

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

May 18, 2017

The meeting began at 2:47 p.m.

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

INTRODUCTION

Chairperson Hylton welcomed those present to the May 18, 2017 public meeting of the New York City Loft Board.

1. VOTE ON MARCH 16, 2017 MINUTES

Mr. DeLaney stated that on page 5 of the minutes, with regard to case 14 last month, 73 Washington Street, it is marked as tabled for this month but is not on this month's agenda. Mr. DeLaney suggested that when cases are tabled, the Board should not commit to a date certain unless there is an agreement to commit to a date certain. Ms. Balsam stated staff is still doing some research which is why the case is not on this month's agenda. Chairperson Hylton concurred with the suggestion and noted that was not a change to the minutes.

Mr. DeLaney further stated as to pages 2 and 3 of the minutes, there is a long discussion of changes to chapter 1 of the rules and the CAPA process. Mr. DeLaney requested to discuss the CAPA process with the Executive Director at a later time. Ms. Balsam agreed to do so.

Motion: Ms. Shelton moved to accept the April 20, 2017 meeting minutes. Mr. Hernandez seconded the motion.

Members Concurring: Mr. Carver, Mr. Barowitz, Mr. Roche, Mr. Hernandez, Mr. DeLaney, Ms. Shelton, Chairperson Hylton (6).

Members Abstaining: Mr. Schachter (1).

3. Report of the Executive Director, Ms. Helaine Balsam, Esq.

Ms. Balsam noted that Michael Atzlan, Esq., Assistant General Counsel, is leaving the Loft Board staff to pursue a teaching career. She thanked him for his hard work.

Ms. Balsam reported that the unofficial revenue total for the month of April was one hundred and thirteen thousand, one hundred and fifty (\$113,150) dollars.

Loft Board staff led a workshop along with the Department of Cultural Affairs relating to the deadline for filing registrations and coverage applications. The workshop was well received. In addition, a member of the Oakland Fire Safety Task Force, which was formed after the Ghost Ship fire, attended the workshop and then met with Loft Board staff to discuss issues arising from these occupancies.

Work on rulemaking continues. The board will discuss proposed changes to Chapter 1 today. Ms. Balsam asked board members for suggestions for changes to the protected occupancy rule. One board member has already responded. She urged other board members to send suggestions as soon as possible.

3. Proposed changes to loft board rules. Ms. Balsam presented a PowerPoint presentation highlighting proposed changes to Chapter 1 of the Loft Board's rules. The changes will streamline and simplify processes, update the rule to incorporate 2015 amendments to the Loft Law and remove redundancies.

Staff proposed a new process for settled cases. Staff would issue administrative determinations on settled cases unless staff felt there was a policy issue the board needed to consider in which case staff would refer the matter to the board for determination. Administrative determinations would be referred to the Board via appeal if either party was unhappy with the decision.

As to stays of default, current rules have four different places where someone who has not appeared can ask to appear. Staff believes this is excessive. The proposal is to limit a request for a stay of default to making a motion before an OATH ALJ. To balance this tightening of the rules, defaulting parties would be allowed to request reconsideration without having to prove good cause for the failure to appear.

As to outdated requirements, Ms. Balsam stated we are still a paper agency and this has got to change. Currently, parties need to file five paper copies of an application. Staff wants to move to having parties file one hard copy and one electronic copy. If someone cannot file electronically the party can write a letter explaining why they cannot file electronically and give us an unbound copy of the application so staff can scan it in.

Staff is also trying to make the rules easier to navigate by breaking them down into subchapters. 29 RCNY 1-06, which was several pages is now subchapters C and D.

In order to clarify actions and responsibilities, staff is proposing to delete the passive voice from the rules wherever it can. Many rules were drafted by a zoning specialist and zoning typically uses the passive voice. We need to clarify who is supposed to do what. Staff is also proposing to use plain language wherever possible.

In terms of timelines, staff is proposing to harmonize timelines, with 30 days being the standard amount of time to do any act required under the law or rules, unless an act requires swifter action, such as access applications.

Staff is also proposing to build in flexibility to allow the Executive Director to extend any filing deadline under extraordinary circumstances.

