MINUTES OF PUBLIC MEETING

New York City Loft Board Public Meeting

March 18, 2021

The meeting began at 2:06PM

Attendees: Elliott Barowitz, Public Member; Richard Roche, Fire Department's *ex officio*; 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 March 18, 2021, public meeting of the New York City Loft Board and explained that the meeting was being held via teleconference due to the coronavirus 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 had two announcements: The first was the new Board member, Manufacturing Representative Kei Hayashi, would not be starting until the April 15th, 2021, meeting. The second was that a second Board meeting, devoted to rulemaking, would be held the following week, Thursday, March 25, 2021, at 2PM, and that the information about that had already been posted to the Loft Board website and Listserv.

VOTE ON MEETING MINUTES:

<u>January 21, 2021, Meeting Minutes</u>

Chairperson Hylton asked if there were corrections or comments on the minutes.

Mr. DeLaney: Yes, thank you. On page 4, I had asked whether there was any update on the case that we discussed in executive session. Is there any update at this point?

Ms. Lin: No, not yet. I did follow up with Law Department again yesterday and was told they will update me when they have any further news to share.

Mr. DeLaney also pointed out that on page 8, there was an issue with Summaries for Cases 5 and 6. The same summary was given for both and he believed it only pertained to Case 6, not for Case 5.

Chairperson Hylton tabled the vote on these minutes until the next session so that the error could be corrected. As there were no further comments on these minutes, he turned to a vote on the February 18, 2021 meeting minutes.

February 18, 2021 Meeting Minutes

Chairperson Hylton asked if there were corrections or comments on the minutes.

Mr. DeLaney noted corrections to be made to the title of the New York City Loft Tenants association, on page 9. The word "Loft" was missing; an "s" should be added to Tenant; and the word association is not part of the title, so it should be removed wherever it might occur.

Chairperson Hylton asked if, with those corrections, there was a motion to accept the February 18th meeting minutes.

Mr. Barowitz moved to accept the February 18, 2021 meeting minutes, and Mr. Hylton seconded.

The vote

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

Members dissenting: 0

Members abstaining: 0

Members absent: 0

Members recused: 0

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

ACTING EXECUTIVE DIRECTOR'S REPORT

Executive Order

On February 14, 2021, the Governor issued Executive Order 202.94, which suspended the in-person meeting requirements of the Open Meetings Law to March 28, 2021.

Revenue

The unofficial Loft Board revenue for February 2021 was $1,150.

Enforcement

On February 23rd, 2021, one violation was issued 156-170 North Fourth St, Brooklyn, New York, in unit 16, for lack of running cold water in the kitchen.

Litigation

There were three new cases: two Article 78 proceedings and one housing court proceeding.

1. *475 Kent Owner versus Loft Board and Julian Bozeman*, index number 152162 of 2021. The owner filed an Article 78, challenging the Board's determination in Loft Board Order 4987, dated June 18, 2020, which invalidated the prior tenant's sale of rights because she was no longer a residential occupant at the time of sale, and it granted the applicant protected occupant status.

2. *475 Kent Owner versus Loft Board and Rune Knudsen,* index number 152193 of 2021. The owner filed an Article 78 challenging the Board's determination in Loft Board Order number 4973 dated, May 1,

2020, which found that the applicant's B1/B2 visa did not preclude him from establishing primary residency and granted him protected occupancy status.

3. A*lden et. al. versus The West Paramount LLC, HPD and the Loft Board,* index number LT 300459 of 2021. Here, the tenants of 117 West 26th Street, New York, New York, filed a housing court proceeding against the owner for failing to provide heat in the building.

Discontinuance: *99 Sutton LLC versus New York City Loft Board*, index number 159477 of 2020. The owner had filed an Article 78 concerning Loft Board Order 4934, dated January 16, 2020, which fined the owner $5,000 for failure to renew the annual registration for the building. Upon review of the Loft Board records, staff discovered that owner submitted his registration renewal prior to the issuance of the Order. So pursuant to a stipulation of settlement, the subject fine is rescinded, and the Article 78 proceeding is discontinued. And that is my report.

Chairperson Hylton: Thank you, Ms. Lin. I will open up to any questions from the Board members.

Mr. DeLaney: I just have one question, which is related to the timing of when we think we might be able to resume the enforcement effort that was started several years ago and then discontinued when the staff member who was leading it up left the agency?

Ms. Lin: That's a very good question, Mr. DeLaney. Unfortunately, I don't think I have an answer for you because it's dependent on a few things. One, getting the new Executive Director on board, and the other is, right now our enforcement attorney is actually out on leave, so we await his return. When those two things come back into place, we can evaluate that issue.

Mr. DeLaney: Thank you.

Chairperson Hylton: Also, Mr. DeLaney, as you know, it will also depend on the budget, if lines are reopened for us to do that. However, I can tell you, this was discussed, and we do need to start up some kind of Loft Board enforcement. It is a priority, and we will try to get something going. It's just not going to be as robust as we had originally planned. But we will regroup and start something soon.

Mr. DeLaney: Thank you.

Chairperson Hylton: While we're on that subject of staffing, I'm not necessarily making an announcement, but I'll just say that we expect we'll have an Executive Director on board soon.

Mr. DeLaney: Before we go to the cases, if you don't mind, I'd like to just raise one other issue. Re-reading the minutes this morning, I was reminded of my decision to defer the suggestion of a Board resolution on the subject of professional and self-certification because I didn't think it was fair to bring it up at a meeting where there was a new member for the first time, Mr. Hylton. And then reading that, I thought, well, here we go again. We're going to have another new member today. But it turns out, we won't have that new member until next month, so I'm in a bit of a quandary about how to proceed. I'd like to move forward on this at some point in the future, but I'm not quite sure what would be fair under the circumstances. So, I guess I'm asking the Chair and the Acting Executive Director for some guidance.

Chairperson Hylton: Can we put this on the agenda for the May meeting? Would that be all right? That would give Ms. Hayashi a chance to review whatever you have. Could you draft something, Mr. Delaney?

Mr. DeLaney: There are a couple segments in the minutes from both -- November and January, I think -- that do a pretty good job of it. But I can certainly pull something together. This is also something Julie had reminded me about. How does that sound to you?

Ms. Torres-Moskovitz: Thank you. Sounds fair for the new manufacturing rep to have a month. But then I guess that means in our April meeting we have to brief them, correct?

Chairperson Hylton: Correct. And in in your briefing, if you want to have that resolution drafted... I don't think we want to have the staff draft that resolution.

Mr. DeLaney: Right. No. I took the responsibility for that. So, perhaps we can put ten minutes for discussion on the April agenda on that topic.

Chairperson Hylton: Fair enough.

Mr. DeLaney: Thank you.

Chairperson Hylton asked if there were any other points for discussion before starting the cases (None).

THE CASES:

Appeal and Reconsideration Calendar:

Chairperson Hylton introduced the only case on this Calendar.

	Applicant(s)	Address	Docket No.
1	99 Sutton LLC	99 Sutton St., BK, NY	AD-0105
The owner filed an appeal challenging an administrative determination, dated February 5, 2020, in which the former Executive Director denied the owner's request to modify the filing date of three administrative appeal applications ("Applications") that were the subject of Loft Board Docket Nos. AD-0101, AD-0102, and AD-0103. In addition, the former Executive Director rejected all three Applications and closed the corresponding dockets. The appeal is denied because the owner did not renew the building's annual registration for Fiscal Year 2020 and did not pay all applicable fees in full until after the Applications were filed with the Loft Board and until after the deadline to appeal the administrative determinations in Loft Board Docket Nos. AD-0101, AD-0102, and AD-0103 lapsed.			

