

MINUTES OF PUBLIC MEETING
New York City Loft Board Public Meeting

May 20, 2021

The meeting began at 2:07 PM

Attendees: Elliott Barowitz, Public Member; Charles DeLaney, Tenants' Representative; Kei Hayashi, Manufacturers' Representative; Christian Hylton, Owners' Representative; Nicole Oddo, Public Member; Samira Rajan, Public Member; Richard Roche, Fire Department's *ex officio*; Heather Roslund, Public Member; Renaldo Hylton, Chairperson Designee; Kevin Schultz, Executive Director

INTRODUCTION:

Chairperson Hylton welcomed those present to the May 20, 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 introduced the new Board member: Ms. Nicole Oddo is a skilled financial executive and Certified Public Accountant with over fifteen years of experience as an accountant and operations professional. Her experiences growing up fueled a desire to help build power for working class communities, immigrants, and other vulnerable members of society. Among other notable achievements, including work at leading contemporary art galleries, Nicole began her career as an auditor and tax accountant in a wide variety of industries, including government contracting, nonprofits, food and beverage, real estate, and luxury retail. She further developed her nonprofit expertise in the role of Director of Finance and HR, and later CFO, at Make the Road New York, a multi-funded social justice organization with over two hundred employees and sites throughout the New York metropolitan

area. Nicole is excited to be back at a place where her work contributes to making people's lives better and is honored to join the New York City Loft Board.

Chairperson Hylton asked Ms. Oddo if she would like to address the Board.

Ms. Oddo: I'm just grateful to be able to lend my experiences to helping support people, especially in New York. I've lived here for a long time, and it's really something I enjoy doing. So, thank you for having me today.

Chairperson Hylton welcomed Ms. Oddo and continued: Item number 8 on today's agenda will be a discussion of an active litigation matter against the Loft Board: *Matter of Dezer Properties II LLC versus New York City Loft Board*. The Board will consider this item after all other agenda items have been addressed. At that time, I will entertain a motion for the Board to enter an executive session to discuss this matter.

VOTE ON MEETING MINUTES:

March 18, 2021 Meeting Minutes

Before voting on the minutes, **Chairperson Hylton** explained that at the March 18 meeting he had inadvertently announced the details of docket number LE-0715, which was not on the calendar. The correct item was Broadway Corporate Group LLC, at 496 Broadway, Brooklyn, docket numbers LE-0722 and RG-0211; and documents for that case were, in fact, presented to the Board, discussed, and voted on. LE-0715 was not presented for discussion at the March 18 meeting, and the minutes from the March 18 meeting reflect the Board's vote on LE-0722 and RG-0211. He asked if there were any questions about that (none), and continued: Are there any comments or corrections to the minutes apart from what I just mentioned?

Mr. DeLaney: Thank you, Renaldo. On page 4, I had asked a question with regard to resuming our enforcement efforts. And at that time, Acting Executive Director Lin pointed out that our enforcement attorney was out on leave, but I see him in the room today, so I'm just asking for an update on our plans going forward with enforcement, either now or when the Executive Director gives his report.

Chairperson Hylton explained that Mr. Schultz would be addressing that in the Executive Director's report. As there were no further corrections or comments to the minutes, he asked for a motion to accept the March 18, 2021, meeting minutes, and for a second.

Mr. DeLaney moved to accept the March 18, 2021, meeting minutes, and **Mr. Barowitz** seconded.

The vote

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

Members dissenting: 0

Members abstaining: 0

Members absent: 0

Members recused: 0

March 25, 2021 Meeting Minutes

Chairperson Hylton asked if there were any corrections or comments to these minutes.

Mr. DeLaney: I do have one question. In the minutes, early on, we discussed the issue of handling, tracking, and scheduling if OATH were to pass that to us. And in the March minutes, Chairperson Hylton agreed on page 3 and asked the staff to circle back to OATH and discuss this in a little more depth and report back next month. So, I'm curious when we might get a report on that question. How we would handle the logistics.

Chairperson Hylton: I thought we handled that at the last meeting, was it not?

Mr. Schultz: The notices that OATH has been handling for us, should we have to take it over, how that might go. Is that the topic?

Mr. DeLaney: Yes

Mr. Schultz: Yes, we covered it last month, but I'm happy to cover it again in my Executive Report. Or now.

Mr. DeLaney: Okay. Thank you.

As there were no additional comments, **Chairperson Hylton** asked for a motion to accept the March 25, 2021, minutes, and for a second.

Mr. Barowitz moved to accept the March 25, 2021, meeting minutes, and **Mr. Roche** seconded.

The vote

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

Members dissenting: 0

Members abstaining: 0

Members absent: 0

Members recused: 0

EXECUTIVE DIRECTOR'S REPORT

Mr. Schultz: Thank you, everyone, for joining us today. First, I'll address Mr. DeLaney's inquiries. With respect to enforcement, you're correct. Our enforcement attorney is back, and we're very happy to have him. We've scheduled a weekly meeting devoted to enforcement, and we haven't missed one yet. At present, it mostly involves getting me up to speed, but we've also working from several documents and a wonderful presentation prepared by Mr. Argov's predecessor.

