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

September 5, 2019

The meeting began at 10:50 AM

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; Renaldo Hylton, Chairperson Designee; and Helaine Balsam, Loft Board, Executive Director.

INTRODUCTION:

Chairperson Hylton welcomed those present to the September 5, 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.

Mr. Hylton: Last month, we had agreed to devote a fifteen-minute period at this meeting to discuss the new Loft Board forms. So I'd like to open the floor up to the Board members for that maximum amount of time to offer any comments or feedback they might have.

Mr. DeLaney: Mr. Chairman, before we do that, I'd like to ask a couple of questions, if I might, on general topics. First and foremost, over the past couple of months, I've learned of several buildings where gas service has been interrupted. I believe a number of them have been referred to the Loft Board. This seems to be a function, in some cases, of service being interrupted due to some concern, real or imagined. In other instances, it seems there are owners who are interested in converting from electric to gas. This is further complicated by National Grid taking the position that it doesn't have enough gas, because the pipeline they'd like to see built isn't being built. So they're not interested in providing new service, which apparently can also include restored service.

I've heard from a lot of tenants who depend on gas for heating, hot water, and cooking, and they're concerned that a very cold winter is rapidly approaching. The National Grid overlay also seems to be affecting small businesses. City Council members are speaking very critically of them, and the governor has weighed-in. There's also the fact that, for a number of years, the Board staff has been reticent to inspect heat complaints, for fear of encountering Modine heaters, which are not acceptable in residential dwelling units. So, I would just like to know if the staff has any updates about where we are on this, because it's a crucial issue.

Mr. Hylton said he believes there is a lot of posturing going on between National Grid and the governor's office, and asked Ms. Balsam if she had any information on this.

Ms. Balsam: We have had several buildings with gas issues. I don't think the causes are really relevant. We have met with owners and tenants of buildings that don't have gas, and yes, the owners are routinely proposing electric solutions under the theory that they cannot provide gas, because National Grid will not give them the service they need.

Mr. Hylton: That's pure speculation on the owner's part right? I don't know that this is what they're doing, but they may be just be leveraging the argument between the governor's office and National Grid to get to where they want to go.

Mr. DeLaney: But apparently National Grid has taken the position that restoring gas service that had been cut off is new service.

Ms. Balsam: I don't think that's true. I think the issue is that in a lot of our buildings there are illegal gas lines, so there needs to be new gas piping and meters. That's really the issue. You're talking about people who have had gas, but it was cut off; and to restore it, the owner needs to legalize the system. And that will involve some kind of sub-metering and new meters for each of the units, etc. That's my sense of where National Grid is drawing the line – at where new meters are required.

Mr. Barowitz: It also has something to do with the two major explosions, one in Harlem and one in the East Village. So the gas companies are very cautious about this. Often, in some of these old buildings, they find micro leaks, in which case the gas can be turned off. And Con Ed doesn't care for how long. I know there are a couple of buildings that have been without gas for a few years.

Mr. DeLaney: Yes. I believe 18th Street has gone without gas, without heat, for a couple of winters years now. I've pointed out the two explosions you spoke of to the tenant's I've spoken with; that it's very serious. I think the one in East Harlem killed a dozen people. If you have a gas line that's not kosher, clearly, that needs to be addressed. But if the current context is that your gas gets cut off and who knows if/ when it will ever be restored….Apropos of the preamble you read at the opening of every meeting, it seems to me that it's incumbent upon us to take a deeper dive into this, because it affects the owners and tenants of these building. There seems to have been a surprising number of these cases this summer. Maybe that's a coincidence; maybe not. I've also read articles about small businesses that are all set to open, but can't, because there's no gas. So it cuts across a lot of different lines.

Mr. Hylton said it was his understanding that such new commercial service was what National Grid was referring to; not to new residential use.

Mr. DeLaney: When the Loft Board receives a call from a tenant saying they don't have hot water or heat because the gas is off, do we go inspect, write a violation?

Ms. Balsam: First of all, it's not heating season, so we can't do anything if we get heating complaints now. But the first thing we always do is contact the owner. What do they know; what don't they know. We usually send an inspector. Will they write a violation? It depends on the circumstances. We had one particular building where we knew it was the tenant that called about a leak in his unit. DOB inspected and, not

surprisingly, found a tremendous amount of illegal work, so they shut off the gas in the building. We have met with the owners and tenants of several buildings, and the owners are pushing for electric. Many owners are willing to make concessions, but not as many concessions as the tenants would like. It's difficult to reach an agreement. People want gas for cooking, and I don't blame them. And that is a big impediment to moving forward with a lot of the work. We had at least three conferences during August with these buildings where gas is shut off about this issue.

Mr. DeLaney: Do we see a way forward?

Ms. Balsam: The way I see forward is alternate plan applications, which is not going to get anyone heat this winter, because people are not coming to agreements. And we can't force them to agree.

Mr. DeLaney: There's at least one architect who's suggested a temporary patch: that the owner provide a generator on the street that would allow for electric heat. Because converting to electric is also going to require a ton of electric work that also can't be done very quickly. It's not just, I don't want electric because a) it's not as good and b) it's going to cost me a boatload -- so the landlord is transferring costs, which is a separate issue -- but also in a lot of these buildings, tenants will say, great, I'll pay for electric. I've got a one-year-old child. You've got me. I give up. I'll pay whatever it is….. They still aren't going to be able to do the work quickly.

Ms. Balsam: I think electrical work can be done faster, and we have owners who are pushing to get permits for electrical upgrades. But that involves work in tenant units, and this is not a value judgment one way or the other, but tenants are holding out for concessions. So they're negotiating. In terms of a generator on the street, that was discussed at every conference. Correct me if I'm wrong, but my understanding is you can only do that if you have a central distribution network to get the heat to all of the places in the building. And many of our buildings don't have that. They have individual heating units that are gas-supplied. So a generator on the street wouldn't be able to connect to all the different places where service is required.

Board members discussed and clarified the generator issue, as an electric generator, which would supply electricity for space heaters where needed.

Mr. Hylton: But they are massive generators that would require permitting and a lot of wiring.

Mr. DeLaney: No one is under the impression that there's an easy fix. But there does seem to have been a rash of these this summer, for some reason, and there's a lot of fear and trepidation. Having to cook on electric is unfortunate, but not having heat in the winter and/or possibly hot water is a health and safety issue.

Ms. Balsam: Based on what we've seen recently, hot water doesn't seem to be that much of an issue. Owners are able to put in electric hot-water heaters. But I guess much more electricity would be required to run a number of space heaters.

Mr. Barowitz: You need a 220 line to make hot water just for your own loft. And you can't add anything else to that line. And it's really quite expensive to do. Somehow, the City has to come to grips with this problem,

because the use of gas is going to be diminished over the years. It's a problem. And there's really no solution to it, but to make the City aware. Loft buildings are one thing, but these tenements all over the city are really in terrible condition.

Mr. Hylton: You raise a good point about making the City aware. Perhaps the Loft Board could write a letter to City Hall to raise awareness?

Ms. Torres-Moskovitz: I would add to it, because what I do in architecture is hyper-efficiency. The energy code is becoming very stringent. The idea with electric is that your building envelope is following the energy code, so it's more efficient. If loft buildings are allowed to skip that step and not have to insulate when they're renovating, it makes heating and cooling more expensive for the tenant. All citizens of New York have a responsibility to reduce our fossil fuel consumption. I teach a class in this. I just spoke to the director of the National Grid, and there's bio-fuel coming on line from our waste treatment centers. So there are some alternatives. The bio-fuel is called renewable natural gas. Europe has it. I think it's good that Mr. DeLaney raised this before the heating season. Mr. Chairman, a letter is a good idea, but I think it's a bigger issue

Mr. Hylton: I think it would be a great idea if the Loft Board drafted something for the City to make them aware that this is a problem for the buildings in the loft community, for landlords and tenants alike. Perhaps Mr. DeLaney and I can work with Ms. Torres-Moskovitz to put something together.

Mr. Barowitz: I hope this will work, because on the other hand, the real estate industry doesn't think very much of the Loft Board to begin with. They think it's a joke.

Mr. Hylton: Well, that's OK. We can do our part by putting the information out there. The right person just might see it.

Mr. DeLaney: I think that's a good first step; however, I would ask the Board staff to also consider looking into having the owner be responsible for providing electric where possible. Because otherwise, once the gas is off, the negotiating balance between the owners and the tenants is tilted significantly in the owner's favor. Unless the owner lives in the building, he's not affected by the lack at all. On the other hand, if you take 18th Street as an example, the tenants, some of whom may have young children, are looking at the possibility of being without heat for a couple of years. That's negotiating with a gun to your head. It doesn't seem fair, and I don't think it can produce successful outcomes.

Mr. Hylton: I would just keep in mind that we have to have alternatives, such as a generator or putting in new electricity. The circumstances would dictate the actions that can be taken to compel the owners to do something.

Mr. Roche asked Ms. Balsam to explain more about why nothing can be done about heating issues now.

Ms. Balsam: The rules define the heating season and the temperatures that need to be measured, and we're not in heating season.

Mr. Roche made the point that the public needs to be made aware of what they should not do, if they find themselves without heat in the winter.

Ms. Balsam: I assume the Fire Department already has informative material about this, and that the staff would be happy to distribute it to loft tenants.

Mr. Roche, Ms. Balsam and Mr. Hylton agreed they would work out the logistics for disseminating this information.

Before moving on to rules, **Mr. DeLaney** had some other questions.

Mr. DeLaney proposed a change in the start time for the longer meetings, from 10:30AM to earlier or later.

Mr. Hylton said they would see if the room is available earlier for the next Board meeting, and then poll the members.

Mr. DeLaney asked Ms. Balsam if, in the wake of the article from *Crain's* that was circulated, if it would be at all possible to get some updates stats on the buildings.

Ms. Balsam: I just want to say that the owner mentioned in that article is suing us, so our position was and is that we won't comment upon it. If you want stats, we can certainly give the Board stats.

Mr. DeLaney: But what if a reporter from a more even-handed publication is curious about a building where there's a law suit, but also wants some general information about how the Loft Law works? Is there a way you can separate them and say, we can't talk about the former but we can address the latter? Because, as seen with the *Crain's* article, where there's a lack of facts, there's plenty of room for fantasy.

Mr. Hylton: Just so you know, procedurally, reporters are supposed to go through our Press Office. We cannot speak directly to the news media. Whatever requests reporters make come to us through the Press Office. And it's been my experience that what often happens is they come to you at the last minute, right before they're going to file their report. Also, they are somewhat biased and have already written the story from a certain point of view. Then they tell you at the last minute, by 5PM, you have to supply us with this. So it's not our decision what is released to the press. It's the DOB Press Office.

Mr. DeLaney's last question was about the status of the new Loft Board website.

Ms. Balsam and Mr. Hylton responded, saying that it is in the works, and is going to be very good. It's taking a while, because there are many points and protocols and requirements it has to adhere to. They would try and find out what the go-live date is.

Mr. DeLaney asked if it would be easier to make changes on the new web site. He mentioned that the Loft Board's move from the 4th to the 5th floor, which happened a long time ago, was still listed as Recent News on

the site, but there was no mention of the June 25th amendment. He wondered if things like that were something the staff could do quickly and easily.

Mr. Hylton explained that all sites and their content were managed by DOITT.

