DRAFT

MINUTES OF PUBLIC MEETING

New York City Loft Board Public Meeting

January 21, 2021

The meeting began at 2:06 PM

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

INTRODUCTION:

Chairperson Hylton welcomed those present to the January 21, 2021, public meeting of the New York City Loft Board and explained that the meeting was being held via teleconference due to the corona virus emergency, pursuant to the Governor's Executive Order 202.1. 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.

OPENING COMMENTS:

Chairperson Hylton: Before we get started, I would first like to welcome our newest Board member, Mr. Christian Hylton, who joins the Board today as the Owners' Representative. Christian has been an attorney practicing in New York for over twenty years, with a focus on land use matters. He has worked extensively in the public and private sectors as Counsel to the Land Use Committee at the New York City Council and is currently a partner at Phillips Nizer, LLP.

Chairperson Hylton asked Mr. Hylton if he would like to address the public and the Board. He did not wish to at this time.

Chairperson Hylton: Okay. Thank you, Christian. We have an addition to today's agenda: item number 5, regarding professional and self- certification processes at the Department of Buildings. In November, the Board had discussed the possibility of passing a resolution at today's meeting; however, as this is Mr. Hylton's first Board meeting, Mr. DeLaney rightly pointed out that it would be unfair to ask Mr. Hylton to vote on a resolution right away. So, when we arrive at item number 5 on the agenda, Mr. Delaney will provide an overview of the topic, and I will table the resolution for February's Board meeting.

VOTE ON MEETING MINUTES:

November 19, 2020 Meeting Minutes

We first turn to a vote of the minutes from the November 19, 2020 public meeting. Are there any corrections or comments to the minutes?

Ms. Lin: Yes. On page 6, halfway down the page, there's one typo, where it says, the Board and the Chairperson is encouraging people to sign up, it says s-i-n-g instead of s-i-g-n. And that will be corrected before it's posted.

Chairperson Hylton then asked if there were any other comments on the minutes. As there were none, he asked for a motion to accept the November 19, 2020 meeting minutes and for a second.

Mr. Hernandez moved to accept the November 19, 2020 meeting minutes, and Mr. Barowitz seconded.

The vote

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

Members dissenting: 0

Members abstaining: 0

Members absent: 0

Members recused: 0

ACTING EXECUTIVE DIRECTOR'S REPORT

Chairperson Hylton introduced Acting Executive Director, Tina Lin, who gave the report.

Executive Order

Ms. Lin: On December 30th, the Governor issued Executive Order 202.87, which suspends the in-person meeting requirements of the Open Meetings Law to January 29, 2021, which is why we're allowed to meet virtually today.

Revenue

The unofficial Loft Board revenue for December 2020, was $13,175.00.

Enforcement

We issued one violation in December 2020, and that was for 144 Spencer Street, Unit 610, Brooklyn, New York, for inadequate heat.

Litigation

We have one decision. That's *Barrett Japaning, Inc. versus Anna Bialobroda and New York City Loft Board.* The Appellate Division, First Department, issued a decision affirming the lower court's dismissal of this Article 78 petition challenging Loft Board Order No. 4575, dated November 17, 2016. LBO 4575 denied owner's letter seeking reconsideration of LBO No. 4510 as incomplete and untimely. Owner had submitted the application letter by fax; did not include required Loft Board forms; failed to timely pay the application fee; and failed to provide proof of service. The lower court had dismissed the Article 78

petition and owner appealed. The First Department now affirms the dismissal, finding that the Loft Board's construction of its rules as requiring Reconsideration applications be filed by mail or hand delivery is rational and entitled to deference. And that's my report.

Chairperson Hylton asked if there were any questions for Ms. Lin?

Mr. DeLaney: Do you have any update on the matter that we discussed in executive session back in November?

Ms. Lin: No, not yet.

Mr. DeLaney: Okay, thank you.

Chairperson Hylton: Ms. Lin, I have a question on the Spencer Street violation. Is there a status on that? Did they cure the violation?

Ms. Lin: I don't have that information available right now. Let me check with our inspector, and I will report back to the Board.

Chairperson Hylton said if there were no other questions for Ms. Lin, the Board would turn to voting on the cases.

THE CASES:

Appeal and Reconsideration Calendar:

	Applicant(s)	Address	Docket No.
1.	475 Kent Owner LLC	473-493 Kent Ave., Brooklyn, NY	AD-0104
Summary: This Order rejects owner's appeal of an Administrative Determination which denied owner's request for an extension of its code compliance deadlines. This Order finds that the Administrative Determination properly denied owner's code compliance extension application due to its untimeliness,			

because a previous extension was already granted, and because owner failed to prove it was statutorily entitled to an extension.

Mr. Argov presented this case.

Chairperson Hylton: Thank you, Mr. Argov. Well presented. Do we have a motion to accept this case?

Mr. DeLaney moved to accept this case, and Ms. Roslund seconded.

Chairperson Hylton asked if there were any comments in this case.

Mr. DeLaney: As the Board members are aware, we have a draft set of revised and new rules that we've been working on now for more than a couple of years. And one of the provisions in that is to give all owners a one-time extension --- the right to make one more extension application, regardless of whether they've missed the deadline that they're applying for an extension for. And you've heard me, and some of you have heard a letter from New York City Loft Tenants, expressing dismay at that provision and a concern that the proposed rule, as it is currently before us, does not carve out any exceptions for people who have made lots of applications like this. For the public, the record for this administrative determination, including several other cases, admittedly, is 1400 pages. It's a lot of work. And here, we have an owner who seems to put a lot of energy into appealing deadlines that, for whatever reason, can't be met. So, this is just another example of the kind of extension application/ administrative determination/ reconsideration appeal that leaves me scratching my head about that rule as we currently have it set forth. Thank you.

Chairperson Hylton: Thank you. Any other comments?

Ms. Roslund: Given what we were presented with to read through this week prior to the meeting, even within that information, there were so many interesting and complex issues and questions that were raised, which we discussed a little bit earlier. And I found both the applicant's arguments and the Loft Board staff's arguments compelling in many cases and not compelling or convincing in many cases. I think this could be a much longer conversation even than we had. But in this particular case, it really comes down to this July 24, 2019 date, which was requested by the owner. So, it's a lot of background

and a lot of information here with a Proposed Order that is determined more so by a technicality in my eyes than by a real, solid argument from one side or the other.

Chairperson Hylton: Thank you, Ms. Roslund. Do we have any additional comments? (None).

The vote

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

Members dissenting: 0

Members abstaining: 0

Members absent: 0

Members recused: 0

The Summary Calendar

Chairperson Hylton introduced the Summary Calendar cases, which are voted on as a group.