Some of the topics we're covering week-to-week are some of the owner defenses that are baked into the rules and how we can address those, both in combating those defenses if necessary but also, potentially, avoiding having to confront those defenses in the first place. And there's conversation about

what I believe was called cooperative compliance. If that wasn't quite the phrase, the meaning of it was ways to try to communicate, warn, advise -- perhaps collectively -- the owner community, with the goal of avoiding enforcement altogether.

When it comes down to actually executing enforcement, there's quite a bit of discussion about the venue. Again, I'm being debriefed week-by-week, but my current understanding is that OATH Trials is the venue, and we're sussing out whether or not that is the best venue or whether OATH Hearings is an option. These are the active discussions we're having on enforcement.

Mr. DeLaney: To follow up, I would ask two questions. The first is, the Loft Law does have a provision that allows, under certain circumstances, either the Board or tenants in the building to bring a motion for specific performance. Have you discussed that?

Mr. Schultz: I have seen it; we haven't discussed it. But I will gladly put that on the next enforcement meeting agenda.

Mr. DeLaney: I would appreciate that. For those newer Board members, and I'm talking in rough figures, under the original Loft Law in the 80s, there were about nine hundred buildings that registered as IMDs. There are still about two hundred of those buildings that have not completed the process. And maybe they're waiting for the fortieth anniversary of the Loft Law next year; maybe not; I don't know. But while cooperative compliance sounds like something that would be a wonderful vehicle if it works, at some point....there are a few really egregious owners out there.

There are owners who haven't registered their building in ten years. We don't know if we have the right emergency contact information for them. So, at some point, it would seem to me that the Board might entertain using the stick of specific performance in a building or two. I know it's arduous, but it's never happened in close to forty years. There are owners that are out there on the field doing the exercises, but there are some still sitting in the locker room. They haven't even showed up on the playing field. And if they continue to get away with it, what message does that send to everybody else?

Mr. Schultz: Thank you for flagging that. I've written it down.

Mr. DeLaney: Thank you.

Mr. DeLaney continued with his second question: At the time that memo by the former enforcement counsel was written, there had been a select group of buildings designated for heightened scrutiny, or maybe cooperative compliance. Have you reviewed that list? And is there any good news out of that?

Mr. Schultz: No, I haven't reviewed that list. In fact, I'm going to find that list now that you've mentioned it. It's possible it got to me, and I didn't recognize it for what it was at the time. But thank you for flagging it.

Mr. DeLaney: Thank you.

Mr. Barowitz: One of these days, we'll have a new mayor, and I wonder whether somehow we could put this problem on the agenda for the new mayor, or the old mayor, to get more enforcement officers. The fact that there are so many of the original buildings that still haven't been legalized is really a shame. Having more enforcement officers to go around and check up on those buildings would be a huge help. Do you think it's possible that we could ask the mayor or the new mayor for a little more help here?

Mr. Schultz: I take note of that, and as we are trying to build a comprehensive and effective enforcement plan, that request is going to become part of it. Obviously, more resources are always better. But we want to ask for the right resources, and I think that might very well be one of the right resources to go for. So, thank you for that. Anything else on the enforcement update?

Mr. DeLaney's second inquiry concerns rulemaking. There is a rule by which the Loft Board staff is responsible for service of documents in the pendency or before an OATH proceeding. However, in practice, OATH has very kindly, and efficiently, and with a great appreciation, been doing that for us. But appropriately, the question arose, what happens if and when OATH decides they can no longer do this for us?

In sum, I had a very good conversation with the OATH staff, who assured me this would not be dropped in our laps unexpectedly. There would be lead time; they would provide drafts of documents to use; and a very crucial piece, the coordination of the schedules, would still be managed by OATH's calendaring unit. We would just be, basically, the mailing agent.

That was the crux of that conversation. If there's anything more, I can definitely try to seek that out.

Mr. DeLaney: That's good. Thanks.

Mr. Schultz continued with his report.

Executive Order

Due to the ongoing public health crisis in accordance with the Governor's Executive Order, 202.105, issued on April 27, 2021, the suspension of required, in-person Board meetings has been extended through May 27, 2021.

Revenue

With respect to revenue, the unofficial Loft Board revenue for April was \$950.

Violations

Two violations were issued in April. On April 2, one violation was issued at 73 Leonard Street for no running water in the building. Also on April 2, one violation was issued at 517-525 West 45th Street for inadequate heat.

Litigation

I have some litigation updates. The first is a new motion on an old case: *Rusudan Grigolia, et al v. Cretan's Association Omonoia, Inc., Department of Buildings, Housing Preservation and Development, and the Loft Board*. In that case, back in 2015, the tenant had signed a settlement stipulation, which they've now filed a motion to enforce. The terms of the stipulation that are problematic are really the landlord's; they're not us. We remain a party on paper, but while we're included as a party, the motion isn't an action involving us or the city in any way. It's seeking specific compliance on things that the landlord had said they would do back in 2015.

