

MINUTES OF PUBLIC MEETING
New York City Loft Board Public Meeting

February 18, 2021

The meeting began at 3:25

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 February 18, 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 first apologized to everyone for the late start of this meeting. There were various technical issues due to the large public audience at this meeting, which took a while to sort out. He thanked everyone for their patience and for coming to the meeting.

VOTE ON MEETING MINUTES:

December 10, 2020 Meeting Minutes

Chairperson Hylton: We first turn to a vote of the December 10, 2020 public meeting. Are there any corrections or comments to the minutes?

Mr. DeLaney: Believe it or not, these minutes are perfect in my view.

Mr. Hylton: Thank you, Mr. Delaney. We needed that.

Ms. Torres-Moskovitz suggested that, in the light of the delay and confusion, perhaps before starting, the Chair should take attendance again to confirm there is a quorum.

Chairperson Hylton agreed. He called the roll of Board members, confirmed all were present, and resumed the approval of the December 10, 2020 meeting minutes. As there were no comments, he asked for a motion to accept the December 10, 2020 meeting minutes, and for a second.

Mr. DeLaney moved to accept the December 10, 2020 meeting minutes, 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

ACTING EXECUTIVE DIRECTOR'S REPORT

As Acting Executive Director Lin was absent, the report was delivered by **Stephan Clarke**.

Executive Order

On January 27, 2021, the Governor issued Executive Order 202-92, which suspended the in-person meeting requirements of the Open Meetings Law to February 26, 2021.

Revenue

The unofficial Loft Board revenue for January 2021 was \$12,900.

Enforcement

Two violations were issued in January 2021. On January 21, 2021, one violation was issued at 517- 525 West 45th Street for inadequate heat in unit 2A. On January 27, 2021, one violation was issued at 117 West 26th Street, New York, New York 10001 for inadequate heat. These issues have not yet been resolved. In addition, at the last Board meeting, there was a report that one violation was issued at 144 Spencer Street, unit 610, Brooklyn, New York 11205, for inadequate heat. That was reinspected last week, and the issue has yet to be resolved.

Litigation

We have one new case for *475 Owner, LLC versus New York City Loft Board*, index number 151133/ 2021. This is an Article 78, challenging *Matter of David Coventry*, Loft Board Order number 4943, dated February 20, 2021. In this Order, the Loft Board found that unit 1109 at 475 Kent Avenue, Brooklyn, New York, should have been covered under the Loft Law and its occupant granted protected occupancy status. The Loft Board found that the unit's exterior terrace/ balcony space should be considered in determining whether the unit met the requirement under MDL 281.5, that the IMD unit must be at least four hundred square feet in area. Owner of the building now challenges that determination. And that is the end of the Executive Report.

Chairperson Hylton thanked Mr. Clarke, and as there were no questions for him from the Board, he commenced with the cases.

THE CASES:

Appeal and Reconsideration Calendar:

Chairperson Hylton noted there are three cases on this calendar, and he introduced the first.

	Applicant(s)	Address	Docket No.
1	Quay Plaza LLC	79 Quay St., BK, NY	AD-0106

Owner appealed the administrative determination of the former executive director who held the building's removal application in abeyance pending the conclusion of the sale of rights for the last remaining IMD unit in the building. The Board finds that once a building has obtained a certificate of occupancy, an incomplete sale of rights is not a basis to delay the processing of the removal application. Owner has supplied sufficient information for Loft Board staff to determine the initial legal regulated rent for the unit. Staff is directed to proceed with processing of the removal application.

Ms. Lee presented this case.

Chairperson Hylton thanked Ms. Lee and asked for a motion to accept this case, and for a second.

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

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

Ms. Torres-Moskovitz had a question about the status of the sale. The tenant and the landlord had agreed to a buyout, but only half the payment was made, and that was a couple years ago. Has it been made since? Or is that information that we don't know?

Ms. Lee said staff would have to get back to her on that question.

Ms. Roslund: The date was December, right? So, it should have passed. And if it did, if they did conclude their business, it would be done with.

Chairperson Hylton asked if there were any other 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

Chairperson Hylton introduced the second case on the calendar.

	Applicant(s)	Address	Docket No.
2	470 Manhattan Ave LLC	18-22 Eckford St., BK, NY	AD-0107
The owner filed an appeal challenging an administrative determination, dated June 25, 2020, in which the former Executive Director lifted the suspension on the answer period for Loft Board Docket No. LN-0028, the subject of which is a decoverage application that was filed by the owner. The appeal is denied because the owner failed to sufficiently demonstrate that it was aggrieved by the administrative determination.			

Ms. Lee presented this case.

Chairperson Hylton thanked Ms. Lee and asked for a motion to accept this case, and for a second.

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

Chairperson Hylton asked if there were any comments in this 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 third and last case on the calendar.

	Applicant(s)	Address	Docket No.
3	Workable 239 LLC	239 Banker St., BK, NY	AD-0108

The owner filed an appeal challenging an administrative determination, dated April 13, 2020, in which the former Executive Director denied the owner's application for an extension of the code compliance deadlines set forth in MDL § 284 and the Loft Board's rules because the owner had failed to satisfy the "good faith efforts" standard for code compliance extensions. The appeal is denied because the facts found by the former Executive Director are supported by substantial evidence in the record and because the former Executive Director correctly applied the law. The owner has failed to show that it had made good faith efforts to achieve code compliance.