Ms. Torres-Moskovitz also wanted ask a couple of questions before moving on to rules. She had written a letter in the spring about self-certification of loft buildings, and she wondered if staff had spoken to DOB and had anything to report. She also inquired about the status of the Project Guidelines – if it would be available on line.

Mr. Hylton said that it was put on the site at the end of July.

Ms. Torres-Moskovitz asked about the status of the inspectors dedicated to loft buildings – how that was going; how their training was progressing.

Ms. Balsam said that DOB handles the training, and there is a session scheduled for the examiners at the end of next week.

Mr. Hylton: That's the plan -- to get those plan examiners trained**.** So far, there hasn't been any feedback on the Project Guidelines; perhaps because people aren't aware yet that it's there.

Ms. Torres-Moskovitz: It would be nice if, as it's rolling out, we had some way to know how it's working.

Ms. Balsam: I can say that even before it was rolled out, at some of the Narrative Statement conferences, I could see that the architects had followed some of the Project Guidelines. So there has been forward motion based on the material in the Guidelines, and I assume it will grow after the training, which is September 13th.

Mr. DeLaney: Is that just a one-shot deal?

Ms. Balsam: No, there's a follow-up scheduled a couple of weeks after that. So, give them the over-view, let them deal with it for a few weeks, and then get feedback. Again, this is not me; this is DOB Technical Affairs.

Ms. Torres-Moskovitz: I don't remember if there was an answer to my first question about self-certification.

Ms. Balsam: The particular cases you had pointed out, we had already investigated. But I will check on that and get back to you.

Mr. DeLaney: As I recall, the letter was more a request for us to take a look at the advisability of that approach in the loft community.

Mr. Hylton: I'm sorry; I may have dropped the ball on that. I'll look into it. So, we have a staff announcement, and then Ms. Balsam will commence with the rules.

Ms. Balsam introduced the new staff attorney, Amy Lee, who is also an engineer, with a degree in applied sciences in engineering and a concentration in civil and environmental engineering.

Before starting, it was agreed to review the new forms at another session. But Ms. Balsam did note that the § 281(6) registration form had some incorrect dates, which have been corrected.

RULE-MAKING

Ms. Balsam: I had handed out a document at the July meeting, based on questions the Board members had had when reviewing §2-08. I wanted to address those issues first, so we can hopefully conclude that section, and then return to §2-01. The first questions were about footnotes. We had asterisks (*) in some of the rules, and the Board wanted to know what those footnotes say. The footnotes are on pages 142 and 143 of our master document.

Ms. Balsam provided the Board members with the corresponding footnote text as follows, and asked if there were any questions or comments about it.

Page 142 line 16: The * here is for a footnote that reads:

> [FN3]. Grandfathering procedures in this classification are designated in the Zoning Resolution and include, but are not limited to §§ 11-27, 11-28, 15-021(c), 15-021(d), 15-215, 41-141, 42-111D(1)(f), 111-201(a) and 111-201(b); as of April 7, 1983,[. As] as well as other sections that have been or will be adopted in the future.

Page 143, line 2: The ** here is for a footnote that reads:

> [FN4]. Grandfathering procedures in this classification are designated in the Zoning Resolution and include, but are not limited to § 74-782; as of April 7, 1983,[. As] as well as other sections that have been or will be adopted in the future.

Page 143, line 16: The *** here is for a footnote that reads:

> [FN5]. A "family" is either a person occupying a dwelling and maintaining a household with not more than four borders, roomers or lodgers or two or more persons occupying a dwelling, living together and maintaining a common household with not more than four borders, roomers or lodgers. See MDL § 4(5).

Mr. DeLaney: It seems odd to have footnotes to a rule. I would think that if it's important enough to be in the document, then it should be in the body of the document.

Ms. Balsam said if he was suggesting moving the text up into the body of the rule, that would be fine.

Ms. Torres-Moskovitz: From just a quick review, at least three of them look like words that are being defined. So, if not moved into the rule, itself, they could be put into the definition section.

Mr. DeLaney: Or do we even need it?

Ms. Balsam: I think it's good to have the information there, particularly about grandfathering clauses. But at this point, it doesn't really matter. I don't know for sure, but my guess is these would have been added at the very beginning, when this was first enacted. Whatever the Board wants to do.

Ms. Torres-Moskovitz: Which one is "family"?

Ms. Balsam: Family is on page 143, line 16: (must) "be the residence or home of a 'family' as defined in MDL § 4(5)*** that is living independently." And then the footnote gives the definition of family contained in MDL § 4(5).

Mr. DeLaney: I think that one should definitely go with the rule.

Mr. Roche: I think if we're going to do one, we should do all three. My personal preference would be to put it there rather than have to look somewhere else.

Mr. Barowitz: The footnotes make no grammatical sense. But that's a different problem.

Ms. Balsam: The definition section we have now defines family as that in MDL § 4(5): "may consist of a person or persons, regardless of whether they are related by marriage or ancestry."

Ms. Torres-Moskovitz: I'm curious, who defined that?

Mr. Hylton: The Multiple Dwelling Law.

Ms. Torres-Moskovitz: Because I just did a workshop that addressed that; how the census defines family.

Ms. Cruz: What we can do is put the MDL definition into the definition section and delete that footnote completely.

Mr. Hylton: Is there a conflict between the footnote and the MDL?

Ms. Balsam: No, both of them reference the MDL. The difference is that the definition of family we have in ours adds, "…regardless of whether they are related by marriage or ancestry." But that's OK. We can keep that in. So family would be:

"A 'family' is either a person occupying a dwelling and maintaining a household, with not more than four boarders, roomers or lodgers, or two or more persons occupying a dwelling, living together and maintaining a common household, with not more than four boarders, roomers or lodgers, regardless of whether they are related by marriage or ancestry." That would be the definition of family in our rule, in the definition section in the front. And then we would change this to be "the residence of a home or family that is living independently."

Mr. DeLaney: What you're reading is different than what the existing footnote is.

Mr. Hylton: Just be careful….

Ms. Balsam: What I just read is the existing footnote, and then I added what is in our current definition section (Chapter 1), "…regardless of whether they are related by marriage or ancestry."

Mr. Hylton: But you mentioned person or persons. So be careful. I think what you just read is not what I was reading.

Ms. Balsam: (Re person or persons) Oh, yes, obviously.

Mr. DeLaney: So the gist of this, if I were trying to explain it to an ordinary person, is that a family can also include four boarders? Or plus four boarders?

Ms. Balsam and Mr. Hylton: Up to four boarders. Not more than four boarders.

Ms. Balsam: But on the "two or more persons occupying a dwelling, living together and maintaining a common household," we've had litigation around that whole concept. I think in one there were nine unrelated individuals, and the Board decided that that didn't meet the definition of family. And the Court actually struck it down and said you'd have to see whether or not they have a common household. So, you can have nine unrelated people living together, if they're maintaining a common a household, regardless of boarders, roomers, or lodgers.

Ms. Torres-Moskovitz asked what building that was, and **Ms. Balsam** replied that it was 13-15 Thames St.

Ms. Balsam: So on page 143, line 16, we'll change this to say, "be the residence or home of a 'family' "-- and we'll take out: "as defined in MDL § 4(5)*** " -- and keep: "that is living independently." And then at the front, we'll change the definition of family to include the MDL definition, rather than just referencing it.

Mr. DeLaney: So we'll end up with one comprehensive definition?

Ms. Balsam: Yes.

Ms. Torres-Moskovitz: This is minor, but I think important. When you mentioned the 13-15 Thames case – as I'm fairly new to the Loft Board, I'm trying to get a sense of the important cases that affect how things are decided here. So I've started my own list. I'm wondering if you have a list of the important cases, the big cases, that the public can have. A kind of a summary of case law that's important for Loft Board members to know.

Ms. Balsam: I don't think we have any comprehensive list.

Ms. Torres-Moskovitz: In the Project Guidelines, for example, the DOB listed all the technical bulletins -- 1993, etc. -- that support certain aspects of it. It would be helpful for non-lawyers to know the case law that might affect future decisions.

Ms. Balsam: We can certainly give you copies of decisions. 13-15 Thames was also a court case. Clearly, when there's a decision by the Appellate Division or the Court of Appeals, those are going to be important. So we can certainly send you that, but I don't think there's a "top 10 hit list" type of thing.

Ms. Torres-Moskovitz expressed the importance of this by pointing to the relevance of the immediate example. She felt it would have been helpful for her to know about the 13-15 Thames case before deciding on changes to rules and/or wording related to the definition of family.

Ms. Balsam: We can send you that decision.

Mr. DeLaney: I understand what she (Ms. Torres-Moskovitz) is asking.

Ms. Balsam: All the decisions are on New York Law School's City Admin web site, but I don't think that's what you're asking for. What you're asking for is more like a legal digest, where subject matter experts distill the cases and produce a document that says, here are the key things in this particular area of law. It's broken down by sections. If that's what you're asking for, we don't have that.

Ms. Torres-Moskovitz said she felt that the staff, many Board members, and lawyers were familiar with a lot of this information, as are many landlords and tenants, but she is not; and having this kind of reference material would be very helpful to her understanding.

Ms. Balsam: Honestly, I have to say, I don't have anything like that, and I don't know that I have the resources right now to devote to creating it. We give you the cases to decide the cases. If in rule-making you would like to know if there are cases that are relevant to the rules under consideration, we can certainly pull some cases for you. But to develop a digest? We just can't do that right now.

Ms. Torres-Moskovitz: Not a digest. For example, I spoke to a lawyer who gave me four important cases, and I took some notes, and now I know them. I typed them up, and I'd like to keep building on that. Whether it's my time to do this or someone else's, I don't know. But I need to know these things in order to be a good citizen, serving the public.

Mr. DeLaney: I think what Ms. Torres-Moskovitz is asking is worth considering. It doesn't need to be a digest, but just a list of categorized cases: windows, doors, etc. There are two or three windows cases that pave the way.

Ms. Balsam: OK, but we don't have that document. We'd have to assign someone to produce it, and we no longer have interns.

Ms. Torres-Moskovitz: Maybe we (the Board) could generate it, and you could just critique it. I'm serious.

Ms. Balsam: I understand, and I do take this seriously; but I'm telling you that we don't have the resources to do this; and we set aside five hours to do rule-making, and we're now almost an hour and a half in, and we've barely done anything.

Ms. Torres-Moskovitz: I understand your frustration, which is why I wanted to talk about two items at the end of the meeting. To me this is intrinsic to informed rule-making. I need to understand what the case law is, and I'm not a lawyer. I don't think what I'm asking for is irrational. It's a very rational request.

Ms. Balsam: I didn't say that it was. I said we don't have the resources to do it.

Ms. Torres-Moskovitz: And I said we would prepare it for your review, which would save you all that time.

Mr. Hylton: Ok, let's move on.

Ms. Balsam: Are we OK with the other two footnotes, or do you want to move the text of the footnotes into the rule? For page 143, line 16, and page 143, line 2.

The Board members all agreed that they should move the text into the body of the rule.

Ms. Balsam summarized: Page 142, line 16, and page 143, line 2, would be moved into the rule, and line 16 on page 143 will go into the definitions.