	Applicant(s)	Address	Docket No.
2.	American Package Company Inc.	226-240 Franklin St., Brooklyn, NY	LS-0259
Summary: The owner filed with the Loft Board an application seeking an Order to direct the residential tenant of Unit G12 to provide the owner with access to said unit. After OATH issued a Report and Recommendation, recommending denial of the owner's access application, the owner withdrew its application without prejudice. The owner's access application is deemed withdrawn without prejudice.			
3.	Stephen Mennitt	239 Banker St., 4C, Brooklyn, NY	PO-0139
Summary: The residential tenant of Unit 4C filed with the Loft Board an application seeking protected occupancy status pursuant to Article 7-C of the MDL. The owner subsequently recognized the applicant as the protected occupant of Unit 4C and requested that the Loft Board update its records accordingly. The protected occupancy application is deemed to be resolved.			

	Applicant(s)	Address	Docket No.
4.	Raoul Arboite, Theodore Shier & Aubrianna McCarter	239 Banker St., 1E, Brooklyn, NY	PO-0144
Summary: The residential tenants of Unit 1E filed with the Loft Board an application seeking protected occupancy status pursuant to Article 7-C of the MDL. The owner subsequently recognized the applicants as the protected occupants of Unit 1E and requested that the Loft Board update its records accordingly. The protected occupancy application is deemed to be resolved.			

Chairperson Hylton asked for a motion to accept these cases and for a second.

Mr. DeLaney moved to accept these cases, and **Mr. Hylton** seconded.

The vote

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

Members dissenting: 0

Members abstaining: 0

Members absent: 0

Members recused: 0

The Master Calendar

Chairperson Hylton noted that the motion had passed and then introduced the first case on the Master Calendar.

	Applicant(s)	Address	Docket No.
5.	Tenants of 475 Kent Avenue	473-493 Kent Ave., Brooklyn, NY	TM-0099
Summary: Because OATH marked the second conference as final against the applicant; because the applicant failed to appear at the second conference; and because the applicant neither contacted OATH nor submitted a written request for reinstatement of her coverage application within the prescribed thirty-day period as set forth in 29 RCNY § 1-06(k)(4), the coverage application is dismissed with prejudice for failure to prosecute.			

Ms. Lee presented this case.

Chairperson Hylton asked for a motion to accept this case and for a second.

Mr. DeLaney moved to accept these cases, and **Mr. Barowitz** seconded.

Chairperson Hylton asked if there were any comments on the cases. There were none from the Board members, but Chairperson Hylton asked Ms. Lee if this case had been before the Board before.

Ms. Lee: This particular case was not before us, before.

Chairperson Hylton: But there was a case for Kent Avenue diminishing of services before us?

Ms. Lee: Yes. It was *Matter of Ohanesian*, Loft Board Order Number 4859.

Chairperson Hylton: Same finding, correct?

Ms. Lee: Similar finding, yes.

Chairperson Hylton: Okay. Thank you. Any other questions for Ms. Lee or comments? (None).

The vote

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

Members dissenting: 0

Members abstaining: Ms. Roslund

Members absent: 0

Members recused: 0

Chairperson Hylton noted that the motion had passed, and then introduced the second case on the Master Calendar

	Applicant(s)	Address	Docket No.
6	Kathleen Carretta	210 Cook St., Brooklyn, NY	TR-1399
Summary: Because OATH marked the second conference as final against the applicant; because the applicant failed to appear at the second conference; and because the applicant neither contacted OATH nor submitted a written request for reinstatement of her coverage application within the prescribed thirty-day period as set forth in 29 RCNY § 1-06(k)(4); the coverage application is dismissed with prejudice for failure to prosecute.			

Ms. Lee presented this case.

Chairperson Hylton asked for a motion to accept this case and for a second.

Ms. Roslund moved to accept these cases, and **Mr. DeLaney** seconded.

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

The vote

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

Members dissenting: 0

Members abstaining: 0

Members absent: 0

Members recused: 0

Chairperson Hylton introduced the last case on the Master Calendar and noted that, as this was a removal case, there would be no presentation.

	Applicant(s)	Address	Docket No.
7	Downing St., LLC	53 Downing St., New York, NY	LE-0720

Chairperson Hylton asked for a motion to accept this case and for a second.

Mr. Barowitz moved to accept this case, and **Mr. Hernandez** seconded.

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

The vote

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

Members dissenting: 0

Members abstaining: 0

Members absent: 0

Members recused: 0

COMMENTS FROM THE CHAIRPERSON:

Thanks to the staff

After noting that the last motion had passed and that voting on cases was complete, **Chairperson Hylton** said: I want to say thank you to the staff. They've been working very hard to get these cases together, and with limited time and resources at this time. So, I want to thank Ms. Lin and her staff for putting this whole thing together.

Listserv

Chairperson Hylton also thanked the staff for their efforts at maintaining the Listserv and encouraged the public not only to sign up by going to www.nyc.gov/loftboard , but also to encourage others to register, as this will help raise awareness and increase the relevance of the Loft Board.

SELF-CERTIFICATION:

Chairperson Hylton introduced Mr. DeLaney, who would lead this discussion.

Mr. DeLaney: Thank you, Chairperson Hylton. First, I want to commend, as I frequently do, the high quality of the minutes of our Loft Board meetings as they've been prepared over the past year plus. The November minutes, in particular, provide a very useful summary of this issue from pages 10 to 14. And those minutes are available to the public. Or will be. I think the draft form is up on the website even before we approve the minutes. The summary is so good due to Ms. Roslund and Ms. Torres-Moskovitz who were able to fill in the gaps in my understanding of the processes because of their professional expertise as architects who practice before the Department of Buildings from time to time.

The issue we're interested in, for those who haven't heard it discussed before, is the appropriateness of both self-certification and professional certification in IMD legalization work. When we met with Mr. Martin Rebholz of the Department of Buildings, who is apparently quite knowledgeable on this topic, I learned that professional certification is actually a certification by a professional who is licensed by the Department of Buildings, such as a plumber -- or I guess it could be someone in the various elevator classifications -- whereas self-certification is certification of the appropriateness of plans by an architect. And I'm going to stop right there and ask either Julie or Heather to tell me if I got that. If there's anything you'd like to add or amend to what I've said thus far.

Ms. Roslund assured Mr. DeLaney he was doing fine.

Mr. DeLaney: Okay. And, as we learned, the Department does a significant amount of random spot checking of professional self-certification submissions, and they investigate any complaints. So the idea that's on the table is that, while mandating that IMDs, for example, not be allowed to use these certifications would require action by the City Council and the Mayor's Office, the Department of Buildings would have it within its authority -- if asked by the Loft Board to do so -- to include the relatively small number of IMD certifications as part of what would be automatically audited.

So that's the germ of an idea that I'm still reflecting on. But what I would like to spend a minute on today is that this discussion with Mr. Rebholz came about because Ms. Torres-Moskovitz wrote a letter to Chairman Hylton maybe a year and three-quarters ago. It took us a while to get through it, but the most salient fact is that the concerns which prompted Ms. Torres-Moskovitz to write that letter stemmed from some egregious circumstances in loft buildings.

