

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

May 16, 2019

**The meeting began at: 2:35 pm**

**Attendees:** Elliott Barowitz, Public Member; Richard Roche, Fire Department's *ex officio*; Robinson Hernandez, Manufacturers' Representative; Charles DeLaney, Tenants' Representative; Julie Torres-Moskovitz, Public Member; Heather Roslund, Public Member; Renaldo Hylton, Chairperson Designee; and Helaine Balsam, Loft Board, Executive Director.

**INTRODUCTION:**

**Chairperson Hylton** welcomed those present to the May 16, 2019, public meeting of the New York City Loft Board. He then briefly summarized Section 282 of the New York State Multiple Dwelling Law, which establishes the New York City Loft Board; and described the general operation of the Board as consistent with Article 7-C of the New York State Multiple Dwelling Law.

Before proceeding, Ms. Balsam is going to address an up-coming matter.

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**MR. CARVER'S DESIGNEE**

**Ms. Balsam:** I received an email from Mr. Carver today (the owners' representative), saying that he's not going to be here and requesting that Jason Frosch, of Borah Goldstein, fill in for him, pursuant to rule 1-01(b). And I will read that rule to the Board:

"Representatives of the special interest groups, specified in 29 RCNY § 1-01(a), supra, may in their absence, designate substitutes to participate in discussions at the Board meetings, when the Board, by vote requests such participation. Such designated substitutes may participate only to the extent permitted by the Board and shall not have the right to vote."

So the first question is, does the Board wish to allow such participation? And if the answer to that is yes, then we can discuss the scope of it. Mr. Carver's email is requesting that Mr. Frosch have access to private and public sessions, for discussion purposes. But before we get to that, the Board needs to decide whether or not it wants to allow that designation.

**Ms. Roslund:** Is this for the entire duration of his tenure?

**Ms. Balsam:** No, I don't think so. I asked him if it was just for this one meeting, or continuing, and he said that it should be continuing. His workload changed substantially, and he probably won't be back for the next couple of months; so, at least today, June and July. There's no meeting in August.

**Mr. Hernandez:** Unless he resigns, there will be no representation from his position, correct?

**Ms. Balsam:** Right.

**Mr. DeLaney** explained that this provision was included in the rules back in 1982, to accommodate the owners' representative at that time, who was obliged to be in Australia with a seriously ill family member. It's been used very rarely in its entire history.

**Mr. Barowitz** asked Mr. DeLaney what his position is on this.

**Mr. DeLaney:** I think it's important for the owners to have a voice, so to say, no, we don't want any level of participation would be unfair; just as it would be if the tenants were denied representation. When the Board was constituted – and for the first thirty plus years of its existence – there was no distinction between a public meeting and a private meeting. Two questions arise for me. One is, should whoever is designated participate in the private session? Second, as Mr. Frosh is an extremely skilled attorney, who represents a large number of cases, how do we address any conflict of interest issues that might arise?

**Mr. Barowitz:** So the designee will not be able to vote, but he will be able to participate in the discussion?

**Ms. Balsam:** The Board is allowed to proscribe the level of participation. The rule specifically states that.

“...designate substitutes to participate in discussions at the Board meetings... Such designated substitutes may participate only to the extent permitted by the Board.”

So you can fashion the extent of the participation. My position on private sessions is that there should be no participation of non-Board members in private sessions, particularly attorneys that frequently appear on cases before the Board. I would say yes to public sessions; no to private sessions; because I fear it could give an unfair advantage to Mr. Frosh's firm in terms of insight into Board members' thinking. And I don't think anyone should have that access.

**Mr. Barowitz:** I don't want to belabor the point, but we just went through a conflict of interest process to insure that none of us have any conflicts. Anyone who then sits here....

**Mr. Hylton:** They're not voting.

**Mr. Barowitz:** But nonetheless, anything they might present in a discussion could be influenced by any outside interests they might have...

**Mr. Hylton:** The participation he would have is similar to what he did here a few months ago, when he was here as part of the panel of attorneys who answered your questions and provided you with some insight through their opinions on the topic of protected occupancy. It's the exact same thing.

**Mr. Barowitz:** I wouldn't have any problem with that.

**Ms. Balsam:** The Board could also say, no private session; no comments on cases; only on rule-making. Other examples of how you could structure it: You can participate in everything, but you can never vote, because you're not allowed to vote. Period. Or, you could say, no participation in the private session, but you can participate in the public session. Or you could say no participation in the private session and no participation in the public session, other than talking about rules. That's a choice, too. And even in the public session, if we were to say, yes, he can talk about cases, he obviously shouldn't talk about his own cases.

**Ms. Torres-Moskovitz:** I have a question. Mr. Barowitz mentioned the conflict of interest board, but in addition, before we joined the Board, we were vetted by DOI (Department of Investigation). It was a very lengthy background check.

**Mr. Hylton:** But you're a decision-maker. That's why you have to go through such vetting. He is not a decider.

**Ms. Torres-Moskovitz:** But he can be an "influencer"?

**Mr. Hylton:** Everyone is an influencer.

**Mr. DeLaney:** I gather from Mr. Carver's email this issue only surfaced this morning?

**Ms. Balsam:** Yes.

**Mr. DeLaney:** Neither the Board nor the staff has had a lot of time to reflect on this. It's not like he made this known two weeks ago.

**Ms. Balsam:** No. It was around 11:00 AM (today).

**Mr. Roche:** Just a thought here. Since the potential designee is actually sitting here in the room, wouldn't this be best discussed in executive session?

**Ms. Balsam:** No, it can't be. You can only go into executive session for certain things, and this doesn't fall into any of the categories.

**Mr. Roche:** I understand that we didn't used to have private sessions, but it seems somewhat unfair that the individual in question can't be in the private session, where we actually discuss the case and share our expertise from the different areas we represent. But he can be in the public session. So we're hand-cuffing him in a way, because he won't be completely on the same page as everyone else. I realize these are uncharted waters, because we didn't used to have private sessions, correct? (To Mr. DeLaney).

**Mr. DeLaney:** Correct.

**Mr. Roche:** So let me ask a follow-up question: If the shoe was on another foot – say manufacturing or tenants – how would you feel if (your designee) was being told, you can't come to the private session, only the public one?

**Mr. Hernandez:** I think there should be participation in both private and public. If there is a conflict, that's something we'd need to know. But I think jumping into the public session when you haven't been to the private one would create confusion. For ease of flow and for having the benefit of their expertise, I think they should be at the private session. So yes, I would want that condition to be extended to my own designee.

**Mr. DeLaney:** I take a different position. We're attempting to have a couple of additional meetings, in June and July, correct?

**Ms. Balsam:** We're not going to be able to have an extra meeting in June, so it's July or nothing.

**Mr. DeLaney:** So there will be at least one meeting devoted exclusively to the discussion of rules. The topics that arise at Loft Board meetings include rule-making, cases, and sometimes other issues. For example, I think we may be discussing the mechanics of legalization at some point; and when we get to the minutes, I'm going to inquire about the status of Ms. Torres-Moskovitz's question about self-certification. I think it's appropriate for a designee of one of the special interest members to participate in discussing rules, but I don't think discussing cases makes sense, particularly with the public/ private distinction we've made. So I would be opposed to that.

**Mr. Roche:** So your position is neither public nor private?

**Mr. DeLaney:** No, no. Only with regard to cases.

**Mr. Roche:** So he would only be able to participate in the public session when we switch to rule-making?

**Mr. DeLaney:** Or other topics.

**Mr. Roche:** But not case topics?

**Mr. DeLaney:** He's certainly welcome to grace the room with his presence...

**Mr. Barowitz:** See, this is what bothers me about this. Does this rule apply to the rest of us?

**Ms. Balsam:** No, only to special interests.

**Mr. Barowitz:** What about someone like Mr. Hernandez?

**Mr. Hernandez:** I didn't even know the rule existed.

**Mr. Barowitz:** But is that something you might invoke in the future?

**Mr. Hylton:** We don't want to abuse this. This is for extraordinary circumstances. We don't want members saying, I can't be here next month, so I'm going to designate someone to sit in. Do the rules say anything about that?