There are three decisions. One is *Robinson, et al v. the New York City Loft Board*. In this case, tenants filed an Article 78 challenging Loft Board Order 4854, which was dated February 21, 2019, and Order

4948, dated March 19, 2020. The tenants have claimed they were rent-stabilized tenants under the Rent Stabilization Law and not the Loft Law. The Orders found that the building was an IMD under the Loft Law, and Order 4854 refused to reject registration for coverage despite the tenants' protest and preference to be covered by the Emergency Tenant Protection Act. The second Order, 4948, denied reconsideration of that, saying that the tenants failed to show error or denial of due process. Most notably, the Board rejected the tenants' claim that an informal conference that was scheduled pursuant to Loft Board rules should have complied with CAPA notice and requirements. The court dismissed the Article 78 petition, finding that the Loft Board's Orders were not arbitrary, capricious, or contrary to law.

The second decision update is *James Gubelmann versus the New York City Loft Board, Cynthia Law, and Frank Lam*. In that case, the petitioner filed an Article 78 challenging Loft Board Order 4819 denying coverage and protected occupant status because the tenant failed to prove that one of the three units occupied during the Window Period had a front-facing window, as required -- facing a street, a yard, or a court. Mr. Gubelmann was permitted to withdraw his petition as moot, ultimately, because he reapplied for coverage under new standards that were amended and made retroactive in 2019's Loft Law updates.

The third case is *Nazor and Mickle versus the New York City Loft Board and Sydney Sol Group, Ltd.* In that case, the petitioner, the tenants of 544 West 27th Street in Manhattan, filed an Article 78 seeking an Order to compel the Loft Board to reconsider their application a second time. It had already been reconsidered once, and they sought another reconsideration. These tenants had unsuccessfully challenged two Loft Board Orders in a prior Article 78, so this one was to compel another review.

The Loft Board Orders at issue accepted an OATH ALJ's recommendation and denied their application seeking coverage and protected occupant status because the new tenant resided in the building for twelve consecutive months during the Window Period in 2008 and 2009. The second Order they issued reconsidered, but also denied it. The court dismissed the tenants' Article 78 in this situation, finding that the Loft Board's denying a second reconsideration was rational. It was not arbitrary; it was not capricious, or contrary to law.

I have one more update related to legislation, which I found out about yesterday. I really just want to flag it for everybody. It's State Assembly bill number A 07667, which contains proposed changes to the Multiple Dwelling Law 282. I'll just read the description given:

It would require owners to provide essential services and habitability for Interim Multiple Dwelling units and allow occupants of Interim Multiple Dwelling units to bring an action in a court of competent jurisdiction. This adds on some rights and protections for tenants insofar as potential action for essential services and habitability issues in IMDs. And within the language, it discusses specifically for these issues, being able to bring them to the New York City Civil Court housing part. So, there's more to learn about this. I've told you all I know about it at this time, but I did want to flag it for everyone because it's obviously very pertinent to what we do. That is everything I have for the Executive Director's Report.

Mr. Hylton asked Mr. Schultz if he knew who had introduced that legislation.

Mr. Schultz noted it was Assemblywoman Glick.

Mr. DeLaney added that this was Deborah Glick, who represents Greenwich Village, down to Soho and up near Chelsea. He also asked Mr. Schultz if he would send him the paperwork on the first case, as he didn't get the name of it (*Rusudan Grigolia, et al v. Cretan's Association Omonoia, Inc, and DOB, HPD, and Loft Board*) and for the address in *Robinson, et al v. the New York City Loft Board*.

Ms. Lin provided the address for the latter as 47 Thames Street, Brooklyn, New York.

Mr. DeLaney: Yes, a rare building that doesn't want to be covered by the Loft Law. Now, I do have a couple of other questions for Mr. Schultz on topics that we have not touched upon yet. First and foremost, on Monday of this week, the City Planning Commission certified a ULURP item relating to a proposed rezoning of Soho and Noho. This comes after a long period of discussion that originally began in community meetings, and it has some impact on the loft world because of the artist-owned zoning in Soho and Noho and the number of IMDs in Soho and Noho. In fact, the former Executive Director and General Counsel, Ms. Balsam, and [former Deputy General Counsel] Ms. Cruz, had attended a number of those community meetings. I just wonder if the Board has any intention of playing any role, or staying informed, or briefing the Board members on that topic.

Mr. Barowitz: Let me add something to what Mr. DeLaney just said. I got very involved in the new zoning and was on several committees. Last week in the Daily News there were two long articles -- one by an architect supporting the rezoning of Soho and Noho and another by a housing group that was against it. Both were quite lengthy and neither of them mentioned artists, which grieves me, since the Soho community, at least, was made by artists. And no matter what I say about it, it doesn't seem to matter.