There's one where the plans were approved for -- and I'm rounding the numbers, I don't have them right in front of me -- but the plans were approved for twenty-two units; but lo and behold, the final C of O was for forty-four units. Where did the other twenty-two units come from? And we had a building where the Loft Board joined in the effort to have the Certificate of Occupancy revoked, because the C of O was granted that had residential units in the basement.

And there are several other buildings where it seems that, in some instances, certifications were put forth by people you can really only think of as bad actors. And in my mind, one architect suffered what I consider to be a slap on the wrist and losing the right to self-certify; whereas frankly, I think an appeal to the New York State Department of Education to look into licensure overall would have been more appropriate.

But it does appear that there are circumstances about the wild and wooly nature of loft conversion and loft development that seem to attract the occasional person with a dubious approach to how to perform what should be thought of as compliance or legalization. So that's why we're having this discussion.

And Chairperson Hylton was correct. I did contact him yesterday and say, having thought about this, I don't think it's fair to drop this in the lap of a new member right away. So, let's leave the presentation of

a resolution to the February meeting rather than today. I know if I had just joined the Board and was trying to represent tenants, I'd want a little time to get my feet under me.

So, that's where we are, and that's what I have to say. And Mr. Hylton, if you'd like to discuss the matter more between now and next month, I'd be happy to chat with you.

Mr. Hylton: I'll reach out.

Ms. Roslund: I'd like to add a few additional points.

Mr. DeLaney: Please

Ms. Roslund: We also discussed the complexities of code compliance in a building that has not been thought through from the beginning, but rather developed or built-out in an ad hoc manner; and the risk of coming to a point during the construction process, if the plans are professionally certified, where something cannot be followed through, because something was either inadvertently or on purpose missed by the architect; and how that could cause a delay is an issue with the tenants. So if, for instance, as part of the narrative process, an agreement is reached, but then, if the architect professionally certifies, and nine months down the road, it turns out that, oh no, this wall has to move, or it could be detrimental to the to the legalization or to the to the tenants. That was a big fear.

Mr. DeLaney: I agree. And in particular, obviously, irregular construction of residential units, -- it's done before anybody moves in. Here, you're doing legalization work with tenants in place, which adds another factor to the complexity.

Ms. Roslund: Right, and if/when you have a blank slate, you can ensure that the room sizes and the windows and all of the code regulations are adhered to. But when you're starting with existing conditions, there's so much minutia that can get missed, because one would be documented in an existing building that... There's just a lot. There's so much room for error.

Chairperson Hylton: Thank you.

Mr. DeLaney: Julie, you look like you had something to add?

Ms. Torres-Moskovitz: I was just going to welcome, Christian to our Board. It's great to have you. It's good to have every position full. I would just add the point of view from the owner's perspective, too, because as an architect who works for clients that are owners -- actually, I've never had a tenant as a client -- but I am a Loft Law tenant, just so you know. So, I think there's both perspectives at play.

For an owner, this could lead to a lot of hardship down the road, if some maverick professional certification of a complex IMD building with tenants in it goes all the way through to construction or midway, and then there's a stop-work order or violation, or audit, and they find that, actually, this decision that the architect took into their own hands is not what the DOB believes is the correct interpretation of code. I feel like it could lead not only to tenant issues, but also to cost ramifications for owners of buildings, too.

That was what I wanted to add. And I can also send a copy of my letter to Mr. Hylton, Mr. Chairperson, unless you are planning to do that?

Chairperson Hylton said he would send the letter to Mr. Hylton as well as to the entire Board, for reference. After asking if there were any other comments, he said: So, to recap, Mr. DeLaney will attempt to do this through a non-binding resolution to the Department Buildings, which we'll vote on in February. And, Mr. DeLaney, you'll try to circulate some language prior to this?

Mr. DeLaney: Yes, I will do that and will attempt to have it to people two weeks ahead of time, so that they have a chance to look at it.

Chairperson Hylton: Thank you for that, and for the opportunity and the respect to Mr. Hylton.

ADDITIONAL MEETINGS:

Mr. Roche: Mr. Chairman, do you anticipate any additional meetings this month or in February for rulemaking purposes? Or is it too early to make that determination?

Chairperson Hylton: Certainly not for this month, and I don't think for February either. Let's see how we move along. We can possibly look at March and April for additional rule-making meetings if we have

a quorum. So yes, I think, Mr. Roche, you should probably anticipate March and April, if everyone is amenable.

RULE-MAKING:

Chairperson Hylton first wanted to clarify or correct something he said at the last meeting. When he mentioned that the rules could be finalized by April, he was perhaps being a bit over-optimistic. While that was not impossible, it doesn't seem, now, that April is reasonable timeframe. He continued: But we're working hard at it, and it all depends on how quickly we move. However, a more realistic estimate would be the summertime. And again, that all depends upon the Law Department's review and also your actions in moving forward. Did I get that right, Ms. Lin? Okay, good.

Now, Mr. Clarke, who's been doing an exceptional job at this, is going to take over from here. We're going to try to do this by four o'clock – in about an hour. Yes, Mr. Clarke?

Ms. Lin: Before Mr. Clarke begins, I just had one item to discuss with the Board regarding rule-making. I would like to ask the Board members if they would like to revisit rule 2-01(b) for next month's Board meeting. Mr. DeLaney actually referred to this earlier. Currently, 2-01(b)(3) of our rules say that the owner can only receive one extension of code compliance deadlines per deadline. So, once the owner has received an extension of compliance deadlines, they can't receive a second one, even if it's not their fault that they can't proceed with legalization.

I believe that the Board had discussed this issue in, maybe 2019, and came up with new rules for this. So under our current proposed rules -- 2-01(b)(4)(i) -- the one-exception-per-deadline rule is removed; and under the newly proposed 2-01(b)(1), within thirty days of the enactment of this rule, any owner can reapply for an extension even if they were previously denied. So, after the Board voted to send the rules to the Law Department and Operations for review, a group of loft tenants submitted their comments and their own proposal on these provisions. The tenants are asking to restrict who can reapply and to keep the one extension per deadline rule. And those materials were circulated to the

Board in March 2020. But at the time, because the rules were already being reviewed by outside agencies, and because we didn't have an Owners' Rep, the Board has not been able to revisit this topic.

But now the rules are back before the Board, and we have a full Board. So, if the Board members are amenable, we can place this topic back on the agenda for the February Board meeting, and I can recirculate the tenants' proposal after this meeting, so the Board members will have a month to review and consider the material.

Chairperson Hylton: Thank you, Ms. Lin. I didn't have notice to call on you for that. I apologize for the oversight. So, this is just advising the Board that we're doing that, correct? We don't necessarily need any comments on this? We're going to bring it before the Board starting February.

Mr. DeLaney: You certainly have my thanks.

Chairperson Hylton: Any other comments? Thank you. Mr. Clarke?