**Ms. Balsam:** No, it just says, "...may in their absence, designate substitutes..."

**Mr. Hylton:** Well, we should add it. We don't want this happening every month.

**Mr. Hernandez:** In this case, we know it's several months, which is why we're entertaining this idea. In other cases, where it's Board-related, we don't have the opportunity to be here and participate. That's on a one-off basis. I don't know that we want to spend fifty minutes discussing this every single time. In this case, we know it's a multi-session absence, so we certainly should consider it.

**Mr. Hylton to Mr. DeLaney:** You said before that you think the designee should be in the private session.

**Mr. DeLaney:** No. I was against excluding a designee altogether, so that the owners had no representation.

**Mr. Hylton:** OK, I'm sorry, I misunderstood.

**Mr. DeLaney:** But to Mr. Hernandez' comment, if I knew next month that for work purposes I had to be out of town, and it was a single event, but I knew two weeks ahead of time, I would certainly ask the Board to consider someone else to sit in my stead. But in that instance, the purpose is to discuss rules and policy and not to participate in cases, because they can't vote on them.

**Mr. Hylton:** But sometimes input is good, right?

**Mr. Barowitz:** I have one more thing to say. We had those two seats, held by Mr. Hernandez and Mr. Carver, vacant for the longest period of time. And I believe I asked the Chair why they weren't being filled. So the fact that we went a year or a year and a half with seats empty..... But now we're invoking a rule...

**Mr. Hylton:** But that was the mayor's office, and these seats aren't vacant.

**Mr. Barowitz:** I understand, and I'm not necessarily against it, but this is starting to play out in a way that's beginning to make me feel uncomfortable. But I'll certainly go along with it.

**Ms. Balsam:** The purpose of the private sessions is for staff to be able to give legal advice to the Board members. During the public session, if a case is coming up for a vote, the Chair will ask for comments, and there will be nothing to stop the designee from making a comment – unless you say they shouldn't; in which case, to your point, Mr. Roche, you will get the input from the owners' rep that you might be seeking. There's nothing stopping the Board members talking amongst themselves in public session about cases. You do that all the time.

**Mr. Roche:** I'm still trying to process this. In fact, my follow-up question to Mr. DeLaney is this: The historical precedent concerns a gentleman who had to be in Australia due to an ill family member or death in the family? Not because he had a heavy workload?

**Mr. DeLaney:** No.

**Mr. Roche:** The more I think about this, the more I become concerned that if we start opening this up to a "heavy workload".....

**Mr. Hernandez:** We have to understand why he had a heavy workload. Maybe it's because he has a sick cousin in Australia, and he has to support her financially.

**Mr. Roche:** Then maybe you should include that information. To just say you have a heavy workload....I'm sure the ladies we have here who are architects have heavy workloads.

**Mr. Hernandez:** I don't need him to justify it. That's his private life. I think in this case, what we're looking at is an extended period of time. So he can either resign from the Board, because he doesn't have the ability to commit...This is not a one-off. He's saying it may be three months. So what we want is an alternative plan that will allow for that position to be represented. Otherwise, we're probing into his private life.

**Mr. Roche:** I'm not advocating that. We're looking at past precedents, and trying to determine...

**Mr. Hylton:** But precedent doesn't matter here. The rule is just the rule, right here.

**Mr. Roche:** But the rule says the Board can make the decision.

**Mr. Hylton:** Yes, but as to what?

**Mr. Roche:** You're missing my point. Any of us can argue that we have a heavy workload. But we make the choice – not Renaldo and I, but all of you -- to go in front of the DOI and say you're going to devote this time and effort to the city, and that you're going to be compensated for it. And that has to be taken into consideration in your work life. I'm not sure that I'm convinced that "workload" should be a reason to invoke this, because I believe that opens the door for any of us to say, I have three new clients, each paying me a million dollars. That's a heavy workload, and it beats my Loft Board salary. So let me try to get someone to sit in for me. I don't think that's what the city is trying to accomplish here.

**Ms. Roslund:** So for anyone, for any reason, if we feel we can no longer make the commitment to the Board that's required, we have a moral obligation to step forward and say, I can no longer participate, I need to resign. But regardless of the reason, I think what we're talking about here is what Mr. Carver believes will be a temporary situation. He doesn't feel that he's unable to make the commitment for the long term; only for the short term; and he's asking to invoke this rule, correct?

**Mr. Hylton:** Yes.

**Ms. Roslund:** So that's one thing. The second is, I agree that the full Board should be represented. It's helpful to have opposing views on different issues, and the conversations are much more interesting and informative. But where I pause is--- and no offense (to Mr. Frosh, in the audience) – this substitute can be just whoever is designated? For example, I can't make it next month, so I say I'm sending my best friend, Wendy?

**Ms. Balsam:** No. The Board has to approve the person.

**Mr. Hylton:** And of course, you would want to designate someone who has the requisite knowledge and expertise in that area.

**Ms. Roslund:** Is he of equal representation as the Board member making the request?

**Mr. Balsam:** Yes.

**Mr. DeLaney:** I guess as I think about this a little more, one of the things that troubles me is that we're grappling with something we were presented with all of two hours ago. In terms of proposed rule changes, it can take us two months to make a decision; whereas here, we have two hours. And however we decide to accommodate this request, it's going to be in effect for a period of time that is not at the moment crystal clear. So maybe we should table this for today, consider a proper approach, and put it into effect at the next meeting.

**Ms. Torres-Moskovitz** said that she liked that idea, and was also wondering if the Law Department or General Counsel should review this.

**Mr. Hernandez** said that he didn't think Ms. Balsam would be presenting it if it wasn't legal.

**Ms. Torres-Moskovitz** said she wasn't questioning the legality, but wondering if the representative Mr. Carver picked, who represents so many of the cases, is problematic.

**Mr. Hernandez** said it was reasonable that Mr. Carver would pick someone who is familiar with the cases, just as he or Mr. DeLaney would pick a representative who was fluent in the tenants or manufacturers' issues. He felt that Mr. Frosch was someone of a caliber that merits the ability to participate.

**Ms. Torres-Moskovitz** acknowledged that working on/ with the Loft Board requires detailed knowledge of its many idiosyncrasies; however, she noted the tremendous number of real estate lawyers and other specialists in the city, and asked why someone whose client base could easily presents conflicts of interest should be chosen as the designee.

**Mr. Hylton** reminded her that he would not be voting; but only commenting on particular issues.

**Ms. Torres-Moskovitz** felt that his mere proximity to the Board members offered him a questionable advantage.

**Mr. Hernandez** clarified, noting that this person would make comments, which the Board could choose to ignore. He explained that it's the same process of discussion the Board regularly engages in, but that this person has zero ability to vote. Mr. Frosch can say, I believe this; and the Board can say, thanks, but we don't really care, and your vote doesn't matter anyway. So, Mr. Hernandez did not see much of a challenge there. However, he did feel that much could be gained from Mr. Frosch's point of view; from what he could contribute to the discussion.

**Ms. Roslund** agreed.

**Mr. Barowitz** also agreed.

**Ms. Torres-Moskovitz** said she didn't want an empty seat, but would prefer a different candidate.

**Mr. Barowitz:** I like the fact that Mr. Carver is taking his position so much more seriously than other people representing the landlords. But on the other hand, this is really unfair. Mr. Schachter hasn't been here many times, and it's probably because he's working. I'm the oldest member of the Board, and I could offer other reasons to be absent. But that would not be allowed, because the rule doesn't state it. This is also true for the Fire Department, isn't it? (to Mr. Roche). It's not, because this is a new position. This position was created after that rule was enacted. So this whole process doesn't seem fair. But nonetheless, I'll go along.

**Mr. Hylton:** It does seem we need to modify the rules, but not now. We have a rule before us (that we need to work with).

**Mr. Roche:** Mr. Chairman, I just want to say for the record that I have the utmost respect for Mr. Frosch and Mr. Carver. I consider them to be good friends and associates. So this is not personal.

**Mr. Hylton** asked for a motion.

**Ms. Balsam** described what the first motion should be: Do we have a motion to allow a designation? I would start with that. And if that is voted yes, then we would move to the next step, which is the extent of participation.

**Mr. Roche:** I'm going to make a motion that we table this until the next meeting; until we've all had time to digest it. I agree with Mr. DeLaney, that to have something like this thrown at us at the last minute and be forced to make a decision is somewhat unfair.

**Mr. DeLaney:** I second that.

**Ms. Torres-Moskovitz:** I third that.

**Mr. Barowitz:** I would prefer that we move on this now, because of my own life. I'm not sure that I'll be able to make the next two meetings. So I would like to see it resolved today.