I sent two long letters, not identifying myself as a member of the Loft Board, to the Department of Planning, and got no response. So, I think that we have an uphill battle here for the recognition of artists living in lofts. And I just hope we can make ourselves known, because also, it was really quite clear from the last Zoom meeting I attended on Soho-Noho, that most people had no idea what the Loft Law is, who it covered, and why. And that's really just too bad.

Chairperson Hylton: Thank you, Mr. Barowitz. Any other quick comment?

Mr. DeLaney: I'm sorry, I don't think I got an answer to my question. And I have another one as well.

Mr. Schultz: Sure, I'll answer. Personally, I have to thank Mr. Barowitz. Within my first few days in this position, he forwarded me one of the public meetings -- one of the bigger ones -- and I was able to join it and listen in. So, to the extent that I and we are staying abreast of this, that certainly is true. As far as providing updates to you, I can certainly confer closer with the staff to get a better understanding of the interaction. And I know there is plenty of interaction between what we do and the rezoning, specifically insofar as impacts we can update you on. Please allow me to confer with the staff on that. And we will.

Mr. DeLaney: Perhaps you could provide us with an update next month?

Mr. Schultz: Certainly, yes.

Mr. DeLaney: Okay. And my last question regarding your report is an expression of concern reflected in an old saying that says, any road will do if you don't know where you're going. And the Loft Board has really fallen down, in my view, in providing members with statistics. Eight, ten years ago, there was a regular, quarterly report; and we got a few of them. But the last one's probably two years old.

I've mentioned earlier the fact that of the nine hundred or so buildings that originally registered under the original Loft Law, there are two hundred left in the system. The reports we used to get would tell us how many buildings are in our jurisdiction; how many are under 281(1); 281(5); and now 281(6); where they are; it would identify how many where the landlord hasn't done anything; it would tell us how many had reached a T C of O; how many had obtained permits -- that kind of information. And without those kinds of key performance indicators, the road we're on is fine, because we don't know where we're going.

Similarly, we used to get a report of how many cases are pending based on flavor: how many coverage; how many legalizations; and all that has kind of disappeared, which is a real concern to me. And I think, with new Board members and a lot of relatively new staff members, it's time to get back on track with that. Because, for example, we often hear the argument that the Loft Law doesn't work, and no buildings are being legalized. But in reality, we have -- I don't know now, because it's been over a year since I've seen any figures -- but we had a significant number of buildings that had reached Certificate of Occupancy; a number of them that had filed removal cases. We had more buildings that had really finished the process, except for getting their exit visa, than was evident in the stats.

I think it's time that we find a way to provide that kind of reporting. So, I guess my question to you is, would you take a look at that, and also update us about that at next month's Board meeting?

Mr. Schultz: Yes, I will work to get my hands on one of those reports you're referencing and see what can be replicated. And if I can't find it, I'll reach out to you to see if I can make sure I know I'm looking at what you're talking about. My guess is that I'll find it.

Mr. DeLaney: I can certainly rummage through the old downloads of the Loft Board materials and supply you with some of them. The stats that were provided some years ago were better than the most recent ones. But anything is better than nothing.

Mr. Schultz: I know our staff are excellent record keepers, so I'm sure I'll find what you're talking about.

Chairperson Hylton: Ms. Rivera is kind enough to say she knows that she has those previous reports. And thank you for flagging that, Mr. DeLaney. I think we got a little side-stepped with rulemaking for

the past couple of years. But yes, we do have some information that we can share. Every month would be a little bit too much, but we could certainly plan quarterly.

Mr. DeLaney: Just as in the proposed rules we're easing the requirement of owners to file legalization updates once a quarter rather than once a month. We don't need these every month by any means. But quarterly would be wonderful. And we could see how we're doing.

SELF-CERTIFICATION

Mr. DeLaney: Once again, particularly for the new members of the Board, several years ago at this point, a former Board member, Julie Torres-Moskovitz, asked for a meeting with the Department of Buildings expert, Deputy Commissioner Martin Rebholz, on a series of topics, but this one in particular.

There have been loft buildings that have been able to make progress towards legalization through the Department of Buildings in ways that make no sense. And in some instances, I think, also demonstrate a flagrant abuse of the system. For example, there's a building where the owner applied to legalize twenty units but got a Certificate of Occupancy for forty units. And 255 18th Street in Brooklyn got a Certificate of Occupancy despite having basement units, which should never have been legalized.

And that led Ms. Moskowitz who, like Ms. Roslund, is an architect, to question both the professional certifications and the self-certification process. That's not to imply that there are a massive number of landlords who would resort to extraordinary and questionable tactics to bring the building to compliance. But since the 70s, when there was no regulation whatsoever, the loft world has always seemed to attract people with questionable intentions or who were willing to utilize extraordinary means to get around the normal routine.

What we learned first from Mr. Rebholz is the distinction between professional certification and self-certification, all of which is summarized much better than I can by comments from Heather and former member Julie Torres-Moskovitz in, I believe, the November 2020 and the January 2021 minutes. We learned from Mr. Rebholz that about twenty percent of self-certification advancements that are given are audited by the Department of Buildings. They also audit self-certification.

