

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

April 19, 2018

The meeting began at 2:06 p.m.

Attendees: Robert Carver, Esq., Owners' Representative; Elliott Barowitz, Public Member; Robinson Hernandez, Manufacturers' Representative; Charles DeLaney, Tenants' Representative; Daniel Schachter, Public Member; and Chairperson Designee Renaldo Hylton.

1. CHAIRPERSON'S INTRODUCTION

Chairperson Hylton welcomed those present to the April 19, 2018 public meeting of the New York City Loft Board and briefly discussed Section 282 of the New York State Multiple Dwelling Law which establishes the New York City Loft Board. He described the general operation of the Board as consistent with Article 7-C of the New York State Multiple Dwelling Law

2. VOTE ON March 15, 2018 MINUTES

Chairperson Hylton asked the Board members if they had any corrections or comments to the minutes of the March 15, 2018 meeting.

Mr. DeLaney had comments regarding page 4 which summarized his concerns for Loft Board docket number TR-1253 regarding Caitlin Waid. Mr. DeLaney stated that his comments were truncated and did not cover his key points. He stated that the transaction between the estate and the landlord did not constitute a sale of rights under 286-12. Mr. DeLaney provided a printed page, which he gave to the Board, containing a short description of his comments to be added to the March 15, 2018 minutes. Mr. DeLaney read his comments into the record as follows: "Mr. DeLaney stated that he agrees with the recommendation of the OATH hearing Officer insofar as it finds that the transaction between the owner and the estate of Mr. Hetherington did not constitute a sale of rights or fixtures to the unit. He pointed out that the owner rented the unit to Ms. Wald before the negotiations with the Hetherington estate were even concluded, and that the evidence presented by the owner seemed to involve discussion of a sale of a few items in the unit. He stated that he intended to vote "No" on the case, because of the Board's decision to request further proof from Ms. Wald regarding the question of whether she used the unit as her primary residence before determining that she was the protected occupant, despite the fact that it appears clear that this is where she lives. He took issue with the reasoning in the proposed order that since she had applied for coverage after the initial one-year lease that the landlord gave her, she was not automatically the prime lessee of the unit. He pointed out that many tenants who were found to be protected occupants over the years under the Loft Law had leases that had expired many years before coverage application was submitted."

Motion: Mr. Barowitz moved that Mr. DeLaney's written comments be added to the March 15, 2018 minutes. Mr. Schachter seconded the motion.

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

Chairperson Hylton asked for a motion to accept the March 15, 2018 minutes as revised.

Motion: Mr. Carver moved to accept the March 15, 2018 minutes. Mr. Schachter seconded the motion.

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

3. REPORT OF THE EXECUTIVE DIRECTOR, HELAINE BALSAM, ESQ.

Ms. Balsam reported that the New York City Loft Board and the Department of Buildings Open Records Portal went live on April 18, 2018. The website is www.nyc.gov/openrecords. She presented the attributes of the portal with respect to the Loft Board and demonstrated how to navigate the portal. The portal is used for the public to enter a FOIL request. Additionally, they will be able to view other requests in the portal and determine if their request is a duplicate. The expectation is that this feature will help to reduce the number of multiple FOIL requests for the same information. Ms. Balsam stated that the portal requests are sent several times a day to the New York City Loft Board FOIL request mail box. The Loft Board staff will then receive an email notification of the requested FOILs.

Mr. DeLaney stated this may be very helpful. He asked if this is an alternative way of filing a FOIL request.

Ms. Balsam stated yes and that she thinks the old fashion way will eventually be phased out and the idea is to get everything to go through open FOIL so that as many records as possible are on the web for everyone to look at.

Mr. DeLaney asked if this should be mentioned in Chapter one which talks about FOIL. Ms. Balsam requested that they bring this up later in the meeting when they discuss rules.

Mr. Carver asked if there is a charge for using the portal for FOIL requests.

Ms. Balsam stated that if documents are being given electronically there is no charge. However it is possible that if there are voluminous documents which may require copying or scanning requiring over 2 hours of labor, there may then be a charge for the labor costs over the first 2 free hours. There was a discussion if the portal process will require more work for the Loft Board. Ms. Balsam stated that she expected the work effort to be about the same as now however she also expects the number of duplicate FOIL requests to be reduced therefore saving some work load.