**Mr. Hernandez** agreed: I feel we're stalling a decision that we all know has to be resolved.

**Mr. Roche:** I don't think it's stalling a decision. We table cases that we have much more information on; we table rules we've been dealing with for years. Here, a rule I didn't even know existed is sprung on us at the eleventh hour, and it sounds like it hasn't been exercised in many, many years, so has not been on numerous peoples' radar screens.....

**Mr. Hylton:** How is that relevant? Because whether or not you knew about it....

**Mr. DeLaney:** I'll tell you how it's relevant: I honestly don't know how I feel about this. I don't know if I can vote no.

**Mr. Hylton:** Or you can vote that he doesn't participate this month, but can start next month. We need to stop the deadlock.

**Mr. Roche:** I made a motion, and it was seconded.

**Mr. Hylton** noted that the motion is on the floor, and called for the vote.

**Ms. Balsam:** The motion is to table voting on this, right?

**Mr. Barowitz:** Tabling is up to the Chair. You either table it or don't table it. This is out of order. You don't take a roll call on tabling.

**Mr. Hylton:** Thank you Mr. Barowitz. My decision is not to table this matter.

**Mr. DeLaney:** I think if you look at the existing Chapter 1 of the rules, there are two provisions for tabling. One is the decision of the Chair, but I believe there's a second option.

**Mr. Roche:** With all due respect, this is another good reason why it should be tabled, because we don't even know that it can't be tabled or it has to be tabled. We're sitting here researching it.

**Mr. Hylton:** That's Roberts Rules.

**Ms. Balsam:** I don't think there is anything about that. §1-03(b) says "The order of business at all meetings shall be determined by the Chairman, but such order may be changed by vote of the Board. The Chairman will place on the agenda any matter at the request of at least three members, with the Chair determining when such matter is to be placed on the agenda." That's the only thing I see that even remotely goes to that.



**Mr. Barowitz:** Can we have another motion?

**Ms. Torres-Moskovitz:** I would motion that we agree that someone should be appointed to fill in for the owners' representative, but that we need to further elaborate...

**Mr. Hylton:** Right. Then after that motion, we would go into what the extent of the involvement should be.

**Mr. Barowitz:** We'll make two motions.

**Ms. Torres-Moskovitz:** But we need more time.

**Mr. Barowitz:** I second the motion.

**Mr. Hylton:** What motion?

**Mr. Barowitz:** The motion is that we approve the designee.

**Ms. Torres-Moskovitz:** Not approve; not right now. In concept, I agree that someone should be appointed, but I'm not ready to appoint someone, because we were thrown this at the last minute, and I'd like to get to the cases. So how can I make that into a motion?

**Various members** state that is the same thing as what had already been proposed.

**Mr. Hylton** to Mr. Barowitz: What is your motion?

**Mr. Barowitz:** We could make a motion to hold it off, and in a sense, over-rule the chair. But I'm not exactly sure about Robert's rules in this particular case.

**Mr. DeLaney:** Where is the reference to Roberts Rules in Chapter 1?

**Ms. Balsam:** §1-03(c)

**Mr. DeLaney:** Would you read that please.

**Ms. Balsam:** "All meetings and hearings will be conducted in accordance with Robert's Rules of Order unless such rules are in conflict with anything stated herein, in which case these Regulations shall control."

**Mr. DeLaney:** Right. And I don't believe it's stated anywhere in the regulations that only the Chair can table something. And I think that a motion to table was properly made and seconded, and I don't think it's disallowable.

**Mr. Barowitz:** I don't think that's correct. There is one particular rule in Roberts that we don't follow, and that's because we have to make our votes public. But generally, in Roberts Rules, if any member of the Board wants a secret ballot, it's automatic. You don't have to vote on it. But in this case, we can't do that, because the votes have to be made public. So we can't vote a secret ballot. But in normal cases whether it is five people or fifty on the Board asking for a secret ballot, it's automatic. There are some things about Roberts Rules that just seem to fall into place, and this is one. I'll look again, but I don't think I'm wrong.

**Mr. Roche:** With all due respect, we don't know that you're right, and we don't have that information here in front of us; so that, to me, is all the more reason that it should be tabled until we do have the information.

**Mr. Barowitz:** Ms. Torres-Moskovitz's motion hasn't been seconded, so maybe we can have another motion. And I tend to agree with the Executive Director that we should have a vote on whether the designee can participate, in general, without getting into the specifics of the participation. Then go on from there.

**Ms. Torres-Moskovitz:** "A" designee or "the" designee?

**Mr. Hylton:** We don't have to vote on "a" designee, because that's already in the rule. "A" designee can. So we have to vote on "the" designee.

**Ms. Roslund** to Mr. Barowitz: Are you making a motion?

**Mr. Hylton:** The rule says it's allowed. The Board has to accept it.

**Ms. Balsam:** It looks like there can be a motion to table, from what I'm reading.

**Mr. DeLaney:** Reading where.

**Ms. Balsam:** I googled Roberts Rules.

**Mr. DeLaney** noted that it could be Google's version.

**Mr. Roche:** Mr. Chairman, with all due respect, we don't have the answer on Roberts Rules. We have no one here who can say anything with certainty; and now we have our executive director saying she thinks it can be. Please take the appropriate measures here and go along with the facts that are presented, which are that we don't have the facts.

**Ms. Balsam:** This is Robert's Rules of Order on line, which is a little better than the Google version. And I'm sorry, but I have to say that this is virtually incomprehensible to me. I can read you the first sentence:

"This motion takes precedence over all other subsidiary motions and of such incidental questions as are pending at the time it is made. It yields to privileged motions and such motions are incidental to itself."

**Mr. Hylton:** That means that the Chair has the final say.

**Ms. Balsam:** I don't know.

**Mr. DeLaney:** I think it means that, under Robert's Rules, a member of the body can make a motion to table if it's seconded, and adopt it. And I believe it's supposed to be undebatable. And when adopted, that shuts down...

**Mr. Hylton:** Why would it be undebatable?

**Mr. Barowitz:** I doubt that it's undebatable. But I doubt my own existence, so I could be wrong.

(Laughter)

**Mr. DeLaney:** None of us thought we'd be confronting this today, right? This is not what we were prepared to do here today.

**Mr. Hylton** asked for a motion.

**Mr. Roche** moved to table this matter until the next meeting, at which time we should come back prepared, and **Mr. DeLaney** seconded.

**The vote on whether or not to table the issue of Mr. Carver's designee**

**Members concurring:** Mr. Roche, Mr. Hernandez, Mr. DeLaney, Ms. Torres

**Members dissenting:** Ms. Roslund, Chairperson Hylton

**Members abstaining:** 0

**Members absent:** Mr. Carver, Mr. Schachter

**Members recused:** 0

**Member present:** Mr. Barowitz

**Mr. Hylton:** The motion did not pass.

**Ms. Balsam** clarified that this means the Board has to make a decision today about approving the designee.

**Ms. Torres-Moskovitz:** I'm planning to vote on whether or not we need a designee. We do. But I'm not ready to vote on who that designee is.

**Mr. Hylton:** So we're not going to post-pone it, because that failed. So we need a motion.

**Mr. Barowitz:** That's not the question – who it is. We know who it is. I think we should proceed with one motion -- whether or not we will allow a designee -- and then we can get into specifics, or not.

**Mr. Hernandez** moved to vote on allowing the designee.

**Ms. Balsam:** Wait. The motion is to allow a designee.

**Mr. Hylton:** Is it "a" designee or "the" designee?

There was some discussion among the members to clarify this.

**Mr. Hylton:** The rule says we are allowed a designee.

**Ms. Balsam:** The way the rules read, it says that the special interest party is the person who names the designee. The special interest holder designates a substitute. The authority is vested in that special interest person. Which makes sense.

**Mr. DeLaney:** Therefore the question is, do we accept Jason Frosch as Mr. Carver's designee?

**Mr. Hylton:** Maybe we should phrase it that way.

**Mr. Hernandez** rephrased his motion to say that he moved to vote on the acceptance of Jason Frosch as the designee for Mr. Carver's special interest position. **Mr. Barowitz** seconded.