Ms. Roslund: Professional certification

Mr. DeLaney: Professional certification. They also audit professional certification if there's a complaint raised. And the question came up, would it make sense for the Board to express a desire to the Department of Buildings that review of professional certifications be routine for IMD buildings?

There are at least half a dozen incidences of activities that just should not have taken place. An example from many years ago is 4860 Beach Street, an IMD building, where the owner got a Certificate of Occupancy for the building even though it was over 5000 square feet and would have needed certification in Tribeca to accomplish that. Boom, the owner just got it. The tenants had to hire a law firm to go to the Board of Standards and Appeals along with the city to ask that the Certificate of Occupancy be revoked, which it eventually was. And the Department of Buildings employee who had made that magical Certificate of Occupancy appear was dismissed from the Department of Buildings for that activity but was back the next week as an expeditor.

The Department of Buildings has made a lot of progress since those days. But still, there's just something about the opportunities in loft buildings that seems to attract a measurable percentage of people who don't want to play by the rules. So, the question is, should self-certification in loft buildings be subject to automatic review? Would that help reduce these kinds of events going forward?

This is something we've talked about multiple times, and I have opted not to press forward because I don't think it's fair to say to someone, in this case, Ms. Oddo, hi, it's your first meeting, make a big policy decision. But I've deferred it now for three or four months, so I think at least some discussion would make sense. And then, if there is interest on the part of the Board, I'd be happy to draft a resolution or go back and provide some more detail on the kind of abuses we're talking about.

Chairperson Hylton: Thank you. I just want to be clear. When Mr. DeLaney says twenty percent are self-certification, he means, I think, the Department audits twenty percent of all certified jobs.

Ms. Roslund: Professionally certified.

Chairperson Hylton: Professionally certified. I just want to be clear on the terminology.

Ms. Roslund: And I would add that it's not just the issue that a building owner might hire an unscrupulous professional to get a building through the Buildings Department. There's also the issue of spaces that have been built-out without any forethought; without a team of professionals; without licensed contractors. Everyone involved in the construction of a loft is at play here. So, when a professional has been certifying to the Department of Buildings that this building is legal, there's so much room for error; it's such a morass, that to have someone just say it's okay, without any review or scrutiny, is where the focus of this issue really lies.

Mr. Hylton: I would say that we also need greater scrutiny in terms of what qualifies for self-cert because not everything does. What instances are we talking about in terms of what was cited in the letter that we looked at? The instance of a specific architect on multiple sites was discovered many years ago by the Department of Buildings, and it was remedied. So, are we looking for a problem? Or is there a genuine issue here that requires addressing? Have there been several cases of architects since then self-certifying, and Department of Buildings issuing violations, and suspending architects' licenses, and things of that nature? Have we seen that around? And also, there's a specific group of architects who typically work on loft buildings. Have we seen that amongst those practitioners? I want to be clear as to what's being proposed and what remedy is being proposed.

Chairperson Hylton: I don't believe this debate is going to happen right now. My understanding is that we think about it and come back for the debate. Is that what you're suggesting, Mr. DeLaney? Because we really don't have the time to delve into all this debate today.

Mr. DeLaney: I think the questions Christian raises are good questions. It's certainly true that this is a relatively small universe of architects who deal with these buildings. And the answer to how prevalent the problems are, I don't know. We hear about only the most egregious, and I suppose perhaps Mr. Schultz may have some sense, based on his prior role at the Department of Buildings. My interest was really to get a sense from other Board members whether this was a topic that merited some study, or not.

Mr. Schultz: As far as knowing how prevalent the problems are, it's something I can certainly look into.

Mr. DeLaney: And Heather makes a very good point. That the circumstances in loft buildings are complicated by the fact that they've been built-out often by artists, craftspeople, tenants, who may or may not have a thorough understanding of code. And now the owner is being asked to legalize the unit with the tenants in place, which is quite different from the construction of new housing, where nobody moves in until there is a Certificate of Occupancy.

Chairperson Hylton: I want to make something clear. I know there's always room for error and sometimes misdeeds, but before any Certificate of Occupancy is issued by the Department, there is a final construction inspection done by a Department of Buildings employee to make sure that what is on the construction documents is actually what was built. Mr. DeLaney mentioned some anomalies there, but that is the official and regular process.

I want to move along, but I want to get clear on what we're doing with this next month. We want to allot maybe fifteen minutes for discussion of this?

Mr. DeLaney: I think that's fine.

Chairperson Hylton: Thank you, Mr. DeLaney, for that presentation.

THE CASES:

Appeals and Reconsideration Calendar

	Applicant(s)	Address	Docket No.
1.	16 Cypress Ave. Realty LLC	476 Jefferson St., Brooklyn, NY	R-0385
<i>Owner challenged Loft Board Order No. 4995, dated July 16, 2020, which granted protected occupancy status to tenants of unit 306. Owner's reconsideration application is rejected. Owner failed to show that there was a denial of due process or that the Loft Board made an error of law in determining that the previous tenant's sale of rights was invalid.</i>			

Ms. Lin presented this case.

