

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

October 26, 2017

The meeting began at 2:05 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 and Chairperson Designee Renaldo Hylton.

INTRODUCTION

Chairperson Hylton welcomed those present to the October 26, 2017 public meeting of the New York City Loft Board.

Chairperson Hylton stated the first item is to vote on the Master Calendar case. That case is 58 Grand Street, Docket # TR-1252, Mr. Bobick, can you please present this to us.

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

1.	Andi Rishoi, Anna Holmgren, Kelsey Knutson, John Cannon, Jaymee Domingo, Ximena Garnica and Shiegekazu Moriya	58 Grand Street	TR-1252
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Chairperson Hylton thanked Mr. Bobick and asked the Board members if they had any comments on the case. **Mr. Delaney** reiterated that he will be voting no because he does not think the retractable steel roll down gate constitutes the front of the building. He thinks the front of the building is set back from the street and it's his opinion that the window requirement should be a legalization issue. **Chairperson Hylton** thanked Mr. Delaney and asked if anyone else had a comment on this case.

As there were no further comments, **Chairperson Hylton** asked for a motion to accept this case.

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

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

Members Abstaining: Mr. Barowitz (1)

Members Dissenting: Mr. DeLaney (1)

Chairperson Hylton thanked the Board and indicated this motion is passed.

Chairperson Hylton then turned to the next item on the agenda, Loft Board rule making. He indicated that at this time, we are shifting from redoing all the rules and we will return to that later but for now we are looking to amend 29 RCNY § 2-09(b) and 29 RCNY 2-10(d)(2). We have before us a proposed rule that incorporates some of the material we discussed last week and we will pick up on Mr. Carver's comments. **Mr. Delaney** asked **Chairperson Hylton** to repeat what he said a little slower. **Chairperson Hylton** repeated that we are now turning to item number 2 on the agenda, Loft Board rule making. At this time we are shifting from redoing all the rules, we will return to that, but for now we are looking into

amending 29 RCNY § 2-09(b) and 29 RCNY 2-10(d)(2). We have before us a proposal of the rule we discussed last week. We will pick up with Mr. Carver's comments. **Mr. Delaney** held up a document and asked if the document was what **Chairperson Hylton was** referring to. **Chairperson Hylton** stated yes. **Mr. Carver** stated so we have brand new language that we are seeing for the first time. I hope we are going to have the opportunity to speak about it at other sessions, yes. **Helaine Balsam, Executive Director and General Counsel** stated I certainly hope so as well. **Mr. Carver** asked whether the plan wasn't actually to vote this out today. **Ms. Balsam** stated if everybody got to say everything they wanted to say, then sure but she thought that unlikely. **Mr. Carver** stated that it was not technically on the agenda, so I think we are not going to do it. **Ms. Balsam** stated she was fine with that. **Mr. Delaney** asked how **Ms. Balsam** expected the Board to say things about something they haven't read. **Ms. Balsam** stated that in terms of the changes to §2-09, that is basically the language that was there in §2-17 with some additions as per Mr. Carver's comments. The other stuff is new and she did not think that we would get through this today. So the changes and the comments on §2-17 she thinks still would apply to what is now §2-09. **Mr. Carver** stated one of the things that he asked for last week, staff agreed that one of the changes being made was so drastic for lack of a better word that we were to have alternate language. I noticed that that wasn't in here. Is that still the plan for the following meeting? **Ms. Balsam** stated no. **Mr. Carver** stated not withstanding you said that you would. **Ms. Balsam** stated yes that's correct. **Mr. Carver** stated we are an independent agency, obviously the Board, and I think that the General Counsel does have certain duties to the Board Members including honesty and loyalty so I would ask that you do give us a choice. **Ms. Balsam** stated she would. **Mr. Carver** thanked **Ms. Balsam** and asked if the Board should expect that at the next meeting. **Ms. Balsam** stated she could probably get that to you this afternoon because she had written it. **Mr. Carver** stated OK. **Ms. Balsam** stated it looks just like this with an extra section.

Mr. Carver stated alright thank you for that. Alright so the last session, well the order now is slightly different. **Ms. Balsam** agreed. **Mr. Carver** stated so I guess we will go in the order of the new one. At the last session I had made some policy arguments as to why the current rule which favors a prime lessee is a good thing, and I'll say them again shortly in a quick way. But I think that concept is actually required by the Loft Law itself. Now going forward I would ask that if you could just give us all a copy of the Loft Law, it's not that long, Article 7-C. **Ms. Balsam** stated sure. **Mr. Carver** stated as you're looking at it, it showed some interesting things, certainly along the process of making the rules we should be looking at, because the point of rulemaking is to implement the statute and to do it right so it's fair and applies to everyone. So §286 (2)(i) of the Loft Law, it talks about protected occupants and it says they shall pay the same rent specified in their lease or rental agreement, etcetera, and if there is no lease the same rent most recently paid and accepted by the owner. So the statute seems to link protected occupancy to a legal relationship with the landlord as opposed to a roommate who has no legal relationship with the landlord. This is consistent with legislative findings earlier in the statute in §280. In §280 the legislature found that tenants, they used the word tenant, in such buildings would suffer great hardship. Tenants, it's a long sentence but ultimately explained that if tenants were forced to vacate they would face great hardship. But to use the word tenants, there is an assumption of a tenancy, that the protected occupant is in a relationship with the landlord. It's not just anyone who happens to be living there on a certain magic date. So I think it's quite possible that a court would not permit a rule to stand that gives equal rights to an actual tenant and someone who is not a tenant. Was there any thought to that given to whether or not giving equal rights to non lessees would be legal under the Loft Law? **Ms. Balsam** stated yes, and as you know there are extensive arguments from the OATH judges about the remedial nature of the law and it's to spread the benefits of the law to non-lessee tenants but we have this rule. So this is not actually a new concept under the law and I think if there were going to be challenges, there would have been challenges years ago. Perhaps there may be challenges now but we thought that the law was expansive enough and the precedent over the years was expansive enough to be able to make this change. **Mr. Carver** asked but how do you counter my specific cite to §286(2)(i) which brings protected occupancy to an actual legal relationship with the landlord. **Ms. Balsam** stated well it says lease or not a lease so there are clearly people that don't have leases that are there that don't necessarily have a legal relationship with the landlord. **Mr. Carver** responded, but the statute goes further to say in the absence of a lease, they are talking about the rent actually accepted by the landlord, so the statute is anticipating that you might not have a lease but it seems to imply at the very least that there is a tenancy, in other words there is a relationship with the landlord, and the proposal that's on the table totally ignores what I think is implicit at