Ms. Lee presented this case.

Chairperson Hylton thanked Ms. Lee and asked for a motion to accept this case, and for a second.

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

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

Mr. DeLaney: I would just comment that this is exactly the kind of case that is part of the reason we have so many guests here today. There is a widespread concern in the tenant community about landlords getting extensions under various circumstances. This particular case is not one where the owner has a pre-established track record of being a bad actor -- we'll talk about that a little later -- but I commend the Board for researching this case as carefully as they have, laying it out, and coming to the proper conclusion.

Mr. Hylton: I would comment that, while the applicant in this case has been found not to have made a good-faith effort, I think there are facts within the information subsequently provided, which, I understand, we cannot, by rule, include or use in consideration. But I think this is an example of a situation where an applicant has actually made a good-faith effort; and though it was not included in the initial application, he is now just trying to have the full information entered into the record. In fact, this is more of an argument as to why there should not be a hard, one-extension-only rule.

Chairperson Hylton asked if there were any additional comments in this case. (None).

The vote

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

Members dissenting: Ms. Roslund

Members abstaining: Mr. Hylton

Members absent: 0

Members recused: 0

Chairperson Hylton: Thank you. The motion carries.

The Summary Calendar

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

	Applicant(s)	Address	Docket No.
4	American Package Company Inc.	226-240 Franklin St., BK, NY	LS-0262
The owner filed an access application for Unit F7. The parties executed a stipulation of settlement. The owner agreed to withdraw its access application without prejudice. The owner's access application is deemed to be resolved. The Loft Board neither accepts nor rejects the remaining terms of the stipulation of settlement.			
5	Nicholas Spector	250 Moore St., BK, NY	PO-0136, TA-0272
Tenant filed for protected occupancy and rent overcharge. Owner and Tenant reached an agreement which recognized the tenant as a protected occupant and a sum for the overcharge that Owner will pay to Tenant. The matter is deemed resolved.			
6	Keith Kozlowski	193-199 Newel St, BK, NY	TR-1379, TR-1380
The alleged residential occupant of Unit 3B filed two applications seeking Loft Law coverage and protected occupancy status pursuant to MDL §§ 281(5) and 281(6). The alleged residential occupant ultimately withdrew both of his applications with prejudice. Both applications are deemed to be resolved.			

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

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

Chairperson Hylton asked if there were any comments in these 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

The Master Calendar

Chairperson Hylton Thank you. Without objection, I would like to table the last case until next month, which is

	Applicant(s)	Address	Docket No.
7	54 W. 22 nd Owner LLC	54 West 22 St., NY, NY	LE-0715

This ends the cases. The next item on the agenda is rulemaking and updates; and Mr. Clarke is going to lead that discussion.

Mr. DeLaney: Before we start, I would like to make request of the Chair and Mr. Clarke. It's my understanding from prior email correspondence with Acting Executive Director Lin that the plan for today was to resume the rather dry discussion of the comparison between the OATH and Loft Board procedural rules. And while I agree that that's important, I'm of the impression that the large number of guests we have today are here because they're interested in the Board's discussion of the extension provisions in §2-01(b), I believe it is. Since it's already almost four o'clock, I wonder if we could start with that discussion, rather than take up the procedural issue.

Chairperson Hylton: Yes, that would be my direction. Let's do that. And I'd like to add that I do intend to take this meeting up until five o'clock, if the Board members are available.

Mr. Clarke: So, we'll table the comparison between OATH's and the Loft Board's procedural rules, and we'll take up discussion of the extension rule.

The document we'll be working from is the chart with columns headed, Notes, Current Rule, Proposed Rule, and the NYCLT (New York City Loft Tenants) Suggestion. For the benefit of new Board members, I'll recap the situation. The Board had previously discussed the extension rule and developed a proposed new rule for the extension rule. But we are revisiting that now, because we now have an Owners' Rep to weigh-in on the proposed rule, and we also have suggestions for the extension rule from the NYCLT.

What the Board members need to do right now is consider the suggestions from the New York City Tenant Association. Do they have comments on them? Do they need to discuss them? Would they like to include them in the proposed rule? And Mr. Hylton, as the new Owners' Rep, now has an opportunity to review and comment on the proposed rule the Board members had discussed and developed before he officially joined the Loft Board, in addition to commenting on the NYCLT suggestions.

Mr. DeLaney: Before we turn to the proposed rule and/or the suggestions that were put forth roughly a year ago by New York City Loft Tenants, I would just like to remind those Board members who were with us then and explain to the Board members who have joined since then -- Ms. Rajan and Mr. Hylton -- that the draft that is currently on the table, that allows an amnesty period, where anyone can apply for an extension, and also provides for multiple extensions, differs from the rule that we currently have and that has been in place for fifteen years or so.

Earlier today, we had a number of appeal cases of administrative determinations taking issue with the actions of the former Executive Director. And I have to say that one thing I would be critical of with regard to the former Executive Director is that there was never really an articulation of the rationale for changing the rule that's currently in effect. And so, before we start to discuss the merits of either the current proposal or the NYCLT counter-proposal, I think it would be very helpful to have the staff articulate the reasoning behind the current proposal.