Chairperson Hylton thanked Ms. Lin, and 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 comments on this case.

Mr. DeLaney: Yes. I had mentioned to my colleagues in the private session prior to the public meeting that this is one of several cases on today's agenda that deals with the desire, in many instances, of owners to present something as a sale of rights document pursuant to Section 286(12) of the Multiple Dwelling Law, and that this is an area that's become quite a headache for the Loft Board in terms of litigation around it and teasing out what is a legitimate sale of rights document versus what isn't.

The vote

Members concurring: Mr. DeLaney, Mr. Roche, Ms. Hayashi, Mr. Hylton, Ms. Oddo, Ms. Roslund, Ms. Rajan, Chairperson Hylton

Members dissenting: 0

Members abstaining: 0

Members absent: Mr. Barowitz

Members recused: 0

Chairperson Hylton explained Mr. Barowitz had to leave the meeting early, and then proceeded to the next cases.

Summary Calendar

	Applicant(s)	Address	Docket No.
2.	222 Varet Realty Corp.	222 Varet St., Brooklyn, NY	LB-0195
3.	Tamar Halpern	144 Spencer St., Brooklyn, NY	PO-0090; TA-0256
4.	Marie Estrada & Eric Jacobsen	473-493 Kent Ave., Brooklyn, NY	TR-1384
5.	Maciek Jasik	1609 Dekalb Ave., Brooklyn, NY	TR-1391

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

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

Chairperson Hylton asked if there were comments on these cases.

Mr. DeLaney: In the private meeting, I did indicate that I wanted, mostly for the edification of the new Board members, to make a couple of comments in the public session that weren't really appropriate for the private session. Case number 2 on the agenda, 222 Varet, is an abandonment application, where the owner withdrew the motion for abandonment. And just so you're aware, we haven't seen a lot of these recently, but the concept of abandonment came from the idea, which seemed pretty unusual at the time, that a tenant would just leave a protected unit. But by leaving, the tenant's not there; the unit's vacant; what can the landlord do? Can the landlord rent it to somebody else? If so, is it still at the protected rent? Does the owner have to legalize?

So, the Board developed a theory, following a court case that involved a tenant who left his unit, but who, at the point of his departure, owed the landlord some several thousand dollars. The owner went to court, and the judge determined that what had happened was that the landlord had made what the judge called a constructive purchase of fixtures. There's another section of the Loft Law, 286(6), which posits the idea that an outgoing tenant can sell their fixtures to an incoming tenant if they're first offered to the landlord, who has the right of first refusal. But this tenant just blew town, owing some back rent. So, the judge said, well, basically, you purchased the fixtures, so the unit's deregulated. That led the Board to craft an abandonment regulation, which attempts to address the issue of what happens when someone just leaves.

It got out of control, particularly in the 1990s. The Loft Board had a case where the tenant of a given unit in the East Village was shot and killed in a robbery in front of his own building. And the Loft Board somehow concluded that he had abandoned the unit. And that was following the logic that death in a unit could equal abandonment under certain circumstances. The abandonment rule has been cleaned up quite a bit, but there still is this question, which we saw here, where one of the big issues is how vigorously the owner attempts to locate the person who has, allegedly, abandoned. And we've run the gamut from owners doing a lot of work to find the tenant, and lo and behold, they didn't really abandon;

to the owner who just didn't file notice to the tenant, then the tenant pops up and says, I'm here. I'm living right where I was. I haven't abandoned anything.

So, there's kind of a wide range of cases, but this one seems to be in the process of resolving itself. But I promised you all that I'd spend a few minutes covering the thumbnail history, and that I've done. Thank you for your patience.

Chairperson Hylton: I appreciate that. Good job, Mr. DeLaney.

The vote

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

Members dissenting: 0

Members abstaining: Ms. Hayashi

Members absent: Mr. Barowitz

Members recused: 0

The Master Calendar

	Applicant(s)	Address	Docket No.
6.	Julian Bozeman	473-493 Kent Ave., Brooklyn, NY	PO-0075
<i>Owner filed an Article 78 arguing, amongst other things, that the Loft Board had not reviewed the entire record when considering Loft Board Order No. 4987, which rejected an OATH ALJ's recommendation and granted a tenant protected occupant status. In order to ensure that all relevant documents and briefs are duly considered, the Loft Board vacated Loft Board Order No. 4987 and remanded it back to the Loft Board for review.</i>			

Mr. Schultz presented this case.

Chairperson Hylton stated that due to the nature of the case, there would be no discussion. He then asked for a motion to accept this case, and for a second.

