

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

September 21, 2017

The meeting began at 1:15 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; and Chairperson Designee Renaldo Hylton.

Absentees: Daniel Schachter, Public Member; LeAnn Shelton, Public Member.

INTRODUCTION

Chairperson Hylton welcomed those present to the September 21, 2017 public meeting of the New York City Loft Board.

VOTE ON June 15, 2017 MINUTES

Mr. Carver commented that in the minutes, if he used the expression "yeah", "yes" may be more appropriate.

Motion: Mr. Hernandez moved to accept the June 15, 2017 meeting minutes. Mr. Carver seconded the motion.

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

Members Absent: Mr. Schachter, Ms. Shelton (2).

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

Ms. Balsam introduced the Loft Board staff's newest attorney, Stephan Clarke, Esq. **Ms. Balsam** also acknowledged the work of Julia Schuurman, the Loft Board's summer intern, who unfortunately did not get to present in July because there was no meeting. Julia did a really great job. The Board members will be receiving at least one memo that she wrote next week when the Board discusses rules. Julia did a lot of work on rules, and researched a lot of issues on rules.

Ms. Balsam reported that staff hired a new Reservist, Stanley Pollack, to complete audits for owners who wish to recover the costs of code compliance as additional rent.

Ms. Balsam further reported that in terms of the changes to the Loft Law, the changes did not pass. We were told that the Legislature will reconsider it in January 2018. **Ms. Balsam** mentioned that since the Board did not have a meeting in July, she is reporting that the changes didn't pass in June.

In terms of failure to file monthly reports, **Ms. Balsam** reported that staff was able to work with DOB I.T. to get the fines for the failure to file monthly reports added to the registration invoices. When the registration invoices went out, not only did the invoices say pay the registration fees, but it also said owner has an outstanding fine. Because of that, we have collected eighteen thousand dollars (\$18,000) in fines from the December 2016 violations. For the May 2017 violations, staff issued seventy (70) violations, forty-two (42) owners cured, and staff recently sent out twenty-eight (28) administrative determinations telling the owners that they have to pay a fine.

On registration renewals, **Ms. Balsam** mentioned that as of September 20, 2017, two hundred and ninety (290) buildings have registered, fifty-eight (58) have not. Staff will start working on those orders for failure to register.

Ms. Balsam further reported that the unofficial revenue for June 2017 was one hundred and seventy-one thousand, eight hundred and eighty two dollars (\$171,882.00). The unofficial revenue for July 2017, because of the registration renewals coming in was eight hundred and sixty-three thousand, nine hundred and fifty-seven dollars and seventy-five cents (\$863,957.75). The unofficial revenue for August 2017 was one hundred and ninety thousand, three hundred and thirty dollars (\$190,330.00).

In terms of the rules, **Ms. Balsam** stated that staff is still re-drafting the current chapter two. Staff is almost done. **Ms. Balsam** sent the Board members some material that we will be starting to discuss next week. We will also talk about the outstanding issues in chapter one. Staff will certainly be done drafting by the end of September or middle of October.

Ms. Balsam mentioned in the June 2017 meeting that staff received a decision in the *Matter of Fiona Campbell Stone and Stephen A. Westbrook v. NYC Loft Board, et al.* The Supreme Court granted the petition and remanded the case to the Loft Board for further proceedings. At the time, **Ms. Balsam** thought we would have prepared an order for this month, but the co-defendants, the owner of the building, filed a request for an appeal so the case is still pending.

Ms. Balsam reported that staff received two mandamus petitions, one asking the Board to decide a reconsideration filed by the owners of 99 Sutton Street and another to decide the 58 Grand Street case. Both cases are on the calendar for vote today.

At the end of June, beginning of July, **Ms. Balsam** stated that staff received two Article 78 petitions, both related to 430 Lafayette Street, New York. This is a case where the Board declined to accept a settlement because the settlement provided for illegal occupancy to remain in the building outside Loft Law coverage.

Ms. Balsam is happy to report that the mapping project is moving forward and we should have a report for the Board next month.

For this month, as per the request of the Board, **Ms. Balsam** introduced Ms. Wendy Wan, an Administrative Architect with DOB Technical Affairs and Development and she will be presenting a report about light and air issues pertaining to legalization of IMD units.