And the other thing I would like to point out, is that the actual New York City Loft Tenants position is -- what we would really like you to do is -- do away with this proposed amendment all together. And that's really the first step that we think should be taken, rather than discussing alternative language.

Chairperson Hylton: Mr. Delaney, in that case, I'd like to hear from the Board on that first, before we go any further. That is, deciding whether or not you want to change the rule. Because I don't want to waste time debating the rule only to realize that the Board doesn't want to change it.

Mr. DeLaney: I think the threshold step is to ask the staff to explain why they were proposing a change in the first place. I mean, if we decided to change the minimum housing maintenance standard heat requirement to a lower heat requirement, or even a higher heat requirement, you'd expect that the staff could explain why a change would be a good thing.

(As Chairperson Hylton was experiencing technical difficulties and could not be heard, Mr. Clarke continued):

Mr. Clarke: I'll try to answer the question as best I can. I know we had discussions about this in the past. As to why the Loft Board even considered changing this rule, I would have to go back in the minutes to try to get an exact answer in terms of the reasoning of the former Executive Director, as well as what the rationale was behind the decision of the Board members who, at that time, supported the change. But from my recollection, it was, basically, trying to balance the two interests.

Obviously, there are severe ramifications for an owner that falls out of compliance. And there are various reasons why an owner might fall out of compliance. And when we say compliance, we mean the specific deadlines set for the owner to reach certain milestones. And if the owner does not meet those milestones on that specific day, then we consider that owner to be out of compliance. And there are consequences for owners that are not in compliance. We understand that for many of the buildings that come under the Loft Board's jurisdiction, the owners are not familiar with how the Loft Board works and how the Loft Law works. But there are many instances where buildings come into our jurisdiction already out of compliance.

Additionally, there are specific actions the owner needs to take in terms of getting that permit, which sometimes includes a very long narrative statement process. And sometimes it's a contentious

narrative statement process, and so it does take a significant amount of time. If it's particularly contentious, it might require an alternate plan, and OATH has to take it over. There's a full hearing, and that takes some time -- for OATH to make a decision and a report and recommendation. Then it has to come back to the Loft Board, where staff has to review it, make a Proposed Order, and send it back to the Board members for them to ultimately vote on. Sometimes this can all take a tremendous amount of time. And it does impact how quickly an owner can move through the legalization process, hit their milestones, and stay in compliance.

Now, that's just me working as a staff member and balancing the issue. Sometimes there is an owner that is not doing what they're supposed to be doing. They're dragging their feet with submitting documentation, sending out narrative statements, things of that nature. There are owners that are not being diligent in moving through the legalization process, but there are other owners that might face situations and circumstances beyond their control that prolong the legalization process. So, I know that the discussion and the reason for the proposed rule hinged on allowing owners that are really trying to move the legalization process forward additional time to try to get things done in good faith before severe consequences come down on them for falling out of compliance.

That's the basic premise. As I said, for more specifics on both the previous Executive Director's and the Board members' reasoning, I'd have to do some research and come back with some bullet points next month. But that's the basic idea. It's a balancing between the challenges owners can face and the tenants who need a safe place to reside, while at the same time, understanding the process. There might be hiccups and bumps along the road that prolong the process. And it might not be fair to have such a draconian consequence for falling out of compliance, when there are some owners that are actually trying their best to legalize the building.

I'm sorry if that was a little long-winded, but we can just start the discussion there and find out where the Board members are -- whether there's a change of heart, or they don't feel we need to make any changes to the current rule. We're here to listen to the arguments on both sides and see if we can come up with a middle ground; or if we need to change it at all; or, if we do need to change it, are we happy with the change that we already have? Or do we want to incorporate other ideas and arguments and take other perspectives into consideration?

Mr. DeLaney: Mr. Clarke, I appreciate your explanation, which I don't find long-winded. There are basically two things that are highly questionable, and, frankly, from the tenant point of view, offensive, and that feel somewhat threatening to a lot of people's health and safety in their unit. One is allowing every owner – as the current proposal does -- a chance to apply for an extension. And the other, which you did not touch on, is the rationale for allowing multiple extensions for a single code-compliance deadline. I wonder if you can comment on that.

Mr. Clarke: Sure. With the proposed rule, as you said, Mr. Delaney, there are, I think, two major points. One is allowing all owners to have an opportunity to file an extension application within thirty days. Our rule says that within thirty days of the effective date of the amendment, all owners can submit an extension application. The reason and rationale behind that, I believe, is just to allow owners one more opportunity to get it right. Whether or not the Board feels, at this time, that that's still a good idea....I know at the time, we understood that there were many owners out of compliance, that would not otherwise have an opportunity to get back into compliance and move the legalization process forward. I think there was a compromise at the time between the Board members to allow that.

The second point, as you said, Mr. Delaney, is to allow multiple extensions. And I believe that also was a compromise, because as the Board members know, proving good-faith and reasonable efforts is a very hard standard to meet. I can say, statistically, most of the extension applications that are submitted to the Loft Board are denied. There is a specific process for those applications. We look at all the information; we look at everything that's presented before us to meet that statutory standard, and we write our Proposed Orders. And it's a very difficult standard to meet.