Ms. Balsam: Next is page 145, line 6, and the definition of cellar. The Board had asked for different definitions of cellar. Right now, we reference the MDL definition of cellar, **which is described in MDL § 4(37).**

"an enclosed space having more than one-half of its height below the curb level; except that where every part of the building is set back more than twenty-five feet from a street line, the height shall be measured from the adjoining grade elevations calculated from final grade elevations taken at intervals of ten feet around the exterior walls of the building. A cellar shall not be counted as a story."

The next one is the Zone Resolution:

"A 'cellar,' except where a #base plane# is used to determine "#building# height, is a space wholly or partly below #curb level#, with more than one-half its height (measured from floor to ceiling) below #curb level#. On #through lots#, the #curb level# nearest to such space shall be used to determine whether such space is a #cellar#. Where a #base plane# is used to determine #building# height, a #cellar# is a space wholly or partly below the #base plane#, with more than one-half its height (measured from floor to ceiling) below the #base plane#.

In addition, the following rules shall apply:

(a) When a sloping #base plane# is established, a #cellar# is a space wholly or partly below the #street wall line level#, with more than one-half its height (measured from floor to ceiling) below the #street wall line level# used to establish such #base plane#. On #through lots#, the #street wall line level# nearest to such space shall be used to determine whether such space is a #cellar#.

(b) All of the floor space with at least one-half its height (measured from floor to ceiling) above #curb level# shall be considered to be a #basement# where, subsequent to December 5, 1990, the level of any #yard# except that portion of a #yard# in front of the entrance to a garage on a #zoning lot# is lowered below the level of the #base plane#."

And the last one is the Building Code definition:

2008 Building Code, at section 502.1 defines cellar as:

"That portion of a building that is partly or wholly underground, and having one-half or more of its clear height (measured from finished floor to finished ceiling) below the grade plane. Cellars shall not be counted as stories in measuring the height of the buildings."

Mr. DeLaney: As usual, trying to read the Zoning Resolution is a challenge. They were way ahead of their time with the hash-tags. You have to hand it to them. They were visionary.

Ms. Balsam explained that the hash-tags just indicate that these are defined terms.

Mr. DeLaney: Yes, I know. But how much difference is there between these definitions?

Ms. Balsam: I think that's a question for discussion.

Ms. Torres-Moskovitz: They should be more-or-less in sync. But what comes up often with brownstones is that the street-level space, that you just walk right into because they changed the grading, is still referred to as a basement. Every time I do a project, I have to investigate this, because Zoning calls it basement plus two stories; a surveyor might come and call it a three-story. But that's not how NYC DOB examiners look at it. It's always an (individual) assessment. The realtors call it the garden level, but we call it the basement. I'm working on a project now where the basement is fully above grade, but the building is still defined as a basement with two stories above it.

Ms. Balsam: Fortunately, we don't have to deal with basements. We can delete the references to basements. The question is, what's the definition of cellar?

Mr. DeLaney: Obviously, where this is germane is that I can predict with a high degree of certainty that there will be a case somewhere down the line that will turn on, "It's a basement, not a cellar." "No, it's not a cellar, it's a basement."

Ms. Torres-Moskovitz: What I know from working on Build It Back – because no one was allowed to keep a cellar – is this. If it doesn't have windows and it's below grade, it's a cellar. And when you do a row house, you're supposed to write (on the plans) that no one will inhabit this space.

Mr. Barowitz: To me, there's not much difference between the two terms. I always thought of the cellar being beneath the basement. But in this instance, it's not, necessarily. So certainly in these tenement

buildings, where there's a step down, and maybe it leads on to, as you say, a garden; there's a window there, and there's a window down the stairway….That's legal, but not in lofts.

Mr. Roche: Mr. Chairman, how closely does what we have now match up with what DOB has?

Mr. Hylton: This is what it is.

Mr. Roche: This is what it is? Then that's what we have to stay with, really. Because I'm telling you, we have to cross-reference this kind of thing every day, and even the FDNY uses what the DOB says as our baseline.

Mr. Hylton: Didn't we just decide a case recently that dealt with this?

Ms. Balsam: That was a basement, but we don't have to deal with basements.

Mr. Hylton: The difference between a cellar and a basement is only the height of a brick, right? Less than half of the space is below grade.

Ms. Balsam: Clearly the Zoning Resolution definition, which is several paragraphs, is more specific. The DOB definition is the shortest, and the MDL is in the middle. There is an argument to be made that since Article 7-C is part of the MDL, we should use the definitions in the MDL. But I don't know that we necessarily have to.

Ms. Cruz: We would have to explain why we are not using the MDL definition.

Mr. Hylton: Does it conflict with anything?

Ms. Balsam: Does the definition in the MDL conflict with the DOB or Zoning definition? The DOB definition is not as specific. Basically, they all talk about the space having more than one half of its height below the curb level. And then you get into the issue of what is the curb level? MDL § 4-37 talks about how you would figure that out. DOB doesn't.

Mr. Hylton: DOB may use terms that have to be more defined. You'd have to look further into the MDL or Zoning to get a precise definition. The definition is more or less similar. One is just more precisely defined.

Ms. Balsam: It tells you how to calculate it.

Mr. Hylton: But that's not part of the definition.

Ms. Balsam: But if the DOB definition says, "That portion of a building that is partly or wholly underground, and having one-half or more of its clear height (measured from finished floor to finished ceiling) below the grade plane," then what's the "grade plane"?

Mr. Hylton: Then you have to go find grade plane in the definitions.

Ms. Torres-Moskovitz added that this happened with Build It Back. A surveyor's stamp was required as part of the approval. It wasn't just left to the architect to decide where grade was. She felt that the same requirement might be applied to loft cases, if there are questions about just where that line is.

Ms. Balsam: If it came up in a case, that would be an issue of proof, and I'm hesitant to tell people what they must produce in terms of their evidence for their cases.

Ms. Torres-Moskovitz: DOB would make them do that.

Ms. Balsam: Right.

Ms. Torres-Moskovitz: Whosever architect it is would have to produce that, which would help the situation – knowing that they would have to produce that.

Mr. Hylton: What do you think? A more simple definition, or… ?

Ms. Cruz: Less is more.

And several members agreed with that.

Mr. DeLaney to Ms. Cruz: You suggest going with the MDL?

Ms. Cruz: Go with the MDL. If it needs to be defined further, we can do it in the case law. We can always remand for more information if we need to. With regard to requiring certain things, we can do that in the cases.

Ms. Torres-Moskovitz: So the question we asked you to look into was how cellar is defined in these various documents?

Ms. Balsam: Yes.

Ms. Torres-Moskovitz: And you're saying, in the definition, use the MDL definition, but then make reference to the Zoning Resolution and…?

Ms. Balsam: We're not saying. The advice Ms. Cruz is giving – and I agree with her – is to stick with the MDL definition. So if it must not be located in a cellar, as defined in MDL §4-37.

Ms. Cruz: We can deal with all of that when the case is in front of us; when the professionals have supplied us with the information as to what is curb level -- which would probably require some type of survey.

Ms. Torres-Moskovitz: So just keep the MDL definition. And we have this document, so it's an easy reference for us. That's basically what the Project Guidelines was doing – pulling together information from various sources. I like that we have it, and I see your point about just staying with the MDL definition.

Mr. DeLaney: Just one quick question. The 2008 Building Code – was that the first time the Building Code addressed the concept of a cellar?

Mr. Hylton: I don't know.

Mr. Roche: I can't imagine that.

Mr. DeLaney: But it could be. Because the question is, and Ms. Torres-Moskovitz can help me out here, **as** I understand it, sometimes people file plans with the Loft Board citing this code and that code. So I'm just wondering if there are dueling cellar definitions in the various Building Codes.

Ms. Torres-Moskovitz: Yes, I think there probably are. What is it – 1938, 1968, 2008?

Mr. Roche: But wouldn't you typically use the code that was in effect at the time the building was erected?

Mr. DeLaney: It's my understanding that architects sometimes pick the code that best suits them.

Ms. Balsam: Right.

Mr. Roche: I'm just thinking out loud here; not trying to make any points. I know that when we research a building, we do it within the realm of the code that was in effect at the time the building was built. If I'm dealing with a building from 1927, I'm going to refer to the code that was in place in 1927, not those from 1968. I'm not going to reference a 2014 building code for a building built in 1927.

Mr. DeLaney: But that's not going to help with ADA requirements.

Mr. Hylton: If you're building under the 2008 code, then you use the 2008 definitions.

Mr. Roche: That's exactly what I'm saying.

Mr. Hylton: Not the year the building was built.

Mr. Roche: I'm not talking about new building; I'm talking about a building that hasn't had any work done to it.

Mr. Hylton: But if you're doing a rehab, it has to comply with the current codes.

Mr. Roche: Right. If you're doing a rehab. If you're talking about a building that's just sitting there; where no work is being done…

Ms. Balsam: Right. Then you would look back to what the code was at that time.

Mr. Barowitz: And particularly when you look at some of these buildings in the outer boroughs. It's very simple in SoHo and NoHo, but you go to the outer boroughs, the buildings are very different.

Mr. Roche: I think where we're going to run into an issue with this going forward is, as legislation allows more people to live in cellars and/or basements or whatever we determine they are, we're going to see more and more cases where this will apply.

Ms. Torres-Moskovitz: My thinking is based on the garden level definition. Everyone gets to live in those. In terms of row houses, which is the main typology here. The new law brings us in sync with that. Before, being allowed to live in a basement was an exception for some odd reason. Now it's not. I don't think anyone's ever been, legally, allowed to live in a cellar. There might be hairline issues around where the fifty percent above is…

Mr. Roche: Right. How that's calculated.

Mr. Hylton: It will really be borderline.

Ms. Torres-Moskovitz: Yes, it was like that in certain Build It Back cases. They're rare, but they're out there. There might be nuances, but I always hear that one-half rule: more than half underground is a cellar.

Mr. DeLaney: So we're going to agree that we're going to go with just the MDL. We could write eight pages that, still, someday, someone will disagree with. There's no definition we could write that would cover everything.

Mr. Roche: In this particular case, I like Ms. Cruz's analogy of less is more. That way, we're not tying ourselves down too tightly.

Ms. Balsam: OK. So the next two footnotes in the document are:

Page 145, line 23: The * here refers to a footnote that reads:

> [FN6]. The New York State Legislature made a typographical error in § 281(5) by listing 47th Street as in the Long Island City Industrial Business Zone. The intended street name is 47th Avenue not 47th Street. The correct name is listed herein.

Page 147, Line 4: Same as previous footnote.

Ms. Balsam: I think we should leave this footnote, unless you feel strongly about it.

Mr. DeLaney: It was never corrected? I thought it was.

Ms. Cruz said she would check.

Ms. Balsam: If it was corrected, we don't have to worry about it. So that brings us to Page 154 line 12. This was a change to the rule regarding the calculation of residential units, which reads:

"For purposes of counting residential units to determine whether a building qualifies for coverage as an IMD building and must be registered, [~~each~~] the unit seeking coverage must meet the criteria set forth in MDL § 281 and these rules, including 29 RCNY…" etcetera, etcetera.

This was a change from requiring three units, all of which had to meet all of the criteria. This was a legislative enactment, and the question was, is there anything specific in the legislative history about the seeking-coverage change to the law. And my answer is:

Regarding "seeking coverage," there is no legislative history about that specific language, but the Assembly Memo in Support states the section "updates the application requirements for units eligible under the 2008-2009…eligibility period."