Mr. Clarke: This morning, I sent out an email with all the documents we'll be using today. I apologize for it being last-minute. Two of those documents are just to make it easier for everyone to follow along with what we're doing today.

We start with a document we've already been using. This is for Mr. Hylton, who is joining us now, as the Owners' Rep. The Office of Administrative Trials and Hearings – OATH, as I'm sure you know -- wanted to comment on the portions of our rules that affect them. So, they've sent us their comments, and now we're reviewing those comments. The Board members must decide if they're okay with the comments from OATH or if there are any changes that they would like to make.

We've been working from the sheet that says 1-12 Definitions at the top. Everything in this particular document the Board members have agreed with, except for three points. And our goal today is to try to go through those three points, and, if possible, get back to OATH after this meeting and let them know what it is the Board members have accepted and what it is the Board members would like to change.

So, there are three issues still outstanding with respect to the OATH rules, and the first one I'd like to address is 1-31 Decisions, section (c). Mr. DeLaney wanted us to take a closer look at this particular

issue, regarding what the Report and Recommendation must include. Mr. DeLaney wanted us to make sure that the Reports and Recommendations OATH is currently giving us include the information that's listed under sub-subsection (c).

So, I also sent you an example of an abbreviated Report and Recommendation. It starts with Tenants, and I thought it would be helpful for everyone to see some of the information that's included in the Report and Recommendation that OATH currently gives us. I reviewed it and found that OATH is already including in their Reports and Recommendations all of the sub-sections of (c) in our proposed rules. I can walk you through that briefly, as this is an abbreviated version. If you want to read the entire Report and Recommendation, you can find that on the New York Law School website with our Proposed Orders. They do have the Report and Recommendation that OATH gives to us that we use to make our Proposed Orders and that the Board members actually use to make their final Proposed Order.

So, number (1) in subsection (c), says,

"The Report and Recommendation must include a description of the application, the names of the parties, their counsel, and other persons affected by the application;"

At the very top of this example, we see OATH identifying the index number and the Loft Board docket number. Below that, there's a short paragraph with a description of what the case is about; and immediately below that, the parties are listed for this particular application. If you flip to the last page of that sheet, at the very end, OATH will always include the attorneys and any pro se litigants that are involved in the matter. So, all of that information is included in the Reports and Recommendations that we're now getting from OATH.

Please feel free to stop me at any time if you have any questions. So that's number (1). Number (2) says the Report and Recommendation is supposed to include,

"a summary of the facts disputed, and the facts found during any investigation and of testimony and other proofs taken at the hearing or inquest."

So, again, going back to that first page of the Report and Recommendation, the administrative law judge will immediately go into the procedures of the case; the factual background of the case; and then will proceed to do a full analysis of all the factual information that was discovered during the hearing. This would have been fifteen pages for all of you to go through, so I didn't include the complete analysis, but that is what OATH does regularly with their Reports and Recommendations. They list the factual background, and then they do an analysis. So that is number (2) -- a summary of all the facts and all the investigative information.

The third part, number (3), says the Report and Recommendation must contain,

"copies of the application and of all affidavits, memoranda, and briefs submitted by the parties;"

So, after OATH submits their Report and Recommendation, they send back the entire record to the Loft Board. And that record does, in fact, include any affidavits, memoranda, post-trial briefs, and exhibits. The Loft Board staff has that. And we use that information to write the Proposed Orders that we bring to you for your vote.

And then the final issue, number (4), says the Report and Recommendation must include a

"recommendation to the Loft Board regarding disposition of the application with the summary of the factual and legal basis for such recommendation."

Again, the OATH ALJs do a fantastic job writing up summaries of factual and legal bases and coming up with an analysis. If you flip to the second page of this document, towards the bottom, it says Findings and Conclusions. There's where you find the ALJ, basically, summarizing the findings, a conclusion, and a recommendation to the Loft Board. You can see from the second page going on to the third page, at the very end of all the findings, in this particular case, the ALJ says, "Accordingly, the parties' applications should be granted." And that's their recommendation to the Loft Board.

So, that was one of the outstanding issues with respect to OATH's comments. And after doing this research, we feel that the current Reports and Recommendations that OATH is providing to us, do, in

fact, include all of the information that our proposed rules are requiring. And I just wanted to give anybody an opportunity to comment if they have any questions about that.

Mr. DeLaney: I think it's time for me to say thank you, again.

Chairperson Hylton: Does anyone else have anything else to say about what Mr. Clarke has presented so far?

Mr. Clarke: Okay. So, I'll move on to the next document, which is a comparison, undertaken by Mr. Argov following another request from Mr. DeLaney, and it concerns section (e) under 1-27 Hearings, which reads,

"Where OATH conducts a hearing and the Loft Board's rules conflict with OATH's procedural rules, OATH's procedural rules of practice will apply unless otherwise provided by law."

Then it goes on to say,

"Where there is no OATH rule or practice regarding a procedural issue, the Loft Board's rules will apply."

Mr. DeLaney wanted to know if there were the differences between OATH's procedural rules and the Loft Board's procedural rules. He wanted to know what would happen if the Board accepted the change in the rules -- in our rules, under 1-27 Hearings. Would that mean that as soon as we send our cases down to OATH, all of OATH's procedural rules will govern?

If the Loft Board rules and OATH rules conflict, OATH's procedural rules will govern. But if there is an issue that arises where the OATH rules are silent, then the Loft Board rules would apply. So, this sheet shows various procedural issues that might come into play and where there is or could be a conflict between OATH's procedural rules and the Loft Board's procedural rules. There are thirteen issues, and we will get through them, but I wanted to make sure that everybody had time to just familiarize themselves with this a little bit. And then, also, to emphasize that the only time this comes into play is when the Loft Board sends our cases down to OATH.

So, when somebody files an application with the Loft Board, there are various phases that the application goes through. The first phase is the filing, where the parties file the application; the opposing party has time to answer; and there might be some amending. The staff makes sure we have the application; that the parties have answered, and there's proper proof of service. That's all phase one. That's not at OATH yet, so all of our rules would apply. Phase two is when we actually send it to OATH to adjudicate. And this is where procedural rules might conflict. So, I just want everybody to keep that in mind.

Phase two includes when we send it to OATH up until OATH writes the Report and Recommendation and sends it back to the Loft Board. After that, I guess you could say phase three would be the Loft Board staff going through the information, writing our Proposed Order, and submitting that to the Board members for their final Order. And then the last phase would be any type of appeal process that might happen. So, we're really, again, looking at phase two: when we send it to OATH. That time period between when we send the application to OATH and when OATH writes their Report and Recommendation.