So that was one of the compromises. And again, sometimes, for any number of reasons, it just might take more time to move through the legalization process. Something unforeseen occurs, so it just might take more time than anybody could have foreseen. For example, maybe all the tenants in the building are on board with the legalization plan except one tenant, who's holding out; who wants to go to OATH; who wants to drag out the process. It's not that the owner hasn't made changes to their plan and tried to engage in conversations and agreements with the other tenants of the building. It's not like the owner is completely dismissive of the conditions that the tenants are in. But one tenant could be holding out and delaying the entire process.

So I think the compromise was, in situations like that, if the owner misses the date in which they are supposed to be hitting that milestone, for good reason, it shouldn't be that the owner can't get a little bit more time to come into compliance and move legalization forward. And I think that was the idea behind the multiple extensions when the Board members were discussing it at the time.

And the proposed rule also allows not only the Executive Director the ability to issue multiple extensions, but also the staff members. And if there are more than two extensions, then it would have to come before the Board. If it's the same owner and the same compliance deadline, then it would come before the Board, and the Board members would make the decision whether or not...

A member of the public asked if anyone was reading the questions in the chat, because there are many who feel this argument makes no sense.

Ms. Roslund confirmed they were reading the chat.

A member of the public: What is stopping landlords from actually doing something now? Why do they need an extension? If they have an intention of fixing the conditions in a building, why aren't they doing it?

Mr. Clarke conveyed Chairperson Hylton's comment, as he was still inaudible: This portion of the Board meeting is not an open meeting for the public to discuss and submit comments. The public will have that opportunity in the future, but this is for the Board members. This is the time set aside for the Board members to discuss, openly, their opinions and their views on this proposed rule. This is not yet the time for the public to comment or speak on the issue. There will be a time, but right now, this is just for the Board members to express their opinions and their views on the matter.

Mr. Hylton: I'd like a little more background in terms of how this rule came up, because it didn't come out of a vacuum. And the discussions that took place previously in terms of developing the proposed limit, I believe included contribution from Board members like Mr. Delaney and Ms. Moskovitz and other folks who have been here previously, am I correct?

Mr. Clarke: Yes. I'll let the Board members expand on that, Mr. Hylton.

Ms. Torres-Moskovitz: I joined the Board in May 2018. I'm an architect and a tenant. Like Stephan, I'd want to go back and review the meeting minutes. But what I recall is that this was already on the table when I arrived, and I was trying to dissect it. I didn't understand why they would want to, all of a sudden, give a carrot to every single landlord who's out of compliance. And I understand that carrot-and-stick idea, and as an architect, I understand how long it can take for things to work their way through the system. So, if you can make it go forward faster toward compliance, that theoretically, sounds like a good idea.

At the same time, I was concerned about rewarding bad actors. I remember, I entered in the middle of the discussion, and I was trying to break it down. I didn't want to offend the former Executive Director, but I kept saying, it's not you, it's the next Executive Director I'm concerned about. I don't know who that next person might be and if they'll just keep granting new extensions for, in the worst-case scenario, political reasons or the like. So that's where I stood at that time. Today, I'm in favor of going back to just the current rule that we had in place originally. Thank you.

Mr. Clarke: Thank you, Ms. Moskovitz. Would any other Board members like to comment?

Mr. DeLaney: I would comment that the history of the Loft Board is such that there are a number of times that things have either been done or proposed without them being discussed at length by the Board. And my recollection is that this draft, the proposed language that -- frankly, I don't know which is worse when I think about it -- whether it's giving multiple extensions or giving a free bite at the apple to every single owner, regardless of their track record. I think they're both bad ideas. And by the way, the legislature continually, in the last two times the Loft Law was being discussed, rejected extensions in the timetable, as was proposed by the owners. Also, in addition to this rule, to my recollection, back in 2014, 2015, the application for coverage was bifurcated from protected occupant status by the staff with no notice to the Board, no public hearing, and no rulemaking. So, I appreciate your attempt, Mr. Clarke, to explain this from your recollection, but I think it's got a way to go.

Mr. Barowitz: I agree. I think it was very important for us, particularly with the last Executive Director, to be as fair as possible to all parties. But I think we ought to go back to the original resolution on this.

Mr. Hylton: As the new representative on this, hearing the various points of view, the over-arching guidance for me is what moves applications most efficiently through the Loft Board and towards

legalization. And, this, I believe, in terms of my understanding of it, came up as an improvement on the existing system that was not showing that level of efficiency in terms of moving applications towards legalization. I think having just one extension is also not the answer to that. So, I would look to still have more conversation, discussion, around this rule to see whether it needs tailoring or whether we can figure out a way it could be applied more effectively. I'm trying to figure out the genesis of this. The discussion does not come out of a vacuum, and I think it looked to see a remedy to the situation in terms of applications and moving buildings towards legalization.

Mr. Clarke: Thank you, Mr. Hylton. And I understand that it might seem like owners are getting another free bite at the apple, but there is a standard that still has to be met. It's not like an owner applies, and we just give them that free extension. That's not how it works.