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

The vote

Members concurring: Mr. DeLaney, Mr. Roche, Ms. Hayashi, Mr. Hylton, Ms. Oddo, Ms. Roslund, Ms. Rajan, Chairperson Hylton

Members dissenting: 0

Members abstaining: 0

Members absent: Mr. Barowitz

Members recused: 0

RULEMAKING:

Mr. Schultz: The purpose of today's conversation will be to clarify a few comments from the last meeting and to flag a few things that were changed since the last meeting. I'm just going to work my way through them all. If you have a burning question and want to raise your hand or speak up, please do. Otherwise, try to save questions for the end.

The draft we had been working with had removed the table of contents, and as promised, I conferred with the Law Department on why that was done. Their answer is that tables of contents are unnecessary, so they regularly recommend their elimination. On modern computers, rules have links that create a tables of contents, which aren't in the rules themselves. Including them within the rules, as the Law Department said, creates another area that requires review and editing. So, for that reason, they, as a practice, have been removing tables of contents.

Next: The Statement of Basis and Purpose for the proposed rule was edited. Specifically, section three was edited. In conversations over the meetings, we've talked about the scope of that. That section has now been revised to really just reflect ministerial and form changes that have been made, as the content changes, for the most part, were entirely or almost entirely removed.

Next: At the last meeting, there was a request that we review certain language in the new rules to be sure it conformed with the Housing Stability and Tenant Protection Act, and we have done that. The HSTPA changed a four-year timeline to a six-year timeline, and we did the same.

A few other relatively minor items that changed:

- On pages 64 and 65, we changed the word monthly to quarterly in a few instances because the reporting requirements have changed from monthly to quarterly in other sections. So that's just for consistency.
- On page 96, there's a chart describing the temperatures at which an owner must provide heat. I believe before there was a notation of below 40°. But with the changes in the 2019 law, there really is no floor; there is no minimum. So rather than leave the blank box created by the edits, we added suggested language: in any temperature. At any temperature in that situation, the owner must provide heat. And it's within a certain date range.
- Pages 122 to 124 remove some section labels. It was formatting some re-numbering; some periods where they weren't supposed to be.
- Page 125 moved a bracket over to delete section G, which doesn't need to be there anymore.
- And pages 171 to 172 capitalize the word Prime Lessee because it's a defined term.

I'll pause there for comment or question on any of that or anything else.

Chairperson Hylton: First of all, I want to congratulate staff on this very professional document and for the time and effort you've all expended over these last four years or so. And I'm not exaggerating when I say four years. It's been a long stretch, and we've come to the point now where we have a document that is good, and ready to go, and that I believe not only greatly improves upon the current rules but also accommodates the many changes caused by new legislation.

I want to thank the Board members, past and present, who put so much time into working through these rules. It was not easy for those of us who are not lawyers. This has been quite a bit of work, and

you're now ready to at least give the Law Department a stab at giving us preliminary approval, so we can get public comments and get to a final rule, hopefully, soon after.

So, my heart goes out to everybody who has been involved in these rules. I even want to thank former Executive Director Balsam, who began this work and did a great job with it. We know in her heart she wanted to get this done before she retired. And now Kevin gets the praise for this, but...

Mr. Schultz: I'll share what I shared before. This is like getting to start the New York City Marathon somewhere in the north part of Central Park and cross the finish line. So very little credit to me. This was a long-time coming.

Chairperson Hylton: Staying on the marathon analogy, we now want to get through the finish line with this. And I think we're almost there. I appreciate everyone's thoughts, comments, input, hard work, research, writing, editing, all of it. Everything that went into this. Again, thank you. So, at this point, if no one has any comments...

Mr. DeLaney: Yes, I'm sorry. I have a couple of questions. First, with regard to the table on page 96, how do the figures that we have in here now for our minimum housing maintenance standards compare with the standard heat law in the city?

Mr. Schultz: I do not know. If anyone on the staff does, they're welcome to chime in, and we can certainly try to do some research right now.

Ms. Lin: It matches. I believe this is why it was taken out in the first place. It was changed to reflect the updates to the Housing Maintenance Code.

Mr. DeLaney: Because that was raised from nighttime heat between 10 and 6AM from 55° to 62° a few years ago, if I'm remembering that correctly.

Chairperson Hylton: Something like that

Mr. DeLaney: Okay, yes, thank you. And similarly, any temperature. If the temperature outside is any temperature that requires the heat inside to be 62° Fahrenheit. Whereas, during the day, the provision

is that it has to be below 55° to require the heat to be at least 68° inside. We're saying, any temperature, we've got to be at least 62°. But during the day, it's different. There is a minimum.

Mr. Schultz: Yes, during the day, there's a minimum temperature that can dictate what the landlord must provide. At nighttime, there's no temperature that dictates that the landlord must keep it at 62° degrees.

Chairperson Hylton: Right. So, I think the idea here is, it doesn't matter what the temperature is outside at night when you're sleeping; it matters what the temperature is on the inside.

Mr. Schultz: Yes. So, there's basically an unequivocal expectation for the landlord at night to keep it at 62°.

