices should be addressed, and about notifying the non-residential units in the building.

Ms. Torres-Moskovitz asked when a revocation would occur, and **Ms. Balsam** explained that, to her knowledge, it had only happened once. The owner had registered three units that were subsequently found to be in a basement. So the Executive Director at that time revoked their registration.

Ms. Balsam continued, on page 166, noting where changes occurred: Line 5, §281(6) was added; line 12, a new more accurate word was substituted for an existing. (This was discussed with the Board, and"registered" was replaced with "assigned"). Line 17, again refers to uses that occur after the effective date of the different amendments to the Law. She explained: This particular section says that, after the effective date of the Law, an owner can't move in an inherently incompatible use, and then claim that the building shouldn't be covered.

Mr. Carver: Even if a tenant hasn't yet filed for coverage?

Ms. Balsam: Yes. (She read from the Law, page 2, lines 34 -37): "…no subsequent use by the owner of the building shall eliminate the protections of this section for any residential occupants in the building already qualified for such protections." Oh, it says in a building already qualified for such protections.

There was some consultation about this among staff and Board members, who agreed that it was on the effective date of the Law, and continuing…

Ms. Balsam: …until the time of an application. They're using the effective date of the Law. You would have to have been there on the effective date of the Law. If you came in after, it doesn't matter whether or not there's been a coverage application, because you came in after the effective date of the Law. You would have to have been there on the effective date of the Law.

Ms. Balsam continued with the changes on page 166: Line 26, a change to a cross-reference; line 27, adding §281(6). Line 28 returns to your point, Mr. Carver, about the shifting of the burden of proof – this is where it shifts in the rules. The Law says, "A party opposing coverage pursuant to this subdivision shall bear the burden of proving the exception to coverage set forth in subparagraph (ii) (page 2, lines 38, 39 of the Law)

Mr. Carver: Is the shift limited to opposition based on the incompatible use issue? It shouldn't be in all cases.

Ms. Balsam: It is. It says, "…the party opposing coverage… must establish by a preponderance of the evidence that there are no commercial, manufacturing or industrial uses in legal operation in the non-residential units that are inherently incompatible with residential use by creating an actual risk of harm than cannot be reasonably mitigated…" etcetera, etcetera.

Mr. Carver: I think what this is saying is that the party opposing coverage has to establish this in all cases. But what it should really say is that they have to establish this if the opposition is based on an incompatible use.

Mr. Balsam agreed with Mr. Carver's suggestion that the words, "inherently incompatible use" should be inserted into this clause.

Mr. Carver also suggested that a more accurate title could be composed for this section; something that notes the opposition factor.

Ms. Balsam suggested *Burden of Proof for Inherently Incompatible Use.*

Ms. Torres-Moskovitz asked for the location of subdivision (k) (*Uses in Use Groups Inherently Incompatible With Residential Use*).

Ms. Balsam: Subdivision (k) is referred to on page 167, line 3; and subdivision (k), itself, is on line 18, page 164. (She reminded the Board what (k) was about).

Ms. Cruz suggested moving "as defined in subdivision (k)" up one line, following "…with residential use….

Ms. Balsam and the Board members agreed, but some had reservations about the length of the sentence.

Ms. Balsam read it aloud, showing that it could be followed. But she noted that the Legislature had added a lot here.

Ms. Torres-Moskovitz asked where the beginning of the section containing (k) is.

Ms. Balsam and **Ms. Cruz** noted it was page 141; that it was part of §2-08 Coverage and Issues of Status.

Ms. Balsam continued with the changes on page 167: Line 7, (r) is not changing. Line 16, the deletion of (s). This is related to what I was talking about before. It had to do with the shifting the revocation of a registration to a de-coverage application that would go before the Board. So perhaps we want to hold off on this, as we did with (m) and (n), as they're all part of the same discussion.

Ms. Balsam noted that they had finished §2-08 and would begin §2-01 next time.

Ms. Torres-Moskovitz asked for some clarification of de-coverage. She noted two cases from the previous meeting where two units were de-covered. One remained residential and the other returned to manufacturing.

Ms. Balsam: There's a difference between de-coverage and legalized. A building that's been under our jurisdiction can be removed and maintain its residential units, either as rent-regulated or not. Or, if there's a buy-out, they could convert the space back to commercial. But that's not the same as a de-coverage application, which challenges the coverage of the building. The owner registers, but then files a challenge, saying, I should not have had to register.

Mr. Hylton asked if the challenge meant that there was a mistake.

Ms. Balsam: No, it's not a mistake. The idea was to at least get the owners in and get the buildings registered. Then if they wanted to say, I really shouldn't be registered, to give them a due-process avenue to do that. But we wanted to get the buildings in, so we could understand what the universe was. To me that makes a lot of sense.

Ms. Torres-Moskovitz agreed.

Ms. Roslund asked how that is not a withdrawal.

Mr. Hylton said that filing for de-coverage is a request to withdraw.

Ms. Balsam: The owner says, I came in and did what the law required me to do, but I believe there's a genuine issue as to whether or not I was required to do that. So let's have a trial.

Mr. Hylton asked if there were any other questions(none).

Mr. Hytlon: This will conclude our July 11, 2019, Loft Board meeting. Our next public meeting will be held on Thursday, July 18, 2019 at 2:00PM at 22 Reade Street, Spector Hall.

The End