Prior to Ms. Wan's presentation, **Mr. DeLaney** asked who staff hired to do the code compliance rent adjustments. **Ms. Balsam** clarified Reserve, a company that has a city wide contract that supplies retired people who want to work a couple days a week. This person has an accounting background and worked for some very large companies in a sort of CFO capacity. **Mr. DeLaney** asked if this replaced the old accountant position which has been gone for many years. Implicit in that, **Mr. DeLaney** asked if we have some cases in the works where the owner is looking to see a code compliance rent adjustment. **Ms. Balsam** responded yes. **Mr. DeLaney** asked if there were a lot of those. **Ms. Balsam** and **Ms. Cruz** responded around five (5).

Mr. DeLaney asked how are we proceeding with the fines for failure to file monthly reports. Is it in our scheduled fines? **Ms. Balsam** responded yes it is. It is one thousand dollars (\$1,000.00) per report, but we are only charging one month in the violation so far. The idea is to get owners to file, not to fine them.

Mr. DeLaney commented that two hundred and ninety (290) buildings have completed the registration requirement. **Mr. DeLaney** asked how many didn't. **Ms. Balsam** responded fifty-eight (58). **Mr. DeLaney** asked if staff will be moving on failure to file registrations. **Ms. Balsam** responded yes.

With regard to the rules, **Mr. DeLaney** commented that we are having a special meeting next week to discuss both chapter one and chapter two and three. **Mr. DeLaney** clarified that the material that **Ms. Balsam** sent to the Board members a couple weeks ago had not gone through the law department. **Ms. Balsam** responded correct. **Mr. DeLaney** asked what the Board will be discussing next week. **Ms.**

Balsam responded that we have already discussed Chapter one and there are a couple of outstanding issues there. **Ms. Balsam** further responded that she sent the Board members new material which is based on the current chapter two, which will be separated into additional chapters. Ultimately there will be five chapters. **Ms. Balsam** mentioned that we will start with the material that she sent the Board members. **Mr. DeLaney** commented that we will be dealing with the language that has not yet been looked at by the law department. **Ms. Balsam** responded that is correct. **Ms. Balsam** believes that the Board members should have their say before anyone else. They are the Board's rules. **Mr. DeLaney** replied well it didn't go that way in chapter one. **Ms. Balsam** responded no that's not true. Staff has not submitted chapter one to the law department. **Mr. DeLaney** replied he hates to press a bit but he was told that the material for chapter two and three is confidential because it is a work product and it would not be subject to a Freedom of Information Law ("FOIL") request, whereas chapter one he believes was foitable. **Ms. Balsam** stated that she sent out the material for chapter two and three with the privileged and confidential notice to give the Board members an opportunity to take a look at the proposals before anybody else saw it. **Ms. Balsam** will send it out again, and it will be foitable before next meeting. **Mr. DeLaney** clarified that it will be foitable before the next meeting but it will be the same. **Ms. Balsam** confirmed that it will be the same but without the privileged and confidential notice.

Mr. Carver commented that the rules Ms. Balsam sent to the Board members are quite long. **Mr. Carver** asked which are the topics that Ms. Balsam is confident the Board will actually get to next week. **Ms. Balsam** responded § 2-17, the protected occupant section. **Ms. Balsam** doesn't think we will get much further than § 2-17. **Ms. Balsam** will take a look and see if there is a miracle and we do get through § 2-17, where the Board would go. **Ms. Balsam** will send an email. **Mr. Carver** clarified that when Ms. Balsam refers to § 2-17, she also means § 2-18. **Ms. Balsam** responded yes, what was actually § 2-09 is split into several different sections, the first ones to discuss are §§ 2-17 and 2-18. There will be a whole separate chapter about rent provisions.

Mr. DeLaney also asked about the Supreme Court case mentioned by Ms. Balsam. **Ms. Balsam** responded that back in June, she reported that we had a remand and she circled the decision to the Board members. The case was *Matter of Fiona Campbell Stone and Stephen A. Westbrook v. NYC Loft Board*. At the time she reported that in June, **Ms. Balsam** said the case would be on the July calendar because it was a remand and staff was going to prepare a proposed order for the Board to decide on. In the interim, in between Ms. Balsam saying that and now, the co-defendant filed an appeal. The case is still pending so the Board members will not see it until the appeal is over. **Mr. DeLaney** asked what Ms. Balsam sent the Board members in June. **Ms. Balsam** believes that she sent the Board members a copy of the decision. If she didn't, she will re-send. **Mr. DeLaney** asked if Ms. Balsam could send it again. **Ms. Balsam** responded yes.