Continuing with her report:

Ms. Balsam responding to last month's request from Mr. Barowitz about the backlogs, prepared a chart indicating there are 50 cases returned from OATH. 15 of the cases are masters and 35 summaries. The year on the chart represents the year each case was filed. The backlog chart does not include removal cases.

Ms. Balsam stated that 18 buildings failed to register for fiscal year 2018. Staff is preparing registration invoices for 2019 to be sent out on or about June 8, 2018.

Ms. Balsam continued with her report stating that the Loft Board's unofficial revenue for March was \$34,226.00.

Ms. Balsam stated that in Enforcement the following statistics were recorded:

37 administrative determinations were sent to owners who failed to file monthly reports. The cure date is May 14, 2018.

Additionally, our HPD inspector issued one no heat violation in March. He is continuing to do signage inspections visiting 72 locations although he was not able to get into all of them. He has issued 4 violations. Inspections are going very well as many signs are posted.

Ms. Balsam stated the owner of 401 Wythe/ 62 South 6th St. commenced and Article 78 proceeding challenging the Loft Board's determination that one of the units was not in the basement because the Certificate of Occupancy stated the unit is on ground floor.

Ms. Balsam reported that on April 10, 2018, the Supreme Court in New York County found that the Loft Board acted irrationally when it refused to allow applicants to withdraw an application and required the applicants to

litigate. In the same decision, the court also said it did not find irrational the Loft Board's rejection of the settlement that the Board considered inappropriate.

Mr. DeLaney questioned whether the 18 buildings that did not register last year were subject to FO notices.

Ms. Balsam responded yes and they will face higher fines this year because the penalty schedule increases for the number of years owners do not register.

Mr. Barowitz asked if the fines get paid.

Ms. Balsam responded yes for the most part, largely because owners want to do some kind of work.

Mr. DeLaney requested copies of the papers on 401 Wythe/ 62 South 6th Street and a copy of the court decision. He also requested that the board members receive copies of all future court decisions.

Mr. Carver questioned if the cases the Board is deciding should be presented at the monthly public board meetings given other pressing business and rule making discussions and whether discussing cases at these meetings is a good use of the Board's time. The Board discussed the issue but decided to continue to have staff present cases at these meeting.

4. DISCUSSION OF REDACTION OF CONSIDERATION IN SALES FORMS AND AGREEMENTS

Mr. DeLaney discussed the cases involving the validity of 286(12) sale of rights whereby documents have the dollar amounts redacted. He stated that the rule should be changed and the amounts should be required and not redacted.

Ms. Balsam stated that she confirmed with the Law Department that there is no FOIL exemption that would cover redactions of compensation from FOIL requests. She further stated that the Loft Law is silent regarding redaction. She stated that the current form requires the sales agreement be attached to the form and allows the dollar amounts to be redacted. Ms. Balsam stated that if the Board wants to change the rule to not allow any redaction she would draft the change. She also suggested the Board consider addressing whether the person selling the rights has to be in residence at the time of the sale. The board members had a long discussion regarding the issue of redaction.

Motion: Mr. DeLaney moved to ask the Executive Director to draft language for the Board's consideration requiring that sales of rights include documentation regarding the sale without any redactions.

Mr. Barowitz seconded.

Members Concurring: Mr. Barowitz, Mr. Hernandez, Mr. DeLaney, Mr. Schachter, Chairperson Hylton (5)

Members Dissenting: Mr. Carver (1)

5. VOTE ON CASES

VOTE ON RECONSIDERATION CALENDAR CASES

Mr. Michael Bobick, Esq., Assistant General Counsel presented the following case to the Board for consideration:

1.	Hlad Limited Partnership	73-77 Third Street, Brooklyn	R-0355
----	--------------------------	------------------------------	--------

Chairperson Hylton invited comments on this case.

Mr. DeLaney stated that there were some modifications to the language in the order.

Chairperson Hylton asked Mr. Bobick to read the corrected language in the last paragraph of the analysis in the Order.

Mr. Bobick read, "Even if Owner's prior counsel was dilatory, that is not a reason to vacate the fine imposed by Order No. 4651."

There were no further comments.

Chairperson Hylton invited a motion to accept this case.