To incorporate the 2015 amendments to the law into the rules, staff is proposing adding additional language to the code compliance timetables as well as codifying an exemption from registration if a final certificate of occupancy is issued before a certain date.

As to removing redundancies, at this time staff mails copies of proposed orders prior to the board meetings. The current rule states this is required by the City Administrative Procedure Act. However, that act states "recommended decisions" must be mailed. A proposed order is not a recommended decision. Final orders will always be mailed after each board meeting but staff wants to eliminate the first mailing in most of cases.

The timeline for enacting the rules is to discuss Chapter 1 this month and Chapter 2 next month, although Chapter 2 may need to be discussed in two parts, rent and non-rent with the discussion of non-rent first. Then we can work through the CAPA process and hopefully enact the rules after the September meeting.

Chairperson Hylton noted that the Board would still have final approval of the rules and requested comments.

Mr. DeLaney requested Ms. Balsam to circulate the slides and she agreed to do so. Mr. DeLaney stated the proposed timeline was optimistic. Ms. Balsam stated it was her dream. Mr. DeLaney

is concerned with the public having enough time to comment during the CAPA process. The changes to the rules are significant. Mr. DeLaney asked if someone made a FOIL request for a copy of the document sent to the Board members for discussion today, would that request be granted. Ms. Balsam said yes, although technically the document could be withheld under the law since it is a draft. She reiterated the she does not understand why people would spend their time analyzing something that is going to change as opposed to analyzing the actual proposed rules approved by the Board.

Mr. DeLaney asked if he would be violating a rule if he handed the draft document to someone in the room. Chairperson Hylton asked that we keep on track. Mr. DeLaney stated he is on track because in other areas, such as land use, people have a certain amount of time to comment on a proposal but the proposal is well known. Here there are significant changes in the housekeeping rules and there is a great deal to look at and there is a distinction between the amount of time staff and Board members have and the community. The community should have input and is better suited to comment. People should be given an opportunity to comprehend the language as soon as possible.

Chairperson Hylton stated that the document would be given through FOIL. Mr. DeLaney again questioned whether he could hand the document to someone. Chairperson Hylton responded that we want to keep our comments now to procedure and we are operating pursuant to law. The Board has to make a final decision on any final rule. The Board always has a say. That is the process for any rule-making agency in the City.

Mr. DeLaney requested a written opinion from staff, issued within seven days as to whether he could release the draft document to the public without the public having to go through the FOIL process. Chairperson Hylton stated he would not be able to answer that question and requested we stick to the proposed rules and comments on those changes.

Mr. Carver stated the best way to do this was to look at the sections highlighted in the memo to board members.

Looking at this issue of service of the application, page 9, at the bottom, Mr. Carver noted that staff added email and fax as methods of service. Ordinarily, when service of contracts is done by email and fax, a copy is also mailed. Mr. Carver asked if that is that was something the board could look into—requiring a mailing if service is done by email or fax. Ms. Balsam stated yes if the board wants that but pointed out that for large buildings, you could have over 100 affected parties. Mr. Carver stated that is no different from the current system and Ms. Balsam agreed. Ms. Shelton asked about people that do not have email. Ms. Balsam responded that email is just a choice. Parties do not have to email. Mr. Carver stated that he would suggest that if someone uses email or fax, there still be a mailing. In terms of the email address, Mr. Carver suggested stating the rule should be to use a current and valid email address. In terms of a private delivery service, Mr. Carver asked if that is currently in the rule. Ms. Balsam said no. Mr. Carver suggested adding “nationally recognized” to the rule.

Mr. DeLaney stated he is unclear as to how we will gravitate away from paper and asked Ms. Balsam to state her vision of the procedure. Ms. Balsam stated we are not at the point where we can be paper-free but having someone submit just one copy with an original signature as opposed to five copies would reduce the amount of paper. If the board wants just electronic submissions, we could go that way but we would need to make sure we are set up to handle it. Ms. Balsam would be in favor of that but is concerned about people who are not technologically savvy so we would still need a procedure for people who cannot email or use a computer. Mr. DeLaney asked if someone could write out an application and email a picture of the writing. Ms. Balsam stated yes. She asked Mr. DeLaney what his concerns were about electronic submissions. He responded that he wanted clarity and that sometimes he cannot read pictures he receives so he would want the document to be a PDF or Word document as opposed to a JPEG. Ms. Balsam stated that is possible but we now receive illegible handwritten documents and this would be no different. Mr. DeLaney asked why we want an electronic copy. Ms. Balsam stated we save files electronically now and pointed out that everything sent to board members in back-ups is physically scanned in by staff members so it would be nice if the documents came to us electronically. This would include supporting documents. The courts take all kinds of documents. Chairperson Hylton stated this is a new way to operate.