Mr. DeLaney clarified that the two Article 78 petitions filed are for 430 Lafayette Street. One is by the owner and one is by the tenant. **Ms. Balsam** confirmed.

Presentation by Ms. Wendy Wan, RA, LEED AP, Technical Affairs, New York City Department of Buildings

Light and Ventilation Requirements MDL Articles 7B and 7C:

- Outline of Requirements
 - Article 7C
 - § 281 (5)
 - Article 7B
 - §277 (6)(b)
 - 1968 Building Code
 - §C26-1205/ Article 6
 - Article 7B
 - §277 (7)(a)
 - §277 (7)(b)
 - §277 (7)(c)
 - §277 (7)(e)
 - §277 (7)(f)

- Article 7C § 281 (5)
 - the term "interim multiple dwelling" shall include buildings, structures or portions thereof ...provided that the unit: is not located in a basement or cellar and has at least one entrance that does not require passage through another residential unit to obtain access to the unit, has at least one window opening onto a street or a lawful yard or court as defined in the zoning resolution for such municipality, and is at least four hundred square feet in area...
- Article 7B § 277
 - Occupancy permitted. Any building ...may, notwithstanding any other article of this chapter, or any provision of law covering the same subject matter (except as otherwise required by the local zoning law or resolution), be occupied in whole or in part for joint living-work quarters for artists or general residential purposes if such occupancy is in compliance with this article. Such occupancy shall be permitted only if the following conditions are met and complied with.
- Article 7B § 277 (6)
 - 6. The building
 - ...
 - (b) complies with the standards of lighting, ventilation, size of rooms, alcoves and balconies contained in section C26-1205.0 through and including sections C26-1205.5 and C26-1205.7 of the administrative code of the city of New York, except as otherwise provided in paragraph (d) of subdivision seven of this section.
- 1968 Building Code

**SUBCHAPTER 12
LIGHT, HEAT, VENTILATION, AND NOISE
CONTROL**

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[Sub-Art. or Sec.]*	Art. or Sec.**	
[1205.0]	Art. 6	Standards of Natural Ventilation
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[1205.3]	747	Alcoves
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[1205.5]	749	Natural Ventilation Sources
[1205.6]	750	Area of Ventilating Openings
[1205.7]	751	Minimum Dimensions of Habitable Rooms

- 1968 Building Code
 - § [C26-1205.1] 27-745 Occupiable rooms.- all occupiable rooms shall be ventilated by natural or mechanical means, or by a combination of both. Natural ventilation may be provided except where mechanical ventilation is required by article seven or eight of this subchapter.
 - § [C26-1205.2] 27-746 Habitable rooms.- All habitable rooms shall be provided with natural ventilation complying with the provisions of this subchapter except as provided in section 27-750 of this article.
 - § [C26-1205.3] 27-747 Alcoves.- An alcove or room opening off another room or space shall be considered as a separate room in determining its requirements for ventilation. ...
 - § [C26-1205.4] 27-748 Balconies.- Where an interior balcony or mezzanine opens to form part of another room or space, its area shall be added to the area of the room or space in which it is located to compute the ventilation required for both spaces.
 - § [C26-1205.5] 27-749 Natural ventilation sources.- Natural ventilation, when required, shall be provided by windows, skylights, monitors, doors, louvers, жалousies, or other similar ventilating openings. Such ventilating openings shall open to the sky or a public street, space,