least in the statute that you need a legal relationship with the landlord. That's my argument on the law, but with respect to the proposal it's not a good thing. The policy arguments that I made last week, I'll just run through them quickly. One item was that if everyone is protected you run the risk of running afoul of the maximum occupancy limits of the Zoning and the MDL and last week I didn't hear any solution to that problem and I don't see any solution in the current write. **Ms. Balsam** stated can I answer that. So we did have a case that came down, again this was the case that was remanded where the Court had actually held that the definition of family needs to be more flexible, it's not only that they are related by blood. So you had a situation in that case where there was more than what would have been what we thought was the legal number, and in fact the Board had held that to grant everybody protected occupancy status would violate the law and the Court said no because the definition of family is more flexible, it doesn't necessarily mean people related by blood that means people could be family members, so therefore you could have more than that. I mean what if you had parents with 10 children. They are family and they can stay even though they are technically over the legal number. **Mr. Carver** stated at the same time I would like to say I wonder if you might circulate it to the group. **Ms. Balsam** stated I think I actually did already I'll send it again. **Mr. Carver** stated thank you. Was that something recently? **Ms. Balsam** responded it was in the Spring and we were going to bring it back to the Board in July but then there was an appeal filed, we're trying to figure out whether or not to bring it back. But I did send it out after that, but I will send it again.

Mr. Carver stated then you have the situation, this is the concept I did mention last week, where you're forcing at least two occupants into a permanent relationship that was once temporary. **Mr. Barowitz** asked you mean if they move out, what do you mean? **Mr. Carver** stated well what if they are not getting along, who gets the rights? How do you split those rights if you are imposing a permanent relationship, each having an equal property interest? There is no right to split the apartment down the middle like you can do when you own property. These are occupants or tenants, there's no such right. **Mr. Schachter** stated that's a landlord tenant matter, that's not a unique situation. **Mr. Schachter** stated that **Mr. Carver** was strongest on his statutory argument and the farther he's gotten away from that might... **Mr. Carver** stated OK, alright. **Chairperson Hylton** stated if there are two people living together and contributing, who protects the right of that person who does not possess a lease agreement? **Mr. Carver** stated well that's a little different, this protective occupancy status is a permanent relationship with the landlord, so this is a little trickier than your common tenancy resident expiration date. **Mr. Barowitz** stated he did not think there is any way of solving this, if they are both on the lease and one moves out. **Ms. Balsam** stated but this contemplates that they are not both on the lease. **Mr. Barowitz** asked whether we had a case recently when they were both on the lease and someone moved out. **Ms. Balsam** stated we have had that. We had a case where I think there was a husband and wife, and the husband moved to California and the wife stayed with the child, we found that it was a phantom tenancy. We did have a case like that. **Mr. Roche** asked have we had a case where it was ruled upon where two domestic partners or husband and wife had a loft and one of them leaves and went their separate ways, do you know if we had anything, maybe the one you just referred to. **Ms. Balsam** stated I think so but I have to research it because it's possible that the husband is the only one on the lease and the wife was not and that was why it was an issue but I'd have to research it. **Mr. Roche** stated he would be interested to know if we had some case law or something to review to see if this issue did come up at any point. Remember there was an OATH case where the decision was involving a domestic partnership where husband and wife had signed into the lease together then went their separate ways and one of them wanted to keep the... **Mr. Delaney** stated if the unit was covered and both individuals were protected occupants, I don't think that dispute would have an entry way to come back to the Board. **Mr. Roche** stated so in other words it could have occurred but the Board was just not aware of it, because there is no reason for the Board to be. I see what you are saying. **Mr. Barowitz** stated I think that in most of those instances they would take the legal separation to the Court in which case the Court can make a decision as to who retains status as a tenant. **Mr. Schachter** stated similar to rent stabilization. **Mr. Carver** stated but in the end why is that the owner's problem? Why is there special protection given to the asset in marriage unlike other assets that are titled to just one of the spouses? **Mr. Delaney** stated that dragging the domestic relations line in the sand might cause more questions than answers. **Mr. Carver** stated well I don't think I brought it up. **Mr. Roche** stated well I'm probably the one who referred to it first. **Mr. Schachter** stated you talked about creating a more permanent relationship for the residents or tenant, whatever you want to call it, on the property so you get into that long term relationship.