Mr. Roche: What was the issue here?

Ms. Balsam: I think Mr. Carver had raised the issue. It's right on the first page.

Mr. Barowitz: I don't know what this is even doing here. The AIR held that joint living-working requirements really only applied to buildings in SoHo and a little bit to the…They don't apply to the outer boroughs, do they?

Ms. Balsam: I don't know, but there weren't any proposed changes to those sections of the rules, except to add § 281(6). And we're not quite at that spot yet. We're a little bit above that, on line 12. The Legislature changed the law: "…provided that the unit seeking coverage is not located in a cellar and has at least one entrance," etcetera, etcetera. It used to say, "provided that the unit is not located in a basement or cellar and has at least…." They added the language, "seeking coverage," so we are adding the language, "seeking coverage," to the rule.

Mr. DeLaney: And omitting the word, "each."

Ms. Balsam: Correct. Mr. Carver was concerned and wanted to know the legislative history on that specific issue. There wasn't anything on that specific language, but it is a change that the Legislature made, so I think we should make the change to the rule.

And Martha found that the error referenced in the previous two footnotes (pages 145 and 147) had been corrected. So we can eliminate them. And that brings us back to page 154, the unit seeking coverage. Are we all OK with this?

Now, Mr. Barowitz, we come to your question, which was about JLWQs. You wanted to know how the Zoning Resolution defined JLWQs. I think our units, if they were still going to be called JLWQAs, would fall under section (c) of the Zoning Resolution:

"(c) by any person who is entitled to occupancy by any other provision of law."

And "other provision of law" would be the Loft Law. Would you want to make any changes to that section at all, Mr. Barowitz?

Ms. Torres-Moskovitz: I think he was asking if it only applied in SoHo or Tribeca. Does it apply to Brooklyn?

Mr. Barowitz: I certainly don't know all of these districts mentioned in (c) -- M1-5A and M1-5B. I don't know if they apply to any other areas of the City, outside Manhattan. Does anyone know that?

Ms. Balsam: I don't think they do.

Mr. Barowitz: They probably don't.

Ms. Balsam: But for our purposes, do we want to change any of this? Other than adding § 281(6) where necessary? Which is on line 16.

Mr. Barowitz: I don't see where § 281(6) is going to cover any more spaces in SoHo, NoHo, and Tribeca.

Ms. Balsam: But would you want to foreclose that possibility?

Mr. Barowitz: What it's doing is elevating something that we've had no concern about all these years. Occasionally, we would get an inquiry from the Law Department about the artists-only district of SoHo, and we've always ignored it, because it's not under our jurisdiction to make those determinations.

Ms. Balsam: So in terms of rule-making, there are two issues on this page. One is on line 16, where we're adding § 281(6). And I think you're saying you don't think it's necessary to add it. And the other is on line 20, where we've already suggested taking out, "pursuant to the Zoning Resolution."

Ms. Torres-Moskovitz: I think 19 should stay.

Ms. Balsam: Do you want to leave it as "pursuant to the Zoning Resolution"? I'm Ok with that.

Ms. Torres-Moskovitz: It's great you pulled this quote from Zoning. Thank you. But I don't think we need to include all it.

Ms. Balsam: I totally agree with that. I think the issue was, we should know what it says before we decide to delete it. We could certainly keep in "pursuant to the Zoning Resolution."

Mr. DeLaney: The question I have about the Zoning Resolution is this: in the first paragraph you quote, it says, "consists of one or more #rooms# in a #non-residential building#." But joint-living-working quarters for artists can be a description of a unit in what has now, through compliance, become a residential unit. So, as a proud amateur when it comes to reading the Zoning Resolution, this would almost seem to be saying that this definition is only applicable to non-residential buildings. But we know that in SoHo and NoHo, the Department of Buildings accepts joint-living-working quarters for artists as residential units, in what are now residential buildings with residential Certificates of Occupancy. In lieu of being a Class A multiple dwelling.

Ms. Balsam: That leans being in favor of taking out "pursuant to the Zoning Resolution"?

Mr. DeLaney: In my small-minded way of looking at it, yes. Which is what you're proposing to do.

Ms. Balsam: Yes. So, let me know what you want to do, and we'll do it.

Ms. Torres-Moskovitz: I get line 19; but line 16?

Ms. Balsam: Mr. DeLaney was talking about line 20, so let's stay with that for the moment. Then we'll go back to 16. The proposal for line 20 is to take out "pursuant to the Zoning Resolution," and I think his argument is that the definition in the Zoning Resolution of a JLWQA conflicts with what we're trying to accomplish. Because the definition in JLWQA is for units in non-residential buildings; and ultimately, our buildings, or portions thereof, become residential buildings. So how can you have something defined as a unit in a non-residential building, if the building then obtains a C of O? Is it still legal? (To Mr. DeLaney) Am I right?

Mr. DeLaney: Yes.

Ms. Torres-Moskovitz: Do you still have people applying under this?

Ms. Balsam: We do still get applications for buildings in Manhattan. Now we are, since the statute of limitations was lifted in June. Whether or not they're in the particular districts where this applies, I don't know.

Mr. DeLaney: We've certainly got buildings that came in under § 281(1), that have not yet gotten a Certificate of Occupancy, in SoHo and NoHo, where it would be likely that the application would be to have those buildings designated JLWQA.

Ms. Balsam: I think it's the architects or the owners who actually fill out the Schedule A. They can say what they want. Not that we would object to it, if it said JLWQA.

Ms. Cruz: What I don't understand is that this particular section is talking about how to calculate the residential units that determine whether or not the building is qualified. So what we're talking about here is a non-residential unit.

Mr. DeLaney: Pre- C of O.

Ms. Cruz: Yes, pre-C of O.

Mr. DeLaney: That being the case, would striking out "pursuant to the Zoning Resolution" create a problem?

Ms. Cruz: I'm not sure. I don't know where else this particular term is defined, or if it would be inconsistent with this definition.

Ms. Balsam: It's defined in the MDL, in § 277.

Mr. DeLaney: If you have, for example, a building in SoHo that had two JLWQAs and still had commercial space, but rented a unit residentially, recently; and had someone apply under § 281(6). And they say, there are two units, now I'm the third, so this should be an IMD. We would say…

Ms. Cruz: We would say yes because this rule says that, despite the designation as JLWQA, the building can still be an IMD. Those two other units that were occupied during the Window Period, provided that they meet the other criteria, would be a basis to grant coverage.

Mr. Barowitz: I wonder how many buildings there are in Manhattan from 1981-2, that are still not under the Loft Law. Do we know?

Ms. Balsam: I think there's around one hundred. I can check. But most of them are close.

Mr. Barowitz: Don't you think it's important that we go out there to these bad buildings and get this over with in Manhattan once and for all?

Ms. Balsam: Yes, I do. I have those statistics, and I can give them to you. But most of them are very close.

Ms. Torres-Moskovitz: I'm sorry, if I'm not as well-versed in this. MDL also defines the JWLQ?

Ms. Balsam: It defines "artist," and it talks about JLWQs, in Article 7-B. MDL § 277 says, "Any building in any city of more than one million persons…….. may, notwithstanding any other article of this chapter, or any provision of law covering the same subject matter……be occupied in whole or in part for joint living-work

quarters for artists or general residential purposes if such occupancy is in compliance with this article." And then it goes on to list all the conditions. So it does use the term. The word "artist" is defined in § 276.

Ms. Torres-Moskovitz: So MDL comes from the State, and Zoning? Doesn't the State have some control over that, too?

Ms. Balsam: No, Zoning is the City. But State law trumps City Zoning.

Ms. Torres-Moskovitz: Our role is to be in sync with State law, telling us what to do. But then, by this, we're warning people that there's the Zoning definition to be aware of?

Ms. Balsam: If we leave it in there, yes.

Ms. Torres-Moskovitz: To me, from the passage you just read from 7-B, it's a little vague. It sounds like they're referencing Zoning. In our definitions section, do we define JLWQA based on Zoning?

Ms. Balsam: I don't think we did.

Mr. Barowitz: In that letter you sent around to the Real Estate Board, they never mentioned joint-living-working quarters for artists. They just mention living quarters. Even though the Loft Law came into effect, essentially, for the artists. Of course, you can't say that, because it's discriminatory. So it got opened up, which I think is the proper thing. And I must say that when I go, as I do often, to see who's applying for coverage, and I put in their names, they're either artists or work in some area of the art world. That still seems to be the case, at least with many of the people I look up. But what I'm saying is, it really doesn't matter at this point. So it leaves me a little befuddled as to why it's in there.

Ms. Torres-Moskovitz: I don't want to cut out a future possibility…

Mr. Barowitz: But everybody works in their apartment these days. When I used to go into SoHo looking at loft spaces, they'd tell me it's live-work. And I'd ask, what does that mean?

Ms. Torres-Moskovitz: But Zoning tells you, legally, what percentage…

Mr. Barowitz: Yes, but it's there specifically for SoHo, and to some degree NoHo, and to a small degree Chelsea.

Ms. Balsam: So, to the extent that we want to add § 281(6) to line 16, after this discussion, my inclination is to say we should add it, because it's true -- it may be a remote possibility, but let's include it as a unit that would count. Is everyone OK with that?

The Board members all agreed.

Ms. Balsam: That leaves us with line 20, whether to include the Zoning Resolution or not. What do you want to do?

Mr. Hylton: I say, take it out.

Mr. DeLaney: If you take it out, then where is this joint-living-working quarters described? It's on the C of O. It's in Article 7-B; whereas here, we're saying, as limited to that defined in the Zoning Resolution.

Ms. Torres-Moskovitz: But are you proposing saying, in 19, "any residential unit designated as joint-living-working quarters for artists," – do you make that bold, as Mr. Carter suggested doing with all the definitions?

Ms. Balsam: Well, we're not defining this term. The question is if it should read, "any residential unit designated as joint-living-working quarters for artists, except as provided below in 29 RCNY § 2-08(d)(2)(ii)." We take out "pursuant to the Zoning Resolution," which makes it more restrictive. We want it broader, so we can get more units.

Ms. Torres-Moskovitz: So leaving it vague is good; not defining it? It seems we're defining terms that aren't common….

Ms. Balsam: The JLWQA is used in different contexts, and I think Mr. DeLaney's point is why should you limit it to just the context of the Zoning Resolution, if you could also include a unit that is, let's say, listed on a C of O as JLWQA.

Mr. Barowitz: At a SoHo/ NoHo re-zoning meeting, the fellow who was running it asked how many people had been living there three to five years? Half a dozen hands went up. Five to fifteen years? Thirty hands. Fifteen to thirty-five? Sixty hands went up. What this seems to indicate is that this is not a closed society.

Ms. Balsam: So why don't we take it out? Everyone's OK with taking it out?

Ms. Torres-Moskovitz: What are you taking out?

Ms. Balsam: "pursuant to the Zoning Resolution"

Ms. Torres-Moskovitz: You're leaving, "joint-living-working quarters for artists," even though we're not defining it? And you're doing that because the MDL definition is a bit vague….

Ms. Balsam: Right. Because we want to be able to include those units as counting toward the number of residential units there are for the purposes of coverage. OK? (She continued):

Page 159, line 14. We had a question about the Board of Estimate – what happened to it. And whether or not we should leave, "or its successor." The question was, is there a singular successor? It was not easy to find information, and I'm ashamed to say that I looked at a Wikipedia article, because you never know what you might find there. And it said that most of the Board of Estimate's functions were transferred to the City Council. Since "most of them" is not "all of them," to the extent that there might have been functions that would be applicable, I think we should leave the text as it is.