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

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

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

The vote

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

Members dissenting: 0

Members abstaining: Mr. Hylton

Members absent: 0

Members recused: 0

The Summary Calendar

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

<table>
<tr><th></th><th>Applicant(s)</th><th>Address</th><th>Docket No.</th></tr>
<tr><td>2</td><td>Matvey Fiks & Vasily Grogol</td><td>250 Moore St., Unit 401, BK, NY</td><td>PO-0068
TA-0241</td></tr>
<tr><td colspan="4">Matvey Fiks and Vasily Grogol, the residential tenants of Unit 401, filed two applications seeking protected occupancy status for themselves and a return of alleged rent overcharges for their unit. The parties executed a stipulation of settlement. Mr. Grogol vacated the unit and withdrew his claims with prejudice. Mr. Fiks also withdrew his claims with prejudice. The owner agreed to recognize Mr. Fiks as the protected occupant of Unit 401. The tenants’ applications are deemed to be resolved. The Loft Board neither accepts nor rejects the remaining terms of the stipulation of settlement. The Loft Board directs its staff to update its records to reflect Mr. Fiks as the protected occupant of Unit 401.</td></tr>
<tr><td>3</td><td>100 Metropolitan Avenue Realty Corp.</td><td>100 Metropolitan Ave., Unit 6, BK, NY</td><td>LS-0261</td></tr>
<tr><td colspan="4">The owner filed an access application for Unit 6. The owner subsequently withdrew its application because the owner was granted access to the unit. The owner’s application is deemed to be resolved.</td></tr>
<tr><td>4</td><td>Mira de Jong & Elae (Lynne) DaSilva Johnson</td><td>141 Spencer St, Units 307 & 203, BK, NY</td><td>TA-0277</td></tr>
<tr><td colspan="4">The residential tenants of Units 203 and 307 filed a joint application seeking a return of alleged rent overcharges for their respective units. The tenants ultimately withdrew their claims with prejudice. The tenants’ joint application is deemed to be resolved.</td></tr>
</table>

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

Mr. Hylton moved to accept this case, and Mr. Barowitz 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, Ms. Torres-Moskovitz, Ms. Roslund, Ms. Rajan, Chairperson Hylton

Members dissenting: 0

Members abstaining: 0

Members absent: 0

Members recused: 0

The Master Calendar

Chairperson Hylton introduced the first case on the Master Calendar.

	Applicant(s)	Address	Docket No.
5	Ronald Pichler	257 West 19 St., 4th floor, NY, NY	TR-1334
Tenant filed an application seeking coverage and protected occupant status. The Building meets the requirements for coverage. The unit for which coverage is sought need not have been used for commercial purposes and the Building meets the requirement that it must lack a certificate of occupancy. The Tenant is the protected occupant as he took possession with Owner's consent pursuant to 29 RCNY § 2-09(b)(3).			

Mr. Clarke presented this case.

Chairperson Hylton: Thank you, Mr. Clarke. Well put-together.

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

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

Chairperson Hylton asked if there were any comments on the cases.

Mr. DeLaney: I would just comment and agree with the Chairperson that this is a very clearly written Order and commend the staff for it. This certainly has some Family Feud elements to it, but it seems that the right conclusion was reached.

Chairperson Hylton: Thank you, Mr. DeLaney.

The vote

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

Members dissenting: 0

Members abstaining: 0

Members absent: 0

Members recused: Ms. Roslund

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

	Applicant(s)	Address	Docket No.
6	The Broadway Corporate Group LLC	496 Broadway, BK, NY	LE-0722; RG-0211
The owner filed an application seeking a final rent order and removal of its building, which was initially registered with three IMD units, from the Loft Board's jurisdiction. *Based on sales of rights that were executed pursuant to MDL § 286(12), the Loft Board finds that, solely with respect to Article 7-C of the MDL, Units 1A and 1B are not subject to rent regulation. As to the third-floor unit, also known as Unit C, Unit 3C, and Unit 317, which remains subject to rent regulation, the owner submitted a Notice of RGB Increase Filing and exercised its right to a rent adjustment based on the necessary and reasonable costs of obtaining a residential certificate of occupancy. The Loft Board has calculated the initial legal regulated rent for the third-floor unit and accepts an agreement, executed by the parties, which stipulates, among other things, the third-floor occupant's share of code compliance costs.* *The Loft Board finds that the owner is in compliance with MDL § 284(1). The Loft Board directs the owner to register the building with HPD and the third-floor unit as a rent-stabilized unit with DHCR or any succeeding regulatory agency. In addition, the owner is directed to provide the occupant of the third-floor unit with a residential lease subject to the provisions of this Order, the Emergency Tenant Protection Act of 1974, and the Rent Stabilization Law and Code. Furthermore, effective 35 days from the mailing date of this Order, the building is no longer an IMD and is no longer under the Loft Board's jurisdiction.*			

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

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

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

<u>The vote</u>

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

Members dissenting: 0

Members abstaining: 0

Members absent: 0

Members recused: 0

The Board took a short break before starting the rulemaking session.

RULE-MAKING:

Chairperson Hylton: The next item on the agenda is rulemaking updates, and Mr. Clarke will lead this discussion. But before he does, I want to say something. I'm setting a goal to have our rules finalized by June of this year to send to the Law Department for approval. This is my goal. Of course, I'd love it to be sooner, and though I realize that is unlikely, the earlier the better.

I believe it's doable, although it's not easy for staff and for the Board, given the staff workload and time constraints. But we all have to strive to make this a priority in the upcoming months. And I really thank you all -- the staff and the Board members -- for your continued efforts in seeing this through. After it leaves us, a lot will depend on Law Department's timing, but it doesn't hurt to set a goal.

I believe we've been working on the rules for close to four years, so we need to wrap this up. That's why we have set an extra Board meeting this month just for rules. If I assess with staff that we need another one in April, I'll ask for another meeting. But let's see if we can get this done without that.

Now, with nothing further, Mr. Clarke will take over.

Mr. Clarke: Thank you, Chairperson Hylton and Board members. We're going to resume reviewing OATH's comments, and for your reference, I sent the two-page document, at the top of which it says 1-12 Definitions, which contains all the OATH comments we've been working through.

We'll start by returning to 1-27 Hearings, section (e). 1-27(e). Board members are asked to decide whether or not they want to accept OATH's proposed change with respect to procedural issues, which reads as follows:

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

For the public, in order for the Board to determine if they should accept this language, they needed to review a comparison of OATH's and the Loft Board's procedural rules to see if there are any conflicts. We're in the process of doing that, and we've done most of the comparisons in the document, but we still have a little bit more to get through. I'm hoping we can finish this today. OATH also added another comment last week, which we'll get to, and then we will have finished reviewing all the comments we received from OATH.

So, turning to the second document that we have been going through--- that chart, the comparison spreadsheet -- we'll pick up with 1-28, Notice of Conference or Trial. That's probably around page 9. I'm sorry, it's not numbered.

Chairperson Hylton: It's around the fifth page. 1-28 you said?

Mr. Clarke: Yes. The Notice of Conference or Trial.

Mr. DeLaney: Excuse me, before we go to 1-28, you were speaking about 1-27(e)?

Mr. Clarke: Yes

Mr. DeLaney: Is that new language that we're seeing for the first time at the end of 1-27(e)?

Mr. Clarke: No, that is language that's been there. Well, this is new language that we received from OATH, yes. But we got this quite some time ago, and the reason why we have the purpose of this spreadsheet is to review the new language OATH recommended.

Mr. DeLaney: Okay. Thank you for clarifying that.