Mr. DeLaney: Mr. Clarke, first, I thank you and Mr. Argov for doing this. I know this was a significant undertaking, and I very much appreciate it. But just for some of the newer members, maybe it would be worth pointing out that, when a case goes to OATH, it first goes to a settlement judge, who attempts to see if the issue can be settled via conference. So, my question to you is, do any of these procedural rules apply to that period? Or, as I understand it, if the parties can't agree, it then goes to a different OATH judge for a trial; the theory being that the settlement judge may have been party to discussions that would have exposed him or her to issues and questions that would not be appropriate for somebody who's now going to actually try the case.

Mr. Clarke: Thank you, Mr. DeLaney. That's a great question. Perhaps Executive Director Lin or Mr. Argov can respond to that, but I think that that would still fall within this purview of OATH's procedural rules applying. Because the Loft Board staff would no longer be handling any of that. We never know when that's happening. So, that's all OATH's undertaking. So, I would assume that that would fall under OATH's procedural rules as well. But, Executive Director Lin, I'm not sure if you have a different opinion?

Ms. Lin: No, I agree. I think once it's before OATH, including the settlement portion, their rules would apply. And some of these rules probably would apply. For example, OATH has rules on who can appear before them. And I would think that their procedural rules would apply at settlement conferences as well.

Chairperson Hylton: But Mr. DeLaney's correct in that the settlement judge is not the trial judge.

Ms. Lin: Yes, that's correct.

Mr. Clarke: Correct. So, if there are no further comments, we can get right into the documents with the first issue. Page one is the Computation of Time. For both the OATH rules and the Loft Board rules, this is basically about how much time the parties have to do something. The OATH rules use calendar days, and the Loft Board rules use business days. And then the Loft Board rules further define business days as ending at 4pm -- from 9am, to 4pm. And that's the only difference with the computation of time.

So, if something happens when the case is before OATH, the computation of time is going to be calendar days, as opposed to business days. But we don't believe that that has any real effect on anything. But calendar days is different from business days; business days being defined as 9am to 4pm. But if the case is before OATH, and there's a certain amount of time the party has to submit or do something, OATH rules would apply at that time, and that would be calculated in calendar days.

Ms. Lin: Just to clarify, Mr. Clarke is referring to the comparison between OATH's current rules and our current rules. Our proposed rules do actually go on to say calendar days. And again, as Mr. Clarke pointed out, it's just a difference in terminology. I think, practically, the effects would be the same.

Mr. Clarke: Yes, you're right. Thank you, Director Lin. Our new rules do say calendar days.

Chairperson Hylton: Meaning that we are adopting OATH's procedural...

Mr. Clarke: Right. Practically, for all intents and purposes, it would be the same. If there are no issues with that, we can move on to the second issue, which is OATH's rule 1-07, Filing Papers and Proof of Service. For the most part, when somebody files an application with the Loft Board, that is not before OATH at that time, the Loft Board rules would apply with respect to filing the papers and the proof of

service. But there might be instances where the parties need to file when the application is before OATH, and they need to submit proof of service. So then OATH's procedural rules would come into play and apply. I see on the sheet that OATH allows electronic service, and that is one of the major differences between OATH's rules and our current rules.

There are two parts to this. First, there's the service; the actual service. OATH allows electronic service, and our rules, I don't think they changed.

Ms. Lin: No, we did change. We are trying to allow for electronic service now. So, once the proposed rules are passed, it would conform with the OATH requirements on service and what's allowed.

Mr. Clarke: Right. Yes. So, then both would allow electronic service. So, those two issues look the same, and we don't think there's any conflict there. Proof of service is the next part of that rule, and as proof, OATH requires an affidavit from the person effecting service, or acknowledgement by the person receiving the service. Our proof of service, under the proposed rules, again, allows for email, fax, first-class mail, and private delivery.

So, there is a minor discrepancy between these two with respect to proof of service. If the case is before OATH, OATH's procedural rules, would govern. And OATH requires proof of service in the form of an affidavit by the person effecting service or acknowledgement by the person receiving service. Executive Director Lin or Mr. Argov can step in, but that's the potential conflict that might arise. And OATH's rules would apply in that situation. It's different than our rules. But if it's before OATH, the proof of service that OATH requires is an affidavit by the person affecting service or acknowledgment by the person receiving service.

Chairperson Hylton: And what is in our proposed rules?

Ms. Lin: It requires something a bit more. Either an email or fax delivery receipt. So, something other than a statement saying you did it, or an affidavit. And it's just my two cents, but I'm not sure there's really any prejudicial effect as different. Because again, the applications that are filed with the Loft Board are filed with the Loft Board. And we're still going to require them to provide these fax delivery receipts, or an email, or a certified mailing receipt. So that's all still Loft Board rules. What's being filed

before OATH, what this would dictate, would be things like motions and the memos that they file with the parties already before the OATH judge. And in my opinion, I think there's probably less of a concern about requiring a very specific proof of service.

Chairperson Hylton: So, no big deal there, right?

Ms. Lin: Not in my opinion, but of course, I'm open to hearing thoughts from the Board members.

Chairperson Hylton: All right. I like no big deal because we've got to go through this. All right, let's go on.

Mr. Clarke: Okay. If there are no comments, we'll move on to the next one.

Mr. DeLaney: Okay, so Ms. Lin, you make an important point there. Our rules would remain our rules for the inception of the case, until we hand it off to OATH. But then, for subsequent filings, OATH's rules would apply. And, obviously, part of my interest in understanding the difference between the OATH procedural rules and ours is -- and I think it's true for practitioners, whether they represent tenants or whether they represent owners -- they've been used to doing things a certain way in the Loft Board, and I'd hate to see clients be affected negatively because there's a different rule now that somebody hasn't had the chance to get up to speed on. So, actually, for this, we'd still have kind of a parallel universe, where our rules would apply until the handoff, and then a different set of rules would apply.

Ms. Lin: Yes, Mr. DeLaney, I think that's correct. So, in terms of actual service – the method in which you can serve -- I don't think there'll be a difference, because now we're going to allow for electronic service, same as OATH. The difference comes down to what proof of service is required, and I think that's an easy fix. As I mentioned, I think OATH's rules are less onerous than ours, in that OATH isn't requiring them to hold on to any receipts; they're just requiring an affidavit or an acknowledgement of receipt, which I think is a lower bar. I do feel, if people can get through the hurdle of filing an application with the Loft Board, they can certainly effectuate proper service at OATH, which – if I understand it -- email service is often acceptable.

Mr. DeLaney: So then, in your take on the matter, the OATH rules are easier. So, the likelihood of anyone getting caught on this particular aspect is low.

Ms. Lin: Yes, that's my opinion. And from what I understand, I think the ALJ's are pretty good about explaining to pro se.

Mr. DeLaney: Okay. Thank you.

Ms. Roslund had a comment and a question: One purpose of this exercise is to ensure that none of the conflicts could cause a real issue. And then, am I correct that.... We have no say over OATH's rules, obviously. But are we also wanting to understand if there are some places where the two can come closer together? Across the board? Is that something we want to pursue? Do we want to have a discussion about any of these conflicts to see if there is a reason why we might want to alter our rules slightly, to be closer to OATH's rules? Or are we just making sure that there are no unforeseen issues that would arise out of these conflicts?