Mr. Barowitz: The Board of Estimate was declared illegal. That's why it no longer exists.

Ms. Balsam: Ok, I'll take your word for it. But I think in the event that not all of its functions were transferred to the City Council, we should leave the language as it is: "…the Board of Estimate, or its successors." Depending on what the functions are, we would have to figure out what the successors to the Board of Estimate are. So I think, just leave it. Are we OK with that?

Ms. Torres-Moskovitz didn't quite understand the logic and wondered if there wasn't anyone in City Hall who knows exactly what the situation is.

Ms. Balsam: We're leaving it in because when the Board of Estimate was disbanded all of its functions were not transferred to one place. If they had all gone to one place, then we could just use the name of that division. But since they haven't all been transferred, we want to be sure we that we're covering (everything).

Ms. Torres-Moskovitz asked if after Board of Estimate, something in parenthesis could be added indicating that it was no longer in existence; because she envisioned, for example, a young person working in her office reading this, coming across Board of Estimate, and wasting a lot of time trying to find out what it was, when in fact, it was of no consequence. She also felt this was related to the view that citizens need to know more about their government and how it works.

Mr. Roche: I don't think there's any harm in putting something like that in parenthesis.

Mr. DeLaney: At this point, what the Board of Estimate was is nice to know; but in terms of dealing with City government today, you don't need to know.

Mr. Hylton: Perhaps we can just say, if there's any disapproval of rezoning for residential use…

Ms. Balsam: I'm OK with that.

Mr. DeLaney: We're actually talking about two possible events: disproving re-zoning or extending a deadline. The deadline in this case being in a study area. And I think both of those functions are Council functions.

Mr. Hylton: Right, but I'm saying we don't have to reference the Board of Estimate at all. We should just say, if there's any disapproval of rezoning for residential use or the extension of such deadline… We don't have to name anyone or a successor. We're pointing to an event, right? The Board of Estimate or its successor disapproves… So we can just say, if there's any…..

Mr. DeLaney: Without naming who does it?

Mr. Hylton: Right. Do you see what I'm saying? We know the Board of Estimate doesn't exist anymore, so just take it out.

Ms. Balsam: So we'll take out, "If the Board of Estimate, or its successor, disapproves," and put in, "upon disapproval of rezoning for residential use or grandfathering, or the extension of such deadlines…"

Ms. Torres-Moskovitz asked if there was an agency that would have the authority to make such an approval or disapproval. She mentioned the ADJ, often mentioned in the codes.

Mr. Hylton mentioned AHJ, which refers to an agency of competent jurisdiction.

Ms. Torres-Moskovitz found that it stood for "already having jurisdiction."

Mr. Hylton: Authority having jurisdiction.

Ms. Balsam: You'd want to say, if the authority having competent jurisdiction disapproves rezoning for residential use?

Mr. Hylton: If any other party having jurisdiction.

Ms. Balsam: "If any other party having jurisdiction disapproves rezoning for residential use or grandfathering, or the extension of such deadline, IMD status for such building expires and all the units in such building cease to be covered by Article 7-C."

Ms. Torres-Moskovitz: The next one, page 161?

Ms. Balsam: Page 161, line 5, regarding JLWQA in Zoning resolution. I think we need to keep it.

Mr. DeLaney: Yes.

Ms. Balsam: So that leaves us with page 164, line 25, which also carries over to page 165. We changed this to just include Use Group 18, as per the law. But then, when we got to line 24 on page 164, it said, "has or should have a New York City or New York State environmental rating of 'A', or 'B' under Section 24-153 of the New York City Administrative Code…" So our question was, how are those terms defined? What is an environmental rating of A or B? And our research revealed that § 24-153 was amended and no longer talks about the environmental ratings under A or B. You have the new text there.

" has or should have a New York City or New York State environmental rating of "A", or "B" under Section 24-153 of the New York City Administrative Code for any process equipment requiring a New York City Department of Environmental Protection operating certificate;"

We could cross out "New York City or" and "under Section 24-153 of the New York City Administrative Code."

I've redistributed what I gave you last time. This is the New York State Code for the environmental ratings, which tells you what A and B are. Which is what it was in the Administrative Code, too, but just so you know, that's what you'd be dealing with. (Attached)

Mr. DeLaney: This is § 212-1.3?

Ms. Balsam: Yes. 6-CRR-NY of the Rules and Regulations.

Ms. Balsam also clarified for Ms. Torres-Moskovitz that the document titled, *§ 24-153 Emissions of air contaminant; environmental ratings,* is how the section reads now. The section used to list A and B and define them, but they've been taken them out and now just rely on the State.

Mr. DeLaney: So we're sending people on a wild goose chase?

Ms. Balsam: Pretty much. They won't find it.

Mr. DeLaney: So your proposal is to….

Ms. Balsam: To cross out "a New York City or." So it would read, "has or should have a New York State environmental rating of A or B." Also take out, "under Section 24-153 of the New York City Administrative Code." And leave the rest.

Mr. DeLaney: "…for process equipment."

Ms. Balsam: Right. Here we have the definition of process. That actually is in § 24-153, but it's also defined in the State -- "equipment used in a process."

Ms. Torres-Moskovitz asked if it was worth noting the New York State rule number.

Ms. Balsam: The problem with doing that is the problem we're coming up against now, which is, if they change it, we have to change the rule. If you cross-reference, and what you cross-referenced to morphs into something else or is appealed, then where do you go with your rule? That's why I don't like cross-referencing. You have to keep on top of that.

Mr. DeLaney: Given that Use Groups 15 through 17 have been removed by the Legislature, the number of disputes about this should be diminished somewhat?

Ms. Balsam: Yes.

Mr. DeLaney: So it seems for us to try to pinpoint where things currently are for those buildings where this will be an issue is like playing whack-a-mole, because they're going to move around.

Ms. Balsam: Yes.

Mr. DeLaney: So I think vaguer is better. Or non-specific.

Ms. Balsam: OK.

Ms. Torres-Moskovitz: I'm so glad you researched that.

Ms. Balsam: Yes, I agree. Thank you for asking. And with reference to page 165, line 1 (below), you wanted to know what risk management plans were.

"is or should be required under the Community Right-to-Know Law, at Chapter 7 of Title 24 of the Administrative Code of the City of New York, to file a Risk Management Plan for Extremely Hazardous Substances;"

Here's what that definition is:

" 'risk management plan' ": a plan filed by a responsible party with the commissioner pursuant to section 24-718 of this chapter.

'extremely hazardous substance': a substance on a list of extremely hazardous substances promulgated pursuant to 42 U.S.C. § 11002(a)."

Mr. DeLaney asked, with reference to § 24-718, which commissioner is being referred to.

Ms. Balsam: DEP (Department of Environmental Protection). So are we good with keeping that as-is?

Mr. DeLaney: Yes. It would be hard to argue that the fact that a building was required to file a risk management plan shouldn't be a factor to consider in determining incompatible use.

Mr. Hylton: Extremely hazardous.

Mr. DeLaney: They're talking about things like radioactive material….

There was a brief exchange among members about other volatile substances, such as hospital waste and the fumes associated with jewelry-making.

Mr. Hylton: But the risk management plan is about what is being stored.

Ms. Torres-Moskovitz asked how propane tanks were regarded.

Mr. Roche said he believed you are allowed 16.4 ounces within your living space.

Ms. Torres-Moskovitz: But if someone was a commissary housing food trucks and had a lot of propane….

Mr. Hylton: They would have to have a permit for that.

Ms. Balsam: OK, that brings us to High-Hazard Group H occupancies -- section 307 of the Building Code. And I apologize for the quality of the chart, which is virtually illegible; but it was the only way I could get it. It's only going to apply to Use Group 18 uses. So maybe you just want to leave it. Basically, if it's a High-Hazard Group H occupancy in a 15, 16, or 17, they could still be covered. It's only the 18's that cannot.

Mr. Hylton asked how this was helpful to the Board.

Ms. Balsam: In determining whether or not something is an inherently incompatible use. The initial question is, is it Use Group 18? And if it is, then you look to, is it an A or a B? Is it required to have a risk management plan? Or is it High-Hazard Group H occupancy?

Ms. Torres-Moskovitz felt it was quite valuable, because it's reliable, first-source information. This is it. The Board doesn't have to define what hazardous is. These are the documents.

Mr. Hylton: I'm just wondering how the Board is going to make use of this chart when making a decision.

Ms. Balsam: I hope if we ever have a case where we have to make a decision, we'll have a legible chart. Or at least the relevant parts of it.

Mr. Hylton: But right now, it is legible somewhere?

Ms. Balsam: I could not find it. We could always go to the Law Library.

There was brief discussion among the Board members as to where other copies of this chart might be found.

Mr. DeLaney: Trying to define these things and decide what's really of concern -- this is where Chief Spadafora was invaluable.

Ms. Balsam: If we needed § 307.1 to decide a case, I would make sure we had a clear copy of it. So we're leaving that, yes? Ok.

The Board adjourned for a brief break

Ms. Balsam: I think that was everything we could do in § 2-08. There are still a couple of open issues dealing with registration, but we haven't gotten to that rule yet, so we'll revisit that. Now, we'll pick up in § 2-01. We left off at § 2-01(d), on page 58. I do want to point out that this rule has already been discussed, in great detail, over a long period of time. We had proposed several changes which the Board approved. So unless anyone has questions, we should really be picking up on page 62, line 20, which is where we've added material. To give you some context, this section of the rules concerns the Narrative Statement process, and this particular section (page 62, line 20) is about when the a Narrative Statement process is not required -- even if the units are newly covered. It basically mirrors the rule for § 281(5) under the 2015, 2013, and 2010 amendments. If the owner is at a certain point in the process already, you don't need to have a Narrative Statement conference. That's what this section is about. So read through page 62, line 20 through page 63, line 19, and let me know if you have any questions or concerns.

Mr. DeLaney: The first part captions this as, "*For buildings covered under MDL §§ 281 (5) and 281(6) as a result of the 2019 amendments to the Loft Law."* Then over on page 63, line 14, you refer to "Chapter 41 of the Laws of 2019." We're talking about the same thing, right?

Ms. Balsam: Yes.

Mr. DeLaney: So wouldn't it make sense to use the same terminology in both instances?

Ms. Balsam: We can do that. The problem is with § 281(5), right? Because it changed in the amendment. So we should we say, as a result of the 2019 amendments to the Loft Law?

Mr. DeLaney: What you're really trying to say is, § 281(5), as amended by….and all of 281(6).

Ms. Balsam: Right. So, "§ 281(5), as amended by… Chapter 41 of the Laws of 2019"?

Mr. DeLaney: Well I guess I first balked at the initial statement, line 20, page 62: "as a result of." It seems like an odd way of….

Ms. Balsam: I'm just mimicking what comes before. If you go back to page 61, line 13, it says, "*For buildings covered under MDL § 281(5) as a result of the 2013 amendments to the Loft Law."* In the interest of moving forward, rather than redesigning the old…

Mr. DeLaney: The real point of this is § 281(5) buildings as a result of the 2019 amendments, and all of § 281(6).