- alley, park, highway, or right of way, or upon a yard, court, plaza, or space above a setback, where such yard, court, plaza, or space above a setback is located on the same lot and is of the dimensions required by the applicable provisions of the zoning resolution.
 - § [C26-1205.6] 27-750 Area of ventilating openings.- Ventilating openings in all habitable rooms or spaces shall have a free openable area of at least five percent of the floor area of the room or space ventilated... Each required ventilating opening shall have a minimum openable area of six square feet....
 - § [C26-1205.7] 27-751 Minimum dimensions of habitable rooms.- Habitable rooms shall have a minimum clear width of eight feet in any part; a minimum clear area of eighty square feet and a minimum clear ceiling height of eight feet for the minimum area, except: (a) A room which complies with the requirements for natural light and ventilation and in addition has an opening of not less than sixty square feet into an immediately adjoining room may have a minimum floor area of seventy square feet and a least horizontal dimension of seven feet; (b) A dining space which has legally required ventilation, and in which the window has an area of at least one-eighth the floor area of such dining space; (c) One-half the number of bedrooms in a dwelling unit containing three or more bedrooms may have at* least minimum dimension of seven feet;...
- Article 7B § 277 (7)
 - 7. Minimum light and air standards for joint living-work quarters for artists or general residential portions of lofts or manufacturing and commercial buildings altered to residential use shall comply with the following:
 - (a) Portions of such buildings which are occupied exclusively as joint living-work quarters for artists as permitted by local law shall comply with the following:
 - ...
 - (ii) Joint living-work quarters for artists shall conform to the standards for light and ventilation of sections C26-1205.0 through and including section C26-1205.7 of the administrative code of the city of New York.
 - (b) Portions of such buildings which are occupied exclusively as residential units as permitted by local law shall comply with the following:
 - (i) Every dwelling unit shall have one or more windows:
 - A. which open onto a street, a court with a dimension of fifteen feet perpendicular to the windows and one hundred square feet minimum area above a setback or a thirty foot rear yard; or

Mr. DeLaney asked is there a need for that window to be operable or openable? **Ms. Wan** responded that for section B, it kind of tells you where you can have the windows, so there are a lot of requirements of where a window is.

- B. for corner lots or lots within one hundred feet of a corner, where the minimum horizontal distance between such windows opening onto a rear yard and the rear lot line is at least twenty feet; or
- C. for interior lots, where the minimum horizontal distance between such windows opening onto a rear yard and any wall opposite such windows on the same or another zoning lot is at least twenty feet and not less than a distance equal to one-third of the total height of such wall above the sill height of such windows; but need not exceed forty feet; or
- D. for interior lots where the minimum horizontal distance between such windows opening onto a rear yard and any wall opposite such windows on the same or another zoning lot is at least fifteen feet and the minimum size of such dwelling unit is twelve hundred square feet; or
- E. in no event shall the distance between such windows and the rear lot line be less than five feet; and
- F. yards and courts may be existing or may be new in buildings seven stories or less in height.
 - (ii) The minimum required ratio of window area opening onto a street, rear yard, or court to the floor area of every living room shall:
 - A. be ten percent where the floor area of such living room is less than five hundred square feet; or

- B. decrease, by one percent for every one hundred square feet greater than five hundred square feet of floor area of such living room, to a minimum of five percent; and
- C. in no event shall the distance between such window area and the rear lot line be less than five feet; and
- D. at least fifty percent of the required window area shall be openable.
- (c) Ventilation of spaces other than living rooms, including enclosed work spaces for joint living-work quarters for artists shall be either in accordance with this section or in accordance with the administrative code of the city of New York.
- (e) The kitchen located within dwelling units and having a floor area of eighty square feet or more shall have natural ventilation as prescribed in sections 27-749 and 27-750 of chapter twenty-seven of the administrative code of the city of New York. Open kitchens shall be considered as part of the adjacent space where forty percent of the area of the separation between the spaces is open and without doors. If the floor area of the combined space exceeds seven hundred fifty square feet, a separate bedroom shall not be required.
- (e) ...When the floor area is less than eighty square feet the kitchenette shall be ventilated by either of the following:
 - (i) Natural means complying with sections 27-749 and 27-750 of chapter twenty-seven of the administrative code of the city of New York and further that the windows shall have a minimum width of twelve inches, a minimum area of three square feet, or ten percent of the floor area of the space, whichever is greater and be so constructed that at least one-half of their required area may be opened...
- (f) When bathrooms and toilet rooms are ventilated by natural means, the natural ventilation sources shall comply with sub-article 1205.0 of chapter twenty-six of the administrative code of the city of New York and shall have an unobstructed free area of at least five percent of the floor area. In no case shall the net free area of the ventilation sources be less than one and one-half square feet. ...