As to the proposed regulation for settlements, 1-30 on page 15 of the emailed packet, Mr. Carver stated the concept of outsourcing settlements to staff makes sense except if staff were to reject a settlement, he thinks that should come to the board. Staff should only accept stipulations. All other stipulations should be referred to the board. Mr. Hernandez commented that staff would provisionally reject settlements. Mr. Carver agreed and stated staff needed to clarify what could happen to a settlement. It could be accepted, sent to the board, rejected or sent back to the parties. Mr. Carver also stated that although the rule states the stipulation arises from a conference, there might be situations where the stipulation arises without a conference. Ms. Cruz agreed that parties could settle before the first conference at OATH. Mr. Carver asked that 1-30(a) be re-drafted to reflect the process.

In addition, Mr. Carver noted that 1-30 (d) as drafted states a stipulation that is void is against public policy but what staff means to say is that an agreement that is against public policy will not be accepted. Mr. Barowitz suggested deleting void and unenforceable and just saying unacceptable. Mr. Carver responded that an agreement that violates public policy or is otherwise void and unenforceable will not be accepted. That is the consequence of such an agreement.

Chairperson Hylton called for additional comments on 1-30. Mr. DeLaney stated that he is completely against the change. Every single case that is submitted as an application should come to the Board for review. While staff can determine whether or not the case is significant he believes all determinations should be made by the board. Chairperson Hylton asked—even if there is not adversity as Mr. Carver stated? Mr. DeLaney responded the board has seen a number of things that might have been on the summary calendar except as a matter of public policy and some of those were arrived at after some lengthy discussion by the board so he thinks it is appropriate to continue to process cases as the board has been processing them for the past thirty-five years. Mr. Roche concurred that he would like the process to stay the way it is.

On the next page, 16, Mr. Carver indicated that 1-31(b), talks about the basis of the opinion for the adjudicator and it states the adjudicator should rely exclusively on the record and case law, but the opinion should rely on all applicable law including statutes and these rules. That language must be sharpened.

On the issue of whether a proposed order should be mailed to parties, Mr. Carver stated that if a party asks for a copy, then the party should have it. What is happening here and now is we have a lot of people here today because of a proposed order being out there, although we might want to say in the rule that the proposed order shall not be a part of the record. That is our fear about having the drafts out there. Whether or not that would save us from having a court looking at the draft, he does not know but it is a possibility We should have that qualification, that the proposed order would not be part of the record if we decided to allow a party to have access to a proposed order.

Chairperson Hylton asked for clarification, that giving a copy of the proposed order should be upon request and also that the proposed order is not part of the record. Mr. Carver agreed and stated that if the reg. allowed for the proposed order, the proposed order would not be part of the record.

Mr. DeLaney stated that if the board is doing away with the proposed order mailing, how would people know? He asked what time the agenda went up on the Board's website? Ms. Balsam responded that the proposed order is a draft from staff to the board. It is not required by CAPA although the rule says CAPA requires this and it does not. In essence, staff members are the board's law clerks and we are giving the public the draft of our attorney work product. It should not be done and is extremely burdensome.