Mr. Carver then quickly restated some of the other policy arguments in favor of the prime lessee concept that are not here. I said them last week I'll be very fast with that so I'll give others a chance to speak on this issue. But it seems to be giving a windfall by giving rights and a property interest to people who are not on a lease, who never had any obligations under the lease. It's an unreasonable expectation and the law should not be granting unreasonable expectations. It shouldn't be working toward unreasonableness obviously and the existence of a lease, it's a bright line rule, very easy to enforce, possibly avoids litigation, easy to know your rights, much better in this kind of scenario to have a bright line rule. So those are my legal and policy arguments in favor of the current state of affairs in which a prime lessee trumps all other occupants as opposed to the proposed rule in which all occupants are equal, whether or not they are on the lease in the face of an occupant who actually has a lease. I have more material on the primary residency but I'm holding that because now we are on the first section of the law. **Ms. Balsam** stated so let me just say just to clarify this would require people to have been there. Landlord consent to a protected occupant is not required for people who were there on the effective date of the law but if they came after the effective date of the law and after the window period then landlord consent would be required, that's why we have the two alternatives. **Mr. Carver** stated I'm talking about on the day of the law. That's the big problem. That's the huge change. **Mr. Hernandez** asked can someone opt not to be protected under the law. **Ms. Balsam** stated yes. **Mr. Schachter** stated hence the settlement agreement where residents reach a settlement with the landlord and then... **Mr. Hernandez** stated I mean like if someone was the primary and I was the roommate and I choose not to follow the protected status. Is there a way to opt in for other individuals? **Ms. Balsam** stated I mean there are two ways if you look at the section, so an owner names them on the registration, or the Loft Board determines. So if you don't file, the Loft Board is never going to make that determination. So that would be a way to opt in by asking for it. If you don't ask for it, how would the Board ever know? **Mr. Schachter** stated can we go back to the statutory language. It sounded like the law was restricted to either tenants who have a lease or tenants whose rental payments have been accepted by the owner. I think there is a lot of policy and discussions for a considerable period of time about the idea of trying to protect the actual people who live in the building and not necessarily those who may have had a lease relationship with the owner. If we are limited by the statute then it would be helpful to get the exact language. **Ms. Balsam** asked if **Mr. Schachter** wanted the exact language. **Mr. Schachter** stated the language and **Ms. Balsam's** thoughts on whether we can deviate from that. **Mr. Delaney** stated, when you say it's been a period of time some of these concepts have been kind of used in various ways, more than the past three years. He thinks the notion that the lease is a bright line rule and easy to enforce makes sense in a rent stabilized building where the building has a certificate of occupancy presumably before anyone moved in, but we are dealing here with loft units where sometimes the lease was issued to a corporation that was controlled by the person that moved in and lived there. There are circumstances where a net lessee took a net lease on some portion of the building, rented to residential tenants, the net lease expired, the net lessee disappeared and all of a sudden, the owner of the building or the landlord him or herself is in a relationship with these tenants who at that point in the late 1970's early 1980's would be protected by a series of court cases that set up this window period and the notion that these were presumed multiple dwellings. Then you also have the circumstance that follows the rules that were enacted in 1983 and 1984 where for example an enterprising tenant rented a whole floor, created additional units, lived in one portion of the floor and subdivided space, perhaps fixturing it himself or herself, perhaps having the subtenant fixture it and the Loft Board over 30 years ago put those subtenants into a privity relationship with the landlord, even though at the time many landlords came and said I don't know these people, I don't have a relationship with them. So there certainly has been a long history of many different ways that tenants have been recognized as protected occupants without what you think of as the residential rent stabilized lease in a studio, one or two bedroom apartment. That's all. **Mr. Schachter** stated certainly in terms of the economic argument in the idea of owner expectations from historical practices that's certainly helpful but he was trying to focus on a simpler question on statutory authority following the language of the statute. And if it's more complicated than that then... **Mr. Delaney** stated implicit in all those different issues the Loft Board has either filing cabinets full or spent a lot of time scanning dozens and dozens of lawsuits that challenge each of these points and in most circumstances the Loft Board prevailed and the reason we find ourselves in this situation today is because the scheme has kind of been upheld by the Court. **Mr. Schachter** stated just to make sure I'm following, the thought is that the proposal is based on case determinations that provide for regulations regardless of whether it's part of the statutory authority.

Mr. Delaney stated I'm not sure I understand your question. **Mr. Schachter** asked am I saying it wrong? **Mr. Carver** stated I think that's right. The statute that he cited plus the legislative findings imply at the very least that a relationship of the occupant with the landlord which is not evident in the proposed rule, which would protect everyone in occupancy on the effective date of the law even if they are not known to the landlord notwithstanding that the landlord had a real lease with someone in the apartment. It's so over inclusive that it seems to wipe out all these other examples of maybe its ok if you don't have a lease in situation x and y but this is the whole alphabet, its everyone with every situation a-z who just happens to be there on that date. So I think the existing framework is fair and workable as opposed to what we have here. **Mr. Schachter** stated I appreciate the context but the fact that in some ways this is not entirely new, this in not unprecedented. There is actually a variety of case law that is the basis for this conclusion but I guess I want to go back to the statute and make sure that we have the authority. **Mr. Carver** stated it's a problem. **Mr. Schachter** stated he appreciated that this is not a surprise, this is actually a product of a lot of hard fought battles in courtrooms.