**Ms. Torres-Moskovitz:** For any term? Or forever?

**Mr. Hylton:** No. Ms. Balsam, what was the term in the request?

**Ms. Balsam:** The request was for this month, and I asked him if he wanted it to continue, and his answer was that it should be continuing. But I believe it was for June, July, and August – or rather, May, June, July.

**Mr. Hylton:** And the next discussion we're going to have is about the limitations.

**Mr. Hernandez:** Can we do one for next week, and then next week just make a quick decision about extending it for a longer period of time?

**Mr. Hylton:** For this discussion, can we address the timeline? Say two months or three months?

**Mr. Barowitz** noted that Mr. Hernandez should officially withdraw his first motion, because we can't have two motions on the floor at the same time. So withdraw the first, then make the next.

**Mr. Hernandez** said he hadn't really made a motion.

**Mr. DeLaney** suggested the wording Mr. Hernandez might use for the new motion.

**Mr. Hernandez** moved that, for this meeting, we accept Mr. Carver's designee, Mr. Frosch; and **Mr. Barowitz** seconded.

**The vote on whether or not to accept Mr. Carver's designee, Jason Frosch, for this meeting**

**Members concurring:** Mr. Barowitz, Mr. Roche, Mr. Hernandez, Mr. DeLaney, Ms. Torres, Ms. Roslund, Chairperson Hylton

**Members dissenting:** 0

**Members abstaining:** 0

**Members absent:** Mr. Carver, Mr. Schachter

**Members recused:** 0

**Mr. Hylton** said that now the Board would take up the question of the what, if any, limitations would be placed on Mr. Frosch's participation.

**Mr. DeLaney:** I just want to say that the rules are going south today.

**Ms. Balsam:** No question about that.

**Mr. Balsam** outlined the options in terms of the limitations that could be placed: Will Mr. Frosch be allowed to comment on

- cases and rules?

- or just cases?

- or just rules?

Those are the choices.

**Mr. DeLaney:** What about private session?

**Ms. Balsam:** For today, that doesn't apply.

**Mr. Hylton** asked if anyone had any objection to Mr. Frosch commenting on cases.

**Ms. Balsam:** That are not his, of course.

**Mr. Barowitz:** How can Mr. Frosch comment on cases if he hasn't reviewed any of the Orders?

**Mr. Hylton:** He just won't have any comments.

**Ms. Balsam:** And the staff will be making presentations, so...

**Ms. Roslund** moved that Mr. Frosch be allowed to participate in discussions regarding cases before the Board today, as well as in discussions about rules, if the Board has time for that today; and **Mr. Hernandez** seconded.

**Mr. Hylton** clarified the motion: That Mr. Frosch be allowed to participate in discussions regarding cases before the Board today – which are not his own and/or do not present a conflict of interest in any way -- as well as in discussion about rules, if the Board has time for that today.

#### **Vote to approve Mr. Frosch's participation for today's Board Meeting**

**Members concurring:** Mr. Barowitz, Mr. Roche, Mr. Hernandez, Ms. Torres,\* Ms. Roslund, Chairperson Hylton

**Members dissenting:** Mr. DeLaney

**Members abstaining:** 0

**Members absent:** Mr. Carver, Mr. Schachter

**Members recused:** 0

**Ms. Torres-Moskovitz:** Can I change my vote to no?

**Mr. Hylton:** Yes, I'll allow it.

**The new vote count is as follows:**

**Members concurring:** Mr. Barowitz, Mr. Roche, Mr. Hernandez, Ms. Roslund, Chairperson Hylton

**Members dissenting:** Mr. DeLaney, Ms. Torres

**Members abstaining:** 0

**Members absent:** Mr. Carver, Mr. Schachter

**Mr. Hylton** noted that the motion had passed, and Mr. Frosch was invited to take Mr. Carver's seat on the Board.

**Mr. Frosch:** I just want to say that I know Mr. Carver did not mean to spring this on anyone, and he would greatly appreciate all the thought and attention devoted to this.

**Mr. DeLaney** to Mr. Frosch: Do you have any thoughts on what would be the appropriate way to seat someone in these circumstances? I ask because I'm genuinely curious.

**Mr. Frosch** stated that Board members should be allowed as much flexibility as possible, as it's important to have each special interest group represented – that none is excluded.

**Mr. Roche** asked for clarification that next month they would go through the same voting process regarding Mr. Frosch again.

**Ms. Roslund** asked how, then, Mr. Frosch would be allowed to participate in the private session next month, if once again, voting is not until after the private session.

**Mr. Hylton:** Not the way we voted on this. So that would be by default, he would not participate in the private session.

**MEETING MINUTES:**

**Approval of March 21, 2019, meeting minutes**

**Mr. Hylton** asked if there were any corrections or comments on the minutes.

**Mr. DeLaney:** The good news is that I don't have any comments on the April minutes. But for March, number one, they're not on the web site. I know this because I was looking for the attachment, so I went to the web site to see if it was there.

**Ms. Balsam:** Ms. Rivera's looking into that.

**Mr. Hylton** confirmed with Ms. Balsam that the Board could vote to approve the minutes, even though they are not posted on the web site.

**Mr. DeLaney** continued: On page four, Ms. Torres-Moskovitz's question about self-certification -- I wonder if the staff has had an opportunity to give that any thought, and if that might return as a topic for discussion?

**Mr. Torres-Moskovitz** said she would formally submit that request.

**Mr. Hylton:** But I do have some information about this: In Buildings Bulletin 2016/10, which supersedes Operation Policy and Procedure Notice 1 of '04, which established procedures for the professional certification program and allows professional engineer or registered architect as an applicant to certify that the job is in compliance with the NYC Construction codes.

I had this distributed to the Board for your review and consideration, to see if it answers some of your questions. I think you also asked for a presentation on this, is that correct? We can have someone from DOB come to talk with to the Board about this process, but for now, if it's OK, I'll just distribute this, the department's procedure, and if that doesn't satisfy, then we'll revisit it and consider a presentation for the Board. And Ms. Torres, I believe you were submitting a request regarding particular audits.

**Mr. Hylton** distributed the document and noted that it's also on the DOB website.

**Mr. Roche** also noted a correction to the spelling of his name at the bottom of page one.

**Mr. DeLaney:** Top of page six, first line: Mr. Hylton said there were six cases on the Summary Calendar – but there are only five.

There was a brief discussion to clarify the number of cases. It was concluded there were only five.

**Mr. DeLaney:** In this meeting (March 21), we seem to be wavering in terms of what we're recording in terms of cases. In prior minutes, for example in January, the Master Calendar cases included the conclusion of the Order. But here, there are none.

**Ms. Balsam** agreed, and said they would be added.

**Mr. Hylton** said that the vote on the March 21 minutes would be tabled, and asked if there were any additional comments.

**Mr. DeLaney** noted a typo at the bottom of page 22 in something Ms. Balsam had said.

**Approval April 18, 2019, meeting minutes**

**Mr. Hylton** asked if there were any corrections or comments on the minutes.

**Mr. DeLaney** commented on the excellent quality of the meeting minutes.

**Ms. Balsam** acknowledged Ms. Ryan, the staff member responsible for them.

**Mr. Hylton** asked for a motion to accept the April 18, 2019 minutes, and for a second.

**Ms. Torres-Moskovitz** moved to accept the minutes, and **Mr. Barowitz** seconded.

**The vote to accept the April 18, 2019 meeting minutes:**

**Members concurring:** Mr. Barowitz, Mr. Roche, Mr. DeLaney, Ms. Torres, Ms. Roslund, Chairperson Hylton

**Members dissenting:** 0

**Members abstaining:** Mr. Hernandez

**Members absent:** Mr. Carver, Mr. Schachter

**Members recused:** 0

**Mr. Hylton:** I just want to say that, in many meetings, proper attention is not paid to the accuracy of these minutes; and I want to commend the Board, and especially Mr. DeLaney, for taking the time to review them to be sure we have accurate minutes.

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**EXECUTIVE DIRECTOR'S REPORT:**

**Loft Law:**

**Ms. Balsam:** In terms of proposed amendments to the Loft Law, yesterday the Assembly passed amendments. There was also a bill introduced in the Senate, but the Senate is split. So I've been checking my phone, waiting to hear back from State Legislative Affairs as to whether or not anything is moving, but as of yet, I haven't heard anything. I think it's very exciting that we have a bill that's moving, and we'll see what happens.