Ms. Lin: I believe it's the latter. We're just trying to ensure that the OATH procedures aren't going to be detrimental to the people who appear before them in any way now that there's a difference in rules.

Ms. Torres-Moskovitz: I just want to make sure I'm understanding this correctly, because I have the perspective of actually being a Loft Law tenant. And one of the things I like about the Loft Board is how they communicate with other tenants that aren't Loft Law tenants. It makes them aware of what's happening. Does anything change with that? I think that's what the certified mail does. It informs everyone else in the building, so that even if they're not involved in the case, they have a chance to understand what's happening in their building. Does this affect that at all? The ability of a tenant who's not a Loft Law tenant and not an IMD, who's in the building. Does it affect their ability to learn information, or no?

Ms. Lin: So, I believe this would again fall under initiating the application, which would fall under our jurisdiction. And our rules still require them to serve affected parties. So, the people in the building would be served with a copy of the application.

Ms. Torres-Moskovitz: By digital means, or electronic means?

Ms. Lin: Right now, we don't allow for electronic service. But if our proposed rules pass, it will allow for digital service.

Ms. Torres-Moskovitz: So, if you had a building with, say, with forty-eight tenants, and only ten of them are Loft Law tenants, the Loft Board staff would have to figure out everyone's email? Or am I getting this wrong?

Ms. Lin: For the filing of the application, it's the party who initiates the application that has to do that. And they don't have to file by email if they don't want to. They can certainly still serve by the regular method. If they choose to, and the other party consents, they can serve by email. Under the proposed rules.

Chairperson Hylton: Yes, it's important to note that. That the email service is by consent only.

Ms. Lin: So, that's something that we're actually going to get to in our rule-making. I believe the version that the Board passed last year doesn't have the consent provision. When we were doing the emergency rule-making, this issue came up, so that's part of the emergency rule-making on electronic service. So now, we have to go back and incorporate that into our regular rules.

Mr. DeLaney: Can you say that again, please?

Ms. Lin: Yes. So, the issue is about whether a party needs to consent to email service before email service becomes effective. So back in February 2020, when the Board first passed the draft rules, consent was not something that was mentioned. And this issue came up during the course of the emergency rule-making over the summer in response to the pandemic. The Board passed a set of emergency rules providing for electronic service. And it was pointed out, I don't recall by whom -- possibly the Law Department – the tenants or owners should consent to service before we can make electronic service a thing. In the emergency rules that we passed over the summer, consent of the parties is necessary before you can actually serve electronically. Our current proposed rules don't reflect that, and that's something that staff still has to work out. How to incorporate the language.

Mr. DeLaney: Thank you.

Mr. Clarke: Are there any other questions or comments on this issue, or can we go to the next one? Okay, the next issue is Appearances, OATH rule 1-11(a). And the difference between the OATH rules and Loft Board rules is the OATH rules seem to allow non-attorney representatives to appear before OATH; but it appears that the Loft Board rules do not contemplate non-attorney representatives appearing at a hearing. I don't think that's considered a major issue. But at the very least, the OATH rules are more liberal, and non-attorneys can appear.

Chairperson Hylton: Mr. Clarke, it says in our proposed rules, "The parties may be represented by counsel." Does that "may" mean it mirrors the same?

Mr. Clarke: I'm not sure if that "may" means that the parties have the option of representing themselves, or they have to be represented...

Chairperson Hylton: Well, a plain reading of the language suggests that "may" means you have an alternative, right?

Mr. Clarke: You have an alternative, but we're not sure if an additional alternative is to have a non-attorney appear on someone's behalf.

Mr. Hylton: Is there a specific bar that says so?

Mr. Clarke: No, there isn't.

Chairperson Hylton: I don't see how else we can interpret this.

Ms. Lin: It could be interpreted as a party may represent themselves. So, OATH's rules explicitly authorizes representation by someone who is not an attorney, and our rules don't explicitly say that. Our rules are a little ambiguous on that provision.

Chairperson Hylton: Okay, so let's leave it ambiguous.

Ms. Lin: The only point of this exercise is to point out that there's no serious prejudice to the parties by allowing OATH to apply their own procedural rules.

Chairperson Hylton: That's fine.

Mr. Clarke: Are there any questions about that? Basically, it's exactly what Executive Director Lin said. We don't believe there's any prejudice in applying OATH's rules.

Mr. Barowitz asked if the term counsel and attorney are synonymous.

Ms. Lin: I believe they are.

Mr. Hylton: In my experience, they've always been interchangeable within rules and Administrative Code.

Mr. Clarke: Are there any other questions or comments?

Mr. DeLaney: I guess the question I would ask then is, maybe this is an example of an instance where we might want to consider changing our rule to comport with OATH's. I'm thinking in particular that it's possible that someone could have limited English ability, for example, and would want someone to pose questions or act on their behalf, who can provide some translation services. You know, some of us are getting up there. I might start to slip a little, and just need a little help. Not a high-priced attorney, but somebody to just tell me to... give me an elbow in the ribs when I say the same thing for the fifth time.

Chairperson Hylton: But Mr. Delaney, I believe the proposed language right now does just that. It gives the opportunity. I think this proposed language was just meant to simplify. What the current rule says, is that you are "... afforded the opportunity to be represented by counsel." And then, "Parties shall be advised of their right to be represented by counsel." It's the same as saying you may be. That was my point before, Mr. Clarke. It's that the word may there just means that you have other options. Counsel is one of them, or an attorney is one of them.

Mr. Clarke: They do have options; it's just not clear what those options are.

Chairperson Hylton: What other...Okay, so I would exclude animals and so on, right? But if you say here that you may be represented by counsel, and you say, well, I don't want to be represented by counsel, then you pick and choose. Who else do you want? I don't think it conflicts with OATH's language here. It certainly simplifies the other rule just for plain language. I think this was just plain language revision here. I don't think there's any conflict, in my opinion. And so, I don't see....

Ms. Roslund: Doesn't it leave some ambiguity about whether or not the person does actually represent the applicant? Or does it need to be the same person? Can I have my friend come next week, and my mom show up next, and my next-door neighbor the week after?

Chairperson Hylton: Does anyone have any adjudicative experience here? Can you let me know? I don't know if you can switch representatives, but I don't think it really bars.... I know in ECB court, you can, at any time, choose whoever you want to appear. I don't know how it is at OATH. But I want to point something out. In OATH's rules, it says, "..or by a duly authorized representative." So, it seems to me that OATH does have some restriction on who may appear there. It says, "a duly authorized representative," meaning that maybe you have to be authorized. Maybe you have to have some sort of registration with OATH to appear. I'm not sure if anyone here can opine on that, but it seems that they're more restricted than our rule.