Mr. DeLaney: But that's part of the problem, as we saw today. And we have a case almost every meeting or two, where, if an owner applies for an extension and it gets turned down, then they file for an appeal to the Board. We had one last month that ran a thousand pages. So my personal opinion is that allowing every owner a free lottery ticket with the chance that they might win something, even if they don't have a lot of good grounds, is just going to swamp the Board in a way that makes no sense whatsoever. So, I think at this point, I'm inclined to suggest that it might make sense, and I'd like to move that the Board consider, going back to the original rule as it currently exists and rejecting any modification.

Mr. Clarke: Thank you, Mr. Delaney. Do any other Board members want to chime in?

Mr. Barowitz: I think we'd like to call that question. Can we call it?

Mr. DeLaney: Somebody needs to second it, if that's going to happen.

Ms. Torres-Moskovitz: I'll second it.

Mr. Clarke: So, **Mr. Delaney** made the motion. And **Ms. Torres-Moskovitz** second.

Chairperson Hylton returned to the conversation and asked for clarification of the motion.

Mr. DeLaney: My motion is to keep the extension rule as it currently is and to take out of the proposed draft rule the one-time shot at the moon and the multiple extensions.

Chairperson Hylton: In other words, to keep the rule intact, or the way it is...

Mr. DeLaney: As it currently is on the books today.

Chairperson Hylton: Is there anything else, except for those changes that Mr. DeLaney is talking about, that are good in the proposed rule? Are there language changes that we need to keep, or are we just going to go...

A member of the public: He said to keep the rule intact.

Chairperson Hylton: I'm sorry, sir. I'm on the Board. You're not on Board, and I'm asking you, please...

A member of the public: Excuse me.

Chairperson Hylton: I've just asked the Board members to clarify exactly what the motion is. Is it just to completely disregard all changes that were being proposed here, or just those things that Mr. DeLaney was mentioning before? Because there may have been other stylistic changes made to the rule. Mr. Clarke, you can clear that up?

Mr. Clarke: I don't want to speak for Mr. DeLaney, but I believe he wants to reject the proposed rule, and also the NYCLT suggestions, and just leave the current rule as it is now on the books.

Mr. DeLaney: That's correct. The staff distributed a document described as current Loft Board rules for 2-01(b), which is the extension piece. And then it also distributed proposed rules that are the staff's recommendation for changing it. My motion is to let the current Loft Board rules for section 2-01 stand as they are without any changes.

Chairperson Hylton: Thank you. I just needed clarity on the motion. And did I hear a second on that motion?

Ms. Torres-Moskovitz: Yes, I second the motion.

Chairperson Hylton: So, we're recording this motion as keeping the current rule as it stands and rejecting all changes, correct?

Mr. DeLaney: Yes, and I would point out to Board members that there already is provision for extensions for new owners and/or owners who contested coverage, and the coverage decision was not made at OATH or by the Loft Board until after the deadline had expired. Those owners would still be allowed to apply for an extension.

Chairperson Hylton asked if there were any further comments. (None).

The vote

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

Members dissenting: Mr. Hylton

Members abstaining: 0

Members absent: 0

Members recused: 0

Chairperson Hylton: Thank you. The motion carries, meaning there will be no change to this piece of the extension rule in this round of rule-revision.

Mr. Clarke: In the next portion of the rulemaking discussion, we're returning to OATH's comments on our proposed rules. We've finished most of them and will now go back to comparing OATH's procedural rules to the Loft Board's procedural rules, using the chart you have. And again, the reason we're doing this is because OATH's procedural rule 1-27 says,

"Where OATH conducts a hearing, and the Loft Board rules conflict with OATH's procedural rules, OATH's procedural rules or practice will apply unless otherwise provided by law. Where there is no old rule or practice regarding procedural issue, the Loft Board's rules will apply."

In our initial discussion of this comment, Mr. DeLaney had asked if we could highlight any differences between OATH's procedural rules and the Loft Board's procedural rules to encourage discussion and perhaps make modifications to our rule if needed. If not, then we might adopt OATH's procedural rules when they don't comply with the Loft Board rules.

I won't revisit the sections we went through last month, but we got to 1-25, Amendment of Pleadings. So, we can pick up from there on the sheet that says across the top, OATH Rule, Loft Board Rule, Difference OATH Language, and Loft Board Language. And we'll start from 1-25, Amendments to the Pleadings.

OATH requires pleadings to be amended twenty-five days prior to the start of trial unless there's consent from the parties or if approved by the ALJ. The Loft Board rules allow pleadings to be amended at any time, up to and including the first day of the scheduled conference. So, there is a bit of a conflict here. I don't handle amendments when they come in, but I asked the staff members who do what happens when we get an amendment after we've sent an application to OATH, and I was told that we would just send that amendment to OATH and wait for the specific time period for the answer to come in. If we do get an answer to that amendment, we send it over to OATH. If not, then OATH pretty much determines how they're going to proceed with the hearing that's already in place.

So, I'm not sure, in actuality, if there will be a conflict. If OATH simply just takes the amendment and makes the determination as to whether or not they want to include any type of amendments in the hearing that's already in place; or if they are strictly adhering to the twenty-five-day period that they have for their amendments. But this is an issue that could potentially cause a conflict, so we would like to hear the Board members' opinions on it.

Chairperson Hylton: Mr. Clarke, what do you think is the rationale behind OATH's twenty-five-day requirement prior to the start of the trial? Is it just for time for parties to consider or record?