Ms. Balsam: Yes.

Mr. DeLaney: It's just a question of how to say that in as clear a manner as possible.

Mr. Barowitz: It would be clearer if § 281(6) was moved to after Chapter 41, the Laws of § 281(6), 2019.

Ms. Balsam: Yes. That's on page 63, but I think Mr. DeLaney is first dealing with the heading on page 62. Do you want to leave that heading as it is, or change that, too? To read, *"For buildings covered under MDL § 281 (5) as a result of the 2019 amendments to the Loft Law, and § 281(6)."*

Mr. Barowitz: Yes, I think so.

Ms. Balsam: Ok, we can do that. Then on page 63, line 14, do you want to leave, "Chapter 41 of the Laws of 2019"? Or do you want to make it, as a result of the 2019 amendments to the Loft Law?

Mr. DeLaney and Mr. Barowitz felt it was best to mirror page 62.

Ms. Balsam: Ok. So on page 62 it will say, *"For buildings covered under MDL § 281 (5) as a result of the 2019 amendments to the Loft Law, and § 281(6)."* That would be the heading. And then page 63, line 14 (beginning on line 13): "and the proposed work is solely within the additional unit(s) covered under MDL § 281(5) as a result of the 2019 amendments to the Loft Law, or § 281(6). 'Additional unit(s),' this paragraph (2) only applies to the occupant(s) of the additional unit(s)." So theoretically, everyone else would have already gone through a Narrative Statement process. If you're a newly covered unit, you still have a right to a Narrative Statement, but you can't necessarily comment on everything.

Ms. Torres-Moskovitz: If there's a permit in effect. But if there's not…

Ms. Balsam: Right. There are different conditions under which you can or cannot have a Narrative Statement conference or comment -- if there's a permit, if there's a TCO….

Ms. Torres-Moskovitz: And you said this just mimics…

Ms. Balsam: It mimics what was there for the section before.

Mr. DeLaney: So the theory being, I'm a new unit being added to a building that's already gone through the Narrative Statement process, and therefore the Narrative Statement process and my right to comment is limited to the plans for my unit.

Ms. Balsam: Yes.

Ms. Torres-Moskovitz: Well, if there was something specific to the outside of the space…

Ms. Cruz: It would have to be something new.

Ms. Balsam: Is everyone OK with this change? Ok, so moving forward: between pages 63 and 68, this is all material that was discussed at length. It all deals with the different ways to serve in getting us to an electronic age – which we hope will be soon.

Before moving on, **Mr. DeLaney** pointed out two typos on page 63.

Ms. Balsam: The next substantive item to discuss is line 4, page 68. Are there any comments?

Mr. DeLaney pointed out a typo on page 65, and a correction on page 66, line 13: "subparagraph (v)" should actually be subparagraph (vi). He continued…

Mr. DeLaney: Going back up to proof of service (page 65, lines 19-20), which I know we've included in a number of places, we say that proof involves "a receipt showing acceptance by the delivery service for delivery to the address of the affected party." I was wondering if we should also include the tracking number, if there is one.

Ms. Balsam: We're accepting a certificate of mailing as proof of first class mailing. And that doesn't necessarily have a tracking number.

Mr. DeLaney: Haven't you ever had the experience where the tracking number says it was delivered to you, but was never delivered?

Mr. Hylton: But for verification, they can use that. If, for example, they provide an affidavit of service. We can always ask for it if there is an issue.

Ms. Balsam: Anything else up to the bottom of page 68?

Mr. DeLaney: The new language on page 66, lines 25 to 27. What was your thinking there?

Mr. Barowitz asked why the word Loft was crossed out there, when it's been used elsewhere.

Ms. Balsam: We're trying to distinguish between the Board and staff, and "the Board" is the defined term that means the Loft Board. We crossed out Loft because it only needs to say "the Board." If there are places where we haven't crossed it out, we'll find and replace them.

Mr. DeLaney: So on page 67, line 5, it's appropriate to say "Loft Board representative," because it's someone other than the collective Board?

Ms. Balsam: Yes. And to answer your question, Mr. DeLaney, about the language at the bottom of page 66: that's actually not new language. It was moved here from somewhere else, in attempt to rearrange the flow of this section, as well as make the changes the Board wanted. So that language already existed there. Let's say the tenant, because of a permit situation, wouldn't normally be entitled to a Narrative Statement conference. That doesn't mean that if they want one, we wouldn't let them have one. So this just reaffirms that, if everyone agrees that they want one, we will certainly hold a conference.

Mr. DeLaney: And its current location applies to the narrative statement conference regardless of under which trigger it is being conducted?

Ms. Balsam: Yes.

Ms. Cruz: Does the "and" there mean they both have to agree? Or could we do it just on the request of one side?

Ms. Balsam: I don't think it would preclude us doing it on the request of one side. But certainly, if both sides want it, we should do it.

Mr. Hylton and Ms. Cruz: So it should be "or." ("Upon the request of the owner or the occupant(s)")

Mr. Hylton: So just on a request you would do it? Or do you need a consensus?

Ms. Balsam: This is one owner and….. I guess it could be more than one occupant, if there's more than one covered occupant.

Mr. Hylton: Is it automatic, upon request?

Ms. Balsam: There are times when we say, no, we're not doing a conference. We can do phone calls instead.

Mr. Hylton: But you're saying that if one side asked, it would be considered?

Ms. Balsam: Yes.

Mr. DeLaney: If I'm a tenant, and I wrote a letter saying I think we should schedule a conference for this reason, and you decline to do so, is that an administrative determination?

Ms. Balsam: Yes. If we sent a response saying we're not holding a conference, despite your request, yes, that would be considered an administrative determination.

Mr. DeLaney: So we're changing "and" to "or."

Ms. Balsam: Yes.

Ms. Cruz: I just thought of something: the idea that we have legalization conferences to talk about progress towards legalization, but there's not necessarily a Narrative Statement involved -- though there could, be if one had been done previously. Should we say, Narrative Statement conference and legalization conference?

Ms. Balsam: I don't think we need to say it here, because I believe at the beginning we say that we can request information and call people in.

Ms. Cruz: Chapter 1 talks about the applications, but this is outside the context of applications. It says we can conduct informal conferences regarding claims made in applications, but I'm thinking more broadly. Just about general progress, because we haven't heard from you in a long time.

Ms. Balsam: I don't know that that would go here…But let's think about adding something. I think it would be better in Chapter 1.

Mr. DeLaney to Ms. Cruz: Can you summarize what you see as the issue here?

Ms. Cruz: There are times when we are asked by both owners and tenants to schedule a meeting about something that, perhaps, we see as a legalization issue. It may not necessarily be connected to a Narrative Statement, but something happened in the legalization process that merits a conversation. I'm not saying we don't have the authority to call people in, but perhaps saying more clearly…

Mr. DeLaney: Like the gas issue.

Ms. Cruz: The gas issue would trigger an Alt application. That would trigger a Narrative Statement. I'm thinking of something more general.

Ms. Balsam: I think often, when we see those issues, they're due to miscommunication or, sometimes, quarrels between contractors and tenants. So we'll try to bring the owner and tenant in to smooth things over. But it's not a Narrative Statement conference.

Ms. Torres- Moskovitz: I don't want to get side-tracked, but this reminds me of a question about the Tenant Protection Plan. Is that part of the process? Is that presented to both sides?

Mr. Hylton: It's not distributed, but The Tenant Protection Plan (TPP) has to be made available to all parties. It's in the law, for every job, with the DOB.

Ms. Torres- Moskovitz: Because in theory, the TPP would give information to all sides, including contractors (which would help avoid disagreements).

Mr. Hylton felt that the TPPs leave a lot to be desired. But the new law, of a year or two ago, now requires more specificity.

Mr. DeLaney asked if a copy of the TPP could be distributed.

Ms. Balsam: I'd like to add that our changes here will require owners to send plans to tenants electronically, and the TPP is part of what they will have to provide.

Mr. DeLaney: Now that you've clarified the removal of the word "Loft" from Loft Board – that it harks back to the definition – having looked at the definition, I think there are a couple of words missing there. Because it just reads, "Board means the Loft Board established pursuant…" (page 3, line 10)

Ms. Balsam: You mean you don't have "to section 282 of the New York State Multiple Dwelling Law"?

Mr. DeLaney: Yes, but, you've now developed a construct, with which I don't disagree, that if you're talking about the behavior of an individual who works for the Loft Board, it's "Loft Board representative." But when you now say "Board" as a stand-alone, what you're actually saying is a practice and policy approved by the members of the Board.

Mr. Hylton: That is what § 282 establishes.

Mr. DeLaney: § 282 establishes the Board, but I don't think the definition is as clear as it could be.

Ms. Balsam: How do you suggest changing it to make it clearer?

There was some discussion among the staff about this. **Ms. Balsam** explained that the idea behind this was to differentiate the staff from the Board members. And the members are the Board, which speaks in one voice.

Mr. Hylton and other Board members tried to find a term or phrase that would define more clearly exactly what the Loft Board is.

But in the end, Mr. Hylton said they were defining "Board" here to mean the Loft Board.

Mr. DeLaney: Perhaps it's doing something as simple as saying Board means members of the Loft Board and actions taken by the members of the Loft Board.

Mr. Hylton and Ms. Balsam: No, because the Board is a collective. It's one, collective action. There is no individual action.

Ms. Balsam: For example, we have a case where the Board decides in a five-to-four decision. That is a Board decision. The members did not all agree, but it is still a Board decision. So it has to be the Board as one body.

Mr. DeLaney: OK. I agree. But I want to register my concern that the distinction you're drawing is nuanced in a way that I'm still not sure is crystal clear.

Ms. Balsam: Do you mean this definition?

Mr. DeLaney: Yes.

Ms. Cruz asked Mr. DeLaney if he was referring to the distinction between the Board and its members or the Board and the staff.

Ms. Torres- Moskovitz answered that he is referring to the staff definition.

Mr. DeLaney: And there again, "Staff means the staff designated pursuant to MDL § 282 to carry out functions of the Board." The first person who arrives opens the door with a key, which is not a function of the Board. We never adopted a rule that says who's going to open the door.

Ms. Balsam: So regarding the definition of staff, which is on page 9, the suggestion is to change it to: "Staff means the staff designated to carry out the functions of the Board."

Mr. DeLaney: Just for example, page 23, "*Service of the Answer*: Prior to filing an answer with the Loft Board…"

Ms. Balsam: It should be Board. Prior to filing an answer with the Board. Or we could say staff.

There was some discussion of this, with **Mr. Hylton** making the point that there is only one place where filings are made to the Loft Board, and that is to the staff offices, which carries out the functions of the Board. No one is going to go to the home of one of the members or come to a meeting, for example, to file an application. The staff accepts these things on the Board's behalf.

Ms. Balsam reiterated that she would go through the document and remove the word Loft anywhere that still reads Loft Board, and be sure it's Board with a capital B or staff.

At **Mr. Hylton's** request, the Board then returned to page 3, line 10, and **Ms. Balsam** read the definition as it remained after the previous discussion: "Board means the Loft Board as established pursuant to section 282 of the New York State Multiple Dwelling Law." She then read the new wording of the staff definition: "Staff means the staff designated to carry out the functions of the Board."