Mr. Clarke: No problem. So, are we all on 1-28, Conference and Trial? Okay. So, there are two, sections in this box: 1-28 and 1-26(d), Docketing the Case. Now, this is going to cause some conflict, because we've already discussed what the Loft Board rules say about the notices of conference in section 1-27. Basically, OATH rules require the party that placed the case on the calendar to serve other parties with notice of trial, as well as other documents. So, if we accept, wholesale, all of OATH's procedural rules, we would accept that the party that placed the case on the calendar is responsible for serving the other parties.

We discussed this previously and took issue with it because, in many cases, it's tenants that are initiating a case, and so that burden would fall on the tenants. Moreover, the Loft Board rules say that you have to provide fifteen days' notice to the parties prior to a conference or hearing and that the Loft Board is responsible for mailing out these notices. The latter we've discussed at length in light of the Loft Board staff limitations.

Originally, we changed the language to adjudicator, but we believe we came to an agreement, or an understanding, that our rules currently have the Loft Board taking responsibility for serving these notices. OATH would like the Loft Board to retain this language -- with the Loft Board taking responsibility for mailing these notices. But again, with this, the problem we have, as I'm sure the Board knows, is that if we accept, wholesale, all of OATH's procedural rules, we're going to run into this issue, with OATH saying that the party that placed the case on the calendar is responsible for service.

Chairperson Hylton: So, Mr. Clarke, if I'm understanding this right, when our rules were written, the Loft Board was doing its own adjudication, correct?

Mr. Clarke: Correct

Chairperson Hylton: So, basically, in practice right now, OATH has adopted Loft Board rules? Correct? Because they're doing the mailings?

Mr. Clarke: Correct. They've taken on this responsibility.

Chairperson Hylton: Right. So is it possible, because the Loft Board is not really a party to the suit... I don't know if we're considered party to the suit. Are we, lawyers? I think we're not. So, if our rules should stand here, we would be asking OATH to send these notices out, correct? Not the Loft Board?

Mr. Clarke: The way it's written now, in our current rules, it would still be the Loft Board's responsibility to mail these out. However, OATH has been doing it ever since the Loft Board ceased conducting their own hearings internally. OATH has taken on that responsibility. But the way that it's currently written, the Loft Board is responsible for mailing out these notices.

Chairperson Hylton: So, you think the Loft Board was meant to be the adjudicating body?

Mr. Clarke: You're right. At the time this was written, the Loft Board was the adjudicating body.

Chairperson Hylton: So, I'm sure the intent of the rule was that the adjudicating body would mail out the notices, correct?

Mr. Clarke: I know. That would make sense to me, but I can't give you a hundred percent....

Chairperson Hylton: Right. But I'm sure if we were to research what the original intent was, it would have been because we were doing it within the Loft Board. We didn't say, adjudicating body; we just said Loft Board. So, in essence, these rules were written with the intent that whoever the adjudicating is would just mail out these notices. And in practice, that's what's happening now, correct?

Mr. Clarke: Yes, in practice, that's what's happening.

Chairperson Hylton: And if I recall, what OATH is actually saying here is, we'll continue to do it, but we don't want to be compelled to do it because of our own potential staffing issues, right?

Mr. Clarke: That's correct.

Chairperson Hylton: And so, if we don't do this, and next month OATH says that they've lost staff due to the pandemic or whatever, and they can no longer mail out the notices, it would fall back on the Loft Board? If we leave this language in there, correct?

Mr. Clarke: Right. But the added difficulty with this is embedded in the language and 1-27(e). It's that if the procedural rules conflict, OATH's rules will apply.

Chairperson Hylton: And what do OATH's rules say?

Mr. Clarke: OATH says the party that placed the case on the calendar has to serve.

Chairperson Hylton: Okay, so I'm thinking of a compromise here. That's why I'm asking these questions. Because I'm thinking that if the Loft Board were to interject the language in here that says, except in these particular instances, if there's a conflict here, if OATH cannot do it, the Loft Board will assume that responsibility. I know, I know. We've got staffing issues, too. But I'm saying if that's the case, if they renege on that -- what they're doing now -- and we can put in the rule that we will pick it up in lieu of it falling to the party that brought the case – which I'm sure, be burdensome on certain tenants, who don't have the legal coverage or the funds required to do this -- and put it back on the Loft Board to do it...What kind of volume are we talking about?

Ms. Lin: It could be a lot. Some of these buildings are quite large. And for certain applications, it's supposed to go to everyone in the building. So, it could be quite burdensome for the Loft Board to pick it up. But frankly, we don't really have a choice. That's what our current rules say. We are responsible for this.

Chairperson Hylton: Okay. So why don't we keep it our responsibility by putting some exception here that says, except in these matters, the Loft Board will continue? We'll find a way to do it. Years ago, this may have been tedious, but now, surely there's software that can at least facilitate the generation of the notices. Service is a different issue. But I think this is service by mail, correct?

So, I don't see how this could be too onerous, even if we had a hundred parties. If we have a list of all the parties in a spreadsheet to just generate a mail-merge document and send out these notices... In fact, we do this now at the Department for violations, and so we could probably assist in that way. All right? So, the Board agrees to find a way to craft language to say except...or to leave it alone, right? But to make an exception in this case.

Mr. Clarke: Right

Ms. Lin: I think the issue here is crafting language for 1-27(e). I don't know if Mr. Clarke had a chance to look at that -- to draft, to create an exception. So, OATH's rules will apply, except for the newest requirements. I'm not proposing the language we should use; I'm just saying that's what the rule should say.

Chairperson Hylton: Right. I'm going to come to the defense of OATH for a second. And Chuck, you may be mad at me, but they're not trying to get out. They just don't want to be compelled. In our conversation with them, they did say they will continue to do it, correct?

Ms. Lin: They will continue to do it for the time being. I don't think it's a life-long commitment or anything, but they are doing it for the moment.

Chairperson Hylton: What I'm saying is, that's how they feel now. But I said this before, they are a City agency. And so is the Loft Board. The City will make it happen – have the notices sent out so as not to burden anyone else. All right? There are notices that go out every time violations are issued; every time cases are put on by some agency. If it's not going to be OATH, it's going to be the Loft Board. We'll make it happen. So, I feel confident that if we, just as Ms. Lin says, make this exception, if it comes down to it, we'll make it happen. In fact, we'll plan for it. Okay? Mr. DeLaney.

Mr. DeLaney: Just so I'm clear, Mr. Clarke mentioned that this would put responsibility on the parties?

Chairperson Hylton: On the party that brings the case.

Ms. Lin: If 1-27(e) remains as written, as you see on the screen right now, if we say, if it's a conflict between OATH and Loft Board rules, and OATH's procedural rules or practices will apply, that does mean that their regulations, which makes the party serve, would take precedent. So, in order to put that responsibility back onto the Loft Board, according to our rules, we'd have to make a little carve-out to 1-27(e).

Mr. DeLaney: So, let's just think this through with a hypothetical. A group of tenants in a building files for coverage. In the earliest iteration of the Loft Board, they simply filed twelve copies, and the Loft Board did all the service.

Chairperson Hylton: If there are twelve affected parties.

Mr. DeLaney: For whatever reason, back in the 80s, it was provide twelve copies. And I guess if there were more affected parties, the Loft Board made copies. That was the way it stood until about, I want to say 2004, when the rule was changed, so that now the applicant is expected to serve the other affected parties, correct?

Mr. Clarke: That's correct. The applicant is responsible for serving the other parties.