Chairperson Hylton: Right. Any other questions or comments on these rules?

Ms. Roslund: I wonder if that will change after last year. Because a big presumption of the daytime temperature is that people are not in the apartment during the day. But now that everyone has worked from home for a year and a half, it may change.

Chairperson Hylton: Very possible. We just hope that this was a temporary thing, and we're out of it. Any further questions?

Mr. DeLaney: Just a couple more. In terms of how we proceed, are you looking for us to vote to send this to the Law Department?

Chairperson Hylton: Yes. I think it's okay. So, yes, the next step would be your vote, Board approval, to send this to the Law Department for preliminary approval. If the Law Department feels there are substantive changes to be made, they'll return it to you, and you'll have to agree upon and vote for those changes. Then send it back to them for another approval. If there are no further substantive changes, they will return a preliminary copy for approval with any ministerial changes there might be. And that would start the comment period, at which point, you will have public hearings. After that, assuming you do not wish to make any changes, it goes back to the Law Department again for final

approval. Then you have a thirty-day window before the rule takes effect, so any minor issues can be worked out through back-and-forth with the Law Department.

Mr. DeLaney: Not to belabor the point, but just so I'm clear; because as you pointed out, we've been working on these rules for four years. It goes to the Law Department; the Law Department comes back and says, we changed a must to a shall, or whatever, a couple little changes. We then vote it out to be published, and that starts the comment period, correct?

Chairperson Hylton: Yes. Not final publication. It has to be published as a draft rule, and then comment period. Yes.

Mr. DeLaney: Yes. It gets published as a draft in the city record. And that publication, the city record, also triggers the clock for public comment, and we will hold the public hearing, correct?

Chairperson Hylton: Yes. And after that public hearing, you may, as a Board, decide you want to change something, or not.

Mr. DeLaney: And it would then come back to us for discussion and maybe some changes. If the changes are substantive, it would go back to the Law Department and come back. But after the appropriate comment period, at some point we would vote to make this official.

Chairperson Hylton: Yes, that's right. And then after that, it has to be published for thirty days before it takes effect.

Mr. DeLaney: And so my last question is, in the draft that we have, the notice of public hearing posits that that will be a virtual hearing. But by that time, the Open Meetings Law may be back into effect.

Chairperson Hylton: That is actually my hope.

Mr. DeLaney: So that would require just changing the opening notice.

Mr. Schultz: Yes, that's absolutely a good note. It's hard to tell right now, but I agree with the Chairperson. We hope to be able to do it publicly. And I don't know if I should be so bold as to say

expect, but it certainly seems hopeful. So yes, that language would have to adapt, and I believe I've seen what that language looks like, because this started before these hearings were teleconferenced.

Chairperson Hylton: Any other comments or questions for Mr. Schultz? So, without saying thank you too many times, I just want to say thank you, again.

Chairperson Hylton asked for a motion to vote on the rules, and for a second.

Mr. Roche moved to vote on the rules, and **Mr. DeLaney** seconded.

The vote on the rules

Members concurring: Mr. DeLaney, Mr. Roche, Ms. Hayashi, Mr. Hylton, Ms. Oddo, Ms. Roslund, Ms. Rajan, Chairperson Hylton

Members dissenting: 0

Members abstaining: 0

Members absent: Mr. Barowitz

Members recused: 0

Chairperson Hylton: I have to say, this must hurt Mr. Barowitz, not being here to vote on these rules.

The last item on the agenda concerns an active litigation matter against the Loft Board. The matter is *Dezer Properties II, LLC versus the New York City Loft Board*. Pursuant to the Open Meetings Law, section 105, a public body may conduct an executive session to discuss proposed, pending, or current litigation. At this time, do I have a motion for the Board to go into executive session to discuss litigation strategy in the *Matter of Dezer Properties II, LLC versus the New York City Loft Board* and to related strategy for future, similarly situated cases and relevant post litigation?

Ms. Hayashi so moved, and **Ms. Roslund** seconded.

The vote to go into executive session

Members concurring: Mr. DeLaney, Mr. Roche, Ms. Hayashi, Mr. Hylton, Ms. Oddo, Ms. Roslund, Ms. Rajan, Chairperson Hylton

Members dissenting: 0

Members abstaining: 0

Members absent: Mr. Barowitz

Members recused: 0

Chairperson Hylton: Thank you. The motion has passed, and we will go into executive session after I'm finished speaking. At that time, I would ask members of the public to sign-off so that the Board may go into executive session to discuss this matter.

This will conclude the public session of our May 20, 2021, Board meeting. As a reminder, our next public meeting will be held on Thursday, June 17, 2021, at 2pm. The Governor's suspension of the in-person meeting requirement of the Open Meetings Law is in effect until May 27, 2021. So, at this time, as usual, we do not know whether the meeting will be held virtually or not. When we have further information, we will update the Loft Board website and send an email update through the Loft Board listserv. Thank you, everyone. Board members, please stay on for the executive session. Members of the public, I ask you to log off at this time.