Ms. Torres- Moskovitz: Maybe at the end of the Board definition, add something like, also see staff. Just so right away people are made aware that there's a difference. Because most people would look in the dictionary for staff.

Mr. DeLaney: When I read Board, I took it to mean Loft Board rather than Rent Guidelines Board.

Ms. Balsam: In these rules, that's what it should be.

Mr. DeLaney said that now that he knows what the intention was, if and when he comes across any places in the document where it's unclear, he'll make note of it.

Ms. Balsam agreed with Ms. Torres- Moskovitz, that for the average person, it's very confusing -- Do I need to go the Board? Do I need to go to the staff's offices? -- and said they are trying to clarify it.

Mr. DeLaney: What is the confusion?

Ms. Balsam: Does Loft Board mean the Loft Board? Or does Loft Board mean the Loft Board's staff?

Mr. Barowitz noted the Legislature put together the Board, but it was the City that added the staff.

Ms. Balsam: No, the legislation also includes the staff. § 282 says the Board can hire the staff necessary to carry out its functions.

Mr. DeLaney: But the Board does not make hiring decisions.

Mr. Hylton: But the staff that is hired carries out the Board's functions.

Mr. Hylton wanted to revisit the definitions of staff and Board, because he didn't like using the word that's being defined (staff, Board) in the definition.

"Personnel" was chosen to replace "staff" in the definition.

Mr. Hylton suggested "the decision- making body," to replace "Board" in the definition.

Ms. Balsam said she wasn't sure if the Law Department would approve it, but they could try. She also suggested shortening it to just the "body," and all of the members seemed to agree that this was clearer.

Ms. Balsam: Then on page 67, line 5, we'll change "Loft Board representative" to "staff." It would now read:

"Information or responses to questions provided by the staff are advisory only and should not be relied upon as a substitute for professional advice of lawyers, architects or engineers retained by the participants."

Mr. DeLaney noted and Ms. Balsam agreed to make the same substitution elsewhere on that page; and the word Loft would be removed from line 27 (page 67).

Mr. DeLaney: The theory being that even though the Board members have nothing to do with the Narrative Statement process, it's been authorized by the Board?

Ms. Balsam: Also, someone could file an Unreasonable Interference Application, as a result of the Narrative Statement process….

Mr. DeLaney: And then the Board would see it.

A few other locations where these changes need to be made in text were noted.

Ms. Torres- Moskovitz then asked about the highlighted text starting on page 68, line 24.

Ms. Balsam: Yes, this is a section that is still open for discussion, as you can see from the comment on the next page. The issue was this: Right now, everyone is allotted the same amount of time to comment, whether the building is three units or eighty-five units. So the proposal was to create some kind of sliding scale. I think everyone agreed with that in principle, but we didn't know what it should be.

Ms. Torres- Moskovitz: And that would only be for the alternate plan?

Ms. Balsam: Right. How long you have to file an Alternate Plan Application or comments. The competing interests are these: if we're talking about a large building, you want to be sure the tenants have an adequate amount of time to get their plans together. On the other hand, theoretically, the owner is under code-compliance deadlines, which move very quickly. It's actually even more relevant now, with § 281(6) buildings. So you couldn't necessarily give the tenants six months to file alternate plans if the owner only has six months to pull a permit. Those are the competing interests. I think everyone agrees there should be a scale; what that is, I leave to you.

Ms. Torres- Moskovitz: It just has to be filed by then. The paperwork has just been sent in. It doesn't have to be approved by then?

Ms. Balsam: For this particular section? Yes. Then there are additional sections that deal with the amount of time they have to clear objections on the alternate plan.

Ms. Torres- Moskovitz asked Ms. Balsam if she was familiar with DOB NOW. She explained that it's about DOB going paperless. There are so many applications for one filing, which all have to be electronically filed, that it's very time-consuming. She described what was involved in such a filing, and related it to the current topic: If the alternate plan required a complete set of drawings/ documents (architectural, mechanical, etc.), that would, theoretically, take a very long time to do. But she hoped that over time, as the DOB NOW process continues to improve and becomes more familiar, that would change.

Ms. Balsam returned to the passage regarding the sliding scale (page 68, beginning line 24). Before reading it, she noted that this text was just a place-holder. No final decisions had been made: For buildings containing one to fifty units, forty-five days. For buildings containing fifty-one or more units, sixty days.

Mr. DeLaney: In buildings where the owner and tenants are getting along, the Narrative Statement process can go on for quite some time, correct?

Ms. Balsam said that, actually, when the tenants and landlord get along, the process usually doesn't go on for a long time. If there are a lot of people involved, obviously, it's going to take longer. Or if it's contentious.

Mr. DeLaney: What we're looking at now, in terms of the time allowed to file alternate plans, that only comes into play once a staff member says, Ok, we're starting the clock. And the period from the first Narrative Statement conference to the point where the staff member says, we're starting the clock, could be weeks, or months, or conceivably even years?

Ms. Balsam: Yes, it could be.

Mr. DeLaney: So no time-limit is imposed by the Board on either side until this clock starts, because there is some dispute that hasn't been resolved, and that gives the tenants time to file an alternate plan.

Ms. Balsam: Yes. However, the law does contain code-compliance deadlines, so the owners are under the gun for those.

Mr. DeLaney: Potentially.

Ms. Balsam: Yes.

Mr. DeLaney: And they're under the gun for the code-compliance deadlines because either (a) the tenants are refusing to pay rent, or (b) the Loft Board or the tenants could file for a finding of non-compliance, subjecting the owner to fines.

Ms. Balsam: Right. They could be subject to enforcement.

Mr. DeLaney: But that's all kind of open-ended. There's no internal clock for that part of the process?

Ms. Cruz: For the Narrative Statement process? No.

Mr. DeLaney: So now I get to this point where the issue before us is, should there be different periods of time for larger buildings to put together an alternate plan? I was one of the people who argued for this, and I think fifty-one is too high. I would propose twenty, because I think there were, at most, two or three buildings under the original Loft Law that had more than a dozen units. 873 Broadway, 303 Park Avenue South – there were very few that had more than a dozen units. So the Narrative Statement process was conceived for three to twelve units, with eighteen being an outlier. Now, we routinely see buildings with higher numbers, of greater complexity. I think when you exceed twenty units, that's where you're going to have a larger number of revisions to sort out. So I would advocate reducing the number on line 27 to twenty or twenty-one, from fifty or fifty-one.

Ms. Balsam: I'm going to ask Ms. Torres- Moskovitz, who I think is in the best position to tell us: Is there a breaking point in terms of number of units, where plans become much more complex?

Ms. Torres- Moskovitz: I agree, that fifty sounds too high. The complexity also includes how many people are involved. How many people in each unit does the architect have to connect with? Four units with five people is much more complex than four units with one. Twelve or twenty… I don't know. But fifty is too high.

There was some discussion of this among the Board members: the sizes of different buildings, of different types, in different areas, at different times. But there didn't seem to be any clear criteria to go by.

Mr. Hylton suggested using twenty.

Mr. DeLaney: Obviously, there's no perfect number.

Ms. Balsam: It doesn't have to be just two groups.

Mr. DeLaney: I remember suggesting that maybe there be perhaps zero to twenty; twenty-one to forty; then maybe forty-five; sixty; seventy-five. To me, something like that would be more realistic, with the knowledge that you can have a four-unit building that has a couple of difficult tenants; a crazy owner with a crazier architect.

Mr. Hylton: Could we say one to fifteen; sixteen to thirty; thirty-one and up?

Ms. Balsam: So, one to fifteen is forty-five days; sixteen to thirty is sixty days; sixty-one and up is 75 days.

Ms. Torres- Moskovitz wanted to clarify what is meant by alternate "plan." To her, that means the architect's plan; not all the engineering drawings, etc.

Ms. Balsam: It would depend on the issue. We've had alternate plans that were just plumbing riser diagrams. We've had mechanical plans for gas issues. An alternate plan is usually filed for a specific issue; the idea being, we've resolved as much as we possibly could, and this is what's outstanding. I can't guarantee there won't come a time when it's broader, but usually alternate plans are very narrow, in terms of what they're trying to accomplish. What will be different is the nature of the issue. Going back to the gas issue, we'll probably see alternate plans regarding gas heating instead of electric.

So we'll redraft the bottom of page 68 to include those parameters. Then on the top of page 69, I drafted it to allow for an additional thirty days if there are extraordinary circumstances. The way it's drafted now, the request has to come from the occupant. But I did this such a long time ago, now I'm not sure why I did it that way – as only occupant-driven.

Mr. DeLaney: The tenant's trying to get together their alternate plan.

Ms. Balsam: Right.

Mr. DeLaney: The next section, line 7 through 14 (page 69). I realized it's not new, but reading it now, I feel that it's not elegantly drafted.

Ms. Torres- Moskovitz: Lines 13 and 14.

Ms. Balsam: "Two or more occupants may file a joint alternate plan application describing their alternate plan." We could just end it after "…joint alternate plan application."

Mr. DeLaney: The first question is about, "if the alternate plan is required to be filed with DOB for review." That suggests that we can have an alternate plan that doesn't require DOB review?

Ms. Balsam: Yes.

Mr. DeLaney: Have we run across that?

Ms. Balsam: Yes.

Mr. DeLaney: OK.

Ms. Balsam: In the case I'm thinking of, the issue was that the owner bought-out everyone on the fourth floor of the building and wanted to put X number of units on the fourth floor, and the tenants only wanted seven units. It didn't have to go to DOB for review, because the issue was whether or not the owner was allowed to have more than seven units. They didn't have to draft an alternate plan to show only seven units. They filed comments, saying this is going to unreasonably interfere with our use because X,Y, Z.

Ms. Torres- Moskovitz: So you listen to their argument, and you settle that?

Ms. Balsam: There are two different ways it could go. If fact-finding is required, then it would go to OATH for a hearing. Or, if everyone agrees on the facts, it goes to the Executive Director, and that determination can be appealed to the Board. It depends on what it is they want.

Mr. DeLaney asked for clarification of lines 8 through 14, which says that if it is necessary for the occupant to retain an engineer, or plumber, or other professional, the occupant is responsible for any fees. (He continued): We feel the need to say that the responsibility for fees falls upon the person who retained those professionals, on the theory that…?

Ms. Balsam: This is how it reads. My interpretation is that when these rules were drafted, the person who wrote this wanted to be sure that tenants understood that they would be bearing the expense, and they should know that up front. I think it's good that it says that.

Ms. Torres- Moskovitz felt the way the professionals are listed could be improved, and that the DOB fees to review and the cost of an expeditor should also be mentioned. There are a few fees involved.

Ms. Balsam: Should the required fees be more specific?

Mr. DeLaney: There might be a way to encapsulate the thought: (Something like) If the alternate plan needs to be filed with the DOB, it shall be the occupant's responsibility to retain and pay any necessary professional and/or filing fees.

Ms. Balsam: Are there ever fees that are not filing fees, though? I'm just curious. I'm fine with using that term, but are there times when there are fees other than filing fees? They wouldn't pay civil penalties. This is a tenant alternate plan. So the tenant would never pay civil penalties.

Ms. Torres- Moskovitz: There's the design fee, and the filing fee. DOB would only have filing fees. And there would have to have been an asbestos investigation, because DOB doesn't look at anything without that. But that would have already have been done by the owner. Unless it's a mechanical issue, and the alternate plan wants to open up an area that's never been inspected.