Mr. DeLaney: So now the case is joined. The parties have been served. Answers start coming in. And currently, the Loft Board sends that whole dossier over to OATH, and OATH takes it from there, correct?

Mr. Clarke: That's correct.

Mr. DeLaney: Okay. So now, if the case goes to OATH, the next thing that happens is there's a settlement conference. Currently, OATH does the notices and the scheduling of the settlement conference, correct?

Mr. Clarke: Yes

Mr. DeLaney: Okay. And if we let this new language go into effect without a carve-out, the first question would be if OATH doesn't want to do it, now, if there's got to be scheduling of a settlement conference with an OATH judge, who's going to do that? Is it the Board? Or is it the party that filed?

Mr. Clarke: If there's no carve-out, then it's the party that filed. That's what the OATH procedural rules mandate.

Mr. DeLaney: Okay, so the party that filed would now be responsible for making sure that the other parties to the case are served? And they also have to make sure the scheduling fits the settlement judge’s calendar, correct?

Mr. Clarke: Right, yes

Mr. DeLaney: Okay. And in most instances, it’s probably not going to be the parties that would do this, but it would be the attorney who represents the parties, because we want to make sure it's done properly. Is that correct?

Chairperson Hylton: Maybe pro se?

Mr. Clarke: So far, yes.

Chairperson Hylton: There's such a thing as pro se? I'm sorry, Mr. DeLaney.

Mr. DeLaney: Sure. It's possible that, if I recall correctly, for a party to appear pro se at OATH, they need permission from OATH to do so.

Ms. Lin: I don't think they do. Anyone can represent themselves at OATH. I think there was an open question as to who you can appoint as a representative.

Mr. DeLaney: Right. Okay.

Ms. Lin: But you can certainly go pro se. You’re not mandated to get an attorney at OATH.

Mr. DeLaney: But let's assume you've got a big building and a contentious group of parties. So, in all likelihood, everybody's lawyered up. So really, what we would be doing in this case would be shifting those, I'll call them administrative costs to the party who brought the case, rather than to the Loft Board. Am I correct there?

Mr. Clarke: Yes. It would be the responsibility... at that point, the scenario that you gave, yes. The party that brought the case would have the financial burden of mailing out the notices.

Mr. DeLaney: And doing it right and suffering the consequences if they don't do it correctly.

Mr. Clarke: Yes

Mr. DeLaney: And then, if the parties can't reach a settlement in front of the settlement judge, then it gets referred to another ALJ, and there's a trial. And through that part of the process, as I understand it,

without some kind of carve-out, it would also be on the parties to do all of that, with regard to scheduling trial dates, adjournments, and everything else?

Mr. Clarke: Yes, that's correct. It's a lot of notices that go out. From the time it gets to a settlement judge; scheduling, conferences, hearings; there are a lot of notices to potentially go out. Especially if it goes all the way to a trial and hearing at OATH. Absolutely correct.

Mr. DeLaney: And there's no supreme court, civil court, housing court, surrogate court....Is there any model where the parties are in charge of doing this kind of stuff? Isn't that generally done by the court?

Ms. Lin: I don't know if there is, because when you initiate a court proceeding, it's the party who initiates the case that's supposed to serve everyone with the court date. And when a court reschedules a hearing, usually the parties are in court. Everyone's there to get the next hearing date. I don't know if the court actually mails out additional notices to everybody.

Chairperson Hylton: I want to take an opportunity here to say this is the way it works in the violation world also. The agency, the arm that brings the charge against the party, issues a violation, mails out that first notice. Adjournments and such that happen in the courtroom are done by the court. At OATH also.

Mr. DeLaney: But in the model we're describing, it could come to pass that it would not be OATH that was doing that work; it would not be the Loft Board staff; it would be the party that brought the case.

Ms. Lin: Right. If we let 1-27(e) read as it does now, without any carve-out provision, that's what would happen.

Mr. DeLaney: Okay, thank you. That makes it clearer to me.

Chairperson Hylton: I think it's an issue for OATH only because there's the potential for so many parties, and it could become a burden for them. I think that's what they're scared of -- that in a major building, there could be a hundred parties that are affected, and they would have to do all those mailings. But I think that's an anomaly, so I'm not scared of the future, of that kind of thing. That's why I'm saying let's do the carve-out. The Loft Board will deal with it.

Mr. Clarke: Are there any other comments?

Mr. DeLaney: If I understand correctly, to take the potential sting to the applicant party out of 1-28, we need to put a carve-out into 1-27(e)?

Mr. Clarke: Yes. And that sting would bounce back to the Loft Board instead of the parties.

Ms. Lin: Yes

Mr. DeLaney: Right. Okay. But we don't have language for that as of yet?

Mr. Clarke: That's correct. We'd have to create that carve-out. Either the Loft Board staff can work on that language, or if the Board members have an idea of how....

Chairperson Hylton: The Loft Board staff will have something by next week. We'll do that.

Mr. DeLaney: Okay

Chairperson Hylton: Board members, is that reasonable? Okay. Thank you. Shall we move on?

Mr. Clarke: So, moving on to the next section, 1-43, Subpoenas. I think it's around page 16.

Chairperson Hylton: We're skipping because we've already dealt with all the rest, correct?

Mr. Clarke: That's correct. So, if we're all here, the conflict with the subpoenas is that the Loft Board rules allow the parties, themselves, to issue subpoenas, where the OATH rules require the ALJ to issue them. That's the major conflict. If we accept OATH's procedural rules, whenever the parties want a subpoena, it has to come from the ALJ. Do the Board members have any comments or concerns with this?

Ms. Torres-Moskovitz asked if Mr. Clarke could explain using a scenario, similar to what Mr. DeLaney had just done with the mailing of notices.

Chairperson Hylton: Before you do that, Mr. Clarke, I have a follow up question. Wouldn't any party who's issuing a subpoena have to have it signed by a judge? I'm just curious. Mr. Hylton? If the case of,

say, a subpoena for records from another party -- one party's subpoenaing another party -- doesn't, the judge have to sign?

Mr. Hylton: Typically

Chairperson Hylton: There may be exceptions, you think?

Mr. Hylton: What I'm curious about here is, how does this operate now? Would this change in any way slow down the operation of adjudicating these decisions? And what are some of the issues that may have arisen thus far that precipitate looking at this rule?

Ms. Lin: I'm not sure there are any consequences. I'm pretty sure that OATH already applies their own procedures and that the judges sign off on the subpoenas. I don't think the parties have been trying to issue their own subpoenas without an ALJ signing off.

Chairperson Hylton: There's such a thing as subpoena power. I don't think parties have subpoena powers just because they're being litigated. You can't just say, I need these records. I'm a party to this lawsuit, and I'm compelling you to give me a copy of these records, without some judge intervening. What if there's a dispute? If somebody disagrees, who rules on it? So, I'm wondering if this in the Loft Board's own rules.

Mr. Clarke: I think it's possible. As you said, Chairperson Hylton, Mr. Hylton might be able to weigh in as well, or Ms. Lin. A party demanding, issuing, a subpoena on its own, without any type of judge....

Ms. Lin: Sometimes an attorney can issue a subpoena. There are certain circumstances.

Mr. Barowitz: It's put into the record, and the judge accepts it, isn't that clear enough? I'm not a lawyer, but this baffles me a bit. I'm assuming that whatever goes on in court, you're under oath, and you have to tell the truth. So, if something is submitted, and the judge has accepted it, isn't that enough? Without necessarily having it subpoenaed to begin with? As I looked through the OATH cases, lawyers are constantly mentioning things that it seem they have testified to under oath.