**Ms. Roslund** asked if Ms. Balsam could summarize the amendments.

**Ms. Balsam:** Yes, I can. This is what I believe is in the bill that the Assembly passed. The bill...



- Clarifies that only the unit seeking coverage needs to meet the eligibility requirements; not three units
- Eliminates basement, window, and Use Group 15 through 17 exclusions
- Excludes buildings in North Brooklyn IBZ M3 zones
- Shifts burden of proof on incompatible use (Use Group 18 only) to the party opposing coverage
- Adds that use must exist on effective date of amendment and continue until the time of the coverage application, be in legal operation, and create an actual risk of harm which cannot be reasonably mitigated
- Adds a new window period (section 281(6)), 1/1/2015 through 12/31/2016. It would be – with the exception of West Chelsea – three families living independently, and that occupancy must be continuous for 12 months during that 24-month period
- Keeps West Chelsea requirement for two families
- Raises maximum penalty for Loft Board violations to \$25K
- Gives Law Department power to bring a civil proceeding to enjoin violations of the law
- Deletes statute of limitations for filing of coverage and registration applications
- Adds code compliance deadlines for units covered under the new amendments
- Allows for previously litigated claims to be refiled if the building or units would be subject to the Loft Law as a result of these amendments.

**Land Use Committee:** Last week Martha and I attended a meeting of Brooklyn Community Board One’s Land Use Committee. It was very informative and I hope we communicated useful information to them.

**Staffing:** In terms of staffing, the Loft Board now has a new HPD inspector. His name is Dewan Tarek. HPD has also designated an alternate inspector, Kashif Braham, to fill in if Inspector Tarek is unavailable. They are both here today (Ms. Balsam introduced them). In addition, by July, we will have two legal interns and one college student working over the summer.

**Revenue:** Loft Board collected \$9,326.75 (unofficial) in April. Bills for fiscal year 2020 should be mailed out in early June.

**Litigation:** I’ve distributed this to you, but Ms. Rivera has also given you hard copies. We had a favorable decision in *Barrett Japaning, Inc. v. Loft Board and Anna Bialobroda*. The Court dismissed this Article 78 petition against the Loft Board and granted Ms. Bialobroda’s motion for summary judgment. The Loft Board had awarded coverage to the building and protection to Ms. Bialobroda. The owner attempted to file for reconsideration, but the owner’s reconsideration application was incomplete and untimely. The Court agreed with the Loft Board – and I have to say, I was particularly pleased with this language – stating that it could not “fathom how it would be ‘unreasonable or irrational’ for the Loft Board to insist on strict adherence to its

timing and filing rules.” The Court also rejected the owner’s argument that the Board’s decision was not supported by substantial evidence, finding that the Board considered the full contents of the owner’s reconsideration application. The owner has appealed that decision.

*Sharpe et al v. 517-525 West 45 LLC et al:* A very interesting case filed by some tenants on West 45<sup>th</sup> Street, the owner had changed the entry locks to an electronic system with swipe cards or a phone app. The tenants objected to that. They wanted mechanical keys, so they sued in Housing Court. There was a lot of back and forth, and it got a lot of play in the press as well. The case settled. The owner has given the tenants mechanical keys in exchange for their promise to never, ever use the electronic system.

The last two cases are mandamus proceedings: *Brocho V’Hatzlocho Corp. v. The New York City Loft Board* and *110 Bridge Street Realty Corp. v. The New York City Loft Board*. These are both cases that came to us from OATH, involving incompatible uses. The issue in both cases is whether there are inherently incompatible uses in the buildings.

**Mr. DeLaney** asked Ms. Balsam to repeat the title of the first case, and if she had the address.

**Ms. Balsam** repeated the name, but did not have the address. She suggested Mr. Frosch might know it.

**Mr. Frosch:** Repeated the name -- *Brocho V’Hatzlocho* – and gave the address as 538 Johnson – 75 Stewart Avenue.

**Ms. Torres-Moskovitz** asked if that was Mr. Frosch’s case.

**Ms. Balsam:** Yes.

**Ms. Torres-Moskovitz** asked Mr. Frosch to please note when he is connected with a case, and he agreed.

**Ms. Balsam:** This concludes my report.

**Mr. DeLaney:** I have a question.

**Mr. DeLaney:** Apropos of your mentioning interns and a college student – I actually received a request for a copy of the retroactivity memo that was written last summer by Trishawn Raffington. Is that a public document?

**Ms. Balsam:** That’s a good question. I’d have to look at it, but if it was presented at a Board meeting, given to you at a Board meeting, then it would be a public document.

**Mr. DeLaney:** That’s where I got it.

**Ms. Balsam:** Please ask the person to submit a formal request to the staff, and we will deal with it.

**Mr. DeLaney:** I’d be happy to receive a response via email, but my question to you is just, is it a public document?

**Mr. Hylton:** It's not a public document to the extent that it was published, but most government documents are public, except for certain categories....

**Mr. DeLaney:** Well if someone wants it that badly, and it's a public document, I'm going to sell it to them, rather than tell them to FOIL it! So, you'll let me know?

**Ms. Balsam:** Yes.

**Mr. Frosch:** I guess I have a comment on the amendment language, if we could quickly talk about that? I think it goes pretty much without saying that, from an owner's point of view, changing the law to no longer requiring a window in a unit to further restrict the definition of a hazardous, incompatible use that shouldn't be in a building that's covered, those are probably the two of the worst elements in this bill from an owner's perspective. I'm just curious, from the perspective of the architects on the Board, the fire department representative on the Board, or the tenants on the Board about those issues, given that there is still an opportunity to...

**Ms. Torres-Moskovitz** asked what he was commenting on.

**Ms. Balsam** clarified that he was commenting on an item in her Executive Director Report (amendments to the Loft Law) before moving on.

**Mr. Frosch:** I just wanted to put in my two cents on that, as there hadn't been a comment on that first item Director Balsam mentioned. So I was inviting any discussion the Board might have on that.

**Ms. Torres-Moskovitz:** No discussion.

**Mr. Frosch:** Would anyone else like to have a discussion about that?

**Mr. Roche:** I would.

**Ms. Balsam:** Could we have the discussion after cases?

**Mr. Roche:** Yes. But the Fire Department does have a perspective on that, if we're opening a window for that perspective to be shared.

**Ms. Balsam:** My only concern is that we're going to get kicked out of this room.

**Mr. Frosch:** I would be fine with that, but for the fact that, if we don't do it now, it could be moot by the next meeting.

**Ms. Torres-Moskovitz:** We're not writing the bill, so I'd rather stick to the cases that the public is here for.

**Mr. Frosch:** But I think that the tenants, the owners, and the manufacturing interests that are affected by the Loft Law are participating in the law-writing process.

**Mr. Hylton:** Yes, it's important, but after the cases.

**Mr. Barowitz** noted that he has attended many meetings regarding the re-zoning of Soho and Noho, and it seems that most of the people in the city -- the planners, the owners, the residents, the business owners --

have no idea what the Loft Board does. He hoped that the Board could get some information out in some way.

**Mr. Hylton** said that he thinks that will happen once the new law is finalized.

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**THE CASES:**

**Appeals and Reconsideration Calendar**

**Mr. Hylton:** There is one case on the Appeals and Reconsideration Calendar.

	<b>Applicant(s)</b>	<b>Address</b>	<b>Docket No.</b>
1	Lora Labovsky Meyer & Jeffrey Meyer Charles & Cynthia Broderson	873 Broadway aka 15-25 East 18 <sup>th</sup> Street, Manhattan	R-0365 R-0367

**Ms. Balsam** presented this case.

**Mr. Hylton** thanked Ms. Balsam and asked for a motion to accept this case, and for a second.

**Mr. Hernandez** moved to accept the case; **Mr. Roche** seconded.

**Mr. Hylton** asked if there were any comments on the case.

**Mr. Frosch:** Yes. From an owner's perspective, I don't think there's an issue. The majority of this case was math. The only thing that concerns me about it is that there seems to be a very limited holding here that amending a reconsideration application, in this case several times, was, in theory, permitted; although here it's also noted that adding additional documentation wouldn't be permitted. The only reason I have a concern here is that this was filed in May of 2018. The first amendment was filed by the Meyers in August of 2018 – two and half months later. Another one was filed a month later, in September, 2018. My main concern is, allowing this, in certain limited circumstances, can significantly delay any reconsideration being heard by the Loft Board and processed by the staff, because it can just keep being amended, amended, amended, which serves to push the process out. So that's my concern, that this really doesn't constrain that practice strongly enough, and I'm worried it could be abused.