Mr. Barowitz stated I'm curious what housing courts would say. Well, are you living there now, how long have you been living there, four years, I can't see the judge saying you don't live there to the person without a lease. **Mr. Schachter** stated I take it that if we are getting into that kind of scenario then we are getting into a scenario where if somebody moves into a vacant house or something like that then I'm not sure if this is applicable. Maybe I'm not seeing it but if someone is sort of constructively occupies property without the owner's awareness then they don't automatically get the right to... **Mr. Barowitz** stated I can think of another, where the prime lessee or whoever cannot pay the rent, say their father or mother pays the rent for floor 4c and the landlord accept his rent without any name on it. I bet you the landlord simply accepts the rent. **Mr. Schachter** stated but the landlord is accepting the rent based on the relationship. I don't think that strengthens the idea of the tenant just living in the building based on the statute. The idea is that the people with a contractual relationship with the landlord then have the right because they are the ones who are paying him, people who are just living there don't have that direct relationship. The cases we are talking about have been building towards this idea that people living in the buildings should have rights. **Mr. Barowitz** stated years ago he pointed out a place rented out by a series of flight attendants. And there are instances where they set the rate of flight attendants in one part of the space, then they simply shared the beds when the others are gone. So we are quibbling about this when I think all over the city this occurs without the city or the state coming down on them. So I don't really know what the solution of this is but we are certainly nitpicking this thing. **Mr. Schachter** stated if we don't have the legal authority, then we can't just do what we want. **Mr. Barowitz** stated right I agree. **Mr. Schachter** stated that was his question. And if we have the legal authority then we can decide what we want to do. He thought that was the issue raised. Do we have the legal authority or does the statute limit us. **Ms. Balsam** stated I'm willing to address the argument but I just don't know that you want me to speak. **Mr. Schachter** stated I would very much like for you to speak. **Ms. Balsam** stated so I think there are a couple of things to say. Number one is that the part about the rent is sort of separate and apart from the protected occupant, there is an "and" clause and that "and" clause specifically talks about d how much rent we are talking about so I think that there's an argument to say that only applies to the amount of rent, it doesn't necessarily apply to the context of who is a protected occupant. So I think there's an argument to be made there. If you carried the argument to its logical conclusion, all you would need to do is have the roommates pay the rent directly to the owner and that would be ok. **Mr. Carver** stated and have the owners accept it under the statute. Also this is all in one sentence. **Ms. Balsam** stated I know it's all in one sentence. **Mr. Carver** stated you're talking about separating it, there are two sides to the same sentence. Are you going to deal with one issue in one clause of the sentence and another issue in the second clause. **Ms. Balsam** stated I think there is enough leeway and I think based on old cases, there is enough authority to go that way. That's my opinion. The law department had no issue when we first discussed it with them. They may come back once we submit a proposal to them. By the way, I digress for one moment to address the economic stuff. We have to discuss that with the law department and I'm assuming they will be putting in some limiting language as to economics, as to when it applies, when it doesn't apply. They are working on that so we don't have to. How far back does it go. **Mr. Carver** raised last week that people had made deals and had economic expectations based on what the law was and the law department has actually expressed that concern and they are doing research and they will come up with some suggested language, limiting language as to who it applies to and when. And we have other rules that already say that based on various amendments over the years, but I didn't want you to

think that we were not considering it because we are. **Mr. Schachter** stated getting back to the single sentence, I'm still trying to follow so, could you read the sentence and help me understand more your perspective on it.

Ms. Balsam stated sure. Prior to compliance with safety and fire protection standards of article 7-B of this Chapter, residential occupants qualified for protection pursuant to this article shall be entitled to continued occupancy provided that their unit is their primary residence, so that's the part that you want right. **Mr. Schachter** stated correct. **Ms. Balsam** continued, and shall pay the same rent including escalations specified in their lease or rental agreement to the extent to which such lease or rental agreement remains in effect or in the absence of a lease or rental agreement the same rent most recently paid and accepted by the owner. And then it goes on to say if there is no lease or rental agreement, the rest of it I would say is not relevant to the argument. **Mr. Schachter** stated but the idea is that no lease or... **Ms. Balsam** stated if there is no lease or other rental agreement in effect then the rent adjustments prior to Article 7-B compliance shall be in conformity with the guidelines set by the Loft Board for such residential occupants within 6 months from the effective date of this article. So it meant the Loft Board passed interim rent guidelines... **Mr. Carver** stated the semicolon talks about how to raise rent in the absence a lease. It's the first part of the sentence that is read... **Mr. Schachter** stated the focus is on who is protected. **Mr. Carver** stated right. It assumes you got a lease or the landlord is taking your rent and is consistent with the legislative findings using the uses the word tenants. It says tenants in such buildings would suffer great hardship. **Mr. Schachter** stated meaning people were living in a building, even if they are not directly on the lease. **Mr. Carver** stated there is an implication that the protected occupant has a relationship with the landlord. It's not just anyone. **Chairperson Hylton** stated, so in my own non lawyer self I looked to the definition of tenant in the MDL and it refers directly to any residential tenant, and is deemed interchangeable with the word occupant following the Article 7-C definition. But in terms of the definition of occupant it says unless otherwise provided it means the residential occupant qualifies for protection under Article 7-C or any other residential tenant. **Mr. Carver** stated ok but the section says lease. **Mr. Schachter** stated right I think every time you move further away then it's less clear. **Mr. Carver** asked if **Chairperson Hylton** was using definitions from the MDL. **Ms. Balsam** stated no these are actually Loft Board rules. **Chairperson Hylton** stated I'm sorry, rules. **Mr. Carver** stated Oh those are ours. I didn't realize. **Chairperson Hylton** stated that's our rules I'm sorry. **Ms. Martha Cruz, Esq., Deputy General Counsel** stated it is §286(2)(i). **Mr. Barowitz** stated so a tenant is an occupant and an occupant is a tenant. What a terrific definition. **Mr. Carver** stated that's not the statutory definition. **Mr. Barowitz** stated no it isn't. **Mr. Schachter** stated it seems to be tied directly between the Owner and the resident. So if there is one person paying the rent to owner and there are six people living there, the other five all pay that one person, the other five it doesn't sound like they are covered under this language. I'm not saying it's fair or not