Ms. Lin: Well, I think part of the issue here might be, what would be a valid subpoena? If I am litigating my coverage issue, and I am a pro se litigant, and say, you are my neighbor, I'm issuing a subpoena per Loft Board rules for you to give me pictures from 2000 of your apartment, do I have the power to do that? It seems like under OATH rules, it requires an ALJ to sign off on a subpoena before I can issue something like that. And under our rules, arguably, maybe you don't have to. Though I would have to look into whether our rule is even valid. Whether it gives subpoena powers to anyone. I'm not sure. But I do think it's enough to say that adopting OATH's rules here would not be prejudicial to any parties.

Mr. Clarke: I agree.

Mr. Hylton: Okay

Chairperson Hylton: I think that's the bottom line, right? Is it prejudicial to our constituents? To the Loft Board's constituents.

Mr. DeLaney: The feedback that I got, what I heard, was that it makes sense to have the ALJ be the one who controls and makes decisions regarding subpoenas. And that there are times when there are discussions about that between the opposing counsels at OATH. I can't say I've heard from every practitioner on the tenant side, but it sounds like no one has ever tried to tell the OATH judge, well, you don't have the power to do that, because the Loft Board rules differ, and it says that I can issue a subpoena without you. Nobody's tried that. And I would suspect that the current Loft Board rule was probably not well drafted back in the 1980s, when this was put in. And at that point, some of the Loft Board hearing officers weren't even attorneys; they were just, like, nice people. So, it seems that the feedback I got is that the OATH method makes more sense.

Chairperson Hylton: I'm going to add that we do still have nice people at the Loft Board.

Mr. Clarke: Okay. Are there any more comments?

Chairperson Hylton: So, we're stuck with this language. We're going to adopt this as acceptable, correct?

Mr. DeLaney: I guess the attendant thought is perhaps we should look at bringing our rule into conformity with it, so that if there's ever a time when the Loft Board goes back to doing its own adjudication, that we'd have the same provision in our rules.

Chairperson Hylton: Your question is, are we amending this piece of our rule?

Ms. Lin: But there's nothing to specifically amend. This all falls under 1-27(e). What portions deserve a carve-out? Right now, 1-27(e) just says if there's a conflict between OATH rules and Loft Board rules, OATH rules will take precedence. So, we're just making sure that there's no place where we wouldn't want the OATH rule to take precedent. And it seems like we're okay with this.

Chairperson Hylton: What Mr. DeLaney is asking is, should we be looking to amend 1-27? Oh, we couldn't amend...

Ms. Lin: That would be a different provision, which we can look into.

Ms. Roslund: What Mr. DeLaney is saying is later, after we're done with the OATH comments, and we go back to the rules, we look at this particular rule.

Mr. DeLaney: What I'm saying is we basically lifted the 1980s language that's in 1-06(j)(2)(ii) and repeated it in our proposed rule 1-27(c), which says in pertinent part, “At the hearing, parties may be represented by counsel, issue subpoenas, or request that a subpoena be issued.” So, whether it’s issue a subpoena or request that a subpoena be issued, it seems to say that the party has the right to issue a subpoena. Maybe we just want to strike three or four words there, so that it would be, “The parties may be represented by counsel, request that subpoenas be issued, call witnesses, cross-examine...” et cetera, et cetera.

Ms. Lin: We can look into look that piece and see if we can draft that differently. That would be 1-27(c) we’d be modifying.

Mr. DeLaney: Correct

Mr. Clarke: We'd just be striking out, issue subpoenas.

Ms. Lin: Actually, yes. Because we still have to request that a subpoena be issued.

Mr. Clarke: All right. So, we can move on to the next section, 1-45, Failure to Appear, which is pretty extensive. At many different points in the Loft Board's rules, a party can fail to file an answer; can fail to respond; or fail to appear at a hearing. And in each of those situations, the parties can end up in default. And the way that OATH rules address failure to appear is:

"Commencement of a trial or any session of trial will not be delayed beyond the scheduled starting time except for good cause as determined in the discretion of the administrative law judge."

So, the administrative law judge at OATH has discretion to, basically, vacate defaults. Whereas in the Loft Board rules, exactly what the parties must do to vacate is detailed and more specific. There are timeframes, and it's not just at the discretion of the adjudicator. So that's the major conflict we have here. Whether or not the Board members are fine with giving the OATH judge the discretion at the hearing portion of the application; or once the application is transferred to OATH, giving the OATH judge the discretion to commence trials without one party that vacated or vacating a default judgment. Does the Board want to leave that power with OATH? As opposed to our rules, where we have a specific mechanism in place to vacate defaults.

As I read the rules, I don't think accepting OATH's procedural rules would be prejudicial on the tenants, but the Board members and anybody else that would like to comment can definitely do so.

Chairperson Hylton: In my reading of this, it seems like the Loft Board says, if you default, you've got thirty days to, basically, file an application to come back in, correct? And then there's some consideration here, right? Somebody has to rule on that, right?

Mr. Clarke: Right. And not only do you have to meet the time requirement, but there also has to be good cause as to why you didn't answer or appear.

Chairperson Hylton: So, the difference between OATH and us is OATH is saying, there's no time?

Mr. Clarke: Right. It's at the discretion. It says that it shouldn't be delayed. So, I think in that language, it means you should be doing it as quickly as possible. But there's no specified time.

Chairperson Hylton: So, who do you think that would benefit?

Ms. Lin: I think it benefits the defaulting party. I will say, I do find the thirty-day deadline a little bit stringent. There could be all sorts of reasons why someone doesn't respond within thirty days. They may be hospitalized, or maybe during COVID they moved out temporarily, and you don't really quite meet the thirty-day criteria. I do think more flexibility is probably a good thing. So, I do think in this respect, OATH's rule provides more flexibility. It doesn't say that we have to accept the people if they come back in a year later. It just gives the adjudicator the discretion to decide what's reasonable, when to vacate a default.

Chairperson Hylton: I agree with that.

Ms. Torres-Moskovitz: Just to clarify, when it says adjudicator, is it always the OATH judge? Or is this a case where the Executive Director of the Loft Board would be given more power and discretion?

Ms. Lin: Right now, it's all before OATH, because that's where our hearings go. But the way our current rules are laid out, it does give the Executive Director power to vacate a default. So, I suppose that would be if the hearing is before the Loft Board again, if we develop this hearing unit again, then I suppose the Executive Director would have the power to vacate the default in those circumstances. But right now, it's all before OATH.

I'm sorry, actually, let me correct that. I suppose there could be a situation in which someone tries to vacate a default and it hasn't been sent to OATH yet. Any applications still before the Loft Board. If there's no factual dispute, we wouldn't really send it to OATH. So, someone, let's say defaulted in a removal application. Those typically don't go to OATH, so then the Executive Director would have the power to vacate a default in that situation.

Ms. Roslund: Are we in the same conversation that we're having about the last one? So if, in order for the same rules to apply to the Loft Board.... Because right now, we're just talking about whether there's a conflict between OATH rules and the Loft Board rules. Because in order to accept 1- 27, that says OATH rules override Loft Board rules, right? So, in order to accept that section, we're now looking at each of these sections individually. So, we're only discussing whether or not the OATH rule would then

apply. So, we're looking at where there's a discrepancy between the two? And in this case it says the OATH rules would apply. So, we're asking, are we okay if the OATH rules apply at OATH. Because that's what we're talking about. The whole discussion is about at OATH, right?

Mr. Clarke: Yes

Ms. Roslund: And that's kind of a yes or no answer. And then the second part of it is, as Mr. DeLaney mentioned earlier, maybe we should re-visit this section of our rules, to allow more discretion or whatever. We might come across those a few more times. But that's a discussion for later, when we're re-reviewing that section of our rules. Because right now, we're only reviewing section 1-27 of our rules. Is that correct?