**Ms. Roslund:** I had a similar question. It was clearer here in the presentation than it was earlier, in the private session. This could affect both sides. An amendment application is filed. The applicant has thirty days from the decision to file the amendment, is that correct?

**Ms. Balsam:** We don't answer questions in public session.

**Mr. DeLaney:** I'll answer. I think that's correct.

**Ms. Roslund:** OK, but then there's a cut-off point? There has to be some cut-off point...

**Mr. DeLaney:** That I won't answer.

**Ms. Roslund:** Ok. We'll talk about it more the next time.

**The vote:**

**Members concurring:** Mr. Roche, Mr. Hernandez, Ms. Torres, Ms. Roslund, Chairperson Hylton

**Members dissenting:** Mr. DeLaney

**Members abstaining:** Mr. Barowitz

**Members absent:** Mr. Carver, Mr. Schachter

**Members recused:** 0

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**CONCLUSION**

Reconsideration R-0365 is partially granted to recalculate the application of the legalization milestone percentages pursuant to MDL § 286(2)(ii). The rest of the application is denied.

R-0367 is denied in its entirety as the Brodersons sold their rights to rent regulation under the Loft Law pursuant to MDL § 286(12) and 29 RCNY § 2-10(a)(1).

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**The Summary Calendar**

**Mr. Hylton:** There are three cases on the Summary Calendar. They're voted on as a group. But we are tabling case number 3.

	<b>Applicant(s)</b>	<b>Address</b>	<b>Docket No.</b>
2	Aimee Franco	8-10 Grand Avenue, Brooklyn	PO-0088 and TA-0253
3	Tenants of 255 18 <sup>th</sup> Street	255 18 <sup>th</sup> Street, Brooklyn	TM-0091
4	Tenants of 178 Walworth Street	178 Walworth Street, Brooklyn	TN-0225

**Mr. Hylton** asked for a motion to accept these cases, and for a second.

**Mr. Barowitz** motioned to accept these cases, and **Mr. Hernandez** seconded.

**Mr. Hylton** asked if there were any comments on the cases (None).

**The vote**

**Members concurring:** Mr. Barowitz, Mr. Roche, Mr. Hernandez, Mr. DeLaney, Ms. Torres, Ms. Roslund, Chairperson Hylton

**Members dissenting:** 0

**Members abstaining:** 0

**Members absent:** Mr. Carver, Mr. Schachter

**Members recused:** 0

**The Master Calendar**

**Mr. Hylton:** There are three cases on the Master Calendar. The first one is

	Applicant(s)	Address	Docket No.
5	Gregory Boustead and Katharina Poblitzki	57 Thames Street, Brooklyn	TA-0228

**Mr. Clarke** presented this case.

**Mr. Hylton** thanked Mr. Clarke, asked for a motion to accept this case, and for a second.

**Mr. Roche** motioned to accept this case; **Mr. DeLaney** seconded.

**Mr. Hylton** asked if there were any comments on this case.

**Mr. Frosch:** I'm only going to note that, as you'll see at the end of this, I was the attorney for the owner on this case. I no longer represent a party. To the extent that I think there are certain principles in this case that could have an effect in a more general context, a part of me wishes I could comment, but I respect whatever the Board wishes.

**Mr. Hylton:** I think it's best if you don't comment.

**Mr. Frosch:** Fine.

**Mr. DeLaney:** I would just note for the record that I raised the issue in the private session that, in this case, the reported recommendation was issued in August, 2017 -- about a year and three-quarters ago. I was contacted by the applicant about six months ago, asking why this was taking so long; particularly since there was not a lot of extensive analysis, and the Board agreed with the OATH judge's recommendation. Perhaps in an overcharge case we should look to expediting the procedure a bit, as we do with access and harassment cases.

**The vote**

**Members concurring:** Mr. Barowitz, Mr. Roche, Mr. Hernandez, Mr. DeLaney, Ms. Torres, Ms. Roslund, Chairperson Hylton

**Members dissenting:** 0

**Members abstaining:** 0

**Members absent:** Mr. Carver, Mr. Schachter

**Members recused:** 0

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**CONCLUSION**

The Loft Board grants in part and denies in part Tenants' claims of rent overcharge. We find that the maximum permissible rent of the Unit is \$1,950.00, plus a \$25.00 monthly water charge for a total of \$1,975.00 per month. Tenants are entitled to \$10,160.00 in rent overcharges paid from June 1, 2014 through September 30, 2015. We further find that an additional \$635.00 is due for the prepayment of the "last month's rent" for a total of \$10,795.00 in rent overcharges.

The Loft Board denies Tenants' claims for the security deposit and administration fee. Tenants are not entitled to recover any part of the security deposit and the administration fee paid.

Lastly, we note that as of the date of this Order, Owner is not entitled to any of the legalization milestone increases under to MDL § 286(2)(ii). Owner has failed to meet any of the legalization milestones set forth in MDL § 286(2)(ii). Owner must take all reasonable and necessary action to legalize the Building. Failure to do so may subject Owner to civil penalties in accordance with 29 RCNY § 2-11.1.

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**Mr. Hylton** introduced the next case:

	<b>Applicant(s)</b>	<b>Address</b>	<b>Docket No.</b>
6	<i>Matter of 224-228 North 7<sup>th</sup> Street Tenants</i>	224-228 North 7 <sup>th</sup> Street, Brooklyn	TR-1143

**Ms. Leveille** presented this case.

**Mr. Hylton** thanked Ms. Leveille, asked for a motion to accept this case, and for a second.

**Mr. DeLaney** motioned to accept the case; **Mr. Hernandez** seconded.

**Mr. Hylton** asked if there were any comments on this case.

**Mr. Frosch:** This is a *Matter of Doris* case...

**Ms. Torres-Moskovitz:** Wait. Do you represent anyone this case?

**Mr. Frosch:** I don't. I've never been involved in this case. But I'm very much aware of it, because it's one of the earlier cases that extended *Matter of Doris*. *Matter of Doris* is infamous amongst practitioners of the Loft Law because it set a significant precedent. Normally, when you have a window on the lot line, with certain exceptions, it cannot be used for light and air purposes. And it's very difficult -- if not sometimes impossible -- to legalize, depending on what's going on with the lot on the other side of the loft. In *Matter of Doris*, the Loft Board said, for the first time, that even if you have a lot-line window which had previously been viewed by the experts as not qualifying under the window requirement in 281(5), now, if what's on the lot line is a yard or

court that's legal with respect to the building or structure on that lot, then it satisfies the language of the statute. Which is a very creative and interesting legal argument to make.

The problem with it from a practical point of view is that, in those circumstances, the owner of the IMD building doesn't have any control over what the owner of the building on that lot is doing with that open space. It may be open at the time of trial, and it may be that by the time the Loft Board votes on it, that owner has decided to construct something that blocks whatever open space might have been there at the time. If that happens, or if the owner proceeds with the obligation to legalize the unit that's covered by the *Matter of Doris* theory, how – and I address this question particularly to the architects on the Board – how can an owner get through the legalization process, providing light and air in a unit where the only exterior façade of the unit has this lot-line? How can they get proper light and air, other than having to purchase an easement from the neighboring owner? And what if that neighboring owner doesn't want to sell an easement? That's really the big concern in terms of finding coverage for two units that don't have anything but a lot line window.

**Ms. Roslund:** Earlier, this case gave me pause for some of the same reasons. The answer is you cannot. Or, if that particular window cannot be considered legal without obtaining an easement or have a zoning law merger, the points made in our discussion were that this is just a coverage application, and there are various ways to legalize a unit. Just because it's not legal in its current state doesn't mean it can't, eventually, be legalized. And again, I feel this logic puts the cart a bit before the horse, because you're granting coverage to someone from whom you may have to withdraw it at a later date, if there is no way to legalize the unit, for whatever reason; or if the owner fails to pursue an option that would legalize the unit. So when we open this conversation, I'm definitely a little wary.

**Mr. Hylton:** I don't know if this is any different than coverage applications granted to loft buildings. If something doesn't work, the owner must take reasonable and necessary steps to legalize it.