Mr. Roche asked Mr. Carver was hard and fast on not changing the rule or what he is looking at is, and he doesn't want to use the terminology middle ground but is there something **Mr. Carver** is looking at that we are not looking at that would relax it a little but would still keep it in what you feel is the comfort zone for the owners. **Mr. Carver** stated is there any concession to the current rule is what you're asking. **Mr. Roche** stated I think that's what I'm asking. **Mr. Carver** stated yes although I'm arguing against myself right, no offer has been made. Well I suppose a spouse in occupancy on the date of the law where the other spouse is the prime lessee on the date of the law. I think that's the one concession to the current rule that I could make. **Mr. Schachter** stated or domestic partner. **Mr. Carver** stated certainly. **Mr. Barowitz** stated or grown children. **Mr. Carver** stated no. **Chairperson Hylton** so you're only bending on the spousal domestic partner relationship. **Ms. Balsam** stated he's actually not bending at all. He's just throwing it out there. **Mr. Carver** asked how are you guys bending? I haven't heard any offers. **Mr. Roche** stated his view is that we are sitting here at a stalemate and we could be here for another how many months. But we can start looking at some other people's thoughts and ideas about how we can come closer together perhaps that might help us move past the stalemate. He thinks what **Mr. Carver** said seems like something we should probably look at. **Mr. Carver** stated I appreciate this, we know that this proposal is from on high, it's not staff generated. **Chairperson Hylton** stated this is staff generated. **Mr. Roche** stated the staff is proposing this and you think we should leave it where it is at. What I'm saying is how can we close that gap and move forward in a positive direction. **Mr. Carver** stated well this is going to alter the economics in the building. It's going to alter the value of property interest amongst the owners,

lessees and occupants. So if this new proposal is so important to the city the city can pay for it. The city can compensate those whose values are being lowered and transferred to others. But that's another solution. **Mr. Schachter** stated it sounds like the Law Department is reviewing the economic repercussions. **Ms. Balsam** stated yes, and they have indicated to us as they have in the past when there were other revisions to the Loft Board rules that they will give us limiting language, but what that will be I don't know, there are going to have to research it, but we have similar language in one of our rules. **Mr. Carver** stated he cannot imagine that's going to address compensation to the value lost to lessees or the owners. **Ms. Balsam** stated no. I agree with that. I would not anticipate that. **Mr. Roche** stated if the Board looked at relaxing this to include spouse, a recognized domestic partner, it would seem to me to be a reasonable step. Because what would happen if I lived in a loft and I was the prime lessee, and I decided to marry. Now my spouse who came into the picture afterward, in theory, if something happened to me, God forbid, that I passed she'd be without a place. **Mr. Carver** stated no you would still have certain rights, succession under both the current rule and the proposal. **Mr. Barowitz** asked what is it two years then they would have succession rights. Am I correct on that. **Ms. Balsam** stated yes you have to be there for... **Chairperson Hylton** asked what was said about two. **Mr. Barowitz** stated if the child moves in there for a couple of years he has succession rights. **Chairperson Hylton** asked a non-adult child. **Ms. Balsam** stated no I think even an adult child.

Mr. Hernandez stated I'm going to the roommate argument because that's where it impacts a lot of people. So if I'm the roommate and I moved in later on, the primary individual, something happens or he or she leaves, I now have rights to that apartment. **Mr. Carver** stated the words later on is a different section of the rule, the argument we are having is for those in occupancy on the effective date of the law. We are just talking about that class of occupancy at the moment. **Mr. Hernandez** stated let's say I'm at that moment, but I'm not on the primary lease, then I have rights to stay. **Mr. Carver** asked under the new. **Mr. Hernandez** stated yes, under the new language. Under the old language I don't. Under the new language I do. **Mr. Carver** stated I think that's correct. **Mr. Hernandez** stated that's what I'm seeing as the point of the change, I have the right to stay. **Mr. Carver** stated right and you may not have had anything to do with converting the space to a residential unit, or we don't know how many people are in that position, we don't know how many people get a windfall at the expense of the prime lessee and the owners. It's a very drastic change. **Mr. Hernandez** asked if there was an analysis on the number of people that would be impacted. **Ms. Balsam** stated there is absolutely no way to know short of knocking on doors of 2,700 units that are under our jurisdiction at the moment, there is absolutely no way to know. **Mr. DeLaney** stated I mean one of the aspects of the roommate question is sure there may well be units that are occupied by two people, not married not domestic partners, two separate bedrooms, sharing a bathroom, two separate bathrooms, it's possible that the person who leased the space, did all the improvements, well it's possible the person that leased the space didn't have to do anything cause it was all set up. Back in the day the 70's and 80's believe me, landlords were watching tenants bring in sheetrock, bring in plumbing and blessing them for taking what was absolutely useless commercial manufacturing space because the remaining commercial manufacturing tenants moved out of the 25 and 30 footers into bigger buildings with better elevators. And they were over the top to see the tenants doing this work, so one possibility is one tenant did all the work made all the investment, rented it to someone and said you can be my roommate, split the rent, you're going to pay 60% cause I did that this work here. It's also possible that two or three or more people did all that work together. The roommate either paid for all the sheetrock or half the sheetrock, so there's just permutations all over the place, but one thing it's not, you know one of the epithets that were hurled at us back in the 70's and 80's was that we were squatters. That we weren't. Landlords were thrilled to see their buildings either maintained or improved. So there's just a wide spectrum here. So in terms of the economic impact, yes we can think about the economic impact on the landlord. In many instances perhaps the lease that they are basing their expectation on, they knew from day one wasn't actually outlining the terms of the use. Artist studios permitted by law was the standard phrase in the old Bloomberg years. But there's also economic expectations on the tenants side as well. **Mr. Hernandez** stated there was an understanding of the risk involved. Regardless if you put in a lot of work, you understood that this was at your own risk. **Mr. Carver** stated that's a very good point. **Ms. Balsam** asked can you say it again. **Mr. Hernandez** stated I just think there's an element of risk regardless of how much investment you're making, there is a risk, that's an acknowledgement that that individual makes so that's what's on my mind. **Mr. Roche** stated in other words anytime you invest in something someone else owns you're taking a risk. **Mr. Hernandez** stated

right, I'm not on the lease, I think this is a great opportunity at this moment, but I also recognize that I am not on that lease. **Mr. Schachter** stated you can also make the argument that the owner knowingly took the property that was zoned for one purpose and illegally converted it with another purpose and therefore the owner took the risk that his economics would not be artificially elevated by illegal use. **Mr. Hernandez** stated both people took risks **Mr. Schachter** stated absolutely. And that's the purpose of the Loft Board to try to legalize the process. Getting back to my simplistic focus on the statute...