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

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

Mr. Stephan Clarke, Esq., Assistant General Counsel presented the following case to the Board for consideration:

2.	Trenkmann Estate, Inc and Celia Gong and Man Kuen Gong	241-249 Centre Street, Manhattan	R-0360 and R-0361
----	--	----------------------------------	-------------------

Chairperson Hylton invited comments on this case.

Mr. DeLaney asked for the rule that gives the Board the authority to review and reject a proposed settlement and remand the application for further investigation and adjudication.

Mr. Clarke stated, "That is §1-06(j)(5) of the Loft Board Rules."

There were no further comments.

Chairperson Hylton invited a motion to accept this case.

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

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

VOTE ON SUMMARY CALENDAR CASES

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

3.	Eighteen Properties, LLC	255 18 th Street, Brooklyn	LS-0237
4.	Macy Pigman	86 East 10 th Street, Manhattan	TA-0246
5.	Richard Keene	262-272 Mott Street, Manhattan	TM-0096
6.	Stephanie Foxx	873 Broadway, Manhattan	TR-1344

Chairperson Hylton invited comments on this case.

Mr. DeLaney, regarding case number 4 at 86 East 10th Street, Manhattan discussed problems with the building and violations the Loft Board issued in January for heat and gas. Owner has not done anything in

the last 10 years to legalize the building. He asked what the Board can do to move a building like this along. He encouraged the board to look into further violations and this is a case where the Board should use its power to seek specific performance to compel this owner to legalize this building.

Ms. Balsam stated that the staff is looking at what kind of enforcement actions can be taken on this building as well as other buildings in similar situations.

Mr. DeLaney asked to have an update next month specifically on this building.

Chairperson Hylton invited a motion to accept these cases.

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

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

VOTE ON MASTER CALENDAR CASES

Mr. Michael Bobick, Esq., Assistant General Counsel presented the following case to the Board for consideration:

7.	Svend Lindbaek and Graham Mosley	736 Broadway, Manhattan	TR-1172
----	----------------------------------	-------------------------	---------

Chairperson Hylton invited comments on this case.

There were no comments.

Chairperson Hylton invited a motion to accept this case.

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

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

Members Dissenting: Mr. Barowitz, Mr. DeLaney (2)

Mr. Michael Bobick, Esq., Assistant General Counsel presented the following case to the Board for consideration:

8.	Tenant of 130 Palmetto Street	130 Palmetto Street, Brooklyn	TR-1174
----	-------------------------------	-------------------------------	---------

Chairperson Hylton invited comments on this case.

Mr. DeLaney commented that there was considerable discussion regarding this case in the private session regarding the opening of the Order which states the Loft Board “rejects” as moot the report and recommendation of the ALJ. Mr. DeLaney asked Mr. Bobick to read the modifications to the first sentence of the Order.

Mr. Bobick read, “Since the Owner registered the Building, the Units, and Tenants as protected occupants, the New York City Loft Board rejects as moot, the Report and Recommendation of Administrative Law Judge Kevin F. Casey dated June 15, 2016.”

Mr. DeLaney further commented that the ALJ's Report and Recommendation provides some detail and additional clarity to the ongoing light and air issues regarding what constitutes a window. He stated his concern with using the word "reject" the Report and Recommendation: that attorneys may believe the Board is rejecting the analysis which he believes is correct. He further stated that the other two options available to the Board, to "modify" or "accept" the Report and Recommendation, were inappropriate.

There were no further comments on this case.

Chairperson Hylton invited a motion to accept this case.

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

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

Mr. Michael Bobick, Esq., Assistant General Counsel presented the following case to the Board for consideration:

9.	Christian Stathis and Laura Aviva	145 Grand Street, Manhattan	TR-1239
----	-----------------------------------	-----------------------------	---------

Chairperson Hylton asked Mr. Bobick to read the modifications to the first sentence of the Order.

Mr. Bobick read, "Since the Owner registered the Building, the Units, and Tenants as protected occupants, the New York City Loft Board rejects as moot, the Report and Recommendation..."

Mr. DeLaney stated the modification was to address the same concerns as the prior case.

There were no further comments.

Chairperson Hylton invited a motion to accept this case.