Ms. Balsam: My concern is that if we limit what fees means, then someone could say, the Loft Board rule says I only have to pay these particular fees. And I don't want people to be taken by surprise. We could say, which may include and/or is not limited to….

Ms. Torres- Moskovitz: Professional and government fees? We're trying to educate people. Yes, I agree with what you're saying.

Ms. Balsam: So on line 7, "If the occupant's alternate plan proposed pursuant to this subparagraph is required to be filed with the DOB because it requires DOB review"--- the occupant shall hire an architect?

Mr. Barowitz: I don't know why the tenant has to do this. If I want to relocate a closet from where the owner is showing it, I have to hire an architect?

Ms. Balsam: It depends on whether the closet is going to interfere with light and air, with egress…

Mr. Barowitz: But at some point the applicant and the owner have to get together and agree upon what needs to be done. Presumably, the landlord has a registered architect, and a plumber, and electrician already involved. This seems to be putting a burden on the occupant, who just has a different idea about how something should be done.

Ms. Balsam: This rule only comes into play when the parties are unable to reach a consensus. We've had conferences; we've tried to get them to agree; but they cannot agree. So here you have an issue – let's say it's the closet – and let's assume that it does require DOB review. If the tenant really wants the closet, he/she needs to file an alternate plan. That kind of alternate plan probably will not involve mechanical, or structural… It's a simple, straightforward draw-a-little-plan, file it, and see what DOB says. As opposed to when you have a building with ninety-five units, and the owner wants to take out – or disable -- all the gas lines and put in electric. That's a whole different ball game. This rule comes into play when the parties cannot agree. We've seen it with fire escapes: the owner wants to keep them; the tenants want to take them off. We've seen it go both ways.

Ms. Torres- Moskovitz: I think there are probably cases where the owner's architect is also helping the tenants.

Ms. Balsam: At a Narrative Statement conference, let's assume the tenants don't have an architect. The purpose of the conference is for the owner to present their legalization plan to the tenants. The plans are laid out on the table and the tenants come up one by one. Here's the layout for your unit. Do you have any issues with it? Sometimes the tenants will say, looks good to me. Or they'll say, I don't understand why you're doing this, this, and this. In which case, the owner's architect will answer. If the tenants have their own architect, then it's usually a conversation between the two architects.

Mr. Barowitz: One of the reasons I question this (stems from the fact that) I've never seen a Narrative Statement. I'm not saying you should send all of us every Narrative Statement, but I've never seen one – though I've been talking about it for fifteen years.

Mr. DeLaney: This raises a point we realized the last time we were discussing this, which is, with the exception of **Ms. Torres- Moskovitz** and me, this is like a hospital ward, where people who have never set foot in an operating room are discussing the specifics of what should be in the OR. If there was a way to give the Board clearer insight, short of attending one of these conferences….

Ms. Balsam: I don't think you're allowed to attend them.

Mr. Hylton asked if Board members are not allowed by rule to attend; or is it just that if they did attend, they'd have to recuse themselves?

Ms. Balsam: Do we need to do this now?

Mr. DeLaney: With regard to section (C) on page 69, it was my comment that this seemed poorly written that launched this discussion. And I'm happy to say, can you just give it some thought, and we'll move on.

Ms. Balsam: OK. Section (D), which ends on page 81, is mostly cross-references and fonts that were changed. There's nothing of substance that hasn't already been discussed. That will bring us to § 2-01(g).

Mr. DeLaney: Wouldn't that be nice? But I do have some questions.

Ms. Balsam: That's fine.

Mr. DeLaney: On page 69, lines 18 to 21, we contemplate the tenant being required to file a Narrative Statement, expressing any comments or objections he/she has to the owner's plan "and any projected increase in code compliance costs ..." How do we think that the occupant is going to know that? The owner's cost?

Ms. Balsam: Well, you know what the owner has proposed…

Mr. DeLaney: But there weren't any costs related to that in my manuscript

Ms. Balsam: No, but you're talking to a design professional…. Let's say the owner wants to put in window A, but you want window B, because it provides better sound insulation. Window A is $100, and Window B is $200. That's a $100 dollar difference in code-compliance costs. The owner could then say, Window B is going to cost me X amount, and it's is actually more than that. The owner has a chance to respond. And I think the tenant knows what the differences are between their plan and the owner's.

Ms. Torres- Moskovitz noted that smaller things, like a closet, or tile, or window upgrade, are fairly simple; but for something like replacing gas with electric, you'd get a whole range of estimates. It would be up to the tenant and owner to work out the differential.

Ms. Balsam: Ultimately, for the Board, I don't think it matters, because it's not affecting anyone else's unit.

Mr. DeLaney: I understand, "the Narrative Statement for an alternate plan… describing the occupant's objections to, comments on, or criticisms of the owner's plan." But I have no idea what the plumber had estimated for the work to remove the PVC piping and other work in my unit. So if I had to opine on that for some reason, I would have no way of knowing whether my plan was higher or lower. It just seems like a "gotcha."

Ms. Cruz: If the idea is that the tenant hired a professional to come up with a different plan, with regard to the piping, don't you think that professional would have an opinion as to whether your plan or the owner's plan would be more costly?

Ms. Torres- Moskovitz: Architects aren't very good at estimating. We just do a cost-per-square-foot guess. In fact, I often have a construction consultant come in and tell them the price – so they don't get mad at me.

Ms. Balsam: But again, these rules all deal with people who can't come to an agreement. But if I understand what you're saying, you feel it's difficult for tenant's to know this, and so we should take it out, right?

Mr. DeLaney: All my professional can do is guess what the owner's cost is, because the owner hasn't shown their cards.

Ms. Balsam: You can always ask. We've discussed with the owner the estimates he's received for what it would cost to change the heating from gas to electric, and we've provided those estimates to tenants. So it's not that we couldn't ask them to provide it. But do we need it, is my question.

Mr. DeLaney: It seems to me, if I'm a tenant, and I prepare a Narrative Statement to my alternate plan; if I describe my objections to the owner's plan, that should be sufficient. If the owner then comes back and says, oh no, wait a minute. Your way is going to cost more than my way. Here's what my way costs. Then the money battle is engaged. But here we're asking the tenant to…pull information out of nowhere.

Ms. Balsam: But again, this section only deals with that occupant's unit. So the occupant here would be bearing those costs if the Board decided that the tenant's plan should be implemented.

Mr. DeLaney: Or would be bearing some portion.

Ms. Balsam: Right. So I don't know that we really need to have that phrase in here.

Mr. DeLaney: You're just starting fights. I would tend to put both D and E after the word "plan."

Ms. Balsam: But here, we have a problem. I don't know that I necessarily agree when it comes to (E) (page 69).

"If an occupant files an alternate plan application with the DOB that affects any other units or common areas,"

Here, I think it's important for people to understand that other tenants, other occupants, might want to oppose that alternate plan, because it will increase their code-compliance costs.

Mr. DeLaney: In that case, it would be fair to say, "comments on, or criticisms of the owner's plan and"--- the code compliance costs resulting from the tenant's alternate plan.

Ms. Balsam: Yes, I think that's OK.

Mr. DeLaney: Then the other tenants can ask the owner, how much the alternate plan is going to cost compared to what you're planning to do?

Ms. Balsam: So we would take out, "projected increase in," and it would be, "…and any code compliance costs resulting from the occupant's alternate plan." I wonder if that places a more onerous burden on occupants. Because now, instead of just highlighting the differences, do they have to then do all of the code-compliance costs? Maybe "projected increase in" was there to narrow the scope of the code-compliance costs that a tenant would have to provide if they're filing an alternate plan. Maybe we say something like, the costs resulting from the work stated in the occupant's alternate plan? Or, code compliance costs related to the occupant's alternate plan? Are we Ok with that?

Mr. DeLaney: Yes. The thing that may avoid starting fights is eliminating "projected increase." As long as that's out, I'm fine.

Ms. Balsam: OK.

Mr. Hylton asked for a recap of (D).

Ms. Balsam: On line 19, page 69, we're going to end the sentence at "owner's plan," period. We're going to take out the clause that follows the "and." Then, on line 26, we're going to take out, "projected increase in."

Mr. DeLaney: The next question is regarding section (F) on page 70. Is there any way to consolidate this?

Ms. Balsam: You could do it by cross-reference.

Mr. DeLaney: There's no difference, right? They're exactly the same?

Ms. Balsam: Yes. There are two reasons why I think it's unadvisable. Number one, if you change the cross-reference section, you have to be sure you change it here. Number two, I think it provides better notice if you have the text right there. However, if you want to cross-reference, then that's what we'll do.

Mr. DeLaney: I was just trying to shorten it.

Ms. Balsam: So shall we stop now? And next time, we start with (G) on page 70.

Mr. Hylton asked if, before he closed the meeting, there were any further comments.

Mr. Hytlon: This will conclude our September 5, 2019, Loft Board meeting. Our next public meeting will be held on Thursday, September 19, 2019 at 2:00PM at 22 Reade Street, Spector Hall.

The End

6CRR-NY212-1.3
NY-CRR

OFFICIAL COMPILATION OF CODES, RULES AND REGULATIONS OF THE STATE OF NEW YORK
TITLE 6. DEPARTMENT OF ENVIRONMENTAL CONSERVATION
CHAPTER III. AIR RESOURCES
SUBCHAPTER A. PREVENTION AND CONTROL OF AIR CONTAMINATION AND AIR POLLUTION
PART 212. PROCESS OPERATIONS
SUBPART 212-1. GENERAL PROVISIONS

6 CRR-NY 212-1.3
6 CRR-NY 212-1.3

212-1.3 Determination of environmental rating.

In accordance with the applicability requirements of section 212-1.1 of this Part, the department will assign an environmental rating for each air contaminant emitted from each process emission source or emission point in accordance with subdivisions (a) through (e) of this section. The factors in subdivisions (a) through (d) will be considered in making a determination of the environmental rating to be applied to an air contaminant pursuant to subdivision (e), Table 1 - Environmental Rating Criteria of this section.

(a) toxic and other properties and emission rate potential of the air contaminant;

(b) location of the process emission source or emission point(s) for the air contaminant with respect to residences or other sensitive environmental receptors, taking into account the area's anticipated growth;

(c) emission dispersion characteristics at or near the process emission source or emission point(s), taking into account the physical location of the process emission source or emission point(s) relative to the surrounding buildings and terrain; and

(d) the projected maximum cumulative impact of an air contaminant taking into account emissions from all process emission sources at the facility under review and the pre-existing ambient concentration of the air contaminant under review.

(e) Table 1 - Environmental rating criteria.

Rating	Criteria
A	An air contaminant whose discharge results, or may result, in serious adverse effects on receptors or the environment. These effects may be of a health, economic or aesthetic nature or any combination of these.
B	An air contaminant whose discharge results, or may result in only moderate and essentially localized effects; or where the multiplicity of sources of the contaminant in any given area require an overall reduction of the atmospheric burden of that contaminant.
C	An air contaminant whose discharge may result in localized adverse effects of an aesthetic or nuisance nature.
D	An air contaminant whose discharge will not result in measurable or observable effects on receptors, nor add to an existing or predictable atmospheric burden of that contaminant which may cause adverse effects, considering properties and concentrations of the emissions, isolated conditions, stack height, and other factors.

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Current through April 30, 2019

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