Chairperson Hylton stated before you go into that I have a question. So I can understand, if for example, two people go into the living arrangement together and they split the rent, one having the lease and the other is just paying rent to stay, there must be a difference if the non-lessee is actually contributing to the upkeep, I think the renovations of the property. **Mr. DeLaney** stated conversion. **Chairperson Hylton** stated conversion of the property. I don't think that's something that should go unnoticed. So, I think there can be something put in where the non-lessee tenant can demonstrate to the Board that there was some contribution made, conversion or upkeep of the apartment. Then it's not the lessee only that's paying the rent. So I'm proposing we can add something there that would help. **Mr. Barowitz** asked there is a situation where a prime lessee pays whatever rent, and then the other person the roommate there pays by cash or check half the rent and one check is delivered to the landlord, what happens then. We would never even know that. **Chairperson Hylton** stated I can understand that there would be no expectation there if that money was just for his stay, but if he is actually paying for upkeep and he contributes not just to the rent but buying improvements to the space, that is more than... **Mr. Barowitz** stated I know but still unless they keep all their documents, how would you know this. **Mr. Roche** stated someone that was going into that situation knowingly would do that if they were interested in protecting themselves. If I'm going to be that person I would bring a check every month for my portion or I would write a check for my portion of the drywall, for my portion of the flooring tiles, so that heaven forbid something does happen five years down the road, now I can show the Loft Board. And again I think that just boils down to doing business if you're entering into a risky situation and you want to protect yourself, you're going to keep those records. **Chairperson Hylton** stated but if you didn't I think that sufficient demonstration of that doesn't necessarily have to be receipts, maybe some acknowledgement, something that an OATH judge can adjudicate on. **Mr. Barowitz** stated I probably think that most people paying rent in lofts all over the city don't know how to protect themselves or what the Loft Law is. They had no idea that the loft would become legal, so why would you keep records. They just found a place to live and thought great I found a place to live and do my work. It's just terribly unrealistic. I don't know what the solution is. **Chairperson Hylton** stated it's the halfway point we are talking about. Because the other end of the spectrum is that anybody can say they lived there and they were using it and just paying their way to stay or to sleep then say they're protected. If you put some onus on the occupant to show that they are in fact responsible for some of that maintenance, that improvement to that property that should be a common ground. **Ms. Balsam** stated let me just say that you don't necessarily have to have written records. You can have testimony as well. The Board has over the years taken lots of testimony from others to say yes I helped build the deck, yes we bought the sheetrock together, but no we did it 10 years ago, I don't still have the receipts. So then of course it becomes a creditably question in terms of the testimony, but we are sensitive to the fact that there may not be documentation, which is why we put great weight on credible testimony.

Mr. Barowitz stated well in the early days before there was any agreement, many of the lofts in SOHO were absolutely raw, and then something came down that you can't live there but you can have a refrigerator and a bathroom. And a number of loft tenants would have a bed and wheel the bed up to the ceiling so when an inspector came they would see you're not living there. What I'm saying is that what happened was so funky, and I don't think it's been a hell of a lot different with the people that moved into 475 Kent Street. I mean I tried to walk into that building once and I was horrified by the stairway, it was wooden, it wasn't straight, you know, I was saying oh my God these people are walking up this stairwell, if there was a fire, God knows what would happen. You know my wife says to me we should keep records of all the improvements we've made in case we want to sell it we can sort of go to the federal government and say look we put x number of dollars in it, but really who does that. I'm sure the majority of the people don't. I don't have a solution for this except that I have a liberal attitude. If you're living there I think you should stay there. Maybe that's a terrible attitude. That's just my decision. For whatever it's worth. It's not worth much. **Ms. Balsam** stated can I throw out something, is there a difference and do we want to draw

a line, I don't know, I'm just throwing it out as a thought, between the economics and the right to stay. Maybe that's where the issue is and I'm not sure that it's a line we could draw but it's just a thought. So you get to stay, maybe not the sales rights, I don't know but maybe that's a middle ground. I'm just throwing it out there. **Mr. Barowitz** stated the economics of the situation, you walk down SOHO these days and you can hardly find a gallery. So what happened to SOHO is it has become a dynamic commercial area. It has benefited everyone, but not necessarily the artists. The same thing is going on now in Williamsburg. There are terrific restaurants all over the place. There's a guy that I know that wrote a thesis simply saying that basically the arts make the culture and make for the good welfare of the city and they make money, and the original Rockefeller report years and years ago made that point that the arts industry, the theater the gallery, the museums had made America very viable. So I can't buy into the argument that I have to worry about the landlords. You know they were happy to rent these places. The commercial and manufacturing moved out of the city...**Mr. Carver** stated our problem is with people who are not renting from the landlord. That's the issue. **Mr. Barowitz** stated alright, my position is, I hate to say it, so what. You know when Thomas Jefferson says "It neither picks my pocket nor breaks my legs." So I don't know what to say about this. Whatever you want to decide is fine with me.