Mr. DeLaney thanked Ms. Wan for preparing this material, and asked her if she would be willing to come back next month, once he had a chance to read through the material and come up with some questions. **Chairperson Hylton** responded that Ms. Wan is unable to come back, but Mr. DeLaney may use staff as a conduit for his questions. **Chairperson Hylton** stated that we have another presentation next month. **Mr. DeLaney** asked on light and air? **Chairperson Hylton** responded no, we don't have time for two presentations. **Mr. DeLaney** asked maybe the month after. **Chairperson Hylton** said he will look into it. **Ms. Balsam** mentioned that she will be circulating Ms. Wan's presentation slides.

VOTE ON APPEAL/RECONSIDERATION CALENDAR CASES

Ms. Cynthia Leveille, Esq., Assistant General Counsel, presented the below reconsideration calendar case for vote by the Board:

1.	99 Sutton, LLC	99 Sutton Street, Brooklyn	R-0356
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Mr. DeLaney commented that the conclusion was subject to some amending in the private meeting. He did not, at that time, hear the phrase "partial reconsideration" which he believes Ms. Leveille read in that re-writing the Board did. **Mr. DeLaney** is not quite sure what partial reconsideration might be and he can't ask questions in the public meeting, so he is stating for the record that it seems something gets reconsidered or it doesn't. **Mr. Carver** responded that Ms. Leveille is using other words for what is already stated in the order. What she said hasn't changed anything. **Mr. DeLaney** replied it hasn't changed anything. **Mr. Carver** stated that the issue raised by Mr. DeLaney is separate from what the Board discussed in the private session. **Mr. DeLaney** asked Ms. Leveille to re-read the conclusion of her case summary. **Mr. Carver** stated that the Board is just giving reconsideration on a limited basis on certain issues, not every issue. **Mr. DeLaney** recommended that when we do this re-writing in the private meeting, we really need to get it on paper.

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

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

Members Absent: Mr. Schachter, Ms. Shelton (2).

VOTE ON SUMMARY CALENDAR CASES

Chairperson Hylton tabled the following cases prior to vote by the Board:

4	Samuel J. Jesselson	33 Union Square West, Manhattan	PO-0037
6	Samuel J. Jesselson	33 Union Square West, Manhattan	TA-0223

These cases will be revisited during the October 19, 2017 Board meeting.

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

2.	Kurt Pitzer and Kimberly Levin	235-241 Berry Street, Brooklyn	LI-0047
3.	Drew De Risi	80 Varick Street, Manhattan	PO-0033
5.	Jocelyn Edelstein	307 Scholes Street, Brooklyn	TA-0216
8.	Chris Cuzme	47-53 South 5 th Street, Brooklyn	TA-0233
9.	Kurt Pitzer and Kimberly Levin	235-241 Berry Street, Brooklyn	TH-0207
10.	Anton Ginzburg & Thomas Nielsen	14 West 19 th Street, Manhattan	TR-1246
11.	Lucas Brower	78-82 Reade Street, Manhattan	TR-1302
12.	Gamze Ceylan	100-104 South 4 th Street, Brooklyn	TR-1314
13.	Joan Beisel	365 Canal Street, Manhattan	TR-1330
14.	Naomi Kaltman	79 Mercer Street, Manhattan	TR-1345

Prior to the vote, **Mr. DeLaney** requested that case 7 on today's agenda, Nicole Craine, 1099 Flushing Avenue, Brooklyn, TA-0229 be voted on separately.

Motion: Mr. Hernandez moved to accept the proposed orders. Mr. Barowitz seconded the motion.

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

Members Absent: Mr. Schachter, Ms. Shelton (2).

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

7.	Nicole Craine	1099 Flushing Avenue, Brooklyn	TA-0229
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Mr. DeLaney commented that this is a case where apparently, the tenant and the landlord stipulated to a rent which appears to be, by his reckoning, above that which would be lawfully permitted under the Loft Law. In his opinion, once a case is filed by a tenant, alleging a rent overcharge, it should go through the process at the Office of Administrative Trials and Hearings ("OATH"). In fact, in this case, this is another one of these cases where the Loft Board cherry picks the stipulation, it allows the case to be withdrawn with prejudice and the Loft Board has its weasel wording of "the Loft Board neither accepts nor rejects the remaining terms of the stipulation". In this case, **Mr. DeLaney** doesn't believe a tenant and an owner have the right to stipulate to different rent than that which is provided under the Loft Law. Should the tenant choose to sell their fixtures, and that actually happened, a new tenant would be entitled to move into that space and it should be at the rent which is the legal rent under the Loft Law. In fact, in an attempt to cover their various parts, the stipulation says if any government agency finds that this is not the legal rent, we agree that is the legal rent. In **Mr. DeLaney's** mind, the Loft Board should not be blessing this kind of agreement. So he plans to vote no.