Mr. Clarke: I think that's what it is. They just need time to consider the amendments and make their decision.

Chairperson Hylton: Do you think that's not reasonable?

Mr. Clarke: I don't see a problem with it. Staff discussed it, and we don't see that as being unreasonable. But the Loft Board's rules are more generous, allowing an amendment to take place at any time. So, are there any comments on this procedural aspect?

Chairperson Hylton: I would ask the Board members if this is something that the Loft Board may consider reasonable to adopt from OATH. Should we adopt that principle into our own rules? Would it make sense that we have the same requirement in the matter of notifying people?

Ms. Roslund: Is there any reason not to? Can we think of a reason not to?

Chairperson Hylton: I can't think of any. I think this is a reasonable requirement -- that you amend your pleadings and give time for other people to consider. You couldn't at court, actually.

Mr. DeLaney explained that, after redacting certain parts of this very informative chart prepared by Mr. Clarke and Mr. Argov and obtaining approval from Chairperson Hylton and Acting Executive Director Lin, he had sent it to some attorneys who represent tenants for comment. He continued:

I also sent a copy of that redacted document to Mr. Hylton so he could see if he could get some feedback from the attorneys that represent owners; because in terms of procedural issues, I think the most important thing is that it's a level playing field. Everybody knows the rules. And overall, one attorney who got back to me said, and I quote, "It's heaven being at OATH compared to housing court, or even civil court." On this particular point, the feedback that I got is that, as it says, the OATH limitation is twenty-five days prior, unless the parties consent or it's approved by the ALJ. And apparently, that leaves a lot of maneuvering-room. So, my sense is we're okay with this.

Ms. Roslund, you raise a very interesting question. If there are places where we think the OATH procedural rules are good, or maybe better than ours, should we incorporate some of their ideas into our rules, in case there does come a day when we start doing hearings again?

Mr. Clarke: Thank you, Mr. Delaney, and thank you, Ms. Roslund. Those are good points. And, of course, if Board members, in going through these documents, see something they feel might benefit Loft Board rules, then definitely make note of it, and the staff will take note of it, and we'll do our best to prepare something that is satisfactory to the Board members.

Chairperson Hylton: So, if I understand correctly, Mr. Clarke, the consensus of the Board is that this piece of language from OATH should just be adopted into our rule? Is that where we are right now? There is consensus? Should everybody agree, then you can just take that language verbatim and put it here in our 1-06(h)?

Ms. Torres-Moskovitz: Chairman, I think Ms. Roslund was saying that she wanted to ask the staff, do you see conflict? I'd like to hear back from Ms. Lin and the staff on...

Chairperson Hylton: I understand, Ms. Torres. But I'm just asking about this particular piece -- if we want to adopt it into our 1-06(h). That's what's before us right now.

Mr. Clarke: Do the Board members want to take this language from OATH and make it part of the proposed rule?

Chairperson Hylton: I'm just saying, if the only difference is that OATH requires this twenty-five-day prior knowledge, and we all agree, that might be a good idea. Including the language saying, unless parties agree or agreed upon by the ALJ, it may be something that's a reasonable accommodation for our rules, should we be doing this in the future. I say we, meaning the Loft Board.

Ms. Torres-Moskovitz: I was thinking there might be a little more research or back and forth on that. Speaking from experience, when there's been quick date changes... I'm not sure what the twenty-five days will do to the Loft Law Board, instead of allowing for faster changes.

Chairperson Hylton: By my reading of this, there are two ways in which that could happen. Less than twenty-five days. As Mr. DeLaney pointed out, either the parties agree, or by leave from the judge, from the ALJ, from the presider.

Ms. Torres-Moskovitz: I'm sorry, I missed the part about parties agreeing to something less. That seems fine. I just know in my own experience, that is what...

Chairperson Hylton: Right, or even the ALJ can do that, can override it. So, if that becomes part of the Loft Board rules, then whoever is the presider at the Loft Board, if we should have our own tribunal, can make that decision also. Without anyone's consent. So, there's flexibility here, as Mr. DeLaney was saying.

Mr. Clarke: I don't want to speak for Mr. DeLaney, but because of that flexibility, it didn't seem like Mr. DeLaney had taken issue with OATH's rule. And if the Loft Board wouldn't have a problem with accepting OATH's procedural rule for the amendment....

Mr. DeLaney: That's a correct assessment.

Mr. Clarke: The issue is whether or not to decide that now. I don't know that it's necessary to incorporate that in our proposed rules, unless the Board members see immediate benefit to doing so at this time.

Chairperson Hylton: You're right, actually. Because where there's a conflict, their rules apply, right?

Mr. Clarke: Yes

Chairperson Hylton: So, there's no immediacy in incorporating it. However, remember, we just had a discussion a moment ago. If we find something in OATH's rules that may benefit our own rule, wouldn't we want to do that? That was a question posed here. We can leave it alone, because it seems that we're not worried about it as it is right now. But if the language makes our rule better, why not adopt it? That's the question for the Board members.

Mr. Clarke: Right. That's correct. Are there any other comments from the Board members? Any other discussion on this? If not, then, I know we have a little bit of time. Maybe we can table this.

Chairperson Hylton: Do we need to table it, Mr. Clarke?