Chairperson Hylton stated it is almost the same situation as giving the draft rule that is not yet approved to the public. Mr. Carver stated the board is sensitive to this because we know the parties who are very interested. Ms. Balsam stated she did not understand the purpose of mailing proposed orders. Mr. DeLaney responded that perhaps the purpose is that the parties have spent a significant amount of time and money on legal fees in bringing a case, and at the moment, as a member of the public, we get the agenda up for the Thursday board meeting the Friday before. So a party having spent a significant amount of time and money, must check the agenda to see if the case is coming up this month? Ms. Balsam responded that the agenda goes up before the proposed orders are mailed. The proposed orders are not sent out until the agenda is finalized because we don't know until then what cases are going to be

on the agenda. Staff is working frantically until the Friday before the board meeting. Mr. DeLaney said there is a case on the agenda today where the OATH judge made a report and recommendation last July. For the parties it gives them a sense of where the board is likely to come out in terms of the decision and it lets them know their case is on the agenda. Ms. Balsam stated the parties know their cases are on the agenda because the agenda is posted. Knowing the way the case is going to come out—parties have the same exact legal rights whether they receive the proposed order and the final order or just the final order. What counts is the final order. Mr. DeLaney stated he and Mr. Carver are looking at the issue more from the party's vantage point. And now that cases are discussed in private meetings, less and less is being shared with the public and that is a great concern. While he appreciates there is work involved, perhaps the orders could be emailed; that way they would get there quicker too. Ms. Balsam stated that would not save that much work for staff but staff could consider that.

Mr. DeLaney stated that since the board may do research or draft for several months after the report and recommendation, parties would have to check every Friday before each board meeting to see if their cases are on the agenda of the Loft Board. That is not a user friendly approach. Ms. Balsam asked whether the issue is that the parties have notice that the case is being considered as opposed to the actual text, because that could be something staff could work with. Mr. DeLaney said no. The benefit is both. It may well be that a party receives a copy of the proposed order and it is what was agreed to so the party does not need to come to the board meeting such as the large audience today. Mr. DeLaney explained that the board is discussing procedure because it is important. Mr. DeLaney quoted Utah senator Jake Garn, "You take content, I'll take procedure and I will screw you every time." The agenda order is such that we are putting the cases second but the rules discussion is where government needs to go.

Mr. Hylton stated this is important and the board needs to let us know what it wants to do. Mr. Barowitz restated that the issue is whether the board wants the proposed orders mailed. Mr. Carver stated whatever would be easiest and it would be only upon request. Mr. DeLaney stated it should stay the way it is. Mr. Bobick suggested that copies of the proposed orders could be posted on the board's website. Mr. Carver stated that would serve the purpose if we want to go that route. Chairperson Hylton said there would be no printing involved. Mr. Hernandez stated it would be faster for the public to see the orders. Mr. Barowitz stated that sounded like a reasonable suggestion. Mr. Carver agreed. Ms. Balsam stated staff would re-draft that. Ms. Shelton questioned whether the solution addressed Mr. Carver's concern that if the parties want a copy of the proposed order, they should ask for it. Mr. Carver responded that staff says it would be preferable to put the orders on the website. Ms. Balsam concurred.

Mr. DeLaney noted that posting on the website does not address his issue of a party with a case pending at the Loft Board having to check every agenda for what might be a year before the case is scheduled. Ms. Shelton asked what other agencies do—do they tell you in advance or do you look on the agenda? Mr. Hernandez stated that at the Board of Standards and Appeals, people have to check the agenda. Ms. Balsam stated the Environmental Control Board does not mail out anything. Mr. Roche asked whether there are legal issues the board needs to consider if the orders are posted on the internet or sent by mail. Ms. Balsam responded that neither posting nor mailing of proposed orders is required by CAPA. Mr. Barowitz asked if the agenda is on the website and Ms. Balsam confirmed that it is posted the Friday before the meeting. Mr. Barowitz stated he appreciates that the workload is huge and he is sympathetic and we should go with putting the orders on the website.

Mr. DeLaney expressed a concern about sensitive cases. Chairperson Hylton stated it cannot be both ways. Ms. Balsam responded we would post what we now mail. Mr. Roche stated he was in favor of the proposal. It may not be one hundred percent what anybody wants, but it's a good idea. Mr. Hernandez agreed. Mr. DeLaney asked whether staff could, upon request, send an email to a party or attorney notifying them that their case is on the calendar. Mr. Hernandez stated that would be a burden and there should not be individual customized exceptions. This is the way things are done across other agencies and this is where technology is taking us. Ms. Shelton concurred, saying parties should reach out and ask if a case is on the agenda instead of giving staff the responsibility to notify parties. Mr. DeLaney said the BSA is a poor analogy. Mr. Hernandez reiterated that staff should react to requests as opposed to putting the onus on staff. Having to track specific requests will only further delay turning out work. Mr. DeLaney asked whether staff would respond if a tenant asked whether a case is on the agenda. Ms. Balsam said yes. Mr. DeLaney asked how burdensome it would be. Chairperson Hylton stated it would depend on the number

of inquiries. Mr. Hernandez pointed out that it would take someone longer to draft an email than to check the agenda on the website so he viewed the receipt of these requests as unlikely based on his experience.