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

Members Concurring: Mr. Carver, Mr. Roche, Mr. Hernandez, Chairperson Hylton (4).

Members Dissenting: Mr. DeLaney (1).

Members Abstaining: Mr. Barowitz (1).

Members Absent: Mr. Schachter, Ms. Shelton (2).

MOTION FAILED. Will be revisited during the October 19, 2017 Board meeting.

VOTE ON MASTER CALENDAR CASES

Mr. Michael M. Bobick, Esq., Assistant General Counsel, presented the below master calendar case for vote by the Board:

15.	Kay Nishikawa Ukai and Allen Koji Ukai	57 Jay Street, Brooklyn	TR-1131/ LC-0166
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Mr. DeLaney commented that this is a case where the amended report and recommendation by Judge Addison at OATH was issued on November 2, 2015, so it is almost two years old. As is OATH's habit, other OATH judges have cited that decision as precedent in making other decisions. **Mr. DeLaney** further commented that this case is remarkable to his view point in that it takes the Loft Board's gradual about face on who is a protected occupant to its absurd conclusion. We now have a mother and son, the son was born in this loft, lived in this loft all his life, except for periods of schooling and Peace Corp. Basically, what Judge Addison came to conclude was that the mother, Ms. Ukai, could be the protected occupant because she is the prime lessee, in which case, the son is not a protected occupant but he could have a right to succession if something happened. On the other hand, if Ms. Ukai is not found to be the protected occupant, then Mr. Ukai is the protected occupant, if a primary residence analysis is used to find that Ms. Ukai lived elsewhere during the window period. The mother, after this decision, which **Mr. DeLaney** views as seriously flawed, was issued, withdrew her coverage claims in the unit with prejudice, thereby elevating the son to the status of being the person who is in occupancy during the period but who is not the prime lessee. To **Mr. DeLaney**, this is the most absurd outcome that could have taken place in terms of this new "who is protected, who is not", as opposed to the twenty odd some years' worth of "you lived there during the period and on the date", we didn't get into is there a prime lessee which, in **Mr. DeLaney's** mind, should only be used in cases where there is a battle over subletting and recovery. **Mr. DeLaney** finds this to be almost bordering on fiction in terms of could you write/devise a case that makes this policy seem as absurd as it is.

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

Members Concurring: Mr. Carver, Mr. Barowitz, Mr. Roche, Mr. Hernandez, Chairperson Hylton (5).

Members Dissenting: Mr. DeLaney (1).

Members Absent: Mr. Schachter, Ms. Shelton (2).

Mr. Stephan Clarke, Esq., Assistant General Counsel, presented the below master calendar case for vote by the Board:

16.	Various Tenants of 125 Green Street	125 Green Street, Brooklyn	TR-1149
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Motion: Mr. Barowitz moved to accept the proposed order. Mr. Carver seconded the motion.

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

Members Absent: Mr. Schachter, Ms. Shelton (2).

Mr. Michael M. Bobick, Esq., Assistant General Counsel, presented the below master calendar case for vote by the Board:

17.	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 disclosed that he received an email from parties in this case, which he claimed he did not read. Secondly, **Mr. DeLaney** stated that over the last six months, he has come to know two of the applicants who live in the unit in question. **Mr. DeLaney** claimed that he never visited the unit, has not had substantive discussions with them about their particularities of their case. Rather, he has talked with them as he has talked with one hundred and fifty (150) people over the last several months with regard to proposed legislation. Therefore, **Mr. DeLaney**, with that disclosure, he is comfortable participating in this case, rather than recusing himself. To that end, **Mr. DeLaney** commented when the exclusionary language was hammered out late at night in Albany, the definition of a lack of a window as a reason to exclude a unit from coverage, rather than something that should be remedied by remedial legislation is incorrect. While technically a roll down gate may constitute or define the exterior boundary, in **Mr. DeLaney's** mind, he believes that the windows that exist at this point in time are not windows that face into a space, and the Board spent some time discussing this in the private session, so therefore, he believes this unit should qualify for coverage, should be covered, and should be brought into code compliance. There have been some other issues bandied about in that discussion which he will reserve for the dissenting opinion.