**Ms. Roslund:** I hate to do worst case scenarios, but what if the only way to legalize the unit is to combine it with the unit next door, or to cut it half, or...? In many units, what needs to be done is obvious: add a fire escape, enlarge a window, upgrade the door. Simple, logical stuff. But then there are these really big questions. What if there's absolutely no way to make this legal?

**Mr. Hylton:** Legalization is tough, and the owner has to take "all" reasonable and necessary steps. I'm sure the owners and the architects will figure it out. This is my take. You don't deny coverage because the choices are difficult. You grant coverage, and you work it out.

**Mr. Frosch:** I just have to play this out for a minute from the owner's perspective. Even though I do understand the concern that one way to deal with this is to have the owner take all reasonable and necessary action, if it comes back from DOB that it's not possible to legalize, then we're going to have to de-cover the unit.

**Mr. Hylton:** That's a lot of "if's."

**Ms. Torres-Moskovitz:** Yes, there are a lot "if's" there. I am an architect with years of experience, and solving these kinds of problems is what we do. We work very hard for our private clients. You're a guest here today, and you're taking up a lot of time with this. Keep that in mind.



**Mr. Frosch:** I understand, and I respect that solution: try to find a way to legalize it. The one problem is that the way the law currently works is, while the owner is in the process of legalizing, if they fall out of compliance with the deadlines because of these difficulties, then the issue of rent starts to become a problem. So I'm just pointing out that if the law allowed the owner to devote whatever time they needed to trying to solve these problems – if it really wasn't possible to legalize it, fine – but the problem is there is this punishment imposed, where the tenants are not obliged to pay rent if the deadlines are not met.

**Mr. Hylton:** Don't you have recourse to the Loft Board?

**Mr. Frosch:** There is no mechanism I'm aware of for filing an application with the Loft Board to say, I can't legalize this unit. I've only seen the Loft Board de-cover a unit once, and it wasn't for this issue.

**Mr. Hylton:** There is a mechanism for that, so you may want to look into it.

**Mr. Barowitz:** I couldn't imagine the number of lot-line windows in this city which require light and air. And I think there have been certain cases...

**Ms. Roslund:** There are zero lot-line windows that provide light and air.

**Mr. Barowitz:** But isn't that the point here? That the window into the court yard is into someone else's property. Doesn't that make it a lot-line window?

**Ms. Roslund:** It does. But the way I understand it, to be granted coverage, there has to be a window. Now, it doesn't say a "legal" window; it says "a window." But then, when the owner hires an architect and goes to DOB, they don't have the same definition. They're different regulatory agencies. So this is just saying that the window allows coverage. DOB doesn't necessarily have the same opinion. So DOB could reject this, and say this window does not allow coverage...

**Mr. Hylton:** For legalization. DOB would not comment on a coverage case.

**Ms. Roslund:** For legalization. Right. They'll say no, no. This is an illegal window; nobody can live here. Then, another solution can be found, or no solution can be found. So that cannot be a covered unit. Not because of the coverage requirements, but because of the legalization requirements.

**Mr. Barowitz:** I can't possibly imagine the number of lofts that have been covered in this city which, if they came before us now, we'd have a certain amount of difficulty with. The law simply says there should be a window giving onto the street. So why don't we just go along with that? And if something happens to it later...I'm sure there are a lot-line windows currently looking out into someone's backyard, where someday, someone might decide to put up a building right in front of it. In which case, the situation would be different. Would we then de-cover that loft?

**Ms. Roslund:** It would never be legalized in the first place. The part of Article 7B, which governs construction in commercial conversions, has reduced yard requirements from thirty feet to five feet, and there are a number of other issues discussed. But never can you have a window on a lot-line be the light and air for that unit.

**Mr. Barowitz:** But that doesn't seem to be the case in this Order. Or is it?

**Ms. Roslund:** They haven't gotten that far. To the legalization.

**Mr. Frosch:** The thing that connects these two concepts is my reading of 281(5), which at present, has a requirement that the window open onto a street, which makes it easy and if it's a lawful yard or court under the zoning resolution, if it meets that definition, it shouldn't be difficult to legalize and provide light and air; if you read it as being a yard or court that's on the zoning lot of the building in question. If you then come up with this *Matter-of-Doris* interpretation, that says that it now can be the open space on the neighboring zoning lot, that does not provide the same protection to say that units are only qualified for coverage if it provides an obvious way to legalize, in terms of light and air.

**Mr. Hylton:** Well, we're not concerned with full legalization right now. This is about coverage. So do any of the Board members, or Mr. Frosch, see anything in terms of a legal impediment?

**Mr. Frosch:** Right. What I'm saying is the language of 281(5) requires there be a legal yard or court on the zoning lot, in my view. And it's up to the Board to decide how to interpret that. For coverage. And the purpose is to prevent likely de-legalization (decoverage), because it's unfair to the owner to put them in an impossible situation and then impose an impossible legal obligation.

**Ms. Torres-Moskovitz:** Architects know how to figure these things out. That's what we went to school for. We're creative; we've been doing this for years in all kinds of buildings all over the city.

**The vote**

**Members concurring:** Mr. Barowitz, Mr. Roche, Mr. Hernandez, Mr. DeLaney, Ms. Torres, Ms. Roslund, Chairperson Hylton

**Members dissenting:** 0

**Members abstaining:** 0

**Members absent:** Mr. Carver, Mr. Schachter

**Members recused:** 0

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**CONCLUSION**

The claims for coverage of units F, G and 1 are deemed settled. The claims for coverage of units A and B are granted. Within thirty (30) days, the Loft Board directs Owner to register the Building and the following units as IMD units and Tenants as protected occupants in accordance with the table below:

IMD Unit	Protected Occupant(s)
F	Mathew Amonson
G	Katrin Altekamp

1	Maxine Nienow
A	Robert Berger a.k.a. Robert Castle and Alejandra Orozco
B	Alex Pasternak

The Loft Board also directs Owner to pay the applicable registration fees within thirty (30) days of the mailing date of this Order.

If Owner fails to register the units and Tenants as indicated above and pay the applicable fees within thirty (30) days of the mailing date of this Order, the Loft Board directs the staff to:

- issue an IMD registration number for the Building;
- list the above-stated units as IMD units and Tenants as protected occupants
- collect applicable registration fees and late fees.

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**Mr. Hylton:** The last case on the calendar (7) is being tabled. However, we do have our staff auditor, Mr. Stan Pollack, here today to present some material relevant to this case. It’s general information, so even though the case is being tabled, this should be useful. I believe the Board members have copies of the presentation.

	Applicant(s)	Address	Docket No.
7	W28 Street Holding LLC	40 West 28 <sup>th</sup> Street, Manhattan	LE-0653 and RA-0015

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**MR. POLLACK’S PRESENTATION**

**The Rent Adjustment Application: Code Compliance Cost Review/Audit Process**

After Mr. Pollack made his presentation (attached), he took questions from the Board members.

**Ms. Roslund:** Just out of curiosity, is everything just done via forms back and forth? Or is someone assigned to each case to meet with the owner to answer questions? Or is it that he submits it; you review it; and you send your answer ?

**Mr. Pollack** outlined the general process, which can take a while. He reviews the application for code compliance and the appropriate documentation. If items are missing or there are questions, there is communication back and forth between the owner and himself where we try to get verification. Once we go through that process, if we can’t get verification, and it cannot be determined that there were necessary, reasonable costs, we disallow them.

**Ms. Roslund:** Typically, how long does this process take?

**Mr. Pollack:** It takes a while. Some applications I've worked on were seven or eight years old.

**Ms. Balsam:** Can I just say, the reason for that is that we didn't have an auditor. When we got auditors they left before they finished.

**Ms. Roslund** to Mr. Pollack: Are you staying?

(Laughter)

**Mr. Pollack** explained that he is a retired accountant, working part-time -- two days a week -- at the Loft Board for the past year and a half. There were five RA applications I worked on and I've completed all the applications I worked on so far.

**Ms. Torres-Moskovitz** asked if contracts were part of the documentation of actual costs submitted with the rent-adjustment application.

**Mr. Pollack** explained that, yes, contracts were submitted, along with other documents, such as POs', vendor invoices.