Mr. Clarke: I don't think so.

Chairperson Hylton: If silence is consent, we could probably incorporate this in our own rules and just make a change. We can change this section 1-06(h) to reflect...

Ms. Roslund: 1-06(h)?

Chairperson Hylton: Right. This is page three...four of the handout. What I'm saying, and correct me if I'm wrong, Mr. Clarke, is we can amend. We can take OATH's language and make it our language in 1-06(h). Would that be acceptable, right now, to the Board members? If not, we can move on. We don't have to do anything, as you say. There's not much of a conflict. But I need the Board members to speak up if you concur.

Ms. Rajan: It seems totally fine to me.

Mr. Clarke: I'll make note to incorporate OATH's language into our proposed rule.

Chairperson Hylton: For the Amendment of Pleadings

Mr. Clarke: Yes, that's correct.

Chairperson Hylton: Without objection, anyone? I hate to sound like a judge, but so ordered. All right, thank you.

Ms. Torres-Moskovitz asked where exactly this 1-06(h) appeared in the chart, and Chairperson Hylton clarified.

Ms. Torres-Moskovitz: I'm fine with it. It makes sense to incorporate it. As long as there's the flexibility about parties agreeing to something less than twenty-five days.

Chairperson Hylton: And/or the judge says it. If one party makes a reasonable, compelling case to the judge, and the judge agrees, he can do it. But otherwise, in normal proceedings, it's done according to OATH – twenty-five days prior. And I think that's reasonable, even in our rules.

Mr. Clarke: Right. I think so. Procedurally, what we would end up doing is incorporating that language into the proposed rule, which we have as 1-25(a). We would just change the language in 1-25(a).

Chairperson Hylton: The opposite way around.

Mr. Clarke: Sorry?

Chairperson Hylton: The opposite way around. You want to change the 1-06(h) to incorporate the 1-25 language.

Mr. Clarke: Right, exactly. I'm sorry.

Chairperson Hylton: Mr. Clarke, I'm going to stop you from going any further. Unless, you think we could do anything in two minutes.

Mr. Clarke: The next two are very difficult. I think they would need a little extra discussion. But there are two that I think we can finish in eight minutes if we want to use that time. But if not, we can pick it up next month.

Chairperson Hylton: Okay, Board members?

Several Board members agree to proceed.

Chairperson Hylton: Let's go for it. It's late already. Which ones are you talking about?

Mr. Clarke: If the Board members can go to OATH rule 1-46 Evidence and Trial. Basically, the OATH rules and the Loft Board rules seem to be very similar in that the traditional Rules of Evidence do not apply at OATH. And our rules basically say the same thing. So, unless the Board members have any reason to object to the way that OATH has worded this, then I can just note this as a non-issue. Are there any comments?

Ms. Roslund: So, it's really the difference between the word technical and the word formal?

Mr. Clarke: Yes, that's pretty much it. And they're both basically saying that the formal or technical Rules of Evidence do not apply during the full hearing. Meaning, that they're more relaxed with the rules of evidence at the OATH hearings.

Chairperson Hylton: So, in one rule it says formal, and in one rule it says technical, and everything else seems to be the same, correct? Everybody agree that formal and technical are the same thing?

Ms. Torres-Moskovitz: I agree. That sounds good.

Chairperson Hylton: Okay. Thank you. Mr. Clarke move on to next.

Mr. Clarke: The next one is 1-49. Public Access to Proceedings. There's really no conflict here, that we have seen. It basically says the Loft Board rules are silent regarding public access. OATH has a rule that says, other than a settlement conference, all proceedings are open to the public. So, there's really no conflict. But since the Loft Board rules are silent, we would be accepting what the OATH rule says here. In that other than settlement conferences, anybody can come. The public can come to the hearings, which we think is fine.

Mr. DeLaney: As it was explained to me, when a member of the public attends, the one thing that the OATH judges tend to do is make sure that the person is not a potential witness, who should not be in the room, except when they're being called.

Mr. Clarke: Yes. Makes sense.

Ms. Roslund: As would happen with any legal proceeding or trial, right?

Mr. DeLaney: One would hope so.

Mr. Clarke: Do any Board members have any issues with that? If not, then there really is just one more easy one, and then we can pick up the two issue that might generate more lengthy discussion at the next Board meeting. If there are no comments, I'll just bring your attention to 1-51, which is for the transcripts. It's the language in OATH's rules and the Loft Board rules that allow the public to get a copy of the transcripts. The only difference is, the Loft Board charges a fee, and OATH is silent about any type of fee. But both of them are saying the public can have access to the transcripts.

Mr. DeLaney: And as this was explained to me, OATH does not charge for digital files. They make a transcript anyway, as part of the record. So, if one of the parties wants a copy of the transcript, as long as it's digital, there's no charge. Obviously, the Loft Board's rules were written before that was even an option. But I think we should do the same thing.

Ms. Roslund: So, the fee went to covering the cost of paper or whatever it would be to physically make a copy of something? The time and material required to do that?

Mr. DeLaney: Right. Whereas now, if the transcription service does it for OATH and sends it to them in a digital file, it takes somebody a minute to make a copy and send it to someone requesting a copy.

Ms. Roslund: Do FOIL requests have a fee associated with them? Do other classes of information?