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

Members Concurring: Mr. Carver, Mr. Roche, Mr. Hernandez, Chairperson Hylton (4).

Members Dissenting: Mr. DeLaney (1).

Members Abstaining: Mr. Barowitz (1).

Members Absent: Mr. Schachter, Ms. Shelton (2).

MOTION FAILED. Will be revisited during the October 19, 2017 Board meeting.

Ms. Cynthia Leveille, Esq., Assistant General Counsel, presented the below master calendar case for vote by the Board:

18.	Tenants of 79 Lorimer Street	79 Lorimer Street, Brooklyn	TR-1273
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Mr. DeLaney commented that Lorimer Street has been here before and got tabled and in somewhat of an unusual situation, the OATH judge's finding would include the people who resided in the unit during the period. The Board wrote a version limiting it to the prime tenants that was before us and tabled in May 2017 and June 2017 and was on the agenda for July 2017, in which the Board did not meet, but for the July version, we ended up with a re-written opinion. The Board staff is still reading the Board's rules and the Loft Law in a way that is quite different than how the OATH judges are reading those decisions. **Mr. DeLaney** further commented that it would have been nice, this goes back to prior to the current Executive Director's tenure, if the Board wanted to hit the nail on the head and be intellectually honest, it would have been nice if that happened two or three years ago, because a lot of tenants have spent a lot of money on legal fees trying to navigate their way through a landscape that has only gradually changed as these decisions are issued. In this case, **Mr. DeLaney** still follows the analysis by the OATH judge and is not persuaded by either the first or second version of this proposed order. He plans on voting no.

Mr. Carver pointed out the landscape of the law and the hierarchy over who has the last say on the interpretation of the Loft Law. The OATH judges have no independent power to interpret the Loft Law contrary to the most recent case law of this Board. To rely on OATH cases that have not been approved by the Board has no basis in law. We the Board are the arbiters of the Loft Law and it is up to OATH to follow the latest interpretation of the Loft Law. Looking at other OATH cases has no legal value. **Mr. DeLaney** responded the problem is like in the case we talked about earlier, Ukai, where the report and recommendation was issued in November 2015, OATH judges have relied on that case over and over

again even though it only came to us for the first time today. **Mr. Carver** replied so what; they have no right to use that as precedent. **Mr. DeLaney** further responded that there have been cases where OATH judges have applied prior OATH decisions that have not come to the Loft Board, that have caused parties to drop their cases. You can't have it both ways. This has been an issue that **Mr. DeLaney** has been ranting about for fifteen (15) years, that OATH considers itself to be the court below, and views us as an appellate court. If an OATH judge makes a decision, no matter how wacky, other OATH judges are allowed to rely on that unless and until that decision comes to us. **Mr. Carver** isn't sure that would change the outcome of this case. **Mr. DeLaney** responded it doesn't change my vote. **Chairperson Hylton** commented that OATH's decisions are just recommendations to the Board. The Board sets the precedent. **Mr. DeLaney** asked if there were some provision that the Board would act on an OATH report and recommendation within some period of time that would be easier to accept. **Chairperson Hylton** commented at some point the ship has to be corrected. **Mr. DeLaney** commented that as he has been saying since these protected occupant cases came up, rather than slowly turning the ship case by case, propose a change in the rule, have public hearings, give the public, give the attorney's time to comment, rather than the way we have been swimming through this.

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

Members Concurring: Mr. Carver, Mr. Barowitz, Mr. Roche, Mr. Hernandez, Chairperson Hylton (5).

Members Dissenting: Mr. DeLaney (1).

Members Absent: Mr. Schachter, Ms. Shelton (2).

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

19.	Rio Azul, Inc.	7 Dunham Place, Brooklyn	LE-0661
20.	812-816 Broadway, LLC	812-814 Broadway, Manhattan	LE-0666

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

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

Members Absent: Mr. Schachter, Ms. Shelton (2)

Chairperson Hylton concluded the September 21, 2017 Loft Board public meeting at 2:26 pm and thanked everyone for attending. The Loft Board's next public meeting will be held at 280 Broadway, third floor, on September 28, 2017 at 2:00p.m.