The Board then moved to page 6, section 1-16 (c). Mr. Carver asked if this language is new about a document not being considered filed until actually received. Ms. Balsam said no. Mr. Carver stated he was concerned about what he used to see with the Fire Department where documents needed to get to a specific room in order to be filed. He asked if getting the documents to the mail room would be sufficient and Ms. Balsam said no. Mr. Carver then asked if there was a concern or if there had been problems in the past with documents reaching the Loft Board. Ms. Balsam responded we had one recent case where someone faxed half a document, then faxed another piece and then filed something else on the wrong form so it has happened but this is what the rule has been in the past. Mr. DeLaney asked if documents are date stamped when filed. Ms. Balsam said yes and they are also inserted on a correspondence log. Mr. DeLaney asked whether some of that would be useful here. Chairperson Hylton asked if Mr. DeLaney wanted the procedure of what staff does now in the rule. Mr. DeLaney stated the term “actually received” was problematic. Ms. Balsam stated that language is in the current rule. Mr. DeLaney asked whether an incomplete application is date stamped, say if there was no payment. Ms. Cruz said yes, we stamp the application even if it is not complete.

Mr. Carver then stated there was a case on the agenda that construes the definition of “new owner” but that definition was not in the rules. Ms. Balsam stated the definition is in the rules on page 3.

Mr. Carver stated that the draft needs copy-editing in terms of periods and commas. Ms. Balsam stated that would be done before the rule is placed into final rule form.

Chairperson Hylton suggested setting aside the discussion of the rules in order to discuss the cases on the agenda. Mr. Hernandez asked if individual board members could have discussions with staff about the rules and Ms. Balsam stated yes. However, Mr. DeLaney stated he wanted to make comments with the full board present.

The discussion of the rules was temporarily tabled to consider the cases on the agenda.

VOTE ON RECONSIDERATION CALENDAR CASES

Ms. Cruz presented the below reconsideration calendar case for vote by the Board:

1.	Kent Ave Holdings I LLC	151 Kent Avenue, Brooklyn	AD-0083
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Mr. Barowitz had a question on page 1 of the decision, second paragraph, stating the year should be 2019 instead of 2009. Ms. Balsam agreed. Mr. Hernandez also stated we are inserting the word prior on page 1 in the third sentence after “Background.”

Motion: Ms. DeLaney moved to accept the proposed order. Mr. Hernandez seconded the motion.

Members Concurring: Mr. Carver, Mr. Barowitz, Mr. Roche, Mr. Hernandez, Mr. DeLaney, Mr. Schachter, Ms. Shelton, Chairperson Hylton (8).

VOTE ON SUMMARY CALENDAR CASES

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

2.	Aaron Steinberg	397 Bridge Street, Brooklyn	TR-1312
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Mr. DeLaney stated the case was on the agenda last month and did not pass. The application alleged nine tenants live in the building. The owner agreed to a surrender payment of \$160,000 to Mr. Steinberg and waived \$31,000 in rent if Mr. Steinberg vacated by a certain date. In his view, allowing the application

to be withdrawn with prejudice, come June 15, when the period for filing coverage applications ends, this will be a building that finds itself in the circumstance of being used residentially and the Board should not allow this application to be withdrawn. The board should continue this in front of OATH. Being an IMD is not voluntary. This is a remedial state law passed by design to take buildings that do not have a residential certificate of occupancy, had three or more units being used residentially and had former commercial use and bringing them into a remedial program designed to bring these buildings up to code. The City of New York does not seem to have a lot of stomach for evicting tenants, so if we accept this withdrawal with prejudice this building will remain an illegal residential building. Mr. DeLaney believes the responsibility of the Loft Board is to be proactive; the board has the legal authority to be conduct its own coverage application and the board has not done it recently. There are a lot of buildings out there operating outside the intended effect of the Loft Law which was to bring buildings up to health and safety standards, put them on the map and let the Fire Department know what is going on. Loft law coverage is not voluntary. Once a building is identified as an IMD, the Loft Board should see that process through.