Mr. Schachter stated in terms of some landlord tenant, if you're a tenant and when there are people who are in the household, people who are there who are not on the lease who are not paying the rent, the whole household has the same rights? **Ms. Cruz** asked everyone in the unit? **Mr. Schachter** stated yes. **Ms. Cruz** stated no. The person who is the leaseholder is the person who has the right. Everyone else is what is called a licensee. They have a license to live there as long as the prime lessee allows them to. That's my understanding. **Mr. DeLaney** asked what was your term again? **Ms. Cruz** stated a licensee. **Mr. DeLaney** asked in terms of rights conferred under the lease. **Ms. Cruz** stated no rights conferred by the prime lessee to the other people who occupy the space. So you have the prime lessee, the prime lessee allows let's say the roommate to live there, that roommate is called a licensee. He's only there with the permission of the prime lessee and at the end of that time, the prime lessee says ok, I don't want you here anymore, we don't have any type of agreement, and I want you to leave now. **Mr. Hernandez** stated so this [proposed rule] would actually give the right to the licensee to stay even if the primary lessee wanted to end the agreement. **Ms. Cruz** stated yes. **Mr. Carver** stated stay for life. **Mr. Hernandez** stated I hate you, but we are going to have to live together forever. **Mr. Carver** stated that's one possible consequence, but there are many. **Mr. Hernandez** stated when it came to the spouse, they are protected even if the primary lessee leaves because of succession so this is a question of what we do with the non-partnership like individuals. **Mr. Schachter** asked if the wife is on the lease and she dumps the husband who is not on the lease, and says to the husband, you need to leave, does the husband have any rights. **Mr. DeLaney** stated I think I'll pass on that one. **Mr. Schachter** stated I know that you brought up this issue before. **Mr. DeLaney** stated actually it was Lanny Alexander speaking of my deceased neighbor who was murdered and it's a little bit of a sensitive topic. **Mr. Schachter** stated I'm sorry. **Mr. DeLaney** stated and again you're looking more at the domestic relations law. He's on the lease, but there's also the dog, I'll take the dog and you get half of the loft, those cases don't come to us.

Mr. Carver asked do the succession rules in the current and proposed rules deal with death. **Ms. Cruz** stated the departure I think. **Mr. Carver** stated that's something we have to look at. I know it is out there somewhere. **Mr. Hernandez** stated which is why I'm looking at it from this roommate situation and the impact on the prime lessee where before I entered into the agreement I thought there was some flexibility built into that but now I may be stuck in a relationship that may not be optimal for me. So now we are moving in a direction where we are forcing the position of this proposal onto people who may not even be in agreement with it. **Mr. Carver** stated I agree with you. Absolutely. **Mr. Roche** went back to what he said before. At the last public meeting, one of the Board members, and I'm not exactly sure who it was, had proposed that perhaps the staff draft up a couple of options for the Board. I'm saying that I think that's the way we should go and at this point I think I'm still that guy that's in the middle saying wait a minute, we could be sitting here months from now with the same issue. Somewhere we have to start moving. So is that a possibility, can we task the staff to come back with two, three options that we can look at to try to move this thing forward or am I thinking wrong. **Chairperson Hylton** stated sure you can ask them. That's fine with me, but I would also think that we should take a break from this and let's think about this more. **Mr. Barowitz** stated I agree and this is not unusual when you have 7 people trying to come up with a decision. **Mr. Roche** stated I want to add to that too. We have 7 people that truly care

about the vote that they are going to have to make at some point and want to make sure that they are making the best possible decision. **Chairperson Hylton** stated so you as a Board member should ask us that. **Mr. Roche** asked is that something that you all would be interested in, a couple of options. **Mr. DeLaney** stated I think that part of what leaves some of the Board feeling adrift in this is we really need both some legal research and a little bit of the history of how we got here as much as options because some of those options may be options that would be legal or not legal. I have to say I see that we had copies of this for the people that came in today, the last time I checked my email from the Loft Board was about 11 o'clock this morning and nobody said hey Chuck heads up, got new stuff for you to look at. **Ms. Balsam** stated I did send it, I did actually send it. I don't know what time but I did send it and said we will have hard copies for you. **Mr. DeLaney** stated yeah but it's kind of a late hit. **Ms. Balsam** stated I do understand that and I did actually apologize in the email for that. **Mr. Roche** stated I think that Mr. DeLaney brings up some valid options but again for the sake of trying to move forward I checked with Robert's rules and I think we make a motion that we task the staff with coming up with two, three options for us to look at and we readdress this at the next meeting. **Mr. DeLaney** asked can we have a discussion on this. My question is to also ask the staff to set out some legal basis as to how things have gone over the last 30 years in terms of the many times that we created relationships and changed the economics with regards to putting a tenant in subdivided space in direction relationship with the landlord. **Ms. Balsam** stated we need to stay clear of subdivision. Subdivision is a different rule, so I'm leery to go there because that would muddy the issue. **Mr. Roche** stated I understand what he is asking for in theory, I don't have a problem with it. My only problem is I'm looking to make this a 30 day window. If we included that, is that throwing too much on them. **Chairperson Hylton** stated that is my concern, that staff has a lot more to do. **Mr. DeLaney** stated I'm not sure what time table you have but we have Mr. Carver questioning the legal basis for the proposal that the staff proposed, and if we're going to create alternatives, then it would be nice to put some legal underpinnings under each of those alternatives. Otherwise we are kind of speculating. **Chairperson Hylton** stated how about if the Loft Staff provide some legislative history of the law itself and all the amendments, would that be helpful. **Mr. DeLaney** stated I think what's relevant is the issues we are dealing with. **Chairperson Hylton** stated you might find some of those issues in the legislative history. What the Board is asking the staff to do is tremendous research in a month. **Mr. Roche** stated he recognized. **Chairperson Hylton** stated you have to reintroduce this motion and I'm just trying to give you some guidance on that. **Mr. Roche** stated I'm going to reintroduce the same motion again for the sake of trying to move this thing forward. I think we still have an opportunity with the proposed options if we don't like what is written on the paper and we need more research, I think we can do that but I still think this is moving us forward. For that reason I would like to make my motion again. **Chairperson Hylton** asked including legislative history. **Mr. Roche** stated I'm going to leave it up to their own devices because I think we have an extremely professional staff up there that can anticipate the questions. We have been together long enough. They know who is going to ask what type of questions. They can anticipate that.