**Mr. Frosch:** First of all, before I ask a question, I really want to thank you for what you're doing. I can tell you that there was a view in the practitioner community that there was no point in even filing for legalization costs, because it would just delay getting through the process and out of Loft Board jurisdiction so much. So your work is very much appreciated, certainly by owners, and probably by everyone involved in the Loft Law. Thank you. So I guess my question is -- in part because, due to this reason, I've never filed a legalization cost application -- what is the Schedule of Indexed Costs, and what is it based on?

**Mr. Pollack** said that the Schedule of Indexed Costs was based on tables provided in the laws.

**Ms. Balsam** clarified that the table is in 29 RCNY 2-01(p).

**Mr. Pollack** explained that the table was very comprehensive and specific line item listing all the trades from demolition through mechanical, electrical, and construction. The unit costs are per square foot or linear foot and include what the cost was back in 1984. Then, an index is applied, based on the construction cost index over that period of years, and updated every year, based on a computation done every September. So it's applied against the 1984 costs to bring the costs up to today's costs.

**Mr. Frosch:** There's some sort of index used that is current, and that formula is applied to the base numbers from 1984?

**Mr. Pollack:** Correct.

**Mr. Frosch:** I don't know what that formula is, but I'm curious -- when you compare owners' costs to the calculated schedule index cost, how often is the schedule index value the lower number of the two?

**Mr. Pollack:** Very frequently.

**Mr. Frosch:** Is it 90% of time?

**Mr. Pollack:** I haven't worked out the percentages, but most of the time – for the majority of the items I've reviewed -- the index cost is less than the actual cost. There are some instances where the actual cost is less but for the majority of the items I review, the index cost is less than the actual cost.

**Mr. Frosch:** In your opinion, is the scheduled index cost is an accurate reflection of the market cost for those items?

**Mr. Pollack:** I can't say that generally.

**Ms. Roslund** asked if there is anything in the process that determines whether it's considered minimal code compliance? Her point being that a plumbing fixture could be a forty-dollar fixture or a four-hundred-dollar fixture; that a window could be a one-hundred-dollar window or a one-thousand-dollar window, both of which meet code-compliance requirements; and this is a factor that could account for the actual cost being higher than the index cost.

**Mr. Pollack:** The cost we have is the index cost; not the actual cost so in your example, the code compliant \$100 light, if the index cost is \$95 dollars, \$95 is the allowable cost. So even if you spend \$400, if the index cost is \$95 we only allow \$95.

**Ms. Roslund:** So I understand the purpose is that we're trying to prevent owners from price-gauging. So while you don't want to compensate them for installing Dornbracht plumbing fixtures, on the other hand, you don't want them installing the cheapest possible Delta fixture either. This is someone's home. They should get a good quality window; not a hundred-dollar window.

**Ms. Balsam:** But the law allows them to do the minimal amount to legalize. So if for those owners, that means the cheapest fixtures, legally, they're allowed to do that.

**Mr. Hylton:** Is the cheapest number the index number?

**Ms. Balsam and Ms. Roslund** said no; that it varies.

**Ms. Balsam** clarified: We have had issues in Narrative Statement conferences where owners wanted to do one thing and tenants said, I don't really like that; I would like to upgrade; and they negotiate with each other. But the law only requires the owners to do the minimum. And that's the Delta faucet, not the Dornbracht.

**Mr. Pollack:** But remember, the allowable cost is the index cost. So no matter what the owner spends on that line item, the maximum allowable is the index number – or what the owner spent, if it's lower.

**Mr. Hylton:** So a fiscally conservative owner will try to get as close to the index as possible?

**Ms. Balsam:** Yes.

**Ms. Torres-Moskovitz:** I would just add that when there are square-footage issues, if you have access to the approved, filed, DOB drawings, that you're referencing how the architect listed square footage, so that it's very clear what the actual residential and common area square footage is.

**Ms. Balsam:** May I just make one more comment? One of the points not in this presentation because it's not necessarily part of Mr. Pollack's process is this: When the audit is complete, we send the results to both the

tenants and the owners, who have an opportunity to comment. It's not that we do the audit and that's it. The tenants have the right to contest. So you could have an owner who says I've put two bathrooms in an apartment, but the tenant says, no, I only have one bathroom; I don't know what you're talking about. So I want everyone to understand that the tenants do get the results of the audit, and they have a right to challenge it under the Loft Board's rules. They receive everything.

**Mr. DeLaney** noted that Ms. Balsam had, in fact, provided a copy of the letter to the tenant regarding case number 7.

**Ms. Roslund:** And if a tenant requests upgraded fixtures for their bathroom...

**Mr. Pollack** said that the tenant and the landlord would work that out, in terms of who pays what portion of the upgrade.

**Mr. DeLaney** gave an example of a situation in his own loft, where he offered to purchase the tile he preferred, and the landlord paid for the installation. **He explained:** Had the owner then applied for cost, he would not have included the tile, because I paid for it. As it is, my owner waived the pass-along, which happens most of the time, perhaps, in part, as Mr. Frosch said, because of the paperwork involved. But in many instances, the cost of legalizing these units is pretty minimal, so it's like, why bother?

**Mr. Frosch** agreed that many of the early buildings were not as large or complex as the later, larger, more diverse buildings.

As there were no more questions, **Mr. Hylton** thanked Mr. Pollack, and noted that only five minutes remained in the meeting time.

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**FINAL POINTS/COMMENTS:**

**Ms. Roslund** noted that in the table of contents for the back-up documents, one of the documents has the incorrect address. 873-879 Broadway says "aka 25 East 28<sup>th</sup> St." It should be East 18<sup>th</sup> St (as opposed to East 28<sup>th</sup> St).

**Ms. Balsam** said it would be corrected.

**Mr. Hylton:** Mr. Frosch wanted to make a comment on the legislation. But I just want to caution that the legislation is not the Loft Board's legislation. So I don't know how much we can actually debate it, but you've got two minutes.

**Mr. Frosch:** Thank you. I'm always reminded that the two biggest issues, I think, affecting everyone with an interest in this, even if it's just being on the Loft Board, and this is the direction these cases are going to end up going, and you have to decide them. The first issue is incompatible use, which hasn't reached the Board yet. The way that's being altered in this law takes what qualifies as an incompatible use and makes it difficult to cover the building, because it's potentially problematic for having mixed use in the building, and makes it much smaller. So under this language, more buildings will be qualifying for coverage, notwithstanding the fact that there could be some concern in commercial occupancy. And the second is that the window requirement we

were just talking about would be gone. So units can qualify – for coverage -- if they have no window whatsoever, meaning even if they're in the middle of the floor, and they are not on an exterior façade, they would be covered under the proposed language. Then it would be the owner's obligation -- with serious penalties for not being able to do so -- to somehow legalize a windowless unit for residential use, and obtain a C of O.

**Mr. Hylton:** I don't know that that's true, if the owner is taking all reasonable and necessary steps.

**Mr. Frosch** clarified, noting that even if the owner is able to have such a unit discovered once it's determined that it cannot be legalized, during the entire period it takes to go through that process, rents might not be paid, and this after the owner has already spent significant sums trying to legalize the unit. In his view, this was not fair to the owner.

**Mr. Barowitz:** I have a question for Mr. Frosch. This email came to Ms. Balsam at 12:04 PM. You seem to be very familiar with some of these orders. Why is that? It takes me several hours to review this material and you did it in less than an hour.

**Mr. Frosch:** One answer is that a couple of these were sent to my firm. That's usually the practice. The Loft Board staff sends them to firms that have had dealings with the property or are currently representing certain units. As for the others, I read these constantly, so in the ten-minutes I had, I read through to get an understanding of the situation.

There was some discussion about approving the process involving Mr. Frosch so that time would not have to be spent on it at the next meeting.

**Mr. Frosch** asked for clarification in terms of his participation in the private meeting next month.

**Mr. Hylton:** That decision will come at the public meeting next month, after the private session. It was nice having you. I appreciate your insight.

**Mr. Frosch** thanked the Board, and said he hoped the short notice didn't cause too much disturbance.

**Ms. Torres-Moskovitz:** As a citizen, I find it a big conflict of interest.

**Mr. Frosch:** I respect that.

**Ms. Balsam:** Can I just say, we really do need to leave. They're going to kick us out of the room.

**Mr. Hylton:** This will conclude our May 16, 2019, Loft Board meeting. Our next public meeting will be held at 22 Reade St. Main Floor, Spector Hall, on Thursday, June 20, 2019, at 2:00PM.

The End