Mr. Barowitz stated that the way the order is written, he will have to vote for it, but he agrees with Mr. DeLaney. He thinks the order should be re-written to state the building should be reviewed before the deadline and he is concerned about the fact that there are so many private agreements that have nothing to do with the Loft Law that people could be living in illegal dangerous situations and come June 15, 2017, we will have no control over this. He is unsure as to what to say because this has nothing to do with the way the Loft Law is written. This building and probably many others have people living in illegal conditions whether they make a deal with the landlord or not. He is very troubled when the board sees that there was a stipulation but it does not see the stipulation terms.

Mr. Roche commented that regarding the safety aspects, the staff does an outstanding job of communicating with the FDNY when they have concerns. But all relationships have bumps in the road but the public should not be left with the impression that the staff and the board are not concerned about safety, which is paramount to all other things.

Chairperson Hylton stated that there are enforcement mechanisms in the city to address unsafe conditions and illegal occupancy conditions. The building and fire departments are examples. Illegal occupancy happens throughout the city as much as it does in loft buildings.

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

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

Members Dissenting: Mr. DeLaney (1)

VOTE ON MASTER CALENDAR CASES

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

3.	James Gubelmann	442 Broadway, Manhattan	TR-0870
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Mr. DeLaney stated this is one of the first cases where the language inserted into the 2010 loft law requiring that a window exist comes into play and sets a very bad precedent. From his vantage point, the lack of a window should be something corrected during code compliance rather than a reason that a unit is not covered. In this case it has the additional consequence of the building not being covered including a third unit. There is actually a fourth unit who withdrew a case. He will vote no on this case.

Chairperson Hylton asked how Mr. DeLaney's opinion meshes with the law in this case. Mr. DeLaney replied that it does not. Mr. Barowitz asked what happens to the tenants with lot line windows and skylights? This is beyond our jurisdiction but he is wondering what will happen to those people. Mr. DeLaney said this is the second pass at this case. The original order from the OATH judge was handed over to the board in April of 2016, one year plus ago. At some point it would be helpful if the board would

have someone come to a meeting to do a presentation on light and air issues and what constitutes a window, for example, lot line windows do not count and he is ignorant on the technicalities.

Ms. Balsam pointed out that light and air issues pertain to legalization and not coverage and confirmed with Mr. DeLaney that he would like someone to come to address the board about light and air issues in legalization. Ms. Balsam stated staff would try to arrange that.

Mr. Carver stated this case is a straight-forward application of the board's rules and it is incumbent upon the board members to follow the rules even if they do not like the outcome. It affects the credibility of the board.

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

Members Concurring: Mr. Carver, Mr. Hernandez, Mr. Schachter, Ms. Shelton, Chairperson Hylton (5).

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

Mr. Bobick presented the below master calendar case for vote by the Board:

4.	Andi Rishoi, Anna Holmgren, Kelsey Knutson, John Cannon, Jaymee Domingo, Ximena Garnica And Shigekazu Moriya	58 Grand Street, Brooklyn	TR-1252
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Mr. DeLaney stated that this is an extremely complicated case. It is one of the first window cases, there is an Old Law Tenement argument and a the protected occupant argument. This case came to the board in June of 2016 but it came to him last Thursday or Friday and he has not had enough time to fully review the record and he knows the record in massive.

Motion: Mr. DeLaney moved to table the case. Mr. Roche seconded the motion.

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

Members Dissenting: Ms. Shelton (1).

Ms. Leveille presented the below master calendar case for vote by the Board:

5.	Tenants of 79 Lorimer Street	79 Lorimer Street, Brooklyn	TR-1273
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Mr. DeLaney stated as the Chair is well aware, the board turned to this case very late in our meeting and the board did not have sufficient time to discuss the real clash here between OATH ALJ opinions that take a different approach as to how to determine who is the protected occupant of the unit. As the board did not have the chance to discuss the case in sufficient detail, he is asking to table this case for one month.