Ms. Lin: I think I interpret that as duly authorized by the litigants. You can designate a representative. I don't believe you need a license to practice before OATH. I'm pretty sure you do not need a license.

Chairperson Hylton: Okay. I'm pretty sure of that too, but I wasn't sure what that meant.

Ms. Lin: To go back to Mr. DeLaney's point of whether we should expand our rules, there would be an easy fix, if the Board wants to do that -- to explicitly authorize for non-attorneys to represent litigants. If hearings ever fall back under Loft Board jurisdiction, we could just amend 1-27(c) to read, at the hearing, parties may be represented by counsel or by a duly authorized representative, to conform with what OATH has to allow for non-attorney representative.

Chairperson Hylton: That's simple enough. I think that's fine.

Mr. DeLaney: Yes, that's what I was suggesting. And it might be helpful....To my recollection, through all these years, we once had a tenant attempt to represent himself, who was clearly challenged in one or more ways, and it's possible that there might be a friend or a neighbor who could assist without being as costly as an attorney. So, I think if there's a way to authorize someone, that's a good idea.

Mr. Clarke: Okay. Thank you, everyone. Are there any more comments?

Mr. Hylton: I have a comment on that. I would only say that, it is also important that applicants fully understand the situation, especially when going before a potentially quasi-judicial Board. They may want to avail themselves of legal representation. You don't want to give the impression that this is something less than what it is, and that there will be legal interpretations that they may want to consult someone about before choosing to represent themselves.

Obviously in court, a person can represent themselves pro se, but you understand what the jurisdiction is, and you understand the ramifications of that. And I think one of the things in terms of how the language is currently placed is, it says you may, but that inference is that you probably would want an attorney to represent you on some of these matters. And I think it's important that persons understand the gravity of the situation in terms that they enter.

I practice before OATH, and you do have to represent that you represent the applicant, even as an attorney. And if you're not an attorney, you have to have some particular link to the property itself, some type of authorization in terms of when you're appearing in front of hearings there. So, it's not just that anybody can come and represent anybody else, interchangeably, hearing to hearing. So, I'd just bear that in mind.

Chairperson Hylton: Are you proposing any particular change to the language that would bring out your point? Are you saying the word "may" here may say something different?

Mr. Hylton: No, I'm not. No, I'm just bringing something to light.

Chairperson Hylton: Okay, great. Because I was going to say, maybe at the hearing the parties have the right to be represented by counsel or a duly.... Maybe that's a better...

Mr. Hylton: Have the right would be a way of putting it.

Chairperson Hylton: In the interest of time, I think if we could just replace the word may here with, at the hearing, the party, the parties, have the right to be represented by counsel or by a duly authorized representative. Is that okay with everyone?

Mr. DeLaney: Doesn't right to counsel imply that, if I'm indigent, I have to be supplied with a counsel?

Chairperson Hylton: I don't know that. Mr. Hylton, can you comment on that?

Mr. Hylton: Off-hand, I can't speak to that. I would defer to counsel for the Loft Board.

Ms. Lin: I have no idea. It's an interesting point. I don't know.

Mr. DeLaney: I know that in housing court now, there's a right-to-counsel initiative, that currently applies to a limited number of population districts, where it mandates that a lawyer be supplied if the tenant can't afford one.

Chairperson Hylton: Actually, that's a good point, Mr. DeLaney, because when someone is arrested, they are told that they have the right to an attorney. So maybe you want to back off from that, after thinking twice about this.

Mr. Hylton: Brings it back to me.

Chairperson Hylton: Yes. Okay. Let's move on. We've got proposed language. At a hearing, the parties may be represented by counsel or by a duly authorized representative, correct? That's the language we have.

Mr. Clarke: Right. I got it. Okay, so the next issue is Ex Parte Communications, and OATH deals with that issue in section 1-14. Our analysis is that both of the rules are similar in that ex parte communications are not permitted. In our current proposed rules, this was mentioned in reference to Loft Board staff conducting Narrative Statement conferences, and we removed that section, because we found it to be confusing. But other than that, it seems there's no conflict between OATH and Loft Board rules. Neither

of them allow ex parte communications. But if anybody has any questions or comments, we can address them now. No comments?

Then we can move on to the next one, which is Amended Pleadings, OATH rule 1-25. And In my reading of this, there might be a potential conflict. If the case is before OATH, if the party wants to amend their pleading, they have to amend twenty-five days prior to the start of trial. But the Loft Board rules allow the parties to amend the pleadings at any time up to, even including, the date of the first scheduled conference.

So basically, the Loft Board has no time limit, but OATH does. Unless they get the consent of the parties or the approval of an ALJ, the parties need to amend their pleadings twenty-five days prior to the start of trial. It's a slight difference, but it's noticeable; though, I don't think it's prejudicial to anyone. I'm not sure if Mr. Argov or Ms. Lin disagree with that.

Ms. Lin: No, and I would just point out that our rules really only apply to the first scheduled conference. Thereafter, you need the leave of the adjudicator in order to amend.

Mr. Clarke: Are there any comments on that?

Mr. Delaney: First, is it our intention to end the meeting now?

Chairperson Hylton: That was my intent. Would anyone object to going another fifteen minutes?

Mr. Delaney: My comment was going to be, this is the first one of these that came up where I would like to get some input from the practitioners before I sign off on this one.

Chairperson Hylton: Okay. So, we could just leave this.

Mr. Delaney: And I appreciate that this is work product, so I have not shared this document with any of the practitioners. But this is the first one that had me thinking I'd like to get some input, which I will do without sharing the document.

Chairperson Hylton: So, we can leave that as an open item, correct, Mr. Clarke?

Mr. Clarke: Yes

Chairperson Hylton: Okay. It's now four o'clock. Does anyone object to going through to 4:15? Thank you for your patience. Let's just try to get done as much as we can by 4:15.

Mr. DeLaney: So, we're leaving 1-25 open?

Mr. Clarke and Chairperson Hylton: Yes

Mr. Clarke: Okay. The next one, 1-26 might be the entire fifteen minutes that Chairperson Hylton just gave us. Maybe we should move through that one for now?

Ms. Lin: Let's skip 1-28. That one does probably require some discussion. So, we're going to take up the OATH rules again at the next Board meeting. Let's table that.

Mr. Clarke: You said let's table it?

Ms. Lin: Yes. So, at the next Board meeting, just to clarify, we will revisit 1-25 and 1-28.

Mr. Clarke: Okay. So, the next is 1-31, Settlement of Conferences and Agreements. And both of the rules are similar, in that they require an agreement to be reduced into writing. But the Loft Board rules go a little bit further and require review by the Executive Director. But there's no conflict at that point. So, Loft Board rules will apply, and that's something that we're already doing with our settlements and our Summary cases. Are there any questions or comments?