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

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

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

10.	37 West Realty, LLC	323-325 West 37 th Street, Manhattan	LE-0680
11.	15 Warren Street, LLC	15 Warren Street, Manhattan	LE-0684
12.	26 West 20 th Street Corp.	26 West 20 th Street, Manhattan	LE-0691

Chairperson Hylton invited comments on these cases.

There were no comments.

Chairperson Hylton invited a motion to accept these cases.

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

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

6. LOFT BOARD RULES- CHAPTER 1 REVISIONS AND PROPOSED CHANGES TO CHAPTER 2

Mr. Schachter asked if the Board members could write out and submit the stylistic issues so that the Board can concentrate on the substantive issues at the meeting.

Mr. DeLaney stated that he would submit his comments for Chapter 1 to the Board in writing.

Chairperson Hylton stated sometimes punctuation makes a difference in rule making so that should be mentioned.

Mr. Carver asked Ms. Balsam if she meant to change "occupants" to "units" on pg. 13.

Ms. Balsam responded yes because "unit" was a more inclusive term. She further stated that she crossed referenced the definition of "family member" against the ETPA and the Rent Stabilization Code and that is where the definition of family member comes from. She stated the definition of "legalization process" on page 6 was changed because it means procuring a certificate of occupancy for the residential portions of the building or the IMD unit.

Mr. DeLaney added process means procuring and it might read more smoothly if legalization process means "the" process.

Ms. Balsam stated additional information was added to the definition of narrative statement.

Mr. DeLaney stated that in Chapter 2 there are some places the term "landlord" is used.

Ms. Balsam replied that it should be "owner" consistently so we do not need a definition for landlord. She continued that on the bottom of page 9, there is no penalty for making a false statement under §1-15(d) so we need a change in §2-11.1. She recommended a penalty of \$5,000.00 because that is the amount in the Department of Building's penalty schedule. She stated we should also add a penalty for violation of a Loft Board Order and proposed a \$5,000.00 fine. She stated that on pg. 10, the Open Records Portal should be incorporated for FOIL requests.

Mr. DeLaney stated he is still thinking about when the record closes under §1-31(e).

Ms. Balsam stated that starting on pg. 23, the first section is an amendment to section §2-09 of Title 29 that deals with code compliance. When the 2015 amendments were passed, the Board never created a rule. This section incorporates the compliance deadlines that are in §281(5) for the 2015 amendments the Loft Law. This is why they are all new.

Mr. DeLaney inquired if the language "as a result of the 2015 amendments to the Loft Law," is needed.

Ms. Balsam responded yes for consistency and clarity. She then stated that §2-01(d)(2)(v) concerns the narrative statement. She said that after discussions with various parties, there has been discussion on changing the narrative statement process.

Mr. Carver stated that the Narrative Statement process is the "nuts and bolts" of the Loft Board. He stated that the owners are upset that the Narrative Statement does not make the process faster. He stated that making the process faster might be the most important thing the Loft Board may be working on. He wrote up suggestions to make the process better and asked for the board to determine if they should be incorporated into the process.

Ms. Balsam stated that she met with owners twice regarding the process but did not receive any substantive suggestions.

Mr. Carver stated he had some suggestions from owners and will provide them to the board.

Mr. DeLaney commented that the tenants are also dissatisfied with the Narrative Statement process. He was 100% in agreement with Mr. Carver that the Narrative Statement conference is one of the most important aspects of what the Loft Board does.

Mr. Carver requested to hear what occurs at the Narrative Statement conference.

Ms. Balsam described what occurs at the Narrative Statement conference. The board members had a long discussion regarding the process.

Mr. Hernandez referring to page 24 paragraph (B) asked about use of email to deliver the Narrative Statement.

Ms. Balsam stated that the current delivery method is regular mail. The Loft Board wanted to recognize current day electronic methods of delivery (e.g. email, fax).

Mr. Hernandez commenting on paragraph (B)(a) requested that language change to indicate that the tenants receiving email delivery of the Narrative Statement provide their email to the owner.

Chairperson Hylton concluded the April 19, 2018 Loft Board public meeting at 4:00 pm. The Loft Board's next public meeting will be held at 22 Reade Street, first floor, on May 10, 2018 at 2:00pm, which is solely a rule making meeting.