Ms. Lin: Yes. Right now, we are focused on 1-27(e). But I will say, given the state of these rules, and if the Board members do want to change something in our rules outside of 1-27(e), they should probably tell the staff now, so we have time to look at it and bring it back to the Board. It does require fiddling with our rules. And I know this has been going on for some time, and people are eager to get it passed. But if the Board members are thinking about changing the Loft Board's rules, I think you should tell staff now, so we can prepare it and bring it back to you as soon as we can.

Ms. Roslund: Sure, agreed. So, we should circle this and say, okay, next week when we meet or next month or whenever, let's look at this. But just in in terms of our own rules. Yeah?

Ms. Lin: Yeah, we can delve into the discussions of redrafting at a later Board meeting. So, if that's something you would like staff to take a look at, we can try to see about adopting language closer to OATH's language. But for today, I think, suffice it to say that the Board members are all okay with letting OATH procedures dictate what happens OATH.

Mr. Clarke: Okay. There is one other fairly simple comment that OATH submitted last week, which I'd like to bring to the Board's attention. And next week, the staff will come back with language for the carve-out. Then, if the Board members are satisfied with everything, we will have completed the comparison between OATH's procedural rules and the Loft Board's procedural rules, and we can start moving into Law Department comments.

Mr. Clarke: Mr. DeLaney, if you have any additional comments under OATH's rule for 1-45, the Failure to Appear, can you present those comments now?

Mr. DeLaney: No, I'm good.

Mr. Clarke: Okay, with that said, we've completed the comparison between OATH's and the Loft Board's procedural rules. We have a couple of changes to our rules outside of 1-27(e) that Loft Board staff has taken note of; however, the Loft Board staff will come back next week with a carve-out for the notices, and we'll be done with 1-27(e).

Okay? So, going back to the first document the Board members received....The colorful one, with all of the comments, there is the one additional comment that OATH brought to us last week.

Mr. DeLaney asked Mr. Clarke for confirmation that sections 1-46, 1-49, and 1-51 had been covered previously.

Mr. Clarke: Everything else was covered, yes. Everything in this comparison chart has been covered. Going back to the first document that you received -- the colorful one -- on the second page, the very last section, which is 1-33, the Appeals, OATH recommended that we change one small part in there, when it comes to the appeals:

"An appeal from a determination of an OATH Hearings Division hearing officer issued pursuant to..." we have, "a Loft Board rule..."

OATH would like to change that to:

"The Loft Law must be brought before the OATH Hearings Division in accordance with the applicable rules and provisions established by OATH, as set forth in Chapters 3 and 6 of Title 48 of the Rules of the City of New York."

Which is OATH's rules. That's one small change that OATH would like to make.

Chairperson Hylton: And what's your analysis of that change?

Mr. Clarke: Our analysis is that it's not a major issue. It seems that OATH wants to draw the power to appeal from the actual Loft Law, as opposed to any type of rule that the Loft Board makes. I don't think it makes any major difference. But I guess it's just a stronger argument to have the appeal come from the law as opposed to the rule.

Mr. DeLaney: Just to clarify, am I correct that this is referring to situations where the OATH judge issues some sort of interim determination, rather than the circumstance where an OATH judge issues a report and recommendation, that is then returned to the Loft Board? Is that correct?

Mr. Clarke: Yes

Ms. Lin: I don't know if that's really the case here because it refers to OATH's Hearings Division and not the Trials Division, and all our cases actually go to Trials. No, I have to confess, I'm not really sure what this provision does. 1-33 is a holdover from our existing Loft Board rules, so it's already in there. So, at a certain point, we decided to put this in there. To my knowledge, we don't really have any Loft Board cases that end up in the Hearings department. But I think this is just a catch-all in case there is a case that ends up going to the Hearings Division, we're going to follow OATH's general procedures for the hearings, which is the appeal goes to someone else within their Division.

Mr. Clarke: Do the violations go to the Hearings Division?

Ms. Lin: No, they go to Trials. They can go to Trials.

Chairperson Hylton: We reserve that right. We can actually take it to Hearings, right? I know we don't have a mechanism to do that. I understand that. But we can, right?

Ms. Lin: Yes

Chairperson Hylton: I don't believe this is right. Because if we do, we'll be bringing violations of rules. We're not going to be citing the Loft Law. We're citing our rules on these violations.

Mr. Barowitz: What if we used both? Why don't we say, Loft Law and rules?

Chairperson Hylton: Yes, I could understand, Mr. Barowitz, if they had said to use both. But why would they change it from rules to law, when our penalties schedule, or any kind of penalty, would be pursuant to rule? I don't get why they put this in.

Ms. Lin: I think it's just broader, in case there's a circumstance in which we bring something that ends up in the Hearings Division that's not subject to a rule, but to the Loft Law, itself. I haven't seen that, but I suppose it could be possible. The rules emanate from the law.

Chairperson Hylton: Yes, I guess it’s possible, but...

Mr. DeLaney: So just to recap, the Hearings Division is not the Trials Division, I realize. Is the Hearings Division what took over from the ECB, basically?

Chairperson Hylton: Yes, it's the ECB that's in the Hearings Division.

Ms. Roslund: Aren’t we talking about two things right now? If you take out some of the extra language, it says, an appeal from a determination issued pursuant to the Loft Law -- is what the change is. It's about an appeal of a determination. And then what OATH is changing is if the determination is based on the Loft Board rules or the Loft Law. Their requested change has nothing to do with the Hearings Division or any of that. It's just about where the determination comes from, and what if that one would appeal.

Mr. Clarke: Yes, that’s what it is.

Mr. DeLaney: Did they explain why they wanted this change?

Mr. Clarke: They didn't put in an explanation as to why they want it.

Ms. Lin: I think that they did explain it. They thought it was broader.

Chairperson Hylton: I really don't want to spend much time on this. I think we should just not accept that. If you want, I can always talk to them. I have a lot of experience in the Hearings Division. Making this change makes no sense, so it’s not worth debating. If the Board members will just ride along with me and reject this change for now, we’ll talk to them about it.

Mr. DeLaney: I support you, Mr. Chairman, because I think it's logical. The minimum housing maintenance standards for IMD buildings are spelled out in the Loft Board rules. Not in the Loft Law. The Loft Law doesn't say anything about what temperature a unit has to be or anything else. So, I agree with you a hundred percent. I think the same way we saw a kind of crafty argument in that first case today, where, oh, by telling me this, then you extended my deadline that ended by that -- you know, somebody could say, well, there's nothing in the Loft Law that talks about that. So, I think Loft Board rule is much more specific to what we're talking about.

Chairperson Hylton: Trust me, we're not going to go to the Hearings Division on anything in the law. We're going to address these things in the rules. Maybe they didn’t understand. But if we ever were to go to the Hearings Division, which we don't do now, it would be rules. And as you said, Mr. DeLaney, and I thank you for that, the rules spell out with specificity what we're actually charging. And also, the penalties would be subject to our rules. So, I don't see how we could even make this the Loft Law, unless they're going to interpret this as saying, the Loft Board rules are subject to the Loft Law. But the reason you issue violations is to be specific, so as not to be obscure about anything.

So, we should not change this. I would not support this. I think we move on and not do this. Ms. Lin, if you need me to talk to anybody there or have my folks talk to them, we can do that. But I actually served on the ECB Appeals Board for many, many years, representing both Fire and the Buildings Departments, and this change is probably a result of somebody who did not understand what this piece is about.