Motion: **Mr. Roche** made a motion that the Board tasks the Loft Board staff with two or three options for the Board to look at for when we reconvene in the November meeting.

Mr. Barowitz seconded the motion.

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

Ms. Balsam stated can I just say members of the public, I see you raising your hands. You are not actually allowed to talk. You will have an opportunity to comment on the rules once they are published. **Chairperson Hylton** stated I just want to ask the Board if you're up to task to begin the next chapter. **Mr. Roche** stated my personal opinion is we should trudge forward for at least another 30 min or so. **Ms. Balsam** stated the next issue would be the primary residence and requiring specifically in the rule primary residence. **Mr. Carver** stated I have a number of comments in terms of the concept. So at the last session I suggested we incorporate the rent stabilization standard, and I see you have added many of those standards although there is not an actual statement saying the rent stabilization standards shall apply. Such statement would incorporate the many years of case law that exists. The case law I circulated I felt was very strong and the rent stabilization standards must apply here. I'm surprised as to

how strong that case law actually was. So I'm wondering, was it your intent that the rent stabilization apply and if so should it be so stated. **Ms. Balsam** stated they are just in such a different world she doesn't know if we can just wholesale put it in, and she is leery of that. I think you made some good points based on the language out there in the rent stabilization code and what the factors should be. I tried to incorporate those factors. In terms of wholesale bringing it in, I just don't know. I'm very hesitant. I think it's similar but not exactly the same and there has to be distinctions, and we have made distinctions over the years. **Mr. Carver** stated you know the state's highest Court, you saw the language I sent to you in that case they basically said already, and the Appellate Term of the Civil Court in the housing context has actually applied that rule. So I'm wondering how we cannot do the same thing. The problem will arise, we will have a case where we are using some lessor standard and the owner wants to use the stabilization standard and then we wind up in court we will be up against those cases that I sent. Could a different standard survive that case law. I don't think so. It's a rhetorical question only in part. I am interested in your answer. **Ms. Balsam** stated I don't think I'm prepared enough to answer.

Mr. Carver stated OK. In terms of the use of the word primary residency in the new language, in your (iii) that determines who is a protected occupant and it talks about primary residence have all these various things, of course that only works for certain sections right. For the section where you take occupancy after the effective date of the law, that section is over inclusive in terms of points in time that it refers to what it means to be a primary resident. It needs to be worked out a little bit. **Ms. Balsam** asked in terms of how it is numbered, (iii) should be ok. You feel it's over inclusive? **Mr. Carver** stated this says you must be a primary resident on the effective date of the law, but several sections later you deal with people who took occupancy after the effective date of the law. **Ms. Balsam** stated right. **Mr. Carver** asked is (iii) meant to apply to the entire section. **Ms. Balsam** stated no. **Mr. Carver** stated so that just needs to be clarified. **Ms. Balsam** stated right. **Mr. Carver** stated and then your alternate 3 you don't have any primary residency. **Ms. Balsam** stated this is taken from the current rule. **Mr. Carver** asked are you saying you need not be a primary resident after the effective date of the law? **Ms. Balsam** stated I put it out there as an option. So I think you should have to be a primary resident but I felt that I should give the Board the option of sticking with the current language. **Mr. Carver** stated last session, my complaint was that your definition of consent would create all sorts of problems, I wasn't questioning the primary residency requirement. I would assume that would then flow through. **Ms. Balsam** asked so you want to bring that language down to alternative 3 as well. **Mr. Carver** stated I would think so. It's already in one of the 3 but it's just not in the alternative. I don't think it's anyone's intent to spread that. **Ms. Balsam** stated I mean I'm ok with that. I don't know about everybody else on the Board. **Mr. Carver** stated so maybe we actually have time to look at my proposition as to whether or not the stabilization standard is required at the next session, we will take that up again. **Ms. Balsam** stated yes. **Mr. Carver** stated ok. In terms of your sale of rights section, I think it is too soon, we just got it. **Ms. Balsam** agreed and said she didn't think the Board would discuss that today. Other comments from people about primary residence? Include it, don't include it? **Mr. DeLaney** stated I'm sorry, I'm trying to read this while listening to Mr. Carver's points and it's really not possible. If you would like me to make comments, I would ask for a 10 or 15 minute recess at this point. **Chairperson Hylton** stated if the Board doesn't mind, let's close the meeting at this point. We will pick up at the next meeting giving everyone a chance to review this. We are going to pick up on the next meeting with rules. **Mr. DeLaney** asked we are going to pick up on the next meeting with rules meaning. **Ms. Balsam** stated on this document and the alternatives that staff will draft. **Mr. DeLaney** stated on the next scheduled meeting we will return to this document and set aside the larger. **Chairperson Hylton** stated he said at the beginning we are setting aside the larger rule discussions. **Mr. DeLaney** stated he just wanted to make sure. And are we planning to come back to this at the next meeting in the context of working on the case calendar? **Chairperson Hylton** stated next month we will continue with the rules first. **Ms. Balsam** stated we have two meetings scheduled next month. We will flip that and do rules first and do cases in the second meeting of the month. **Mr. DeLaney** stated and the expectation would be to focus on this plus any alternatives, and this is set aside for the moment. **Chairperson Hylton** stated absolutely. **Mr. Schachter** stated so no cases will be decided next meeting. **Chairperson Hylton** stated no cases.

Chairperson Hylton thanked everyone and concluded the October 26, 2017, Loft Board public meeting at 4:32 pm. The Loft Board's next public meeting will be held at 280 Broadway, third floor, on November 16, 2017 at 2:00p.m.