Mr. Carver clarified that his vote to table is not an indication that there is anything wrong with the opinion. He is voting as a courtesy to a fellow member of the board. Mr. Barowitz reminded the Chair that he does not need a motion to table. The Chair stated he would like a motion.

Motion: Mr. DeLaney moved to table the case. Mr. Barowitz seconded the motion.

Members Concurring: Mr. Carver, Mr. Barowitz, Mr. Roche, Mr. Hernandez, Mr. DeLaney, Mr. Schachter, Ms. Shelton, Chairperson Hylton (8).

Chairperson Hylton then returned to a discussion of the rules.

Mr. DeLaney suggested that from this point going forward, can we use some type of legislative approach to mark up the document through some convention. Ms. Balsam stated the proposal is not in that format because we are repealing the old rules and we can talk about formatting off line.

Mr. DeLaney addressed the definition of prime lessee on page 4. He stated he would like the phrase “or whether the lease remains in effect” removed in conjunction with the discussion of the issue.

As to the definition of person, Mr. DeLaney stated there were definitions of responsible party and person and he asked how a corporation can be a person and can there be more than one responsible party. Ms. Balsam stated there can be more than one responsible party, because there can be an owner and a net lessee. A corporation can be a “person” because it is a legal definition and we are so defining it. For example, a person may file an application, and that would include a corporation. Mr. DeLaney noted that as to responsible party, there are places in the rule where we say “a responsible party” but that should be changed to reflect that there could be more than one responsible party. Staff will make those changes.

On page 5, 1-13(e), extension of filing deadlines, Mr. DeLaney asked how long a period of time or how many extensions the Executive Director can grant. Ms. Balsam stated it was not considered. Mr. DeLaney asked for some clarification. Mr. Carver stated that would be a bad idea because the point is to have total flexibility. If you make it more specific you lose that flexibility. Ms. Balsam gave examples necessitating different amounts of time that might be needed under different conditions (heart attack, coma). Mr. Hylton asked whether a denial of an extension could be reviewed by the board. Ms. Balsam opined that it could not as the party would be foreclosed from filing. She agrees that the amount of time should not be open-ended and suggested inserting “a reasonable amount of time.” Mr. DeLaney is concerned about future Executive Directors and how they might apply the rule. Ms. Balsam said staff would work on adding some type of qualification while trying to keep the rule as flexible as possible.

Mr. DeLaney then moved on to 1-15 (a). He questioned the meaning of the term “official correspondence.” Ms. Balsam stated that term is in the current rule, but agreed to take out the word “official.”

Mr. DeLaney asked whether 1-17 “Confidentiality of lease information” is currently in the rules. Ms. Balsam stated yes but staff moved it from a different location to put it with public access to records. The language was changed only to make the rule less passive and put it into plain language.

On page 8, 1-19 (d)(3), Mr. DeLaney asked why staff deleted the Chair’s ability to reject a petition for rules. Ms. Balsam stated she would review her notes and report back to the Board. She asked whether the board wanted the Chair to have the ability to reject. Mr. DeLaney said the board might want to discuss how it wants to address the concept of someone petitioning the board for rulemaking. Also in section 3, the last sentence, is the board able to limit the right of someone to seek judicial review. Ms. Balsam stated that power is currently in the rules and she does not know whether this has been challenged. The Law Department will strike it if it does not belong there. Mr. DeLaney said someone can always go to a judge. Chairperson Hylton responded that judges can always dismiss.

Chairperson Hylton tabled further discussion of the rules until the next meeting. Chairperson Hylton also informed the board that Ms. Bolden-Rivera resigned from the board effective immediately. He thanked her for her years of service and wished her the best in her future endeavors.

Chairperson Hylton concluded the May 18, 2017 Loft Board public meeting at 4:30 pm and thanked everyone for attending. The Loft Board’s next public meeting will be held at 280 Broadway, third floor, on June 15, 2017 at 2:30p.m.