Mr. Clarke: Okay, thank you. So that concludes all of the OATH comments in our proposed rules. The Board members actually did an exceptional job today of finishing up the OATH comments. Ms. Lin is invited to jump in here, as I explain what we plan on doing for the next portion of the rulemaking session. The Loft Board staff is currently in the process of compiling something of a master set of proposed rules that incorporate all the changes the Board members have discussed thus far, as well as line edits from Operations, from the Mayor's Office. We feel it will be easier for the Board members to work with, as opposed to returning to old versions that do not adequately reflect all the changes that have been decided upon. We're trying to compile one set of rules that incorporates all the changes, and we should have that ready for you at the next Board meeting.

But in the time remaining today, there are some additional changes we can discuss with the Board members, and for this, we need to return to the set of proposed rules that all the Board members should have. I didn't email another copy to everyone, but it's this thick packet with all of our proposed rules, which the Board members have. Ms. Lin, correct me if I'm wrong, but this is the September draft of the proposed rules.

Mr. DeLaney: What's the file name of the document you want us to refer to?

Ms. Roslund said she believed it was the 09012020 draft.

Mr. Roche wondered if Mr. Hylton had received a copy, and Ms. Lin said, yes, he had.

Ms. Lin: Board members, I just emailed you all a copy of that draft. If you don't receive it the next couple of minutes, please let me know.

Mr. Clarke: If the Board members would open up that document, the first Law Department comment that we'll talk about briefly is on page 86. The definition of harassment. This was a comment where the Law Department recognized that we already had a definition of harassment in our global definitions and asked that we make the definitions match. So, we did that. The language matches, all except for in the block paragraph for harassment, which begins with, "Harassment means any course of conduct." And on the fourth-to-last line, where it says, "...Harassment, if engaged by the Landlord..." We have to include "harassment if engaged by the Owner or the Landlord." So, we're just going to add that language, Owner or the Landlord, and the global definition and the definition here will match. And that will take care of Law Department's comment there for harassment.

If there are no comments or issues with that, we'll move on to the next issue, which is about email service. We've added language to include consent. There are various places in our rules where we needed to add in additional language for consent to email service, and the first place you're going to see that is on page 18 of your document, highlighted in pink, from the Law Department.

I'm just going to be adding some additional language there, under section c(1), where it says, in the copy that you all have, "email, if the affected party has provided the applicant with a current and valid email address." We've added language in there to now read:

“email, if the affected party consents to such service and has provided the applicant with a current and valid email address.”

So, this is the first instance where we're adding the language for consent to email service. We believe this language is sufficient because we've already received this language from the Executive Order, where the Mayor allowed email service. So, we just took that language from the Executive Order.

Ms. Lin: Let me correct you. It's not from the Executive Order. This is part of the emergency rulemaking that we did back in April of last year. So emergency rules were reviewed by the Law Department at the time, and they seemed to be okay with the language that we put in there at the time. So, we think that should be sufficient. But if it's not, for whatever reason, the Law Department will tell us otherwise.

Mr. Clarke: Yes, it's the emergency rule. So that's the first instance where you’ll see that.

Mr. DeLaney: Can you go back to exactly what language you're going to add? Exactly where?

Mr. Clarke: Yes. On page 18, under Service of Application.

Ms. Lin: It might be page 17 for some of you. It shows up as 17, for me. I think it depends on whether you're viewing it as a track-changes, whether you’re seeing it with the markups or not. But for me, I see it on page 17. Its (c)(1).

Mr. Clarke: Under Services of Application. It should start reading, “email, if the affected party has provided the applicant with the current invalid email address.” It should be highlighted in pink.

Ms. Roslund: It's yellow on my document.

Mr. Clarke: So, with that sentence there, after affected party, email, the affected party, we're going to be adding language that says, “consents to such service.”

Mr. DeLaney: So that would read, “...if the affected party has consented to such service and has provided...”?

Mr. Clarke: That is correct. "...if the affected party consents to such service and has provided the applicant..."

Mr. DeLaney: And how does one give consent for this kind of thing?

Mr. Clarke: That is a good question. The staff thought about including language to try to address that question. But we decided it might be a little bit complicated to try to put examples of consent into the rules. And since this was already reviewed by the Law Department in the emergency rules, and it passed muster, we decided to just use that same language and not go into how, specifically, parties need to prove consent. We also feel that most of the parties that are going to be sending out service are familiar with, or have counsel that familiar with, how to properly get consent. Or the parties already know each other. If they have email addresses, it's probably not that complex of an issue for the parties to prove consent. But we didn't draft additional language.

Chairperson Hylton: A party would just email the other one and say, hey, is it okay that I serve you electronically? And their response to that email would be consent.

Mr. Hylton: Typically, a court will have you consent to electronic disclosures and emails for the remainder of this hearing, and someone responds yes or no.

Chairperson Hylton: And if there's no response, there's no assumption, right? Outside of the court doing it, Mr. Hylton, if he didn't respond to your email saying he consents, then you know you don't have consent.

Mr. Hylton: Correct

Chairperson Hylton: Mr. Clarke, I may have missed it. Did we make it clear why we need consent?

Mr. Clarke: We need consent because we don't believe a party has the right to just give email service without another party consenting to that.

Mr. Hylton: You can't assume another party's utilizing email.

Chairperson Hylton: Not even in the rule that, basically, says you can consent? This is the Law Department's comment, right?

Ms. Lin: It sort of is. It arose out of the Law Department's comments about electronic signatures in general and when we can require the parties to file electronically. Their opinion was that we can't really mandate it, but it can be an option. So, this expanded from that. They haven't explicitly told us to do this, but this was part of the emergency rules. I believe it came up during that portion. I'd have to go back and look at the correspondence between former staff and Law Department to verify. But I believe that's how this came about.

Ms. Roslund: Also, email's a tough one. You have an official address, your physical address. It's on file. It's on your driver's license; it's on your documents and all that kind of stuff. Email's more vague. But I have, like, seven email addresses. So, if you sent me something, and I didn't check that email for six months, I could claim I never got it. Isn't that kind of where this is coming from, the consent?

Mr. Clarke: Yes. I think we're concerned that the party that's receiving the email is aware that they're going to be getting important documents through this type of communication. And they're consenting to it.

Chairperson Hylton: Yes. You can expect the mail, the regular mail, but you don't necessarily want to assume that everybody's looking at their email for important messaging like this. But even for rules saying you can serve by email, are you saying if the rule says you can make service by email, it has to have the caveat of upon consent?

Mr. Clarke: We believe so.

Chairperson Hylton: As a safety net. So, let's err on the side of caution, right? You say you believe so, but I think you know so, really.

Mr. Clarke: Right. As Acting Executive Director Lin said, we're basically mirroring the emergency rule, and the emergency rule included this consent language.

Chairperson Hylton: Which was what the Law Department told us we had to say, correct?

Mr. Clarke: Correct

Chairperson Hylton: Thank you.

Mr. DeLaney: I hate to belabor the point, but I agree with what Ms. Roslund said. I think I still have an AOL email address out there still collecting junk mail. I don't even remember the password for it. And I probably wrote a complaint to my landlord on it eight or ten years ago about heat. And if he all of a sudden decides that that's adequate service, then there's going to be a problem. And I understand what Mr. Hylton said. If the judge gets everybody together and asks, okay, from now on, is this okay, and it's all on the record, then it's clear that people agree, and they know which email address to use. There must be other agencies that have grappled with this. I would think there would be some best practice for how you establish this.