Mr. DeLaney: I think this is worth spending a moment on, particularly for the benefit of the newer members. You can see that in the box marked difference, the last sentence points out that the new rule includes additional language that states, "The Loft Board must reject settlements that include terms which violate public policy or those which are void and unenforceable." And this has happened a number of times in the last five or six years, I'd say, where owners and tenants have come up with ideas like, okay, you withdraw your case; we won't be governed by the Loft Law, but I'll give you ten-year leases, and you'll give me eight years to bring the building up to code instead of the more stringent rules mandated by the Loft Law.

And we have rejected those as being against public policy. We've been taken to court, and I believe we've prevailed in all those cases. And obviously, I believe that we can't allow some parallel universe, where tenants and owners agree to be bound by a set of rules that don't relate to a state law or the city's Administrative Code, even though there are times when there are tenants who have not been pleased with me taking that position.

And there have also been many times that tenants and owners come up with a stipulation, which includes some provisions that either make no sense or bind the Loft Board to do certain things. And the Loft Board has come up with an approach that says, we accept the settlement, but we neither accept nor reject the terms of the settlement -- which is something that those of you who've been on the Board for a while must be so sick of hearing me object to every time it comes up. We didn't have any on this docket, but if there's any way that we can... I think it's important that we include what we put in involving our attitude toward things that violate public policy. And since, ultimately, the case comes back to us to approve, or reject, or modify, or send back to OATH, we have the final say. But this is an area that I think would benefit from some discussion and perhaps scrutiny.

Mr. Barowitz: I agree, totally. When the first Loft Law came into effect, we saw a substantial number of tenants that made deals with landlords. I don't think putting in an escape hatch is the answer. We say, oh, it's against public policy, but we really have to make that very clear. Either we're bound by the Loft Law, or we're not.

Mr. Clarke: Okay, thank you. Are there any other comments on this section? So then, we can move on to the next section, which is 1-32 Adjournments. The difference between the rules is that the Loft Board rule does not allow for more than two consecutive adjournments, unless the party requested five days in advance, at which point it may be granted. But OATH rules do not specify a limit on adjournments. That's the only difference. We don't believe there's any prejudicial effect. It is a difference, but if it's before OATH, the OATH rules would apply. And OATH doesn't limit the amount of adjournments that can be allowed. Are there any comments?

Ms. Roslund: Why do we have this limit? Do you know where that came from?

Mr. Clarke: I'm not sure why the Loft Board decided to impose a limit on adjournments. Usually, it would be to streamline the process and not unreasonably delay the trial or the hearing. So, I can see why there would be a limit. But at OATH, their rules just don't specify a limit on adjournments. They give the control to the ALJ, who has the latitude, based on their discretion, to decide if there's any type of unreasonable delay or any reason why they're no longer going to grant adjournments. Basically, OATH just gives the ALJ that control.

Are there any other questions or comments? Okay. So, we're almost there. The next one is 1-43, which concerns Subpoenas. And the Loft Board rules allow the parties, themselves, to issue subpoenas; whereas the OATH rules require the ALJ to issue them. That's the conflict. Basically, when it's before OATH, the parties have to get the approval of the ALJ, and the ALJ has to issue the subpoenas. We don't believe there's any prejudicial consequences to that, but if anybody has comments, we'll listen.

Mr. DeLaney: This is another one I'd like to ask that we leave open, because I'd like to get some feedback from the practitioners.

Mr. Clarke: Okay. Anybody else with respect to subpoenas? So, we can move on to the next one, which is Failure to Appear. At various times throughout the hearing, parties can fail to appear. OATH just requires the parties and attorneys to be present at the commencement of the trial. If not, then there's a failure to appear.

The Loft Board rules set timeframes and different criteria for vacating a default. A default happens when you fail to appear. There's a default judgment against the party, and the Loft Board rules allow parties to vacate that default judgment. OATH pretty much just says that the parties should be there, and that absent good cause, the OATH judge will proceed without the party that's absent.

Ms. Roslund asked for clarification.

Mr. Clarke: If a party fails to appear, the ALJ can grant relief, which means that, when the party fails to appear, there's a default judgment against the party. That means the hearing can move forward without that particular party's input. They can't present their case because they've defaulted. Under OATH's rules, vacating that default is at the discretion of the ALJ. The Loft Board rule outlines a specific process

to vacate that default, and it includes time limits and a standard of care as well. And that's the difference between vacating defaults with OATH and with the Loft Board. Basically, the ALJ has the discretion when it's before OATH. And if it's not before OATH, there are time limits governing when a party has to submit a request to vacate the judgment. In short, that's the difference between the two.

Chairperson Hylton: Are you saying at OATH, there's no time limit to vacate the default?

Mr. Clarke: That's correct. And that's what I read. Do you agree, Mr. Argov?

Mr. Argov: The OATH rules say that a motion must be filed as promptly as possible, but it doesn't specify a particular timeframe. I don't know how open-ended it actually is in practice, but their rules say it has to be done as promptly as possible. It doesn't give a certain amount of days, as our rules do.

Ms. Lin: I imagine they would have up until the close of record before the Report and Recommendation is issued to do something. But that being said, it's now 4:15, and I do imagine this is something that Mr. DeLaney wants to take up with the practitioners, which I will find valuable myself. So why don't we say 1-45 will also be taken up later?

Chairperson Hylton: At this point, Mr. Clarke, I'm going to ask that we cease the discussion of rules. So, we're going to table 1-43?

Mr. Clarke: 1-45

Mr. DeLaney: Mr. Chairman, before we conclude, I would just like once again to thank Mr. Argov and Mr. Clarke for their work on this. Plowing through this and comparing these, particularly if you've got a baby that keeps you up at night, has got to be a tall order. I asked you to do it, and I'm really very appreciative. You both did a great job with this.

Ms. Roslund: Yes, it's amazing. It's really quite easy to follow. The language is technical, but the structure is really brilliant.

Ms. Torres-Moskovitz: I also thank you, Mr. DeLaney, for asking them to do it, because it's important. Clearly, there are many issues that may be minor, but its seems like they add up to something that should be discussed, as long as we're doing rules. So, thank you.

Chairperson Hylton: Yes, thank you. And, again, I want to thank the staff for doing this in addition to everything else. Board members, if anything comes up between Board meetings that you want to bring to staff's attention, please do reach out to Ms. Lin, so we can speed up discussion at the Board meeting. All right? So, I thank you very much. Without objection, I'm going to close the meeting.

So, this concludes our January 21st, 2021 Loft Board meeting. Our next public meeting will be held on Thursday February 18, 2021, at 2pm. The Governor's suspension of in-person meeting requirements for the Open Meeting Law is in effect until January 29, 2021, so at this point, we do not know whether the next Board meeting will be in person or via teleconference. We will update you as soon as we know the format of the next meeting. We will also put that information on Loft Board Listserv and post the information on the Loft Board website. Board members, please sign and email in your attendance sheets as soon as possible. Thank you and have a great month of January. Thank you.