Chairperson Hylton: We charge twenty-five cents a page for physical copies. Digital is free.

Mr. Clarke: I think that covers it. At the bottom of that page, you see OATH rules 1-22 and 1-24. We just put those there for informational purposes. They concern the filing of petitions and answers. But since we handle that portion of the hearing here at the Loft Board, what OATH does is a non-issue.

And I think that's all we have time for. There are two more issues that will probably garner more discussion at the next meeting. Once that's done, we'll be completely finished with OATH's comments to our proposed rules. And then we can focus the rest of our attention on the Law Department's comments to our proposed rules. We're making progress.

Chairperson Hylton: Thank you, Mr. Clarke. And now might be the time to say that we do need to have two additional Board meetings devoted entirely to rules, so we can expedite this process a bit. Ms. Lin will poll the Board members for dates in early March and April. We do need a quorum to have these meetings, so please respond to her as soon as possible, so she can schedule the meetings.

Ms. Torres-Moskovitz: I wanted to add one thing, if I may, just generally. It's good to see so many people from the public here. It reminds me that sometimes in the past, staff would do a town hall or informational meeting. And this also shows that people can find virtual meetings easier than a room somewhere near City Hall. So, it seems like this could be viable for a future town hall for transparency, when the rules are going to be published, or different kinds of issues that affect tenants and landlords that arise. They found it. Thank you.

Chairperson Hylton: Thank you for those comments, Ms. Torres. And related to that, I do want to say to the members of the public, tenants, whoever had joined the prior meeting and was locked out or disenfranchised in any way, again, I apologize. I take full responsibility for it. We didn't anticipate so many people coming, and GoTo Meeting, I guess, is perhaps not the best mechanism for such a high-volume. We'll we have to look at something different, so that it doesn't happen again. But again, I'm sorry that it kept people waiting for so long, and I'm sorry that it did create all this anger and so on. But I appreciate everybody sticking with it, and I thank the Board members for sticking with it and coming and having such good debates. I think this is great. Certainly, the pandemic has opened our eyes to so many different means of communication and transparency. So, it's all good, and I just want to thank everybody for their patience with us.

Mr. DeLaney: I'd just like to say that I think any anger expressed was not directed at you, Mr. Chairperson, or at the Board, but was rather the expression of tenants who've had a tough time in their buildings and are concerned about the extension and the like. I don't think it was at you.

Chairperson Hylton: Sure. Well, the debate among the tenants, it turned out fine, right? Back door, it worked. So, I thank you, and I got it. I really got it. Would any other Board members like to say anything before we close? Okay, so before we close, I have two announcements. Today will be the last Board meeting for Mr. Hernandez. Robinson Hernandez, our Manufacturing Representative. Mr. Hernandez, are you still there?

Mr. Hernandez: Yes, still on.

Chairperson Hylton: There you go. Okay, good. Mr. Hernandez joined us back in December of 2016, and at that time, the Loft Board was without the benefit of a Manufacturing Rep for many years prior. I want to express my thanks on behalf of all our fellow Board members, as well as on behalf of the city of New York, to Mr. Hernandez for his contributions over the years to the operations of the Loft Board. He put his substantial expertise and experience to work as a public servant, and I can tell you, Robinson has been a public servant with the city for a very long time. Certainly, we've known each other for fifteen plus years. And we owe him a debt of gratitude for his time on the Loft Board. So, we wish him the best in his future endeavors, and he will have an opportunity to talk about that, but I hope our paths will cross in the future.

Mr. Hernandez: I sent a note out to everybody. So, thank you so much. Appreciate it.

Ms. Roslund: Thank you. We're going to miss you.

Mr. Hernandez: Thank you. Likewise. I'll send a note out to everyone soon, so I can get... I know we've run over. Sorry.

Chairperson Hylton: Thank you, Robby. Thank you for bringing the debate on the extensions to an end before leaving. I appreciate it. That was the agreement, right?

Mr. Hernandez: Right. Yeah.

Mr. Clarke: Thank you, Mr. Hernandez.

Chairperson Hylton: Take credit, take credit.

Mr. Hernandez: Sure. You're welcome.

Chairperson Hylton: Next, the mayor has decided on a replacement for Mr. Hernandez, and that person is Kei -- spelled K-e-i, and the last name is H-a-y-a-s-h-i. Hayashi. To succeed Mr. Hernandez, and she will be joining us as a Manufacturing Representative starting at the March 18th meeting. Maybe even earlier if we have a rules meeting, and she's able to come. But officially for now, it's the 18th of March.

_CLOSING:

This will conclude our February 18, 2021, Loft Board meeting. Our next official public meeting, where we discuss cases, will be held on Thursday, March 18, 2021 at 2pm. And we will advise about the date of an additional rules meeting once we know everyone's availability. The governor's suspension of the in-person meeting requirement for the Open Meetings Law is in effect until February 26, 2021. So, at this point, we don't know whether the next Board meeting will be in person or via teleconference. It will most likely be via teleconference, but we will update you as soon as we know the format of our next meeting. And we will also send that information out via the Loft Board Listserv and post that information on the Loft Board's website. Thank you again. Loft Board Members, please remember to sign and email your attendance sheet. Thank you and have a safe evening.