Chairperson Hylton: But the bottom line is, in this modern world, you want to have the ability to have electronic service. We should definitely have a confirmation from the party or parties who want to accept electronic service, simply because, if they do agree to it, then they'll be looking for that service, right? That's confirmation that they actually read that particular email. It's not just that junk email box that they use to apply for every promotion that comes up, right? We actually have one set aside, officially, for important correspondence. So, yeah, I think the bottom line is, it's just good practice, but it's also, I think, legally required, as per the Law Department, that they consent to service. But everybody doesn't have to consent, right? You could have half the parties consenting to electronic service and the other half not consenting – still being served the old-fashioned way?

Mr. Clarke: That's correct.

Mr. DeLaney: Well, in this context, which I guess is 1-21(c), we're talking about service of the initial application. So, at this point, if I live in a big building, and there are commercial tenants and residential tenants on the initial application, the chances are I don't know everyone's email address to begin with. This is the initial communication, and it seems a little far-fetched that I'm going to go up and down the halls knocking on people's doors saying, hey, I want to make sure I serve you as an affected party. What's the right email address? And do you give consent? It's a great way to meet your neighbors I suppose.

Mr. Clarke: Right, but there are other places where we have added this language, which includes service of the narrative statement. There are six places in the rules where we've added this consent language, the next occurrence being on page 19.

Mr. DeLaney: But I hope you take my point, that once, to quote Sherlock Holmes, the game's afoot, then you kind of know who the players are, and it would be easier to start to have an electronic dialogue. But this is the toss-up at the start of the first quarter of the ballgame.

Ms. Lin: Mr. DeLaney, the thought here was just to make it an option for people who do know each other. The Loft Law only has so many practitioners, and they all know each other. So, the idea is to make it easier for practitioners to serve each other. Say for example a tenant wants to file an overcharge claim, and you know who the owner's attorney is, and you know how to serve them by email, it's much easier for the tenant's attorney to just email the application over to the owner's attorney. A lot of times the owner's attorney really has no issue with it. The only problem is our rules prohibiting them from doing that. And the goal here is to allow that kind of service in order to expedite certain matters.

Chairperson Hylton interjected that they were just about out of time.

Mr. Clarke: Yes. We just basically wanted to bring to the Board's attention where we added this language. It's in six different places. We just looked at the first one. As for the additional places, Board members can look at it now, or we can save it for next week.

Ms. Lin: Why don't we pick it up next week. And in the meantime, Mr. DeLaney, if you want, you could reach out to other practitioners and get their take on it to see whether they think this will be burdensome. But I think the idea behind this was really to make it easier for the frequent petitioners to be able to start applications.

Mr. DeLaney: I'm thinking more of building-wide issues like coverage, where there are affected parties who... But they can be served by mail.

Ms. Lin: Yes, they can still be served by mail.

Chairperson Hylton: Right. This is just an optional service, if the party agrees to it. And I suppose if the party bringing the action wants to go around on foot and knock on every door and say, what's your email address, we can't stop them from that. If they want to ask around, as long as it doesn't become harassment.

Mr. DeLaney: And I agree that if the practitioners -- and it is a small group of individuals -- if they can serve each other because they know who they're representing, by email, and they know there's going to be consent, it'll save on administrative costs. So that's a good thing for the parties that the attorneys represent, presumably.

Chairperson Hylton: Okay, Mr. Clarke?

Mr. Clarke: Yes. We did a good job today. We got through OATH, and we'll pick it back up next Thursday. We'll have another document to circulate, so we'll finish up with consent, and we'll go through the line edits from the Mayor's Office. And, hopefully, we'll stay on track with Chairperson Hylton's timeline for completion.

Chairperson Hylton: I don't want to start having Board meetings on Sundays now, you know, so...Let me ask you, though, in the interest of time, I'm thinking this. These areas where you have to add this language. The Board members seem to be okay with that piece. Do we need to revisit this, or can we just change it?

Mr. Clarke: If the Board members are fine with that, we have no problem with it.

Chairperson Hylton: Okay, why don't we do this then. Why don't we do this then, so we don't revisit this unnecessarily next time. Why don't we make those changes, circulate them, and if anyone has any questions, we can pick those up next time.

Ms. Torres-Moskovitz: I think if the staff could look at anything else that's related, for example, I know from my experience, a narrative statement affidavit, where everyone needs to sign something. Does it have to be a wet-ink signature, or can it be digital? We're going digital. The idea is that we need to make it easier for people to go digital. So, if it's related, similar to what we're talking about for emails instead of mailings, if there are other issues in the rules that are about real signatures of, say, all

tenants needing to be on one piece of paper during COVID -- which is crazy -- that there would be a way to avoid that. To have it as a digital signature.

Chairperson Hylton: Electronic signature. Is that not something else? A separate type of discussion, Ms. Lin?

Ms. Lin: I think it depends on what you're talking about. When some people say electronic signature, they mean you check a box on a web page and say, I affirm this is my signature, instead of writing anything. But here, I think what Ms. Torres-Moskovitz is talking about is signing something and scanning it. Is that what you're referring to?

Ms. Torres-Moskovitz: If you have a document you need ten tenants to sign, and you collect eight of those signatures as real, because people are around, but it's COVID, and so two of them are digitally attached onto Adobe, until the end sheet is like a digital...Everything's signed, but not a wet-ink signature. That should be fine today, rather than every single original signature. Like the Declaration of Independence, where John Adams and everyone signed for real. We shouldn't have to all sign real when there's fifty tenants or ten tenants. It's just too much of a burden. So, if there's anything antiquated like that, I feel like it should be clarified.

Ms. Lin: That's the intent with these proposed rules. That's what we are trying to do. There is some complication with trying to make sure it complies with state law. And we're still looking into that. That's something that, I think, the original staff had not really contemplated when they drafted these rules. So, it's something that we're looking into now. We are trying to make that happen.

Chairperson Hylton: Are you saying that you're looking into that in these current rules?

Ms. Lin: We have to. The Law Department says we have to. They're basically saying, you missed this, so you have to go back and make sure this complies with this. We're trying to do this.

Chairperson Hylton: You know where I'm going with this, right? I don't want anything holding up our rules.

Ms. Lin: Yes, I understand, but in order get certification from the Law Department, we have to make sure it's legally compliant.

Chairperson Hylton: All right. I agree with you, Ms. Torres-Moskovitz. It's good idea.

Mr. DeLaney: Before we close out, can I just ask, when can we expect to get the new document that we'll use next week?

Ms. Lin: I'm going to try to send it out tomorrow. It may not be as clean as I really want it to be. I'm trying to clean it up as best I can. It is kind of a mark-up mess, as you will see, but I'm trying to make it less daunting to look at. But I will try to get a version out tomorrow. I'm also drafting a comparison document to go with that, so I can direct the Board members' focus to specific pages, instead of making you hunt through 180, 190 pages. That might not come until next week, the comparison guide. But I will try to get the full document out to everyone by tomorrow.

Mr. DeLaney: Thank you.

Chairperson Hylton: Okay. Are we all clear hearts everyone? Anyone else want to say anything else? Mr. Roche is a thumbs up. Everyone else is good? Good. Thank you. I don't think Easter or Passover is before next week, right? I just want to make sure I'm not wishing anybody prematurely, a happy holiday. I think we meet back next week.

So, this will conclude our March 18, 2021, Loft Board meeting. Our next meeting will be held Thursday, that's next week, March 25, 2021, at 2pm. As you know, the Governor's suspension of the in-person meeting requirement of the Open Meetings Law is in effect until March 28, 2021. So, we will be holding our next meeting in this forum, virtually. Board members, please remember to sign and email your attendance sheets. Thank you very much, everyone, and have a great week. Thank you.